

Debates
of the
North Dakota Constitutional Convention
of 1972



PUBLISHED BY AUTHORITY
of the
NORTH DAKOTA
CONSTITUTIONAL CONVENTION
of 1972
TWO VOLUMES
VOL. I & VOL. II

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EDITED, INDEXED AND ARRANGED
By DEAN F. BARD

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FOREWORD

On April 28, 1972, the people of this state rejected the proposed Constitution of 1972 by a clear and decisive majority. With the force of a thunderclap, the product of nearly two years of intense activity, painstaking research and study, and endless hours of dialogue, persuasion and compromise was soundly defeated. For many, it was heartrending to see an object so carefully constructed and nourished die before it could bear fruit.

Without attempting to pass judgement on whether the majority of the electors voted as informed persons and were not swayed by false doubts and misinformation about the new document, it should be emphasized that the disapproval by the voters did nothing to cure the defects in the 1889 Constitution under which we are currently operating. Constitutional revision is, and should be, a continuing process. To that end, it is hoped that this volume will be useful. It has been indexed and arranged in a manner which will enable the user to gain information on a given subject dealt with by convention delegates by use of the subject matter index. The proposal index sets forth all relevant actions affecting proposals and resolutions, permitting a review of the progress of each. In the delegate index, remarks made on the convention floor are cataloged by subject. This latter index should prove particularly interesting and useful to historical scholars for one can easily obtain the convictions and philosophies expressed by individual delegates. Of course, it was not feasible to index each set of remarks, so the listing, although nearly so, is not totally complete. Instances where an expression merely supported or opposed a subject under consideration without any further reasoning or explanation given for the position were not included since usually little of substance was added to the discussion. Also, remarks made by President Wenstrom and Chief Clerk Gilbreath were not included in the index where the subject dealt with related merely to convention procedure or administrative detail.

The reader will notice that only a minimal amount of editing has been performed. Convention officials were of the belief, the opinion concurred in by this writer, that extensive editing, while serving to make the finished product more readable, would do so only at the expense of the speaker's meaning. Thus, it was only where obvious grammatical errors and errors of substance in factual matters were evident that corrections were made. And, where there was doubt as to the meaning intended to be conveyed, even these corrections were not made. Apologies are tendered in advance to those persons who may be offended by the informal style afforded by common conversation as found in this work. It is felt that the original intent was much better captured and retained by limiting the editing function in this fashion.

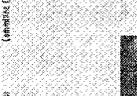
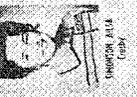
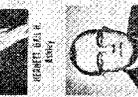
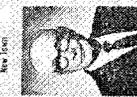
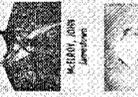
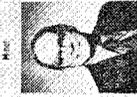
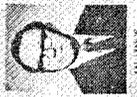
An explanatory note must be added concerning what this document does not contain. Only occasional references will be found mentioning the organizational session held on April 6, 7 and 8, 1971 and the interim committee period, which took place between the dates of May 20, 1971 and November 17, 1971. Since these portions of the convention's activity were not recorded verbatim by reporter, they could not be included in this volume. However, a record of these proceedings was made by electronic recording means and the tapes are on file with the State Historical Society for the future use of historians and students of Constitutional processes.

Most assuredly, the process of constitutional change will continue in this state. Whether its tempo will be increased or diminished by the effect of the Constitutional Convention of 1972 is as yet unknown. One fact does become clear however, and can not be denied — the 98 delegates to the Constitutional Convention of 1972 created a document through diligence and perservance that no one need apologize for, no one need feel regret over.

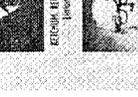
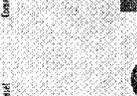
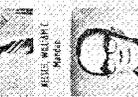
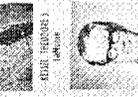
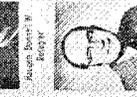
Quorum pars magna fui!

It is to these 98 that this volume is affectionally and justifiably dedicated.

Dean F. Bard



NORTH DAKOTA CONSTITUTIONAL CONVENTION 1972



BRUCE J. JOHNSON
Chairman

WILLIAM J. JENSEN
President

Delegates to the 1971-1972 North Dakota Constitutional Convention, by Districts

Dist. No.	Name	Home Address	Occupation	Marital Status	Where Born	Birth Date
1	Mrs. Frank F. (Elvira) Jestrab	Williston	Optometrist	Married	Minnesota	1917
1	Frank A. Wenstrom	Williston	Banker	Married	North Dakota	1903
2	Mrs. Arthur (Ailsa) Simonson	Crosby	Newspaper Writer	Married	Iowa	1922
2	Myron J. Wallin	Crosby	Insurance and Real Estate	Married	North Dakota	1923
3	Elmer W. Cart	Minot	Retired	Widower	Iowa	1891
3	Henry P. Sullivan	Mohall	County Justice	Widower	Minnesota	1907
4	Clare H. Aubol	New Town	Aubol's Inc.	Single	North Dakota	1936
4	Gary L. Lerberg	Parshall	Banker	Married	North Dakota	1925
5	Lynn W. Aas	Minot	Business Mgr., Clinic	Married	North Dakota	1921
5	C. W. (Bill) Baker	Minot	Radio Announcer	Married	North Dakota	1915
5	John D. Decker	Minot	Real Estate	Married	Montana	1917
5	Richard (Dick) R. Dobson	Minot	Newspaper Reporter	Married	North Dakota	1935
5	Sylvan E. Hubrig	Minot	Union Administrator	Married	North Dakota	1926
5	Wayne G. Sanstead	Minot	Teacher	Married	Arkansas	1935
6	J. K. (Kris) Benson	Upham	Farmer - Rancher	Married	North Dakota	1918
6	Lawrence (Larry) A. Rosendahl	Westhope	Farmer	Married	North Dakota	1916
7	D. Kyle Miller	Bantry	Farmer	Married	North Dakota	1924
7	Stanley Saugstad	Minot	Farmer and Appraiser	Married	North Dakota	1908
8	Earl W. Chase	Washburn	Pharmacist	Married	North Dakota	1922
8	Donnell Haugen	Roseglen	Insurance	Married	North Dakota	1907
9	Clarence A. Larsen	Agate	Farmer	Single	North Dakota	1907
9	Eugene J. Nicholas	Bisbee	Farmer - Rancher	Married	North Dakota	1945
10	Earl Bassingthwaite	Sarles	Farmer	Married	North Dakota	1907
10	Donald W. Quam	Langdon	Transportation	Married	North Dakota	1926
11	H. Jackson Fiedler	Cavalier	Farmer	Married	North Dakota	1901
11	W. Grant Trenbeath	Neche	Farmer	Married	North Dakota	1916
12	Robert D. Hartl	Rugby	Attorney	Married	North Dakota	1937
12	S. F. (Buckshot) Hoffner	Esmond	Farmer	Married	North Dakota	1924
13	Myron Birkeland	New Rockford	Automobile Dealer	Married	North Dakota	1933
13	Thomas A. Roney	Carrington	Banker	Married	South Dakota	1920
14	Alvin Berg	McClusky	Mortician	Married	North Dakota	1918
14	Stanley J. Kwako	Heaton	Banker	Married	North Dakota	1913
15	Fred Hoghaug	Devils Lake	Banker	Married	North Dakota	1910
15	Neil Thompson	Devils Lake	Attorney	Married	North Dakota	1926
16	Arden Burbidge	Park River	Farmer	Married	North Dakota	1918
16	Robert L. Burke	Grafton	Attorney	Married	North Dakota	1909
17	Terence (Terry) P. Devine	Lakota	Attorney	Married	North Dakota	1937
17	Joseph S. Lamb	Michigan	Banker	Married	North Dakota	1934
18	Mrs. Stella H. Fritzell	Grand Forks	Retired Stockbroker	Widow	North Dakota	1909
18	Mrs. Loran (Elynor) Hendrickson	Grand Forks	Housewife	Married	Colorado	1917
18	Edward K. Lander	Grand Forks	Businessman	Married	North Dakota	1922
18	George Longmire	Grand Forks	Attorney	Married	Tennessee	1915
18	Lloyd B. Omdahl	Grand Forks	College Instructor	Married	North Dakota	1931
18	George M. Unruh, Sr.	Grand Forks	Businessman	Married	New York	1920
19	James P. Griffin, D.D.S.	Larimore	Dentist	Married	Iowa	1905
19	James R. Hougen	Larimore	Businessman	Married	North Dakota	1929
20	Ralph E. Diehl	Hillsboro	Farmer	Married	Iowa	1905
20	Mrs. Lloyd (Irene) Sondreal	Buxton	Housewife	Married	North Dakota	1916
21	Francis J. Butler	Fargo	Executive - Retail Merchandising	Married	North Dakota	1911

Delegates of the North Dakota Constitutional Convention, 1972 — (Continued)

Dist. No.	Name	Home Address	Occupation	Marital Status	Where Born	Birth Date
21	James R. Dawson	Fargo	Insurance	Married	North Dakota	1925
21	C. Warner Litten	Fargo	Business Manager - Clinic	Married	Missouri	1914
21	Ralph B. Maxwell	West Fargo	Judge	Married	North Dakota	1919
21	John D. Paulson	Fargo	Editor	Married	North Dakota	1915
21	Frederick B. Scheel	Fargo	Businessman	Married	Minnesota	1921
21	Mrs. Charles (Jeannette) Stanton	Fargo	Housewife	Married	Minnesota	1917
21	Mrs. Mart (Lois) Vogel	Fargo	Housewife	Married	North Dakota	1914
22	H. G. (George) Poulson	Wheatland	Banker	Married	North Dakota	1924
22	George A. Sinner	Cassleton	Farmer	Married	North Dakota	1928
23	Mrs. Lyle (Helen) Bender	Cooperstown	Housewife	Married	North Dakota	1910
23	Thomas J. Brakke	Aneta	Farmer	Married	North Dakota	1922
24	Eugene G. Huckle	Valley City	Retired	Married	North Dakota	1906
24	Muriel P. Wicks, D.D.S.	Valley City	Dentist	Divorced	New Mexico	1913
25	Perry H. Engstrom, M.D.	Wahpeton	Surgeon & Teacher	Married	Pennsylvania	1924
25	Wallace E. Warner	Wahpeton	Judge	Married	North Dakota	1916
26	LeRoy Erickson	DeLamere	Farmer	Married	North Dakota	1926
26	Nicholas Schmit	Wyndmere	Building Mover	Married	North Dakota	1917
27	Mrs. Agnes Geelan	Fargo	Retired	Widow	North Dakota	1896
27	Theodore F. Kessel	LaMoure	Attorney	Married	North Dakota	1912
28	James O. Billey	Ellendale	Farmer	Married	South Dakota	1935
28	Mrs. Betty J. Daniels	Oakes	Farmer	Widow	South Dakota	1926
29	John E. McElroy	Jamestown	Farmer - Rancher	Married	North Dakota	1914
29	Roland E. Meidinger	Jamestown	Businessman	Married	North Dakota	1913
29	David E. Nething	Jamestown	Attorney	Married	North Dakota	1933
29	Kenneth Urdahl, Sr.	Jamestown	Businessman	Married	Minnesota	1907
30	Gail H. Hernett	Ashley	Banker	Married	Minnesota	1909
30	William E. Kretschmar	Venturia	Attorney	Single	Minnesota	1933
31	Robert C. Fallgatter	Steele	Rancher	Married	North Dakota	1918
31	Kenneth K. Ketchum	Linton	Businessman	Married	North Dakota	1918
32	Joseph D. Byrne	Bismarck	Insurance	Married	North Dakota	1914
32	Vance K. Hill	Bismarck	Attorney	Married	North Dakota	1935
32	James K. O'Toole, M.D.	Bismarck	Psychiatrist	Married	North Dakota	1928
32	William R. Pearce	Bismarck	Attorney	Married	Indiana	1910
32	I. E. (Esky) Solberg	Bismarck	Public Relations	Married	North Dakota	1905
32	Robert C. Tudor, M.D.	Bismarck	Pediatrician	Married	Minnesota	1913
33	Darold Benz	Beulah	Insurance - Farmer	Married	North Dakota	1939
33	Rudolf C. Hildebrand	Hazen	Farmer	Married	South Dakota	1917
34	William G. Engelter, Jr.	Mandan	Attorney	Married	North Dakota	1944
34	William C. Kelsch	Mandan	Attorney	Married	North Dakota	1932
35	David M. Gipp	Fort Yates	Indian Agency Administrator	Single	North Dakota	1946
35	Ernest Peters	Lark	Retired	Married	Wisconsin	1905
36	Ralph M. Christensen	Watford City	Businessman	Married	North Dakota	1911
36	Mrs. Clarence (Cecelia) Rude	Watford City	Insurance	Married	North Dakota	1914
37	A. L. (Tony) Binek	Dickinson	City Commissioner	Married	North Dakota	1907
37	Mrs. Gilman (Bea) Peterson	New England	Housewife	Married	Iowa	1916
38	Theodore (Ted) S. Hardmeyer	Mott	Implement Dealer	Married	North Dakota	1919
38	Kenneth Knudson	Taylor	Farmer	Single	North Dakota	1927
39	Allen R. McIntyre	Hettinger	Radio	Married	North Dakota	1937
39	Earl Rundle	New England	Farmer - Rancher	Married	North Dakota	1906

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HISTORY OF THE CONSTITUTIONAL CONVENTION OF 1972

House concurrent resolution number 16, passed by the 41st Legislative Assembly, provided for placing a constitutional amendment on the September 1970 primary election ballot calling for a Constitutional Convention. Representative William Kelsch of Mandan sponsored this resolution, which passed the house by a vote of 72 to 19 and received the approval of the senate by a vote of 45 to 0. The resolution was signed by Governor William Guy on March 27, 1969. On September 2, 1970, the North Dakota electorate approved the amendment by a vote of 56,734 to 40,094.

House bill number 485 of the 41st Legislative Assembly, set forth the procedures for selecting Convention delegates and for running the Convention's organizational and plenary sessions. House bill number 485 is found in chapter 462 of the 1969 North Dakota Session Laws.

House bill number 485 provided for a nominating commission consisting of the governor, lieutenant governor and attorney general. These three public officials met in the State Capitol at Bismarck in September of 1970 and nominated 98 Convention delegates, whose names were to be placed on the November ballot. In addition to these 98, 141 other individual candidates filed for delegate seats. A general election was held in North Dakota on November 3, 1970, and at this election the North Dakota electorate picked the 98 Convention delegates. It is interesting to note that of the 141 candidates petitioning for delegate positions, only 24 were able to displace nominating commission candidates and obtain a Convention berth.

The 42nd Legislative Assembly passed two bills which directly concerned the Constitutional Convention. House bill number 1033 appropriated \$600,000 for the Convention. House bill number 1484 amended chapter 462 of the North Dakota Session Laws of 1969 by removing the three-day limitation on the organizational session, by directing state agencies to provide assistance to the Convention, and by calling upon the Governor to order a special election on the Convention's proposals between sixty and one hundred and fifty days after adjournment. The amendment to chapter 462 also provided that the Convention could recess for as many as ten days during its thirty-day plenary session and provided regulation for lobbyists.

Governor William L. Guy called the Convention to order at 10:00 a.m. on Tuesday, April 6, 1971. The Convention held a three-day organizational session during which Frank A. Wenstrom, Williston, was elected president; William R. Pearce, Bismarck, as First Vice President; Stanley Saugstad, Minot, as Second Vice President and Lois Vogel, Fargo, as Secretary. The organizational session also saw the establishment of six substantive committees, as follows: Education, Resources and Public Lands, chaired by R. E. Meidinger of Jamestown; Executive Functions, chaired by Gail Hernet of Ashley; Finance and Taxation, chaired by Donnell Haugen of Roseglen; Judicial Functions and Political Subdivisions, chaired by George Longmire of Grand Forks; Legislative Functions, chaired by S. F. Hoffner of Esmond; and the Preamble, Bill of Rights and Suffrage Committee, chaired by Ralph Maxwell of West Fargo. Five procedural committees were also created and this number was later increased to eleven.

Following the organizational session, the Convention recessed to begin the task of organizing its administrative machinery and to usher in the work of interim committees. Dean F. Bard, a Bismarck attorney, was selected as executive director of the Convention, and on May 20 a meeting of Convention officers and substantive committee chairmen and vice chairmen was held. Ground rules for the operation of the interim committees were laid at this meeting. The Committee on Education, Resources and Public Lands, the first substantive committee to convene, held a three-day meeting beginning on June 15. Other committees soon followed and by the end of June all six substantive committees had met once for either two- or three-day sessions. Throughout the summer and fall the substantive committees of the Convention continued to meet, with a total of seventy-one meeting-days being utilized for the six committees' work. During this period, those sections of the constitution that had been assigned to it were carefully studied by each committee. Before deciding what changes were to be recommended in these sections, delegates studied staff memoranda and other materials to give them the background and knowledge necessary to make informed policy decisions. Testimony was collected from a number of citizens and special interest groups, both at the substantive committee hearings held in Bis-

marck — all of which were open to the public — and at the 16 special public hearings, each of which was held in a different city within the state during the month of September. Suggestions for constitutional revision termed "citizen-ideas" totaling exactly one hundred in number, were received and considered by the six substantive committees. Proposals introduced by individual delegates were deliberated and reported on, and many of the committee recommendations reflected an incorporation of concepts from this source. The last committee to meet during the interim period, the committee on Judicial Functions and Political Subdivisions, finished its work on November 17, 1971, and interim reports were then prepared by the staff setting out each committee's finding and recommendations. These reports were bound into one document entitled "Interim Report-North Dakota Constitutional Convention." Also received during the month of November was notice of a grant award from the Housing and Urban Development Agency in the amount of \$44,189 for professional staff assistance relating to research and planning activities of the Convention.

On January 3, 1972, the Convention met in Plenary Session for thirty session days of dialogue to make final decisions on proposals that were under study by the substantive committees. The full statutory recess period of ten days was used during which time the Style and Drafting Committee remained in session to place the document in its final form. The final draft of the proposed constitution was adopted on February 17, 1972 with all delegates approving the draft except four. Three delegates were absent for the final vote, thus 91 members voted their approval of the new document. Having completed its work, the Plenary Session adjourned sine die at 3:38 p.m. on Thursday, February 17, 1972 after presenting tokens of esteem and appreciation to President Wenstrom, a number of Delegates, and staff members. Delegates then journeyed home to begin the public information phase of the convention's work. During the period from February 17 to Friday, April 28, 1972, the day established by the governor for the special election on the new constitution, Delegates took advantage of every opportunity to appear before the public and explain the provisions of the new document. A program designed to inform and assist voters was undertaken at a cost of approximately \$60,000 and was supervised by an executive committee of the public information committee.

Strong opposition to ratification of the new constitution was advanced, spearheaded by the North Dakota AFL-CIO and the National Farmer's Organization. The campaign against adoption, which for the most part was confined to the two-week period immediately preceding the special election, was telling, as the Proposed Constitution of 1972 went down to defeat by a lopsided vote of 107,643 opposed, to 64,073 favoring the document. In the balloting on the alternates, North Dakota voters chose the bicameral over the unicameral form of Legislative Assembly by a margin of 109,146 to 48,217, decided against giving full adult status to 18 to 20-year olds by a vote of 102,151 to 63,223, approved an increase in the signature requirements for initiative and referendum 76,585 to 71,062, and ratified the concept of permitting the Legislative Assembly to decide whether lotteries and gift enterprises should be allowed by a vote of 93,137 to 68,148. The vote on the alternate proposals was, of course, purely advisory only, since the main proposition, which they would have affected, failed to pass.

The staff offices closed on May 9, 1972, and the Debates of the Constitutional Convention of 1972, the contents of this publication, were edited, indexed, arranged and published during the summer and early fall of 1972. On September 30, 1972, with all assigned tasks completed in accordance with statutory directives, and in concurrence with the date of expiration of the Housing and Urban Development professional assistance grant, all activity of the convention ceased, and the Constitutional Convention of 1972 passed into history.

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VOLUME I
(January 3, 1972)

MORNING SESSION

(At the hour of ten o'clock A.M., on the 3rd day of January, 1972, being the day and hour designated by the Convention Rules of the Constitutional Convention of the State of North Dakota, the delegates elect of the Constitutional Convention assembled in the House Chamber of the State Capitol Building at Bismarck, North Dakota, and were called to order by the Convention President, The Honorable Frank A. Wenstrom, and the proceedings were had as follows:)

PRESIDENT FRANK A. WENSTROM: The Convention will please come to order.

The North Dakota Constitutional Convention is now being opened in compliance with Rule 38 of the Convention Rules, which directs that the Plenary Session of the Convention shall commence at ten o'clock A.M. on the 3rd day of January, 1972. In conformity with well-established custom and, I know, in conformity with your wishes, we will commence our opening-day ceremonies by asking that The Reverend Charles M. Hill, United Church of Christ, lead us in the invocation. Reverend Hill.

REVEREND CHARLES M. HILL: Would you bow with me, please?

Father, we thank Thee for this high moment in our history. We thank Thee for the common purpose that draws men together, and we would pray now for Thy blessings upon these whom we have set aside for the delicate task of assembling the laws and regulations by which we will govern ourselves. We pray Thee, Father, to bless us with a vision of the responsibility as it is coupled with the heritage of the past and what it means for those who are to come after us. Give us wisdom, give us courage, give us honesty of opinion, and we shall meet the task and challenge of these days. Bless those who govern us, bless all of us, that we might walk in peace with Thee and with our fellows. In Christ's name we pray. Amen.

PRESIDENT WENSTROM: Thank you so very, very much, Reverend Hill.

We will proceed by calling the roll of the delegates. Chief Clerk Roy Gilbreath, you will open the key. The delegates will record their presence.

You will close the key. Take the roll.

The roll call indicates 95 present, three absent. A quorum is present.

We will have the Presentation of the Colors by the Eagle Scouts of Bismarck. Following this presentation, we will all remain standing for the Pledge of Allegiance.

(The Eagle Scouts of Bismarck made the Presentation of Colors, followed by the Pledge of Allegiance.)

PRESIDENT WENSTROM: Governor Guy, Father Kuhn, Reverend Hill, Justices of the North Dakota Supreme Court, Elected State Officials, Fellow Delegates to the Convention, Friends:

It is a privilege and I deem it a great honor, first, to be serving as your President, and, second, to act as moderator during this morning's session.

I welcome you to the opening ceremonies of the Plenary Session of the Constitutional Convention — the first to be held in North Dakota since territorial days. We Delegates to the Convention feel especially proud and are greatly honored at having four of the five Judges of the North Dakota Supreme Court with us attending these ceremonies. We are equally proud and honored to have thirteen of the fourteen elected State Officials in attendance here this morning. We thank each of you for departing from your busy schedules, for giving of your limited time, and being with us this day. We wish for you all to know that this extra effort on your part, in order that our day may be made more meaningful, is deeply and sincerely appreciated.

And now a few words to my fellow Delegates. On our return to the Convention this morning, we again find ourselves in this beautiful and more-than-adequate facility known as the House Chamber, the home of the North Dakota

House of Representatives. This chamber is being loaned to us by the State of North Dakota. It will be our home for the duration of the Convention. Here we will hold our debates; here we will give careful consideration to the many complex and important issues as they come before the Convention. May history record that out of this chamber — as the fruits of our labors, our knowledge and foresight — did come a sound and serviceable Constitution, one that did provide the foundation and framework for the full development of our State, and by so doing, assisted in the fulfillment of the aspirations and the just hopes of our citizens.

Our morning's program will continue with the administering of the Oath of Office to any Delegate that did not receive the Oath at the April session of the Convention. Convention records indicate that all Delegates, with the exception of Delegate Francis Butler, have received the Oath of Office.

Delegates Stanton and Dawson, will you please form an escort and present Delegate Francis Butler at the rostrum?

(Delegates Mrs. Charles Stanton and Mr. James R. Dawson escorted Delegate Francis Butler to the rostrum.)

PRESIDENT WENSTROM: The Honorable Alvin C. Strutz, Chief Justice of the North Dakota Supreme Court, will administer the Oath of Office.

(The assembly arose.)

CHIEF JUSTICE ALVIN C. STRUTZ: Will you raise your right hand and repeat after me?

I do solemnly swear —

DELEGATE BUTLER: I do solemnly swear —

CHIEF JUSTICE STRUTZ: That I will support the Constitution of the United States —

DELEGATE BUTLER: That I will support the Constitution of the United States —

CHIEF JUSTICE STRUTZ: And the Constitution of the State of North Dakota —

DELEGATE BUTLER: And the Constitution of the State of North Dakota —

CHIEF JUSTICE STRUTZ: And that I will faithfully discharge my duties —

DELEGATE BUTLER: And that I will faithfully discharge my duties —

CHIEF JUSTICE STRUTZ: As Delegate to the North Dakota Constitutional Convention —

DELEGATE BUTLER: As Delegate to the North Dakota Constitutional Convention —

CHIEF JUSTICE STRUTZ: To the best of my ability, so help me God.

DELEGATE BUTLER: To the best of my ability, so help me God.

(The assembly was seated.)

PRESIDENT WENSTROM: Fellow Delegates and Friends:

May I call your attention to the Red River High School Band that performed so ably in the hall this morning? This band, a group of young musicians, are truly representative of the students enrolled in the music departments of the Grand Forks Public School System.

Someone in the group threw me a curve, in that they are supposed to be seated in the right balcony, and I don't believe they are.

This fine musical organization is under the able direction of Kenneth M. Larsen. I am happy to report to you that this group of high school musicians have recently received new and great honors. They have been named the North Dakota Governor's Band for 1972. This band opened the Convention activities with an appropriate program of band music. The concert started at nine o'clock and continued until minutes before the opening of this Session.

Director Ken Larsen and members of the high school band, we are greatly appreciative — we are most grateful of your efforts in our behalf. To you, a sincere and heartfelt thank you. (Applause.)

The Bismarck Elks Chorus, a gifted group of local singers, a chorus that has received high honors at the area, state and national levels, will sing to us this

morning. The chorus was organized in 1958 and, since that time, has provided entertainment at community functions, banquets, charitable endeavors and many conventions. It was awarded first place in open competition at the Elks National Convention held in Chicago in 1967. The chorus won similar honors at the Elks National Convention held in San Francisco in 1970. It is under the able directorship of Mr. K. K. Kittler, a Bismarck businessman. Its hard-working President is Mike McCormack; its pianist, Robert Orr.

It is with much pleasure that I present to you this outstanding musical organization — the Bismarck Elks Chorus.

(The following musical selections were presented by the Bismarck Elks Chorus: "America," "Go North to North Dakota," "Eternal Father," and "This is My Country.")

PRESIDENT WENSTROM: Thank you very, very much, gentlemen, for being with us this morning and for permitting us to enjoy this beautiful music.

At the opening of the Constitutional Convention on April 6th of 1971, I am confident you all will recall that Governor William L. Guy sounded the gavel and brought the Convention into being. On that memorable day, he was here as required by law; today he is again with us — this time, however, at our invitation. Time will not permit me to enumerate the many reasons for our happiness and the great honor you bring to our Convention by your being with us this morning. I shall single out but two:

First, you are here in the distinguished role as Governor and as our State's Chief Executive Officer; secondly, because the records of history indicate that you did join early in your career as Governor with the great majority of your illustrious predecessors, all advocates of constitutional revision and all advocates of governmental reform.

Fellow Delegates, Guests and Friends, I deem it a great honor to present to you our Governor and Chief Executive Officer, The Honorable William L. Guy.
(Standing applause.)

HONORABLE WILLIAM L. GUY: Thank you, President Wenstrom.

Delegates to this historic Convention, young people who are here in the balconies, the Band from Grand Forks, Ladies and Gentlemen:

The Governor's Band from Grand Forks Red River High was selected because it was recommended by the music directors of the colleges and universities over the State; so this band comes here with the credentials of excellence that I know will make it an outstanding Governor's Band in 1972. I am pleased that they were here to add a little pomp and ceremony to the opening of this Session.

The Elks Chorus, incidentally — that grand aggregation — will this year bear the title of the "Governor's Chorus," and they, too, are worthy of all of the accolades that can come their way.

Many times I have stood in this House Chamber to address the Legislature. At those times I had the Constitutional directive to communicate the needs of the State to the Senate and House members and to be a part of the legislative process.

Today I do not have that responsibility and I am here only as a guest of this Convention. I thank you for inviting me to witness the opening of your home stretch Plenary Session.

Several years ago, I was jolted awake at three o'clock in the morning by my bedside phone's insistent ringing. I sleepily asked the operator if it was an emergency. A young voice with a southern accent at the other end of the line assured her that it was an emergency.

"Is this Governor Guy?" the voice asked. I told him it was and I asked who was calling.

"Just call me John," he said. "Tell me, Governor, is there really a North Dakota?"
(Laughter)

I was suddenly incensed.

"Where are you calling from, John?" I asked.

"Ah'm callin' from Florida," he said rather expansively.

"What state is that in, John?" I asked.

(Laughter)

As I hung up, I could faintly hear him explaining: "Why, Florida isn't in a state, man; it is a state."

Well, John had a point. North Dakota is not well known, and populationwise, it is a small state. And to be a small state is somewhat like being the small man on the basketball squad — you have to perform better than the big men to keep a place on the first team.

North Dakota needs to perform better than other states to maintain a respected position in the federal system. In many ways, we perform better than other states now. But we can and must continue to improve. Your being here today is part of that restless desire of a state to improve and excel.

I welcome you back to these beautiful chambers in our State Capitol. By now I know that each of you is well aware of the profound responsibility you have as a delegate to North Dakota's first Constitutional Convention in 82 years.

The voting public has said to you that they are willing to pay the cost of your work. If you serve up a constitution built for the future, it will be well worth the price in taxpayers' dollars and many hours of time you will have contributed.

If the end result of this Convention is only the past warmed up over a timid flame, it will be a costly exercise in both tax dollars and frustration.

Why does North Dakota need a new constitution? This is a question that will be asked over and over. It will be a topic of discussion during coffee breaks. It will be the subject of stories and editorials in newspapers. There will be lectures and debates about it in classrooms. It will be asked in indignation by some who have enjoyed years of comfort from built-in advantage given them by provisions in the old document. The question will be asked in fear by those who hesitate to face the future. It will be asked reluctantly by those who admire anything antique, whether it is a spinning wheel or a state constitution.

There are compelling reasons why North Dakota, or any state, for that matter, needs a modern constitution. In this day and age, we find the tempo of life increasing with each passing year. We also find our state government becoming more complicated year by year. Each session of Congress deepens the maze of federal programs affecting state government. Each legislative session in North Dakota struggles to adopt state and local government to the vital roles they must play in the ever-more-complex federal system.

And where do the voters fit into this federal system of which we are so militantly proud? Is the system designed to serve the voter or the officeholder? Are Joe and Jane Citizen able to keep fully informed about what is going on in state government? Sadly enough, the answer is no.

How can we expect to be fully informed about government? All of us Joes and Janes in our society are under constant pressure day by day just to make a living. Our thoughts are bombarded by a constant stream of new knowledge needed to make that living in our fast-moving technological society. When there is a slack moment, Joe and Jane Citizen's consciousness is invaded by a barrage of attention-getters on every subject under the sun that can be reported by television, radio and newspapers. It is no wonder that Joe and Jane Citizen find little time to think about state government. And when they do, they are bewildered by what is supposed to be a very simple democratic process in which the majority rules.

They are frustrated, too, by their inability to pin responsibility on state officials or focus the spotlight on who is to blame for failure to get things done. And even though we elect many state officials by finding out who gets the most votes, it is impossible for those elected, as well as for those who voted, to determine which elected state officials carry the majority mandate and a mandate for what.

Past generations have designed North Dakota state government as very thin soup, too diluted to be able to distinguish taste or aroma. Neither the legislative branch, nor the executive branch, nor the judicial branch can offer enough nourish-

ment to give the strength that is needed to carry out a respected role in the federal system.

The outlook for the future is for ever-increasing domination by the federal government. Oftentimes this encroachment by the federal government is caused by a citizen hunger for services which goes unnoticed by state or local government. Obviously, a much more vigorous broth should be served up as state government.

Who can really peer very far into the future? Nobody, perhaps, though there are projections which seem quite obvious.

Just finding a place for people to live and work in this Nation in the face of our population explosion will generate many new federal programs. And even though North Dakota may not be jolted by the population explosion, we will be dragged along with all the other states into the jungle of new governmental services and regulations implemented at the federal level.

How can Jane and Joe Citizen as voters be expected to become fully informed about their government when often employees working full-time within government are not able to comprehend all of the aspects of this burgeoning thing called government? In many cases, these employees are not even able to become fully informed on the activities of the department in which they work.

The frustrated public would like to simplify the actions of the three major branches of state government so they can focus on who is responsible and for what. This is where a new state constitution comes on strong.

A new constitution could do many things for the people of North Dakota. It could give them a clear, concise framework for democratic process in government which could be understood without a textbook on law or Latin.

Our constitution could give our legislature, our executive branch and our judicial branch the flexibility they need to keep our State's government abreast of the accelerating change around us. Our state government needs to be able to act and respond quickly and smoothly, rather than be stalled by impasse after impasse brought on by a weak constitution.

We must seek to continually modernize government to make it more effective and more economical. A state constitution which anticipates the future can provide the flexibility for people to make their state government more effective and economical. Or a head-in-the-sand state constitution can reflect a built-in fear of the future and a distrust of the democratic process itself. A constitution based on fear or a distrust of the legislature or the executive branch, or cluttered with unnecessary checks and balances, would be a document which prevents change or prevents the establishment of efficiency and economy in state government.

You have had committees studying the various parts of a constitution. These committees now bring their recommendations to this Plenary Session. Unless the reports of the committees, so carefully woven through hours of hearings and study, are given considerable weight and respect, this Plenary Session could be only an unraveling operation in which the public would be left with a pile of yarn. All of us in North Dakota are on the edge of our chairs watching you now.

It will take a great effort and courage to submerge or suppress our individual prejudices, fears and biases as we view a new constitution. And yet we must accommodate various points of view if we are to have a new instrument which will allow our State to keep abreast of the hours and days and years as they tick away.

I know I speak for the vast majority of North Dakotans in wishing you well in your deliberations. We are grateful to you individually for your personal commitment to this unique public service.

I hope, when you are finished, we can say with greater pride than ever: "Yes, John, there really is a North Dakota. It will always be a great state."

(Standing applause)

PRESIDENT WENSTROM: Thank you so very, very much, Governor Guy, for the very stirring address. We are so happy that your schedule was such that you could be with us this morning.

In planning this morning's program, it was determined that a review of the previous efforts toward constitutional revision in North Dakota would be a subject of interest to all attending this Session. To prepare and present this report to the Convention, we have selected one of our Delegates — our efficient Secretary, Lois Vogel.

Mrs. Vogel for years has been a student of state government at its organization. Most recently she has concentrated her studies on state institutions — not only our own, but on many of our sister states as well. She has prepared and presented numerous papers on this important subject.

The title of her report this morning is "Convention Groundwork."

I am pleased that I may present to this Convention our Secretary, Lois Vogel.
(Applause)

DELEGATE LOIS VOGEL: Thank you, Mr. Wenstrom.

Governor Guy, Distinguished Guests, Fellow Delegates and Friends:

North Dakota's first Constitutional Convention since statehood officially opened about forty-five minutes ago at ten o'clock this morning, Monday, January 3, 1972; but everyone here today is quite aware that preparations for this Convention began long ago. I shall take these opening minutes to go back in time and review the work already done which makes it possible for us to convene here today with the purpose and hope of successfully drawing up a new constitution to serve North Dakota for many years.

Sixteen months have passed since the amendment calling for a constitutional convention was approved; fourteen months since delegates were elected. But the need for substantial change in the Constitution was recognized forty-three years ago when Governor Shafer, in his inaugural address in 1929, recommended a "comprehensive program of reconstruction and readjustment in our state system of government from top to bottom." A commission was appointed to make a "comprehensive survey and investigation of the structure, functions, and processes of the entire government of North Dakota, and all municipalities and political subdivisions." When the Commission's report was given to the 1933 Legislature, we were deep in a depression and not much interested in implementing it. However, the recommendations were on record and people involved in government were aware of them.

Then, in 1941, the Legislature appointed a Governmental Study Commission, whose members were Governor John Moses, State Senator Milton Young and State Representative Targie Trydahl, to find out what was wrong with the governmental structure of the State and to recommend a cure for the defects. At this time, the Public Administration Service of Chicago was employed to make a detailed survey. This Commission published its report in December 1942 and distributed a very interesting 19-page pamphlet entitled "You and Your State Government," graphically describing the problems and the Commission's plan for reorganization, which would require amending the Constitution. However, in the words of the report:

"We feel this is so important that it would be unfair to attempt to decide this question while a substantial portion of our citizenry is away from home, their minds occupied with the business of defending our nation in order that we may have free government of any kind."

And so it was shelved. But it was an excellent report, and many people read it and pondered its recommendations. Those most responsible for governing the State — including most of our governors since the twenties and growing numbers of legislators — were increasingly convinced that major changes would have to be made in the Constitution before state government could become what it ought to be.

A major effort at revising the Constitution began in 1963 when the Legislature directed the Legislative Research Committee "with the assistance of outstanding citizens of the State, to conduct a study of the Constitution of the State of North Dakota, and to make its recommendations with regard to the revision thereof." Senator William Reichert was named chairman of the LRC Subcommittee on Constitutional Revision, which included, in addition to legislators, such prominent public members as ex-Governor Fred Aandahl, Judge Adam Gefreh, Thomas

Kleppe, Dr. Henry Tomasek of the University of North Dakota Political Science Department, and Jerrold Walden, head of the Law School. The President of this Convention, Frank Wenstrom, and Delegates George Sinner and George Unruh, were also members.

The Committee conducted a careful study of the Constitution over a period of four years and presented its recommendations for extensive revision to the 1965 and 1967 legislative sessions. Most of the recommendations were submitted to the people for approval in the form of several very long constitutional amendments. Unfortunately, the Legislature could not appropriate funds to publicize the amendments or to carry on any sort of program to educate the public. Consequently, most voters went to the polls with very little idea of what changes were being proposed or why. The amendments were defeated.

But, again, the careful work was not wasted. The seeds planted then continued to sprout and some of the recommendations made then are incorporated into the proposals which will be presented on this floor within the next few days. Meanwhile, more and more interest was beginning to focus on the need for revising the Constitution. A number of delegates are here today because their interest was aroused at that time. My own involvement began about that time when the League of Women Voters undertook a study of constitutional revision in 1963.

It was the 1969 Legislature which took the step that finally culminated in this Convention when it proposed an amendment calling for a constitutional convention. The amendment was approved in September 1970 by a vote of 57,700-to-40,000, a clear indication that the people of the State agreed that the time had come to rewrite the Constitution.

The high degree of interest was also shown by the number of people who wanted to be delegates. In addition 98 candidates whose names were presented by the Nominating Commission — Governor Guy, Lieutenant Governor Larsen and Attorney General Johanneson — 141 individuals were nominated by petition. Two hundred thirty-nine names appeared on the ballots in November. The 98 delegates elected were a cross-section of North Dakota — farmers, businessmen, doctors, lawyers, bankers, housewives, teachers, 24-to-79 years old; people with and without experience in government and politics, some whose roots reach back three generations in North Dakota, and some relative newcomers to an adopted state.

A few weeks later, we delegates had our first glimpse of the magnitude and complexity of the job before us when almost all of us took time at the Christmas season to come to Bismarck, at our own expense, to attend a seminar sponsored by Mary College. We heard Joseph Pisciotte, the Executive Director of the recent Illinois Constitutional Convention, George Braden, a consultant to that Convention, Henry Tomasek of the University of North Dakota, Albert Blaustein, Professor of Constitutional Law at Rutgers University, and Robert Meriweather, Professor of Political Science and member of the Arkansas Constitutional Convention, who told us about the conventions in which they had participated, gave us advice about how to proceed with our own, and warned us about pitfalls ahead. We were impressed!

Four months later, on April 6th, we gathered again in Bismarck, the first time officially, for a three-day organizing session, to select officers, adopt rules under which we could carry on our business, and divide ourselves into substantive and procedural committees — a task which, according to Dr. Pisciotte, who had returned to see how we were faring, we could not possibly accomplish in the allotted time. When we had completed what we had come to do, Dr. Pisciotte said that he still couldn't see how it could have been done and that no one else was going to believe it, once again proving that North Dakota is an unusual state. I think the efficiency and harmony displayed in that organizing session is a good omen.

Today, as we gather a second time, we are a much better educated group of delegates. We have had a crash course in state government in the intervening months, far more effective than any civics or political science classes we ever had in school. Our teachers have been many — those in our own and other states who have struggled with problems of constitutional revision; the state officials

who came to our committee meetings, some of them a number of times, to explain how the Constitution affects them and to tell us what changes they would or would not like to see, and to answer our questions and submit statements; the representatives of many organizations with particular interest in particular sections of the Constitution, to present arguments for and against proposals being considered; we have learned much from individuals, those who appeared before us and those who submitted individual proposals — more than a hundred of them — which we have carefully considered, adopting some and rejecting others.

We are grateful to the Bureau of Governmental Affairs of the University of North Dakota, which has provided all of us with much carefully-researched background information.

We are particularly grateful to the competent staff, headed by Dean Bard, Executive Director, David Peterson, Assistant Director, and Committee Counsel Dwight Cuffe and Michael Keedy, who have patiently worked long hours keeping the records of committee meetings, digging out information we have asked for, researching problems, writing and rewriting drafts at our direction. Without them, we couldn't have functioned at all.

But, mainly, I think, our teachers have been each other. We have benefited enormously from the exchange of opinions arising from our differing backgrounds, differing experiences, differing viewpoints.

The committee sessions began in June. We recessed for the month of July and then settled down to regularly-scheduled meetings which were not completed until mid-November. Each committee held either four or five two or three-day meetings, and through vacation time, harvest time and back-to-school time committee after committee had perfect attendance — a quite remarkable record.

All committees began their work by examining the sections of the Constitution assigned to them and studying the court decisions interpreting those sections — not an easy task. Some of us who hadn't read our own Constitution last year found ourselves pouring over provisions of other state constitutions, comparing them to ours, discovering where the problems lay. After that, each committee proceeded in its own way to listen and learn and decide.

I think that we surprised even ourselves with the diligence we brought to our committee work. Probably none of us would claim to be experts today, but we are knowledgeable about problems we didn't even know existed a year ago. Some of us have changed our minds, after listening and reading and thinking, about matters we were very sure about once upon a time, and we may change them again as the Convention progresses.

During these months of committee meetings, we have developed tolerance and respect for each other, have learned that those who disagree with us are not necessarily thereby proved wrong. I think that the courtesy, hard work, willingness to learn and dedication so evident in our committee work is another good omen.

All delegates have regularly received detailed minutes of committee meetings, enabling them to keep informed about what the other committees were doing. In addition, we have had six issues of the Constitutional Convention News, prepared by the staff and reporting all activities of the Convention.

Constant efforts have been made to inform and interest the public. Since last August, A. J. Gilje, our Information Director, has been preparing news releases for the weekly papers of the State. Many delegates regularly write newsletters or columns for their local papers. Others have appeared on television and radio programs. In September, special hearings were held in sixteen communities around the State, with six delegates, one from each committee, present at each meeting to tell what the committees were doing, to answer questions, to listen to what the public had to say.

The League of Women Voters has distributed to more than 5,000 people three issues of **Constitutional Convention Comments**, a most informative discussion of issues, problems and proposals being considered by the Convention.

Individual delegates have driven many miles and spent many hours talking to dozens of groups and organizations, ranging from young people's summer camps to retired teachers' organizations, conventions of legal secretaries and of county

judges, county commissioners — anyone who has indicated a willingness to listen. A byproduct of this Convention is a group of exceptionally well-informed men and women, many of them new to state government, accustomed to speaking out in public, whose interest is not going to evaporate with the special election, no matter what the outcome.

The farm organizations, labor groups, political parties, professional and student groups and service clubs are among the many who have involved their members in discussions about the Constitution. And while constitutional revision will probably never be what most people are discussing over their coffee most of the time, the public has learned a lot about a subject which people have generally regarded as too dull, too vague, too complex for their attention. Once a nucleus of interest has been created, information clusters around it and it grows. It is absolutely essential for the success of this Convention that we create that interest and keep it growing.

From the first, the news media — the daily and weekly newspapers, the TV and radio stations — have cooperated in the task of informing the public. Newsmen from all over the State recently attended a symposium in Grand Forks to be briefed on committee proposals and to consider how best to report the Convention. We depended upon these people more than on anyone else other than ourselves to educate the public about what is being done and why, and they have done an amazing job. Last June I heard the clipping service had already gathered several hundred news items about the Convention — more than the LRC subcommittee had had in the four years of its existence. I think this is another good omen.

We have been exposed to many ideas. We have spent much time discussing them. We have decided which we want to include in our committee proposals. Possibly we have rejected some excellent ideas whose time has not yet come. But because we have given them exposure, perhaps they will be accepted when future changes are made, as they inevitably will be. Now the preliminary work is done and the final decisions must be made.

Time spent exploring ideas is never wasted; but we will have wasted our time if we now look backwards instead of ahead into the future. We must examine the past so that we can learn from it; but we must not be bound by it. We must not offer North Dakota, as an alternative to our present Constitution, nothing but a warmed-over nineteenth century document, somewhat tidied up.

I shall conclude now with some words of Shakespeare which are carved at the base of one of the statues flanking the entrance to the National Archives in Washington, the institution which preserves the records of our Nation of the past: "What Is Past Is Prologue."

(Applause)

PRESIDENT WENSTROM: Thank you so very much, Delegate Vogel. It was wonderful to hear that report and to sort of serve as a refresher to bring back many of the things that have gone before. Even, I'm sure, many of our Delegates have forgotten a number of the things that we worked on last summer. And, Secretary Vogel, it was excellent to hear your version of what has gone on before in constitutional revision.

Fellow Delegates, I have an introduction I would like to make at this time.

Seated with us at the rostrum is our Second Vice President, Stan Saugstad. Stan does not have a special assignment in this morning's program; however, you will hear from him further before the day is out.

Stan has carried out a number of special duties for the Convention during the interim period. He has given freely of his time and his talents to Convention work.

Ladies and gentlemen, our Second Vice President, Stan Saugstad.

(Applause)

PRESIDENT WENSTROM: The Delegate who will next address you is also one of the Convention officers. In his professional life, he is considered by all who know him to be one of North Dakota's most able and talented jurists. In addition to his Convention work as an officer, he has also served efficiently as Chairman of the Budget Committee. Here he has earned for himself the some-

what dubious title of "Watchdog of the Convention Treasury." To me, as Convention President, he has been a pillar of strength and an always-available source of sound advice and counsel.

I am privileged to present our First Vice President, William R. Pearce. His subject: "The Charge to the Convention." Mr. Pearce.

(Applause)

DELEGATE WILLIAM R. PEARCE: Governor Guy, Chief Justice Strutz, all of the many distinguished guests, Fellow Delegates, the vast crowds of citizens who are traveling in the galleries:

I think, rather than "Watchdog of the Treasury," I probably am by now called "Mr. Tightwad." But I'm happy to report, preliminarily, that we have not yet run out of money. That may be one of the few accomplishments that we are able to boast about here.

I did not ask to make a speech this morning. Frank ordered me to! I did not pick the title. Frank did it!

Now, a charge to the Convention, I suppose, is comparable to a charge to the jury, and as a lawyer, and never having been a judge, I have never charged a jury. I have argued to the jury. Consequently, by force of long habit, my charge may be a trifle more exhortatory than a judge's would. I have, of course, listened to some judges charging the jury and thought to myself, "There's more argument in there than there should be," depending on which side I was on. I wish to assure you that, while it would be a joy to talk until noon, I will not take up that much time. I have thought quite a lot, myself, about the duties of this Convention, and each Delegate, and the more I thought, the more I reminded myself that I really don't know exactly what to do; and perhaps some of you were in the same dilemma.

We are met on the one hand by the charge that it is time for us to update, streamline, innovate, be imaginative, get with it. We are met, on the other hand, by "Well, now wait a minute. We don't need that. We want these fundamental things. And if you're going to hand us some new, mod constitution, we'll just hand it right back to you." Now, I don't know which side is right, yet; but I do say that, if we are to have a constitution at all — and, mind you, except that we were required to have one to get into the United States as a state — we might pare the Constitution down to one nice, sonorous little paragraph that says, "We hereby hand the government of the State over to the Legislature; and, boys, try to do a good job," period. Now, we could do that. The Legislature is perfectly capable of setting up the judicial system, the legislative system, all of the State Officials, and providing the manner in which they shall take office, whether it be elective or appointed. In fact, we don't have to have such a big group as the Legislature; we could have a small executive committee. At times in the past, mankind didn't even bother with that large a group; they just gave it to one man and he ran the show.

It is easy to see how government got started. Presumptively, first, some cave-men, when they advanced enough to live in a cave, ran around individually and found that they were rather easy prey for the saber-toothed tiger and the dinosaurs and all of the other ills that plagued the troglodytes of that time. He undoubtedly found a strong friend once in awhile, and they banded together and discovered that they could look in both directions at the same time, which was considerable aid in mutual protection. And so it must have accumulated a little until they began to get too many fellows together and there was too much argument going on about what they should do. So, undoubtedly, one of the stronger men simply beat up on the rest of them, until he was the decider. However, it's difficult to beat up on too many, and so they had to begin to form alliances, and they formed alliances and there were always, of course, inevitably, people in the tribe who were not in this particular group. So, almost at once, you had two groups, and we now call them parties, who fight against each other. Now, in the meantime, sheer power ruled the roost for awhile. But, after awhile, I presume they began to see that there ought to be some kind of rules — principally for the succession of the next powerful man, so that he wouldn't have to survive the ordeal of beating up all the rest of them, if he lived to sit on the throne.

And many kings have not, of course. So we evolved rules, and that we call "government."

Now, many people say, and some people have said to me, I suppose, "You seem to fear government." Well, I don't fear government. I fear my fellowman. I've feared him all my life. I think everybody in the world does. Who starts wars? Who kills people? Who commits crimes? Who steals? Who murders? Men — and I suppose I must now include women, too. So it's men that we are afraid of. It's men who oppress each other. It's men who aren't fair.

Now, men can have a power structure and that can be the government. And so the only government I fear is the government dominated by men. That I fear. And Plato worried about this and he taught that the best government would be a government composed of philosopher-kings — the king for power and the philosopher for his intellectual ability and his tolerance of people. And so we have searched for some of those philosopher-kings and we have found kings sometimes and philosophers. But they always seem to occupy separate bodies and very seldom have they been able to combine them. And so we must struggle along with what we have.

Now, in 1515, Thomas More sat down and started to write a book, "Utopia," and it became an extremely popular book, quoted by philosophers and government people. Now, that was in 1515. That was quite awhile ago. And it — from that book, of course, we got the term "utopia," meaning perfection — political perfection. Of course, actually, "utopia" means nowhere. And that was the right word for it, because nowhere has it ever come about yet. And Plato had written one, of course, quite a long time before Sir Thomas More came on the scene — Plato's "Republic," in which he said the things that he thought ought to be the idea of a republic, and we have had many since and we've had people who have tried to set up small colonies based on some of these ideas. They were almost always communistic in the sense that most of the property had to be owned in common, which is all that "communistic" really means, technically. Somehow or other, people always seemed to want something themselves, whether it was their own wife or their own children or their own ax, or their own suit of clothes, or their own money, and people still do want to keep their own; they are all for dividing it up, if you're dividing the other people's who have more than you have. But to surrender your own in common doesn't seem to jibe with political and personal — personalities — human personalities; they want it. A child doesn't have to be very old to be very jealous of his or her own toys or possessions, and we don't lose that.

Now, why do we have a constitution at all? Why not get along without one? Most of the governments in the world always have. Very few governments have written constitutions, particularly with a supreme court to sit there and say, "Well, now, look! You can't do this, because it isn't within that written document." To many places in the world, that's an incomprehensible idea — just as our form of government is incomprehensible to many parts of the world. The world isn't nearly up to where we think we are. When you sit in your living room and, with the technological wizardry of television, you can see people starving to death in Pakistan live on the evening TV and living in the stone age, obviously we aren't all up to a particular level.

Now, if we are to have a constitution, then it strikes me that we must believe that there are certain fundamental things that ought to be in that constitution. If we don't believe that, why bother to put them in? Why bother with a document at all? If everything is to be in a state of flux and change, let's let it float. Why embody it into a written document at all? So, if we are to have one, presumptively, that's what we're going to put in it — the fundamental principles, the unchanging things, the things that our founding fathers said that "We believe these things to be self-evident." And still, that Declaration, when shown to some people, now raises eyebrows, that it's much too liberal.

Now, if we believe these things, then those are the things we ought to have in the Constitution.

Now, we shouldn't sit around and say, "Well, we don't want those because they're too old, they're outdated;" because, first we must believe that they are fundamental. If something is really fundamental, it's never outdated. If there

are certain truths that are self-evident, they should never outdate. People are people.

My father was fifteen years old when our present Constitution was adopted. I don't regard my father as such a different individual or human being than I am. I don't think the things that are important in life have changed since my father's time and me, and I don't think they will change from my sons' or from my grandchildren. The manner in which they live, with the things they eat, the type of clothes they wear, the vehicle that they travel around in, the taxes they pay, may change considerably; but what a man wants out of life — how he thinks when he's in bed alone at night and shuts his eyes and thinks all to himself — that's when a man is true to himself — there's nobody around for him to make a show for — he thinks his own private thoughts — then's when he can confess to himself his own sins, his own mistakes, his own inadequacies — there's no one to keep up a facade for. What are the things you want at those times? That's what you want out of life, really. I think that's what everybody wants. We call that, for the most part, liberty, because for all these many thousands of years men didn't have liberty. Maybe we don't really have liberty yet and maybe we can't ever have it completely. There isn't anyone who thinks we ought to have complete anarchy, unless he's willing to be attacked and stolen from and murdered, or whatever you want. We have to have some rules. So here comes the big question: Where do we draw the line? Where do we draw the line for rules? And, next, to whom do we give the power to draw those lines and draw up the rules? And that's representative government.

Now the people in North Dakota have given the 98 some power — they were careful — not unlimited power. They still didn't want us to pass a constitution finally and put it on the books. This is your constitution. They reserved the ultimate referendum of voting it in or voting it out.

Now, I was always in favor of having a constitutional convention, if the constitution didn't get a word changed, because I felt that it was the only way in which as many people would study the Constitution and think about it and talk about it. There isn't any other way to get that much publicity and that much talk and that much thinking, and people would at least understand and know more about what we already have, because I don't think many people sit around reading the Constitution, even though it is now out in paperback; not for fun, you know. So, even if we didn't change a word, I would say that we have not been a failure.

Now, if we change all the words and the people adopt it, then we will not have been a failure either. We'll have a brand new, updated constitution, dated in 1972, which is what I understand updating means.

Now, somewhere in between — between changing all the words and changing none — is what we will eventually come up with, and I only have this feeling that it is our duty, and this is as much mine as any other individual — we have to think through the fundamental things that we want — the fundamental things. Don't worry about the details, but keep hold of the fundamentals and bear in mind that what we are setting up is not an artificial creature called the government — we're setting up a framework in which people — you, me, the rest of us — will operate. That's what the government is. It's men that make or break.

In the play "Julius Caesar," when they are beginning the plot to overthrow Julius Caesar, the first thing one of them — one of the characters — says — you remember well the first thing — "Let's kill all the lawyers." Well, I always thought that was complimentary to the lawyers, because obviously it meant that they are not going to be able to overthrow the government successfully if they leave any lawyers around to raise any questions about it — perhaps get a writ of injunction against them, ordering them "Don't do this!" So lawyers do have a function. It's a function of government.

And, again, they're talking about Caesar. Bear in mind he's a one-man government, practically, because the senate was doing everything Caesar told them to do, and one man, one character, said — and this is, to me, one of the most profound statements that Shakespeare ever wrote politically — he said, "I had as lief not be, as live to be in awe of such a thing as I myself." Now, that's a very profound statement — I would as leave die as live under a form of govern-

ment in which I had to be in awe of such a one as I. And that's the essence of democracy, and that's what we must preserve. Maybe we can do some more to it, but every act and every sentence we should have in the Constitution to preserve that form of government — to preserve the necessity never to have to live to be in awe of such a thing as one of us.

Now, that's our duty and our obligation. Now, the things that are not necessary for that, take them out. But unless we put in the fundamentals, we should go home. And that's, I suppose, my charge.

Now, it was an enormous temptation to go merrily along, at least until noon, or at least until Frank begins to wield this rather delicate gavel that he has up here. I look forward to the Convention. I trust that it will not be too often, as I said, that I will be reminded of a verse in the 8th Chapter of Job. You will recall that Job was an extraordinary person. "How long wilt thou speak these things, and how long will the words of thy mouth be like a strong wind?"

(Applause)

PRESIDENT WENSTROM: Thank you so very, very much, Bill Pearce. I didn't know that I usurped the authority and commanded that my able Vice President should give the charge to this Convention; however, if that's what I did, I am more than happy that I did do just that.

Now, I am very happy to inform you that the Bismarck Elks Chorus has consented to sing one more number. At this time, they're back on their stand and, fellows, will you take over?

(The Elks Chorus presented a musical selection — "Battle Hymn of the Republic.")

PRESIDENT WENSTROM: Members of the Bismarck Elks Club, we do thank you most sincerely for coming back. I doubt seriously — I know that I have never heard that hymn sang more beautifully. Thank you so very, very much.

I was informed a few minutes ago that Reverend Father John H. Kuhn of the Church of Christ Catholic Church, would not be able to be with us this morning; so, in his absence, I have asked that Reverend Hill pronounce the benediction. Reverend Hill.

REVEREND CHARLES M. HILL: The doors have been opened, the task set before you, the charges made and the commitment accepted. Let us do that task. Now may God's grace sustain you, may His love surround you, may His spirit fill you, may His protective providence be with you in your deliberations through these days; in Christ's name we pray. Amen.

PRESIDENT WENSTROM: Again thank you, Reverend Hill.

I do now declare this special opening ceremony of North Dakota's Constitutional Convention closed.

The Convention will remain in recess for approximately five minutes, in order that those of our special guests and friends wishing to leave the Chamber may do so. We will come back into session for special announcements.

(The Session recessed at 11:32 A.M. until 11:37 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

Will the Delegates please take their seats?

We had a number of announcements that we would like to make. Several committees have requested early meetings and those that specifically have expressed their desires to meet almost at once is the Committee on Public Information, the Committee on Rules and the Committee on Employment.

Now, I do not know at the moment whether any of our substantive committees wish to meet early this afternoon, but when we come back into session this afternoon, I'm sure that will be decided, and then we can adjust just when we should hold or when we can hold the meetings of the special procedural committees.

One thing I think that we should have explained at this time is the locker system, where the lockers are and how they correspond with each of your individual desks; so I'm going to call on Roy Gilbreath to explain the system to the Delegates at this time. Roy Gilbreath.

CHIEF CLERK ROY GILBREATH: In the front of each desk, on the top, you will see a number — a little brass plate. In your drawer — in most of the drawers,

there are a set of keys. These keys are for your drawer and for the locker. There is a locker on the ground floor, where you go into the Blue Room. You don't go all the way into the Blue Room, but as you go into that doorway going into the Blue Room, to your left are lockers. The key on your keyring will correspond to that locker number.

Now, we are shy a couple sets of keys. If anybody inadvertently took them home last spring, we would like you to turn them back in, and we'll try to get them to the right desk at the right time. With the switch in names, we can't — we have no record as to who sat in what desk last spring for three days. But if you have — if anybody has a set of keys, would you please turn them in up at the desk?

PRESIDENT WENSTROM: Are there any questions?

CHIEF CLERK GILBREATH: The parking lot attendants are working and they can get pretty rough out there; so please put on your stickers on your car — on the left, or on the driver's side, on the rearmost window; not on the rear window, but on the left side, on the rearmost window. And if you haven't got your sticker, please get it in the office right up to the left here, right by Dean Bard's office. I'm sure you all know where Dean's is.

Also, if you have lost your name tag, go in there and give the girls your name and they will order you a new name tag.

PRESIDENT WENSTROM: Thank you, Roy.

One of the things that we wish to have completed before we leave here this morning is the taking of pictures. There are a number of cameras in the balcony here, and the same group that took pictures of the Convention in April would like to again make permanent records for posterity on just how we looked on this memorable day.

While I'm talking about pictures, during — especially during the early days of the convention, a number of photographers for the news media will be on the Convention floor — not while the Convention is in session — but they will funnel in and out of here and they will be requesting that they might take your picture. Now, please, let's cooperate with them to the fullest extent; because this is the news media and they need these pictures and we will all need photographs and we will need pictures of ourselves for our publicity purposes as the Convention goes on. But, again, let's treat those people that come around to take our pictures — don't do like I do — I get a scowl on my face and act as though I'm real unhappy about it — because this is one of the things — that is part of the price you pay for serving in a convention such as this.

Then, if the photographers are ready to take the pictures, we will proceed and do this at this time.

(Convention photographs were taken.)

PRESIDENT WENSTROM: While the photographer is in the process of moving from one balcony to the other: What time would you like to come back in session this afternoon? One-thirty? One o'clock? Compromise?

The Chair will rule, then, that this Convention will reconvene at 1:15.

While the photographer is still working, I would like to request that the chairmen of the six substantive committees meet in my office immediately following this noon recess — the chairmen of the six substantive committees.

Are there any special announcements? You have one, Roy?

CHIEF CLERK GILBREATH: The Bank of North Dakota will provide check-cashing facilities in the State Treasurer's office on the third floor of the Capitol 9:00 A.M. to 12:00 Noon Wednesdays and Fridays.

PRESIDENT WENSTROM: Any further announcements? Hearing none, the Convention will be in recess until 1:15.

(The session recessed at 11:49 A.M. until 1:22 P.M., the same day.)

AFTERNOON SESSION

January 3, 1972

PRESIDENT WENSTROM: Will the Convention please come to order?

The first item on our afternoon's agenda will be the swearing-in ceremonies for the desk force. So I would like at this time that Roy Gilbreath, Barbara King, Leo Leidholm and Vern Asheim appear before the rostrum for the swearing-in ceremony.

You will raise your right hand. Pronounce your name — say "I" and repeat after me:

(The following oath was administered by the President to the desk force:)

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of North Dakota, and that I will faithfully perform the duties of the position for which I have been selected. So help me God.

PRESIDENT WENSTROM: You may be seated.

We have had a number of questions asked by Delegates, and at this time I am going to ask our Clerk, Roy Gilbreath, to first discuss the matter of telephones and the WATS line system. Roy?

CHIEF CLERK GILBREATH: In Memorial Hall, at the end of Memorial Hall, there are some telephone booths and some telephone information girls. They will be happy to help you with any calls within the State. We're on a WATS line hookup. You can call. They'll be glad to place any calls for you out there, and they will also be leaving messages or telling you that you have phone calls. They will be leaving messages that you have phone calls on your desk. Any questions you need answered about going out on the WATS line, they'd be happy to answer. They'll call most of the — any number that you have, and you can also call, yourself. This is for the Delegates, only. At the end of Memorial Hall, right off here to my right, between the Senate and House Chambers, is the phone booths. Hopefully, there'll be two more booths before the afternoon is out.

PRESIDENT WENSTROM: Are there any questions?

Roy, would you tell me whether this little button says "phone" — that says "phone" on here has anything of any consequence?

CHIEF CLERK GILBREATH: Well, while we're on it: This is the voting machine. No. The only thing that's wired as of right now is "Aye" and "Nay." You cannot lock it, as you could in the old ones. This is the new setup. You can vote "Aye" and "Nay." The phone page button is to put the page light on, in front of either page desk. The light will go on. A page will come to your desk and ask you what you desire. After you have told her — given her the message, then please push the button again and it will turn it off. The phone thing is looking in the future — that if some day they would be able to light it up and tell you there's a phone call. But it isn't wired at all. The bottom button is not wired, nor is it ever planned to be wired during this Session. So forget that little red button. It doesn't work and it isn't going to work.

Any other questions on the voting machine?

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: What is the purpose of the green button?

CHIEF CLERK GILBREATH: The recognition button is — we hope, before they're done, you can push that and it will show a light on Frank's board up here. But that is not wired as of right now. But it is supposed to be wired before they're done.

PRESIDENT WENSTROM: Well, gentlemen and ladies of the Convention, while we're talking on the matter of recognition: When you wish to obtain the floor, don't be hesitant about standing up and shouting, "Mr. President!" It's impossible to sit up here and view the whole panorama at one time. So, rather than have someone stand up and wait to be recognized, and then I recognize someone else, I would urge that when you wish the floor, that you are not hesitant

in the least; that you stand up and shout, "Mr. President!" And I will try to recognize you.

DELEGATE SCHMIT: Mr. President.

PRESIDENT WENSTROM: Delegate Schmit.

DELEGATE SCHMIT: Is my mike on?

CHIEF CLERK GILBREATH: No. Give it a real good push. There! Now you're live.

DELEGATE SCHMIT: Am I now? Will our constituents be able to place collect calls to the Delegates on the telephones?

PRESIDENT WENSTROM: I don't believe so. I think — I think that that's something that we will have to talk to the Budget Committee on. But I think that, at the moment, our answer would be no.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: What phone number will people use in trying to call us on the phone numbers out in the hall?

PRESIDENT WENSTROM: Can you answer that?

CHIEF CLERK GILBREATH: 2-1-9-6 will bring you into the telephone girls. 2-1-9-6. 224-2196.

PRESIDENT WENSTROM: Does that answer your question, Delegate Decker? Are there any further questions, then, on the phone system?

DELEGATE CART: Will you repeat the phone number, again? I'd like to write it down.

CHIEF CLERK GILBREATH: 224-2196.

PRESIDENT WENSTROM: We'll prepare for the next item, then — that of mailing.

CHIEF CLERK GILBREATH: There is a mailing service. They try and mail two times a day. If you have any mail to go out, would you please drop it in this box right up here in front. It will be placed right here. And, in the same line of mailing: We have a stenographic clerical pool. They are located in the Senate Conference Room, which is directly behind the rail, up the middle aisle of the Senate Chambers. There are eight girls over there and, if you have correspondence, they will be glad to take care of it for you — in the Senate Chambers -- in the Senate Conference Room, directly behind the rail, up the middle aisle.

PRESIDENT WENSTROM: Are there any questions? Hearing none, we'll move on to the assignment of committee rooms.

CHIEF CLERK GILBREATH: Committee room assignments:

Preamble, Bill of Rights and Suffrage — that is the Lewis and Clark Room, which is the old room where you got your license — the old Motor Vehicle room, right before you reach the elevators, on the south side.

The Legislative Functions room — Committee room will be the large hearing room, which is directly beneath these chambers.

Judicial Functions and Political Subdivisions room is in the Gold Room, which is the room near the Senate locker room. It would be exactly opposite where your lockers are. It's called the Gold Room.

Finance and Taxation are in the Blue Room, which is right next to your lockers.

Education, Resources and Public Lands are in G-1, which are in the semicircle on the ground floor, right beneath the Senate Chambers.

The Executive Functions will meet in G-5 and 6. That is the committee room directly beneath President Wenstrom's office, on the ground floor.

Style and Drafting will meet in G-7, and that's — that's the room next to the water fountain, right before you go into the main part.

PRESIDENT WENSTROM: Are there any questions?

The next item on our afternoon's agenda is revision and correction of the Journal. This would be the corrections to the Journal from the last day of the three-day session in April.

CHIEF CLERK GILBREATH: Mr. President, your Committee on Revision and Correction of the Journal has carefully examined the Journal of the Organizational

Session for Wednesday, April 7, 1971, and recommends that the same be corrected as follows:

Delete Page 75 as shown, and substitute the following in lieu thereof:

THURSDAY, APRIL 8, 1971
PROCEDURAL COMMITTEES

1. Budget Committee

Name	District	Name	District
Baker	5	Litten	21
Roney	13	Pearce	32
Lamb	17		

2. Rules Committee

Name	District	Name	District
Hubrig	5	Geelan	27
Saugstad	7	Fallgatter	31
Trenbeath	11	Kelsch	34
Wicks	24		

3. Committee on Style and Drafting

Name	District	Name	District
Cart	3	Vogel	21
Dobson	5	Tudor	32
Unruh	18	Knudson	38
Maxwell	21		

4. Public Information Committee

Name	District	Name	District
Simonson	2	Diehl	20
Wallin	2	Sondreal	20
Sullivan	3	Paulson	21
Dobson	5	Poulson	22
Bassingthwaite	10	Brakke	23
Birkeland	13	Solberg	32
Berg	14	Benz	33
Fritzell	18	Peterson	37
Lander	18	McIntyre	39
Omdahl	18	Rundle	39
Griffin	19		

5. Coordination and Transition Committee

Name	District	Name	District
Chase	8	Billey	28
Burke	16	Nething	29
Butler	21	Byrne	32
Sinner	22	Hill	32
Warner	25		

And when so corrected, recommends the same be approved.

Delegate Dobson, Chairman.

Delegate Simonson moves that the report be adopted.

PRESIDENT WENSTROM: It's been moved and seconded that the report of the Committee on Revision and Correction of the Journal be adopted. Is there any discussion? If not, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the report is adopted.

The next business before the Convention will be the introduction of interim delegate proposals. The Clerk will read the report.

CHIEF CLERK GILBREATH: Delegate Tudor introduced Delegate Proposal No. 2-1, and said Proposal was referred to the Committee on Executive Functions.

Delegate Geelan introduced Delegate Proposal No. 2-2, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Geelan introduced Delegate Proposal No. 2-3, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Geelan introduced Delegate Proposal No. 2-4, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Tudor introduced Delegate Proposal No. 2-5, and said Proposal was referred to the Committee on Education, Resources and Public Lands.

Delegate Tudor introduced Delegate Proposal No. 2-6, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Paulson introduced Delegate Proposal No. 2-7, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Paulson introduced Delegate Proposal No. 2-8, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Hoffner introduced Delegate Proposal No. 2-9, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Paulson introduced Delegate Proposal No. 2-10, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Engelter introduced Delegate Proposal No. 2-11, and said Proposal was referred to the Committee on Judicial Functions and Political Subdivisions.

Delegate Rundle introduced Delegate Proposal No. 2-12, and said Proposal was referred to the Committee on Judicial Functions and Political Subdivisions.

Delegate Rundle introduced Delegate Proposal No. 2-13, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Rundle introduced Delegate Proposal No. 2-14, and said Proposal was referred to the Committee on Judicial Functions and Political Subdivisions.

Delegate Tudor introduced Delegate Proposal No. 2-15, and said Proposal was referred to the Committee on Education, Resources and Public Lands.

Delegate Tudor introduced Delegate Proposal No. 2-16, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Tudor introduced Delegate Proposal No. 2-17, and said Proposal was referred to the Committee on Finance and Taxation.

Delegate Tudor introduced Delegate Proposal No. 2-18, and said Proposal was referred to the Committee on Judicial Functions and Political Subdivisions.

Delegate Devine introduced Delegate Proposal No. 2-19, and said Proposal was referred to the Committee on Education, Resources and Public Lands.

Delegate Devine introduced Delegate Proposal No. 2-20, and said Proposal was referred to the Committee on Education, Resources and Public Lands.

Delegates Fritzell and Sanstead introduced Delegate Proposal No. 2-21, and said Proposal was referred to the Committee on Education, Resources and Public Lands.

Delegate Hill introduced Delegate Proposal No. 2-22, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Thompson introduced Delegate Proposal No. 2-23, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Hubrig introduced Delegate Proposal No. 2-24, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Vogel introduced Delegate Proposal No. 2-25, and said Proposal was referred to the Committee on Executive Functions.

Delegate O'Toole introduced Delegate Proposal No. 2-26, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Byrne introduced Delegate Proposal No. 2-27, and said Proposal was referred to the Committee on Executive Functions.

Delegate Warner introduced Delegate Proposal No. 2-28, and said Proposal was referred to the Committee on Judicial Functions and Political Subdivisions.

Delegate Rundle introduced Delegate Proposal No. 2-29, and said Proposal was referred to the Committee on Executive Functions.

Delegate Baker introduced Delegate Proposal No. 2-30, and said Proposal was referred to the Committee on Executive Functions.

Delegate Nething introduced Delegate Proposal No. 2-31, and said Proposal was referred to the Committee on Executive Functions.

Delegate Chase introduced Delegate Proposal No. 2-32, and said Proposal was referred to the Committee on Executive Functions.

Delegate Hill introduced Delegate Proposal No. 2-33, and said Proposal was referred to the Committee on Executive Functions.

Delegate Omdahl introduced Delegate Proposal No. 2-34, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Saugstad introduced Delegate Proposal No. 2-35, and said Proposal was referred to the Committee on Finance and Taxation.

Delegate Peterson introduced Delegate Proposal No. 2-36, and said Proposal was referred to the Committee on Education, Resources and Public Lands.

Delegate Hubrig introduced Delegate Proposal No. 2-37, and said Proposal was referred to the Committee on Judicial Functions and Political Subdivisions.

Delegate Omdahl introduced Delegate Proposal No. 2-38, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Thompson introduced Delegate Proposal No. 2-39, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Lamb introduced Delegate Proposal No. 2-40, and said Proposal was referred to the Committee on Legislative Functions.

Delegate Lamb introduced Delegate Proposal No. 2-41, and said Proposal was referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Saugstad introduced Delegate Proposal No. 2-42, and said Proposal was referred to the Committee on Finance and Taxation.

PRESIDENT WENSTROM: Fellow Delegates, I believe we have arrived at the point where we have no further prepared work on our agenda. We have had a number of requests for committee hearings, most notably the request from the Committee on Rules and the request from the Committee on Public Information.

In visiting with Chairman Geelan right after we recessed for noon luncheon, it was her opinion at that time that this Committee should meet as early this afternoon as possible. Further, that should Delegates wish to appear before the Rules Committee and obtain information on certain rules, wish clarification of the rules or have any suggestions to simplify or improve the rules, in case there are any questions or doubt as to their interpretation, they would be very much welcome at that time.

Now, Fellow Delegates, what is the wish of the Convention?

The Clerk has an announcement that he would like to make at this time.

CHIEF CLERK GILBREATH: This is the one that Frank was just talking about.

The permanent Rules Committee will meet immediately after the afternoon recess in the large hearing room, which is directly beneath these chambers. Delegates who wish to inquire about the recommendations of the Rules Committee or who wish to propose rules changes, are asked to come to this meeting. Delegate Geelan, Chairman.

The pages will be passing out among you, getting you to sign travel vouchers. Sign on the dotted line, as the expression goes, and on your work sheet, which you will keep, keep a day-by-day account of the expenses which are to be reimbursed. Attach all room receipts, showing the daily single rate. Do not fill in the mileage section, the meals section or the total. The girls in the office will total them up and fill in these sections. Show when trips were made to your home residence, sign and return to the office, which is the office next to Dean Bard's office, on January 31st.

The numbers on the left-hand side coincide with the days of the month.

PRESIDENT WENSTROM: Now, are there any questions? Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, how long will the Rules Committee be meeting? Would they be able to complete their work by four o'clock?

PRESIDENT WENSTROM: Delegate Hoffner, you should ask us something easy the first day. That is real difficult to say. But, of course, we have a very, very fine Rules Committee, and if they are in session too long, it's not going to be the fault of the Committee. It will possibly be the fault of the Delegates that are there, interfering with their work. However, we do want every Delegate that has a question or anything pertaining to an interpretation of the rules, we would appreciate very much if they would appear at the Rules Committee hearing.

I'm sorry, Chairman Hoffner, I cannot tell you just how long this will take.

DELEGATE HOFFNER: Mr. President. Then I'd like to make an announcement that immediately after the Rules Committee meets, the Legislative Functions Committee will meet in the large hearing room.

PRESIDENT WENSTROM: Thank you. Did the members of the Committee hear that? I see Delegate Paulson has the floor.

DELEGATE JOHN PAULSON: Mr. Chairman. Mr. Dobson and myself would like the Public Information Committee to meet this afternoon. I'd like to schedule the time for 2:30, so that members could go to the Rules Committee meeting, and we will excuse them. We don't have any pressing business, but we would like to get organized, and I would like a room assigned from the desk, please.

PRESIDENT WENSTROM: Delegate Paulson, I am informed that Room 208 will be available at that time — right over here.

DELEGATE JOHN PAULSON: All right. That's 2:30, then.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: President Wenstrom. The Committee on Education, Public Lands and Natural Resources will meet immediately after this session in G-1 for the purpose of receiving communications and, hopefully, communicating with each other.

PRESIDENT WENSTROM: Thank you, Delegate Meidinger, and apologies to Delegate George Longmire. He's asked for the floor twice, and I did acknowledge two other Delegates first. Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. The apology is accepted.

I'd like to announce the meeting of our committee — the Judicial Functions and Political Subdivisions — in the Gold Room immediately. I don't know how many of you are on the Rules Committee, if any, or how many of you want to attend the Rules Committee hearing. If too many of you do, we'll disband immediately; but, if you don't, we will go over some of these proposals that have been referred to our Committee.

PRESIDENT WENSTROM: Thank you.

DELEGATE LONGMIRE: And, Mr. President, that's immediately after we recess.

PRESIDENT WENSTROM: Thank you, Chairman Longmire.

DELEGATE RUNDLE: Mr. President. Members of the Rules Committee asked me to move that we recess immediately, because they have so much work to do, and I so move.

PRESIDENT WENSTROM: Delegate Rundle, will you grant us time to introduce rule — or committee proposals? There are only a few here, and then you would have those at the committees.

DELEGATE RUNDLE: It's agreeable.

PRESIDENT WENSTROM: We will hold the motion in abeyance until we have taken care of these.

The Clerk — Roy, will you read those?

CHIEF CLERK GILBREATH: Committee Proposal 1-1, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"That the Preamble of the constitution of the State of North Dakota be amended."

PRESIDENT WENSTROM: Committee Proposal No. 1-17 is referred to the Committee on Education, Resources and Public Lands.

I'm sorry. My script is not correct.

Committee Proposal No. 1-1 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-2, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"That article I, sections 1 through 24, of the constitution of the state of North Dakota, pertaining to the Declaration of Rights, be repealed; and that a new article to the constitution of the state of North Dakota, pertaining to a Declaration of Rights, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-2 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-3, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 208, pertaining to debtors' rights; section 209, pertaining to child labor; section 212, pertaining to blacklists; and section 213, pertaining to women's rights to property, of article XVII of the constitution of the state of North Dakota be repealed."

PRESIDENT WENSTROM: Committee Proposal No 1-3 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-4, introduced by the Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that article I of the amendments to the constitution of the state of North Dakota be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-4 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-5, introduced by the Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that the first paragraph of section 203 of article XVI of the constitution of the state of North Dakota, pertaining to the Compact with the United States, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-5 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-6, introduced by the Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that article V, sections 121 through 129, of the constitution of the state of North Dakota, pertaining to the Elective Franchise, be repealed; and that a new article to the constitution of the state of North Dakota, pertaining to the Elective Franchise, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-6 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-7, introduced by the Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 25 through 70, inclusive, sections 194 through 201, inclusive, section 202, section 211 and articles 51 and 75 of the amendments to the constitution of the state of North Dakota be repealed; and that a new article II to the constitution of the state of North Dakota be created, all pertaining to the legislative branch of state government."

PRESIDENT WENSTROM: Committee Proposal No. 1-7 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-8, introduced by the Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 25, section 202, and article 33 of the amendments to the constitution of the state of North Dakota be repealed; and that a new article to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people."

PRESIDENT WENSTROM: Committee Proposal No. 1-8 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-9, introduced by the Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that article III, sections 72 through 84 of the constitution of the state of North Dakota be repealed; and that a new article to the constitution of the state of North Dakota be created, both of which pertain to the executive branch of state government."

PRESIDENT WENSTROM: Committee Proposal No. 1-9 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-10, introduced by the Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that article XIII, sections 188 through 193 of the constitution of the state of North Dakota be repealed; and that a new article to the constitution of the state of North Dakota be created; all of which pertain to the state militia."

PRESIDENT WENSTROM: Committee Proposal 1-10 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-11, introduced by the Committee on Judicial Functions and Political Subdivisions:

“Be it resolved by the North Dakota Constitutional Convention that sections 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, and 120 of the constitution of the state of North Dakota be repealed; and that article IV of the constitution of the state of North Dakota be created; all of which pertain to the judicial branch of government.”

PRESIDENT WENSTROM: Committee Proposal No. 1-11 is referred to the Committee on Judicial Functions and Political Subdivisions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-12, introduced by the Committee on Judicial Functions and Political Subdivisions:

“Be it resolved by the North Dakota Constitutional Convention that sections 130, 166, 167, 168, 169, 170, 172 and 173 of the constitution of the state of North Dakota be repealed; and that article XII of the constitution of the state of North Dakota be created; all of which pertain to political subdivisions.”

PRESIDENT WENSTROM: Committee Proposal No. 1-12 is referred to the Committee on Judicial Functions and Political Subdivisions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-13, introduced by the Committee on Judicial Functions and Political Subdivisions:

“Be it resolved by the North Dakota Constitutional Convention that sections 203, 204, and 205 of the constitution of the state of North Dakota be repealed; and that article XIII of the constitution of the state of North Dakota be created; all of which pertain to the compact with the United States.”

PRESIDENT WENSTROM: Committee Proposal No. 1-13 is referred to the Committee on Judicial Functions and Political Subdivisions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-14, introduced by Committee on Judicial Functions and Political Subdivisions:

“Be it resolved by the North Dakota Constitutional Convention that sections 206 and 207 of the constitution of the state of North Dakota be repealed; and that article XV to the constitution of the state of North Dakota be created; all of which pertain to state boundaries and the state seal.”

PRESIDENT WENSTROM: Committee Proposal No. 1-14 is referred to the Committee on Judicial Functions and Political Subdivisions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-15, introduced by the Committee on Education, Resources and Public Lands:

“Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149, 150, 151, 152, and article 54 of the constitution of the state of North Dakota be repealed; and that article V to the constitution of the state of North Dakota be created; all of which pertain to education.”

PRESIDENT WENSTROM: Committee Proposal No. 1-15 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-16, introduced by the Committee on Education, Resources and Public Lands:

“Be it resolved by the North Dakota Constitutional Convention that article VI to the constitution of the state of North Dakota, which pertains to environmental degradation, be created.”

PRESIDENT WENSTROM: Committee Proposal No. 1-16 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-17, introduced by Committee on Education, Resources and Public Lands:

“Be it resolved by the North Dakota Constitutional Convention that sections 153, 154, 155, 156, 157, 158, 160, 161, 163, 164 and 165 of the constitution of the state of North Dakota be repealed; and that article VII to the constitution of the state of North Dakota be created; all of which pertain to trust lands.”

PRESIDENT WENSTROM: Committee Proposal No. 1-17 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-18, introduced by the Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 215 and 216 of the constitution of the state of North Dakota be repealed; and that article VIII to the constitution of the state of North Dakota be created; all of which pertain to public institutions."

PRESIDENT WENSTROM: Committee Proposal No. 1-18 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-19, introduced by the Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 210 of the constitution of the state of North Dakota be repealed; and that article IX to the constitution of the state of North Dakota be created; both of which pertain to appropriation of waters."

PRESIDENT WENSTROM: Committee Proposal No. 1-19 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-20, introduced by the Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145 and 146 of the constitution of the state of North Dakota be repealed; and that article X to the constitution of the state of North Dakota be created; all of which pertain to corporations."

PRESIDENT WENSTROM: Committee Proposal No. 1-20 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-21, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that article XI, sections 174 through 181, pertaining to revenue and taxation, article XII, sections 182 through 187, pertaining to public debt and public works, of the constitution of the state of North Dakota, and article 56 of the amendments to the constitution of the state of North Dakota, pertaining to motor fuel and license taxes, be repealed; and that a new article XI to the constitution of the state of North Dakota, pertaining to finance and public debt, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-21 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-22, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that articles 14 and 19, pertaining to mills and elevators in Minnesota, Wisconsin and North Dakota; article 24, pertaining to hail tax; articles 59, 65 and 87, pertaining to veterans' bonuses; article 60, pertaining to the medical center; and article 76, pertaining to bonds, of the amendments to the constitution of the state of North Dakota, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-22 is referred to the Committee on Finance and Taxation.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, one of our colleagues, Delegate Sinner, is absent today because he recently underwent surgery to correct a back defect. He's now recuperating at his farm home near Casselton. So, Mr. President, I would move the Convention express to Delegate Sinner our best wishes for a speedy recovery and a happy New Year.

PRESIDENT WENSTROM: You have heard the motion.

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: The motion is seconded by Delegate Lamb. Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye." Opposed, "no." The "ayes" have it.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, a point of inquiry:

I assume, under the statute that we have, in case of a delegate being absent for what is an obvious unavoidable reason, I would — if it is in order, I would like to move that the absent delegates be excused.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been moved and seconded — however, I believe that we have to deny the motion. I don't believe that, under the statute, that that is possible. This is different than the Legislature, Delegate Longmire, and I believe that the statute requires that you receive compensation for the meetings you attend. Now I can have that checked; but that is my opinion. Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I've visited by Mrs. Geelan, and it doesn't appear as though the Committee will be able to complete their committee work early this afternoon; so I'll call off the committee meeting of the Legislative Functions Committee.

PRESIDENT WENSTROM: Did you hear that, Fellow Delegates? The committee meeting on Legislative Functions has been called off by the chairman.

We have a motion. Before I take that motion, again, I have a question that came in.

Delegate Rundle, with your permission. I have a question here that it would be well to put before the Convention for your thoughts, because this is something that will come up in the immediate future. And the question is: When is the question on Saturday meetings to be resolved?

With that, I will take the motion as presented by Delegate Rundle some few minutes ago. Delegate Rundle.

DELEGATE RUNDLE: Mr. President, with your permission, I'd like to yield for just a second to Delegate Rosendahl, who has a short announcement.

PRESIDENT WENSTROM: Permission is granted.

DELEGATE ROSENDAHL: Thank you, Delegate Rundle.

Mr. President, I have a short message I would like to convey to the Delegates for the record.

Mr. President, I should like to take this opportunity to make a short statement for the record pertaining to the badge I am wearing on my coat. This is one of the original badges from the 1889 Constitutional Convention. It was worn by a farmer from Grafton, North Dakota, in Walsh County, who not only served as a delegate to the 1889 Constitutional Convention, but four years later went on to distinguish himself by becoming the fourth Governor of North Dakota, from 1895 to 1897. I am sure that you North Dakota historians know by now that I am referring to the late Governor Roger Allen. This badge was among the many personal effects left to his nephew, Mr. Roger Bond, long-time prominent businessman at Bottineau, North Dakota.

I thought the Delegates would be interested in this bit of history from the first Constitutional Convention in 1889.

Thank you.

(Applause)

PRESIDENT WENSTROM: Thank you. Thank you so very, very much, Delegate Rosendahl.

DELEGATE RUNDLE: Now, Mr. President —

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I would move that we recess until nine o'clock tomorrow morning.

PRESIDENT WENSTROM: It has been moved that the Convention stand in recess until nine o'clock tomorrow morning. Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: We have a second. Delegate Haugen.

DELEGATE HAUGEN: A question on a point of order.

Does this mean that the Convention will meet tomorrow morning at nine — nine until noon? Those committee chairmen who have not announced meetings would like to know, so we can plan meetings for tomorrow.

PRESIDENT WENSTROM: Delegate Haugen, I would have to answer that by saying that the Convention at this time is very much in a state of flux and we have no new rules. There's a question of when they are adopted. When they are adopted, I think that all these little questions, like the one you just raised, would be answered; however, if we do meet at nine o'clock tomorrow morning and the Convention wishes to recess and attend committee meetings, that's perfectly the prerogative of the Convention.

Delegate Haugen.

DELEGATE HAUGEN: This does not give the chairman much basis for planning. Could we — with Delegate Rundle's permission, could we discuss this for a minute or so?

PRESIDENT WENSTROM: Delegate Rundle?

DELEGATE RUNDLE: Go right ahead.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I think that there is some difference of opinion as to when the Convention should hold its regular session each day. I recall that at Grand Forks, when some of us met, and a large majority were for holding morning meetings — morning sessions of the full body — and devoting the afternoon, wherever necessary, to committee meetings. I am inclined to agree with that provision, myself.

For the purposes of discussion, may I move that mornings be devoted, beginning at nine o'clock each day, to the meetings of the Convention, and that the — am I out of order here?

PRESIDENT WENSTROM: I'm afraid I'll have to rule that you're out of order.

DELEGATE HAUGEN: But I still want to know. What can I do about my committee tomorrow?

PRESIDENT WENSTROM: Delegate Haugen, may I suggest that you call a meeting of your committee when you'd like to have it meet, and I think the Convention will cut the cloth in order that it will fit. So you call your meeting, and I'm sure that provision will be made so that your group can meet.

Now, back to Delegate Rundle's motion that the Convention now recess.

You are aware of the question. The question is on recessing until nine o'clock tomorrow morning.

As many as are in favor of the motion will say "aye"; opposed "no." The "ayes" have it and the Convention will stand in recess until nine o'clock tomorrow morning.

(The Plenary Session adjourned at 2:06 P.M., Monday, January 3, 1972, until 9:00 A.M., Tuesday, January 4, 1972.)

VOLUME II

January 4, 1972

MORNING SESSION

(The second day of the Plenary Session commenced at 9:05 A.M., Tuesday, January 4, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our chaplain for this morning is the Reverend Richard Unkenholz, First United Methodist Church of Bismarck.

REV. RICHARD UNKENHOLZ: Let us pray.

O God, we thank You for the newly-discovered challenges and unclimbed heights in this temporary life. In times of change and reevaluation, guide us with Your eternal wisdom. Give counsel and help to each of those who deliberate here.

Grant that what is done in this Convention, even today, may result in benefit for many generations yet to come. Help each of us to hold the rights and needs of others to be as important as our own.

Help each delegate to evaluate fairly the suggestions, ideas and convictions brought to this place of decision. Grant that out of the struggle and testing entered into here there may emerge a document that will broaden and enrich the possibilities of life in our State of North Dakota.

We pray in the name of the Christ, who lives and who leads. Amen.

PRESIDENT WENSTROM: We'll have the calling of the roll. The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence? If so, you will close the key.

The roll call discloses 96 present; two absent. A quorum is declared.

We'll be on the fourth order of business — approval of the Journal.

CHIEF CLERK GILBREATH: No Journal yet to work with.

PRESIDENT WENSTROM: We'll be on the eighth order of business — Communications.

CHIEF CLERK GILBREATH: "The North Dakota Constitutional Convention, State Capitol, Bismarck, North Dakota.

I send my wishes for success to the delegates on the North Dakota Constitutional Convention. The task you undertake is most important. It could create the basic structure of government which will guide North Dakota into its second century. The various proposals of the convention committees about which I have read show a great understanding on the basic problems affecting our state government. They will furnish an excellent starting point for the deliberation on this convention. I share your hope and confidence that these proposals under the careful study of the delegates assembled can become a worthy document for submission to the people of North Dakota.

"Quentin N. Burdick, United States Senator."

"Frank Wenstrom, President, Constitutional Convention, Capitol Building, Bismarck, North Dakota.

"Please extend my greetings to the delegates and guests at the Constitutional Convention. Your task is a vital one for the future of our state and I am confident you will meet the challenges before you. All North Dakotans are grateful for your dedication. Best wishes for every success.

"Mark Andrews, United States Congressman."

"Honorable Frank A. Wenstrom, Constitutional Convention, State Capitol, Bismarck, North Dakota.

"Dear Frank:

"It appears that I will be unable to attend the opening days of the Constitutional Convention. I have had some back surgery, and I was a little optimistic about the time it would take to regain my strength. I am hoping to be in Bismarck the second week and, if all goes well, maybe the latter part of the first week.

"Please extend my regrets to the rest of my committee at least and to other delegates who might wonder where I am. I look forward to joining you all as soon as possible.

"Best personal regards. Sincerely, George A. Sinner."

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: I would like to report present. I wasn't here for the roll call.

PRESIDENT WENSTROM: We will be on the ninth order of business — the introduction and first reading in reference to proposals to committees.

CHIEF CLERK GILBREATH: Delegate Hubrig introduces Delegate Proposal No. 2-43:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota pertaining to penalties for drug offenses, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-43 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Billey introduces Delegate Proposal No. 2-44:

"Be it resolved by the North Dakota Constitutional Convention that article 54 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to education."

PRESIDENT WENSTROM: Delegate Proposal No. 2-44 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Delegate Dobson introduces Delegate Proposal No. 2-45:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota which pertains to reimbursement to counties for costs of the special election on the proposed constitution, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-45 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Dobson introduces Delegate Proposal No. 2-46:

"Be it resolved by the North Dakota Constitutional Convention that section 98 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the filling of vacancies in the offices of justice or judge."

PRESIDENT WENSTROM: Delegate Proposal No. 2-46 is referred to the Committee on Judicial Functions and Political Subdivisions.

CHIEF CLERK GILBREATH: Delegate Erickson introduces Delegate Proposal No. 2-47:

"Be it resolved by the North Dakota Constitutional Convention that section 176 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created, both pertaining to uniformity of taxation."

PRESIDENT WENSTROM: Delegate Proposal No. 2-47 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Hubrig introduces Delegate Proposal No. 2-48:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota, which pertains to a Bill of Rights for minors, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-48 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Peterson introduced Delegate Proposal No. 2-49:

"Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149, 150, 151 and 152 of the constitution of the state of North Dakota be repealed; and that article V, section 1, of the constitution of the state of North Dakota be created; all of which pertain to education."

PRESIDENT WENSTROM: Delegate Proposal No. 2-49 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Delegate Trenbeath introduces Delegate Proposal No. 2-50:

"Be it resolved by the North Dakota Constitutional Convention that article 56 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to dedicated funds for highways."

PRESIDENT WENSTROM: Delegate Proposal No. 2-50 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH Delegate Rundle introduces Delegate Proposal No. 2-51:

"Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota, which pertain to matters of initiative and referendum and amendments to the state constitution, respectively, be amended."

PRESIDENT WENSTROM: Delegate Proposal No. 2-51 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Delegate Cart introduces Delegate Proposal No. 2-52:

"Be it resolved by the North Dakota Constitutional Convention that article II of the constitution of the state of North Dakota, including sections 25 through 70 and pertaining to the legislative branch of government, be amended."

PRESIDENT WENSTROM: Delegate Proposal No. 2-52 is referred to the Committee on Legislative Functions.

The Convention will be at ease.

(The Convention was at ease from 9:22 A.M. until 9:55 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

We will be on the eighth order of business — Communications and Announcements.

CHIEF CLERK GILBREATH: "The Honorable Frank Wenstrom, President, Constitutional Convention, State Capitol, Bismarck, North Dakota.

"Dear Mr. Wenstrom:

"We have had several inquiries regarding the use of the Supreme Court library during the evenings by delegates to the Convention.

"For the convenience of the delegates, we have made available a key to the library which will be in the possession of Mrs. Dunn, the clerk of the Supreme Court. Anyone wanting to use the library facilities during the evening hours may, by calling on our clerk during office hours, arrange for securing the key.

"The library, of course, is always open to the delegates during office hours and we invite the members of the Constitutional Convention to make use of it. Mr. Dewald, our librarian, will be ready to be of any assistance possible to members of the Convention.

"Very sincerely yours,
"Alvin C. Strutz."

PRESIDENT WENSTROM: At this time —

CHIEF CLERK GILBREATH: Do you want me to go ahead and read the rest of the announcements?

PRESIDENT WENSTROM: Yes, if you will.

CHIEF CLERK GILBREATH: The Public Information Committee will tentatively meet on Thursday at 4:00 P.M. to discuss post-convention activities with members of the North Dakota Extension Council. Several council members will be here Thursday. Chairmen Dobson and Paulson.

You have on your desk what are called "Journal Mailing Lists," and there are ten per delegate. Would you please check with the other delegates from your district so we don't duplicate and one individual ends up getting two or three Journals. Would you please communicate among your district delegates and not come up with identical names on your Journal mailing list? Will you have them filled out — they don't have to be filled out entirely — I mean you don't have to have ten — you can have one or five or three — and turn them in at the desk up here in front.

PRESIDENT WENSTROM: I would like to announce the appointment of committees — of three committees at this time.

On the Employment Committee: Chairman, Warner Litten. Delegate Lamb, Delegate Solberg, Delegate Byrne, Delegate Hoghaug, Delegate Sanstead, and Delegate Knudson.

On the Committee on Enrolling and Engrossing: Delegate Erickson is Chairman. Delegate Urdahl, Delegate Warner, Delegate Aubol and Delegate Kwako.

For the Committee on Revision and Correction of the Journal: Delegate Simonson is Chairman. Delegate Dobson and Delegate Paulson.

We'll be on the seventh order of business — Reports of Select Committees.

At this time we will have the Report of the Committee on Employment.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates:

You have on your desk now the results of the meetings that have been held or meetings that have been held that have to do with the Procedural Committee on Employment. I might just mention to you that the Committee met two or three weeks ago, and we have already seen the results of our good work with some of the people that are already working with our respective committees and some of us as individuals.

When we met, you notice from what President Wenstrom said a minute ago, that Delegate Sanstead was a member of our Committee. I might just mention for your own information that he was unable to attend our meetings and Delegate Hoffner sat in as his proxy.

I would just give a little bit of the background on the procedure the Committee followed.

We can report to you that we analyzed the positions that had been recommended to us. We established salary guides having to do with the respective positions. We reviewed all of the applications in great detail; in fact, we broke into a subcommittee that analyzed them even more than the main Committee had done, and we consolidated a number of the positions, as you already have noted, that have to do with the committee clerks and stenographers. The positions that have been eliminated don't show on this sheet, but there were several that were eliminated. We feel that the results of the work of the Committee have caused us to have working with us an employee force that probably is incomparable. We feel that we have a group of people who can perform in each respective task that's been assigned to them. They're well qualified and, almost without exception, well-experienced.

So, with that thought in mind and without going into the list in detail you have in front of you, this is the report of the procedural committee.

You'll notice on the bottom of the second page that we're involved with an expenditure of \$971 a day, a total cost of \$29,130 for the 30 days that we'll be in session.

With that, Mr. President, I'll move that the Report of the Employment Committee be adopted.

PRESIDENT WENSTROM: It has been moved that the Report of the Employment Committee be adopted. Do I have a second?

DELEGATE NICHOLAS: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nicholas. Is there any discussion? Hearing none, and inasmuch as this entails the expenditure of funds, we will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

The key is closed.

The roll call reveals 94 "ayes;" no "nays;" four absent and not voting.

The report is adopted.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I'd like to refer back to the Journal mailing. I have a question.

Is the Staff going to be mailing Journals to the schools, the newspapers, farm organizations, et cetera, or do we have to — what is the procedure?

PRESIDENT WENSTROM: It is my understanding, Delegate Hoffner, that we are. However, I can't say positively. But I will get that for the Convention today.

Will the Sergeant at Arms bring the employees to the foot of the rostrum for the swearing-in ceremony?

(The Convention employees were brought before the rostrum.)

PRESIDENT WENSTROM: You will raise your right hand and repeat after me:

(The following oath was administered to the employees by President Wenstrom:)

"I DO SOLEMNLY SWEAR THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE OF NORTH DAKOTA AND I WILL FAITHFULLY PERFORM THE DUTIES OF THE POSITION FOR WHICH I HAVE BEEN SELECTED. SO HELP ME GOD."

PRESIDENT WENSTROM: We have no more work at the desk. We have an announcement. We'll be on the eighth order.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to announce a meeting of the Committee on Finance and Taxation at 1:30, or immediately following the afternoon session, if we have one.

PRESIDENT WENSTROM: Delegate Haugen announces that his Committee on Finance and Taxation will meet at 1:30 this afternoon, or immediately following the afternoon session.

DELEGATE HAUGEN: I presume that the members know that the meeting will be in the Blue Room, which is just through the locker room.

PRESIDENT WENSTROM: The meeting will be held in the Blue Room.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: What is the schedule for this morning and this afternoon? Do you intend to recess now until one o'clock, or something like that, or are you going to adjourn?

PRESIDENT WENSTROM: Delegate Hernet, I have to tell you that the Convention at this point — at this time is very much in a state of limbo. I have nothing up here. The rules are not ready to be discussed and it is real difficult to proceed until such time as we do have the rules with us and have them adopted.

I think that at this time we could say that the Convention is open to the will of the delegates.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Mrs. Geelan.

DELEGATE GEELAN: I understand that the material that we need for our rules report — the materials have been distributed. If they have been, we are ready to report. There are two things that we must have on every desk — the Report of the Procedural Committee — and you will notice on the first page it begins with Rule 8, and then another page that includes the amendments that were adopted by the — changes that were adopted by the Committee yesterday.

Now, if those are on the desk, we are ready, as the Rules Committee, to report.

PRESIDENT WENSTROM: Madam, I think — I know the desk doesn't have anything. We don't have anything up here to work from.

DELEGATE GEELAN: Well, then may I ask that the Staff distribute the materials to the desk? I believe — let me see how many committee — how many delegates have them.

PRESIDENT WENSTROM: It seems that everyone has the material but the desk.

DELEGATE GEELAN: Well, I would suggest that the Staff see that the President and the desk get the material that we need, and then, at that time, we are ready to report.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: While you wait for that, I would like to announce that our Committee on Executive Functions will meet, also, whenever it is convenient for the Convention. I would guess, if we're going to discuss rules this morning, why, we probably won't meet until 1:30, and it will be down in our hearing room, which is 5 and 6, I believe. So, otherwise, I was going to say that we could meet now; but if we're going to discuss the rules, we'll put it off.

PRESIDENT WENSTROM: Delegate Hernet announces that the Committee on Executive Functions will meet at 1:30 this afternoon in their regularly-scheduled room.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I would like to announce that the Bill of Rights Committee will meet at 2:00 o'clock in the Lewis and Clark Room, provided that this does not conflict with a meeting of the general session.

PRESIDENT WENSTROM: Delegate Maxwell announces that the Committee on Bill of Rights will meet in the Lewis and Clark Room at 2:00 o'clock, in the event that it does not conflict with the work of the Convention.

DELEGATE MEIDINGER: Mr. President:

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: The Committee on Education, Resources and Public Lands will also meet at 2:00 o'clock, and, in the words of the Judge, "provided."

PRESIDENT WENSTROM: Delegate Meidinger announces that the Committee on Education, Public Lands and Natural Resources will meet in Room G-1 in the event that the Convention is in recess at that time.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: The Committee on Legislative Functions will meet at 1:58 in the Large Hearing Room.

PRESIDENT WENSTROM: Delegate Hoffner announces that the Committee on Legislative Functions will meet in the Large Hearing Room at 1:58.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: The Committee on Judicial Functions and Political Subdivisions will meet at 1:59 in the Gold Room.

PRESIDENT WENSTROM: Delegate Longmire announces that the Committee on Judicial Functions and Political Subdivisions will meet in the Gold Room at 1:59. I presume that's A.M.

DELEGATE LONGMIRE: We'll take that up, Mr. President, at that time and decide whether it's A.M. or P.M.

PRESIDENT WENSTROM: Thank you, Delegate Longmire.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I'd like to ask —

PRESIDENT WENSTROM: Delegate Rundle, your mike isn't working.

DELEGATE RUNDLE: Now is it working?

PRESIDENT WENSTROM: Now it's working.

DELEGATE RUNDLE: I would like to ask the Chairman of the Committee, Mr. Longmire, if he could meet a little later. His Committee has been so efficient there's nothing to do.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I'd like to ask Delegate Rundle: Is there any good reason why it should be later, and, if it is, I assume that we could.

PRESIDENT WENSTROM: Do we have the material now to take up the rules?

DELEGATE GEELAN: Mr. President —

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: — and Fellow Delegates:

Before we go into our Rules Report, it might be well to have a few words of explanation.

You will recall that, at the organizational meeting, you authorized the Permanent Rules Committee to take action on three rules that were referred to them; one was on the powers and duties of the Committee on Style and Drafting, and you will find our recommendations on that, in addition to Rule 12 or the Rule No. 12.1.

The second rule referred to us was on calls of the Convention. You will find our recommendations there under Rule 15.

The third rule referred to was on the suspension of rules, and our recommendations there are under Rule 37.

Then, too, the organizational convention gave the Permanent Rules Committee the authority to revise rules during the interim, with two provisions: Any rule that was amended would have to have the unanimous consent of the President and the two Vice Presidents, and any rule amended would have to be submitted to this body for approval.

The Committee met in September and amended three rules — Rule 11 on committee meetings, Rule 13 on reports of committees, Rule 18 on introduction of proposals, and, as required by our temporary rules, those three rules, as amended, were sent to all the delegates.

Then, at that same meeting in September, we asked President Wenstrom and the Staff to make recommendations to our Committee on rule revisions and additions that would affect the Plenary Session. We met in December to consider their recommendations by the Committee, and recommendations that were given to the Rules Committee by various delegates.

Yesterday, we had another meeting. As many of you know, we had a good attendance and, believe me, the Committee appreciated it. Many delegates were in attendance and we had a number of suggestions. As a result of those suggestions from the other delegates and from members of our Committee, the Rules Committee made additional changes, and those are on a separate sheet. See, we were up against a time element. Rather than print a new report — and you have this report on your desk now — we thought it would be better and we thought, if there was any question, the rules may need to be suspended, but we thought it would be better to have these on your desk on a separate sheet, and as the rule is read, the additional amendment will be read by a member of the Committee.

You have, then, two reports on your desk from which we will work — the Report of the Procedural Committee and the additional sheet on amendments.

Now, the report shows, in each case, and they are all the rules now — the three that were referred — the three that we took action on in September — and you already had the report on that — and then all other changes. So this report will only have all of the rules that are changed, beginning with Rule 8. We think

that the preparation is clear. Matter that is underlined will be new additions. The double underlining does not mean a new addition; it just means a change from the temporary rules report; and then anything deleted has triple parentheses. But because you have not had an opportunity to see this report, we think that the rules should be — changes in the rules should be explained. So all of the members of the Rules Committee have accepted specific rule assignments and, after the rule — each rule is read by the Clerk, a member of the Committee will explain the changes, and then, if there is an amendment to be made, they will offer it.

After the discussion, of course, the rule is open to your discussion and possible amendments.

With that, Mr. President, then we are ready to go into the Report of the Procedural Committee.

PRESIDENT WENSTROM: Thank you, Madam Geelan.

CHIEF CLERK GILBREATH: Report of the Procedural Committee:

“Mr. President: Your procedural committee appointed to review and recommend changes in the temporary rules has had the same under consideration and recommends that the Temporary Rules of the Convention be amended as follows:

“Rule 8. COMMITTEES

“The President of the Convention shall appoint the following six substantive committees:

- “1. Preamble, Bill of Rights and Suffrage
- “2. Legislative Functions, Elections, Removal and Amendments
- “3. Executive Functions
- “4. Judicial Functions and Political Subdivisions
- “5. Finance and Taxation
- “6. Education, Resources, and Public Lands

“The President of the Convention shall appoint the following (((five))) **seven** procedural committees:

- “1. Budget
- “2. Rules
- “3. Style and Drafting
- “4. Public Information
- “5. Coordinating and Transition
- “6. **Committee on Calendar**
- “7. **Committee on Enrolling and Engrossing”**

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I was the one who was asked to explain the changes in Rule 8. Before I do that, I should just like to say one or two words, or a few words, about the Rules Committee and the necessity of rules. Actually, the need for rules is that the rules exist to facilitate transaction of the business at hand. Also, remember that the will of the majority prevails; also, that the rights of the minority are respected and protected and that all members have equal rights, privileges and obligations; that the rules should also provide for full and free discussion, and that they should provide the simplest and most direct procedure, and that all delegates shall have the right to know the question before the assembly and what its effect will be.

In other words, the reason for these rules, and some of them which may sound a little complex are simply to facilitate our work at hand, and the reason for many of these rules have evolved through long experience in this type of a deliberative body.

Now, getting back to Rule 8:

We are adding two additional committees — a Committee on Calendar, which will be a sort of steering committee. It will be composed of the chairmen of the substantive committees, plus a chairman, and this Committee will be charged with the responsibility of deciding the order in which various proposals will come

on or appear on the calendar. I think, if you'll give that a little thought, you can see for yourselves that that will be a rather important factor in the deliberations of this body.

The other committee which is being added is a Committee on Enrolling and Engrossing. Actually, this is a mechanical detail, to show that the proposals are drafted in proper form and placed on — in proper form for the interim record or permanent record.

At this time I would move the adoption of the suggested or recommended changes for Rule 8.

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: It has been moved by Delegate Saugstad, and it was seconded by Delegate Trenbeath, that Rule 8 now be adopted. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and Rule 8 is adopted.

CHIEF CLERK GILBREATH: "Rule 11. COMMITTEE MEETINGS

"A committee shall meet at the call of the chairman, who shall also set its agenda, or upon the written request of a majority of the members or at the direction of the Convention.

All meetings and records of the Convention **and all committees, subcommittees and hearings** shall be open to the public **and the news media.**

"(((All committees and subcommittees and hearings shall be open to the public and the news media.)))

"Committees and subcommittees may hold meetings and public hearings in the city of Bismarck, or upon the affirmative vote of the majority of the members of the committee and after consultation with and approval by the President, may hold meetings and public hearings at any other place in the state.

"No committee shall sit during the (((sessions of the))) **time** the Convention **is actually meeting in plenary session** without special leave of the Convention by a majority vote of those voting.

"A majority of any committee constitutes a quorum.

"Committees may meet jointly with the consent of their respective chairmen.

"Prior to the plenary session, no committee meetings or hearings may be held unless notice thereof is given ((in the following manner: The president of the Convention shall be furnished a written notice, signed by the chairman or members of the committee calling the meeting. The notice shall state the date, hour, and the place of the proposed meeting (which shall be not less than 96 hours after the president has been furnished such notice) and the proposal number or subject matter to be considered. The president shall mail or deliver a copy of the notice to all delegates of the Convention, at least 72 hours prior to the time set for such meeting and shall post such notice in the State Capitol))) **to all delegates** at least 72 hours prior to the time set for such meeting(((s))).

"**No substantive committee or a subcommittee thereof shall meet between the dates of November 15, 1971, and January 3, 1972, inclusive, without the permission of the President.**"

"During the plenary session, ((no committee hearings shall be held unless such a notice shall have been delivered to the president and posted in the State Capitol at least 24 hours prior to such hearings.))) **each chairman shall inform the clerk of the Convention of the time and place of meetings of his committee. The clerk shall post notice of such meeting in the state capitol.**"

"Rule 12.1. POWERS OF STYLE AND DRAFTING COMMITTEE

"**1. To review and correct grammar, punctuation, and usage of the words used in each section.**"

DELEGATE GEELAN: Mr. Chairman, may I interrupt there? I believe we should take action on No. 11, first.

CHIEF CLERK GILBREATH: Oh, I'm sorry.

DELEGATE HUBRIG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, I believe that Rule 11 is sufficiently covered here. It explains what the changes are. I don't think there's any need for additional explanation on it. The things we do recommend be changed is a matter of timing, and the first portion of it is history now, anyway. It's what's going to happen from today forward that we should be concerned about, and I believe that it's clear on the new language that we're using, and I would, therefore, move the adoption of Rule 11.

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Delegate Hubrig moves the adoption of Rule 11. We had a second. It was seconded by Delegate Sanstead.

Now, is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Rule 11 is adopted.

We will proceed.

CHIEF CLERK GILBREATH: **"Rule 12.1 POWERS OF STYLE AND DRAFTING COMMITTEE**

"1. To review and correct grammar, punctuation, and usage of the words used in each section.

"2. To look for and bring to the attention of the Convention for its action, any sections which are in conflict with each other or need to be clarified.

"3. To remove inaccurate, repetitious, unnecessary and inconsistent language.

"4. To arrange the order and number of the articles and arrange the order and number of the sections in each article."

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: I move the amendment of Rule 12.1 as follows:

Insert the word "title," between the words "To" and "arrange" and between the words "and" and "arrange" in paragraph 4, which makes paragraph 4 read: "To title, arrange the order and number of the articles and title, arrange the order and number of the sections in each article."

I move the adoption of this amendment.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: Delegate O'Toole seconds the motion on the amendment. The question now is on the amendment as offered by Delegate Wicks.

Delegate Haugen, do you have a question?

DELEGATE HAUGEN: I have a comment that, in my opinion, at least, the language leaves a little bit to be desired — that "title" and "arrange" are not exactly the same thing. It probably would be better to say "title and arrange" — to have it "and to title and arrange the order and number of the sections." It would be a technical suggestion. I believe it reads better than it now reads.

PRESIDENT WENSTROM: Do you move an amendment?

DELEGATE HAUGEN: I would so move, if it meets with the approval of the Committee.

PRESIDENT WENSTROM: Delegate Haugen, I believe that you should present the motion or the amendment to the desk, so that we can carry it out exactly the way that you'd like.

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: I would be willing to incorporate that amendment in the amendment as I have suggested it, to include the "and." Would this simplify matters?

PRESIDENT WENSTROM: I think it would. Is that agreeable with Delegate Haugen?

DELEGATE HAUGEN: Yes.

PRESIDENT WENSTROM: Then you would just include that in your amendment?

DELEGATE WICKS: And I would include that in my amendment.

PRESIDENT WENSTROM: Delegate O'Toole?

DELEGATE O'TOOLE: I'll include that in my second.

CHIEF CLERK GILBREATH: Then that would read: "To title and arrange"

DELEGATE HAUGEN: Yes.

CHIEF CLERK GILBREATH: — "the order and number of the articles and title and arrange and number . . ." Okay.

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: The reason for inserting the title in here was we found, in going over the committee reports, that not all of them had titles — all articles and sections — and this just leaves the Style and Drafting Committee leeway, without the Committee having to do any more work on this.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Would you have the desk read that paragraph 4 as it would be, after amendment?

CHIEF CLERK GILBREATH: "4. To title and arrange the order and number of the articles and title and arrange the order and number of the sections in each article."

PRESIDENT WENSTROM: Any further questions? The question is on the amendment.

As many as are in favor of the amendment will say "aye;" opposed "no." The "ayes" have it.

The question is on the adoption of Rule 12.1 as amended. Is there any further discussion?

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. Chairman, how much power does this grant to the Style and Drafting Committee?

PRESIDENT WENSTROM: Delegate Solberg, I don't believe your mike is working.

DELEGATE SOLBERG: I don't either. The article 3 or point 3 there, "To remove inaccurate, repetitious, unnecessary and inconsistent language." What is the interpretation of something inaccurate? What is the interpretation of "unnecessary"? What is the interpretation of "inconsistent"? When do these things prevail and, if they do prevail and in the judgment of this Committee they do prevail, what will it do to that particular section or proposal that is being acted upon by the delegates? Will it change the entire sense and language? Will it change the entire meaning? Will it perhaps allow for inconsistencies to develop after the change? How much power lies in the interpretation of the members of the Committee in the area of these — the use of these particular semantics arrangements?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: In answer to Delegate Solberg's inquiry, the Style and Drafting Committee will prepare a report. Their actions will come in the form of a report to this body. This body then must adopt their report. Should any delegate question their actions, they will at that time have an opportunity to raise their objection.

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I don't know if I'm in order or not. I was going to talk about No. 4, and I believe we passed it. Am I in order to talk about it?

PRESIDENT WENSTROM: No. I believe you'll have to hold that in abeyance until we're through with the question on the floor. Then I'll recognize you.

DELEGATE HENDRICKSON: All right.

PRESIDENT WENSTROM: We have a — we need a motion. I guess I called for one here that we didn't have. We need a motion.

DELEGATE WICKS: I move for the acceptance of Rule 12.1 as amended.

PRESIDENT WENSTROM: It's been moved that Rule 12.1 be approved as amended. And now do we have a second?

DELEGATE LITTEN: Second.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I think Delegate Hendrickson's point has to do with the adoption and should be discussed prior to the adoption.

PRESIDENT WENSTROM: I'm sorry sir. I thought she was referring to Rule No. 4.

DELEGATE HAUGEN: She referred to paragraph 4.

PRESIDENT WENSTROM: Paragraph 4. Well, then the Chair is corrected. And then, if you have a question on No. 4 —

DELEGATE HENDRICKSON: As a member of Style and Drafting, I'm wondering, as we go through the Constitution, and if you'll take a look, some of these sections are very short. Do you mean by this that every section will have a title? For example, one section reads: "No person shall be imprisoned for debt." Does that need a title? Some of them, I feel the titles will be as long as the sections. Does this mean that every section has a title?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I don't — the Rules Committee didn't feel that they had to. We just wanted to make sure that, if Style and Drafting wanted to title, they could. I can imagine there's some that would be awfully hard to title. But we wanted to have somebody to have the authority, and the committees have not been consistent. Some have been titling and some have not. We felt that there should be one committee that has the overall authority to look at the sections for titles and, of course, anything they do title will come back to the Convention for approval. So I don't think they have to.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: As this particular rule reads, I think it empowers —

PRESIDENT WENSTROM: Delegate, I wonder if your mike is working?

DELEGATE KELSCH: If you'll hold your mikes up close to your mouth, everybody can hear you.

DELEGATE HENDRICKSON: As this particular rule now reads, I would assume that every article should have a title, unless we put in "if necessary," or some qualifications.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I think Delegate Hendrickson should give full emphasis to the preparation, too, because that gives leeway to this particular committee to arrange or to title and arrange and, therefore, the Committee has this alternative, as I look at it, and, therefore, this gives them the leeway to give title or not to give title.

PRESIDENT WENSTROM: Thank you, Delegate Solberg.

Is there any further discussion? The question then is on the adoption of Rule 12.1 as amended.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and the rule is adopted.

CHIEF CLERK GILBREATH: "Rule 13. REPORTS OF COMMITTEES

"The affirmative vote of a majority of the members of a committee having the right to vote shall be necessary to report a proposal out of committee. **Such**

report shall be signed by the chairman of the committee and shall recommend one of the following:

"1. That such proposal be adopted.

"2. That such proposal be amended, and when amended be adopted.

"3. That no recommendation is made on such proposal.

"4. That such proposal be indefinitely postponed.

"Reports by subcommittees shall be considered by the entire committee before recommending any action thereon by the Convention.

"(((All committee recommendations shall be accompanied by a concise written explanation of the reasons for the committee's action.)))

"The report or reports of a minority of any committee shall be received in the same manner as the majority report and treated as an amendment or substitute offered to or for the report of the committee if offered as such on the floor.

"(((At least three of the))) Three or more members of any committee may make a minority report.

"The minutes of interim committees or subcommittees shall be sent to all delegates of the Convention.

"The minutes of a committee shall report its consideration of all citizens' ideas referred to it in writing.

"It shall be the duty of each committee chairman during the plenary session to report to the president of the Convention each Monday, or at his request, the proposals, by number, remaining for consideration in his committee."

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I note, to begin with, there's going to be a little complication right away. On this other single sheet there was supposed to have been another amendment to be added to this Rule, other than those that were read from the desk. I think we could get by amending it without having a copy on the desk, because it's a very simple amendment. I don't know what happened. I think our Staff just slipped in putting it on this sheet, and maybe we should reconsider our action on their salaries at this point.

Anyhow, if you'll turn to the second page and go down to line one, two, three, four, five, six — it's the end of the second paragraph. It's the wording on the end of the second paragraph — ". . . if offered as such on the floor." That is to be deleted as another portion of this amendment. There's a reason for that. Further on in the rules, we have provided there shall be no amendments allowed to committee reports, majority or minority, and in the explanation of those rules as we proceed, you will understand this. So it has to be taken out of that second paragraph — that last line. So, added to the amendments as read from the desk, I will further amend to strike out those words "if offered as such on the floor." And insert a period after the word "committee."

PRESIDENT WENSTROM: It has been moved by Delegate Trenbeath that, on line one, two, three, four, five, six, that we strike "if offered as such on the floor." Do I have a second?

DELEGATE ROSENDAHL: Second.

PRESIDENT WENSTROM: For the record, we need who made the second. Delegate Rosendahl.

Now, is there any discussion? Hearing none, the question is on the amendment as offered by Delegate Trenbeath. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

Now we're on the question of adopting Rule 13 as presented, as read from the Chair.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I think that just a little word of explanation might be in order on Rule 13. As you note, it spells out completely the four ways that a bill can come out of committee. Probably of special note, you should

take note on that second page, of that first paragraph, which states that the minority report will be only substituted for the majority report; in other words, it will be treated something like an amendment. Now, this will be the only — if there's any cloud on any motion made as a substitute motion, this will be the only one that will be allowed, according to our President. So I'll just make note of that to you delegates that the minority report will also be an amendment to the majority report when the committee report comes before the house — or before the Convention.

Secondly, the last paragraph — the underlined wording there — is placed for a specific purpose. It was thought by the President and others that to expedite the work of the Staff and the ability for the President to know what's going on in committee, the chairmen of each one of the committees shall report each week at the Plenary Session to the President on what proposals he has in committee. It will get the committee chairmen together, so, if there are sections of the Constitution that have relative meaning to one another, they can call their committee meetings together and get those on the calendar kind of together, so that we'll have subject matter related that we can dispose of at the same time. It's just a matter of expediting our work. Otherwise, I think your Rule 13 should be adopted with the amendments proposed.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I'm still a little confused about the way this minority report is going to be brought to the floor. I have some questions for someone who might be able to answer them for me. In parliamentary procedure that's followed in other instances in the House and Senate of North Dakota, the opportunity of presenting the minority report is made at the time the majority report is introduced, and the debate then takes place as to substituting the minority report for the majority report in that proposal. Is that to be followed here and does it come onto the floor automatically — the minority report?

DELEGATE TRENBEATH: The procedure is the same as it is in the Legislative Session, Delegate Butler.

DELEGATE BUTLER: Thank you.

PRESIDENT WENSTROM: Delegate Butler and Delegate Trenbeath, might I add, however, that there is a distinct difference here, in that there are more than one minority reports in this Convention that are coming out of the committees, and that's something we don't have in the legislative process.

DELEGATE TRENBEATH: Yes, Mr. President, I'll bring that out in the next — in the discussion on the next rule.

PRESIDENT WENSTROM: Are there any further questions? Is there any question by a delegate or —

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: This is an inquiry to Delegate Trenbeath as to "It shall be the duty of each committee chairman during the plenary session to report to the president." Does this contemplate a copy on the desk of each of the delegates?

DELEGATE TRENBEATH: No.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Excuse me, Mr. President.

Delegate Burke, no. In my understanding, no. You will be able to follow the procedure of the proposals in committee on the bulletin board and on the calendar on your desk. But every Monday morning, why the chairman of each one of these committees will have a meeting with the President and they will go over the proposals that are in their committee.

PRESIDENT WENSTROM: Does that answer your question, Delegate Burke?

DELEGATE BURKE: Yes, Mr. President.

PRESIDENT WENSTROM: The question then is —

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Delegate Trenbeath, on this same point here, you talk about proposals. Now, in our committee, one proposal is practically everything which is assigned to us — the whole section of the Constitution — or sections. Now, when you talk about we may not bring this on the floor of this Convention as a package — everything that was assigned to us — we're going to break that down, I would hope, and suspect. Now, when you talk about proposals as what we have left, I think your word "proposal" is too broad. I think you should talk about what is left in the committee, that we haven't brought on the floor — is what I would suspect you intend. Is that right?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Do I understand you, Delegate Hernet, that you just report the proposals that you set out on the floor and this pertains to the proposals you have left in committee?

DELEGATE HERNETT: Well, these proposals — the one we have — for instance, our committee proposal No. 1-9 is practically everything that's assigned to us.

DELEGATE TRENBEATH: Right. So that's all you have to report to the President, unless it's other proposals that may be introduced.

DELEGATE HERNETT: Now we may break this down in bringing it out onto the floor in packages or in sections?

DELEGATE TRENBEATH: Surely.

DELEGATE HERNETT: So then I think we should report to the President the sections that we have left in there.

DELEGATE TRENBEATH: Oh, I see. You wish to amend that.

DELEGATE HERNETT: Well, I'm just wondering what your intentions were.

DELEGATE TRENBEATH: Those were our intentions, Delegate Hernet.

Now, if you don't think it's clear enough and you wish to add a word "section" in there, along with "proposal," I think the Rules Committee would go along with you.

DELEGATE HERNETT: In fact, I think my committee only has two proposals that we have under consideration right now. It may be all we'll ever have, and it's pretty broad — the word "proposal."

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of Rule 13.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed, "no." The "ayes" have it, and Rule 13 is adopted.

CHIEF CLERK GILBREATH: **Rule 13.1. PLACEMENT OF PROPOSALS ON CALENDAR**

"If a committee report is for adoption of the proposal or for no recommendation and the report is accepted, the proposal, unless the same is re-referred, shall be placed on the calendar for first passage which shall be not sooner than the next Convention day.

"If a committee report is for amendment of the proposal under consideration, and the report is accepted, the amendments shall be placed on the calendar for the next Convention day, for their adoption or rejection under the sixth order of business. After consideration of and action on the amendments, the proposal shall be placed on the calendar for the following Convention day in accordance with Rule 19, unless the same is re-referred.

"No proposal recommended by a committee for amendment for which the amendments have been adopted on sixth order shall be considered by the Convention for adoption unless the same has been properly engrossed.

"If a committee report is for indefinite postponement of the proposal under consideration, and the report is adopted, the proposal shall not be placed on the calendar but shall be deemed defeated.

"On the twenty-eighth Convention day and thereafter the provisions of this rule requiring that proposals or amendments to proposals be laid over shall be

inoperative, and such proposals and amendments to proposals may be considered and acted upon during the same Convention day that the committee report is adopted."

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: There are further amendments to be made to Rule 13.1, after a long discussion in committee yesterday and the subcommittee last night. I think I will make a motion to adopt these amendments and hope for a second, so we get into full discussion on the whole rule.

The amendments are, of course, on this single sheet, and it means that paragraphs one and two of 13.1 shall be stricken and inserted in lieu thereof shall be these two paragraphs that you find on your sheet as 13.1.

I make that motion.

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: The question is on the amendment to Rule 13.1. Wat that amendment read from the desk?

CHIEF CLERK GILBREATH: No.

PRESIDENT WENSTROM: That whole amendment?

CHIEF CLERK GILBREATH: No. You want it read?

PRESIDENT WENSTROM: I think maybe we should read it.

CHIEF CLERK GILBREATH: The amendment is to delete paragraphs one and two and insert in lieu thereof the following:

"If a committee report is for adoption, no recommendation, or for amendment of a proposal, and the report is accepted, the proposal shall be placed on the calendar, for amendment, or first passage which shall be not sooner than the next convention day.

"No proposal that has been amended shall be voted on for first passage until one convention day has passed."

PRESIDENT WENSTROM: You have heard the reading of the amendment — the proposed amendment. It has been moved and seconded. Is there any discussion?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: This last amendment primarily simplifies the other two paragraphs that were originally in the rule, but I think probably the best way — and probably this rule has the greatest concern of many of the delegates here. Probably the best way to explain it is to go through with an example of just how these committee reports are to be handled, and it's a little bit peculiar and doesn't fit, really, the legislative process, because ordinarily a minority report of a bill is to kill the bill; but in the case that we have here before us, we have many — we have more than one minority report dealing with different sections or even with the one section in the proposal.

So what will happen here, for example, if you have three — say three minority reports coming out of the Committee, they will be labeled "A, B and C." The minority report will be debated first to substitute for the majority, and whatever happens to it, why then the minority — the report will be substituted for the majority report, added to it or lost, and so on.

Now, if a committee report has an amendment tied to it in committee, then the proposal will go on the sixth order for the following day's business. That's just if an amendment is made by the Committee. Otherwise, it will go on the tenth order for the next Convention day.

Now, anybody that loses a minority report — and this is for the protection of the minority — they really have two cracks, so to speak, on an issue. They'll be able to argue it on the committee report. If they're — if they do not prevail there, then, when it comes on the tenth order of business on first passage, they can offer the same thing as an amendment at that time, also, and the same thing applies. And I know there's a lot of concern about committee reports coming out deleting sections of the Constitution, and there might be — you might be

the only delegate in that committee that wishes that section not to be deleted, so you can't get two more signers to come out with a minority report. So — but he will have his opportunity on the tenth order of business to make an amendment to adopt that — to include that section. That will be the time that he'll have his opportunity. Either that or he could introduce a separate proposal, if he wishes, in committee, and if he can't get a favorable reaction in committee, of course they will end up with that proposed for them, and then he can argue his argument on the committee report and he'd have to postpone it, if he wishes.

So this protection is granted to the minority, both in committee and as delegates here on the floor.

Now, you'll notice that "No proposal that has been amended shall be voted on for first passage until one Convention day has passed." For instance, if the bill gets on the tenth order of business and there's amendment on the floor, that amendment then — or that proposal — will then have to be held over one Convention day, unless it's so simple that everybody can understand it, the rules can be suspended and you can put it on — or suspend the rules and put it on the calendar for first passage.

Now, some of these things are not easy to understand, probably, until we get into the process. But this is just exactly the way the Rules Committee see that we can make this thing work and give the minority always the right to get their ideas across.

PRESIDENT WENSTROM: Are there any questions?

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I look at this particular section, 13.1, and it ties in very closely with Rule 20, and I would like to ask Delegate Trenbeath if it's the intent of the Rules Committee that an individual delegate can amend a report after it has been presented to the delegation or the Convention from the floor? Is this the object of the Rule 20? We're presuming that we will adopt Rule 20 and tie it in with 13.1. Is that the effect it will have?

DELEGATE TRENBEATH: Mr. President. You're very observant, Delegate Butler. I forgot to mention that in speaking about the new amendments to Rule 13.1, because the amendments that will be coming in Rule 20 do apply to the conditions of Rule 13.1, and, as I stated before, in the work of the Committee and in their observations, we felt we would prolong this Convention to no end if we allowed the amendments on the Committee Reports, either majority or minority, because, in reality, in a lot of cases the minority report itself is an amendment. So we are allowing no amendments on the Committee Report to be made to the Committee Report; but, at the same time, the amendments will be open to be offered on the tenth order the following day, from the floor.

DELEGATE BUTLER: On that same Committee Report?

DELEGATE TRENBEATH: Well, after the Committee Report is adopted, then we call it a proposal, really.

DELEGATE BUTLER: Okay. Call it what you want; it makes no difference. You're still going to be able to have an individual delegate amend it from the floor?

DELEGATE TRENBEATH: Yes, you bet. He'll have that opportunity.

DELEGATE BUTLER: Okay. Thank you.

PRESIDENT WENSTROM: Are there further questions?

The question before the body is on the — to adopt the amendment.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I believe this question is directed to Delegate Trenbeath and the members of the Committee. But I can see the interesting circumstance of three — A, B and C — objectors to a particular proposal combining forces, three individuals each. That's nine. And my 17-member Education Committee — it would seem to me nine of 17 would effect the majority report. And in that case, if those individuals wanted to stop passage of that,

could they, in effect, control the process by moving for a majority report for indefinite postponement and leaving the other eight members of that Committee in a minority position, or is that perceptible to the Rules Committee?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Delegate Sanstead, we never discussed that possibility in the Rules Committee; but I can't see how that would ever — ever happen, because the minute it came to the floor, that kind of coalition would certainly come to light and the Convention could make their decision there on that Committee Report.

PRESIDENT WENSTROM: Any further questions? Further discussion?

The question is on the adoption of the amendment to Rule 13.1.

Hearing no further discussion. I will call the question.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

And now we're on the question of adopting Rule No. 13.1. That's the amendment to the rules.

Now, Delegate Trenbeath, do you move that we adopt Rule No. 13.1, as amended?

DELEGATE TRENBEATH: Mr. President, I so move.

PRESIDENT WENSTROM: And do we have a second? Delegate Litten offered the second.

So now the question before the assembly is on the adoption of Rule 13.1, as amended.

Is there any discussion? Are there any questions?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the rule is adopted.

CHIEF CLERK GILBREATH: "Rule 15. CALLS OF THE CONVENTION

"Calls of the Convention ((may)) shall be ordered upon ((motion by the affirmative vote of the majority of the members present and voting but the total vote in favor of such call shall be not less than 15)) demand of not less than fifteen delegates.

"After a call of the Convention is ordered, the doors shall be closed and the members shall not be permitted to leave the floor of the Convention without permission of the President of the Convention.

"((The sergeant-at-arms shall notify all members within the bar of the Convention of the call.))

"The roll of the Convention shall be called and the absentees noted.

"The sergeant-at-arms may, upon motion, be dispatched after the absentees. In such case, a list of the absentees shall be furnished by the clerk of the Convention to the sergeant-at-arms, who shall bring such absentees to the floor of the Convention with all possible speed.

"In case the sergeant-at-arms requires assistance in addition to the regularly appointed assistant sergeants-at-arms of the Convention, the President, upon motion, may deputize as a special assistant sergeant-at-arms any person properly qualified.

"The Convention may proceed to other business under a call of the Convention pending the arrival of the absentees.

"A call of the Convention may be dispensed with by ((a majority vote of the members)) an affirmative vote of not less than fifty delegates."

PRESIDENT WENSTROM: You have heard the reading of the amendment. Delegate Fallgatter.

DELEGATE FALLGATTER: Mr. President. Just a brief explanation on the action of the Committee on Rule 15.

In the first paragraph, the new language, I think, is self-explanatory. And then, down to the third paragraph, the deletion of the entire third paragraph:

"The thinking of the Committee here was that the words like "bar of the Convention" could be misconstrued.

And then, on to the last paragraph: I think the new language there has a more definite meaning in the Rule and I would move the adoption of Rule 15.

DELEGATE BINEK: Second.

DELEGATE HUBRIG: Second.

PRESIDENT WENSTROM: The question is on the adoption of Rule 15, and it's been moved and Delegate Binek — a question. Delegate Binek, did you second?

DELEGATE BINEK: Yes.

PRESIDENT WENSTROM: That's what I interpreted it to be. So we have — the Rule has been moved and it has been seconded for the adoption of Rule 15.

Now, do we have any questions. Is there any discussion? Delegate Cart.

DELEGATE CART: Mr. President. We have — could have a situation which has developed yesterday —

CHIEF CLERK GILBREATH: Push the button.

DELEGATE CART: On the desk?

CHIEF CLERK GILBREATH: No.

DELEGATE CART: Assuming that a member is ill and confined to a hospital, or something, would we list that person as one that should be brought? If that person has been properly excused because of his illness, he certainly couldn't be listed as one that should be brought forcibly to the Convention, necessarily.

PRESIDENT WENSTROM: May I answer? Are you directing the question to the Chair?

DELEGATE CART: Well, to the Convention here. There's someone that wrote these rules. Just how would this be applied? I've seen this happen in the Legislature many years ago, where someone was ill and we had to have calls of the body, and that person was, of course, not listed as one that could be brought. He was absent because of illness.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Trying to answer Delegate Cart's question: Do the Rules of the Legislature provide for sick members under a call of the Convention? Maybe some of the people here who have served in the Legislature can tell us.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I think the procedure is, if someone is sick, that someone who is aware of this should make a motion that that person be excused from the call. They do that at the call and there is precedence for this. I'm sure it could happen. I would assume that this Convention would be kind enough to excuse someone that was sick, if they had to be brought here on a stretcher.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: President Wenstrom. The policy that is generally followed goes something like that. In the event there are members who, for illness or other reasons, will not be available to be brought before the House or these chambers, someone will move that the call of the House or the call of the Convention be dispensed with, and on a majority vote, of course, that motion will prevail and then those members are automatically excused.

PRESIDENT WENSTROM: Does that answer your question, Delegate Cart?

DELEGATE CART: I'm satisfied, yes.

PRESIDENT WENSTROM: Any further discussion, or are there any further questions? If not, the question is on the adoption of Rule 15.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Rule is adopted.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I would like to ask — have the permission of the delegates to take Rule 19 before we take Rule 16. Rule 19 is so pertinent to 16.

PRESIDENT WENSTROM: Hearing no objection, the permission is granted. I believe it was Rule 19 — isn't that right, Delegate Geelan?

DELEGATE GEELAN: That's right.

PRESIDENT WENSTROM: So next for consideration would be Rule 19.

CHIEF CLERK GILBREATH: "Rule 19. ORDER OF CONSIDERATION OF PROPOSALS AND FINAL DRAFT

"The regular order to be taken by proposals introduced in the Convention shall be as follows:

"1. Introduction (((, first reading by title,))) **and** reference to a committee or committees by the President, and reproduction and distribution **in a manner and amount as ordered by the President** unless otherwise ordered by a majority of the delegates voting.

"2. Report of committee and (((placing on the calendar of the convention under General Orders of the Day))) **action of the Convention on the committee report.**

"3. (((Consideration by the Convention in order of report from committee.))) **Placing proposal on calendar, first reading and action of Convention on first passage.**

"4. Reference to the Committee on Style and Drafting.

"5. Report of Committee on Style and Drafting (((to the Convention))) **and action of the Convention on the report.**

"6. (((Second))) **If the adopted committee report calls for any revision, second reading ((,)) and vote on second passage.**

"7. Re-reference on Committee on Style and Drafting for incorporation in final draft.

"8. (((Final report))) **Report** by Committee on Style and Drafting (((for incorporation in final draft))) **and acceptance of report.**

"9. Consideration by the Convention on (((third))) **final reading and final vote on passage** (((of any complete revision by article and as a whole, or in the case of any amendment by sections as a whole))).

"10. **Signing the final draft by delegates."**

PRESIDENT WENSTROM: You have heard the reading of the proposal, and may I have a second for its adoption? Delegate Kelsch. The motion has been made for adoption.

CHIEF CLERK GILBREATH: No, it hasn't.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would move that Rule 19, as amended, and shown, be adopted.

PRESIDENT WENSTROM: Do I have a second?

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Trenbeath.

Now, is there any discussion?

DELEGATE KELSCH: Mr. President, I'll try to run through this.

This, of course, is the order that the Rules Committee has tried to come up with that the proposal will go through, and of course it's very important we all understand how this works. We hope we haven't got it too complicated. It was quite a job. But I'll run through it and try to answer any questions that you have.

First of all, we started out with No. 1, and this is the introduction of the proposals. That's out. This may be either a committee or delegate proposal. We struck out "first reading by title," because we felt that many proposals may be introduced during the interim, and we didn't feel there was a reading needed at that time. So, in item one, the proposal is introduced. It goes and is referred by the President to a committee and it's reproduced in a manner that may be

ordered by the President. That's new language on reproduction.

Now, No. 2 is "Report of committee and action of the Convention on the committee report." This is, of course, the time when you will be considering the minority reports and, in some cases, you may have four or five minority reports on one proposal, and those minority reports will either win or fail. So there will be a head-on issue, usually, at this time in argument or debate on the Convention floor on whether or not the majority report should be either substituted for or by the minority report, or whether or not the majority report should be amended by the minority report. Some minority reports are comprehensive enough so that they will work for a substitute for a majority report that's being tendered; others are limited in scope, dealing with one or two sections of a majority report, and these would be treated as amending, if accepted. If rejected, that's the end of the minority report. If amended, it would constitute an amendment or substitution of the majority.

Now, then, after that has been done and it is acted on or been accomplished so that we now have a majority report, as it may be amended or substituted by a minority, before the Convention floor, we then are on No. 3, and that is the placing of a proposal on the calendar and first reading and action by the Convention on first passage.

The Rules Committee views this to be the primary and final battle on any particular issue. We call it a "first passage." We don't want to imply that, because it's called "first passage" — and there is another word — called "second passage" and "final passage" — it should be entitled to three strikes on an issue. We call it "first" — but these are the best words we could find, and we felt we needed a second passage to cover style problems and final passage and the final document. We want you to understand that "first passage" is really the ballgame. The only way you could get back on the merits of the proposal would be by reconsideration. After it's had first passage, to get it back, you'll have to ask for reconsideration.

No. 4 — and that's an automatic thing — as soon as it's had its first passage, it's automatically referred to the Committee on Style and Drafting.

No. 5: That Committee reports its action to the Convention.

And No. 6: If the Style and Drafting report calls for revision, then there will be a second passage. Now it may well be — we hope in many instances Style and Drafting will feel the proposal passed finally was in good shape and doesn't need any changes. If that's the case, they simply report that and then the proposal then scoots on down the row there to No. 9; in other words, to be incorporated in the final draft, and the next time we see it will be on the final draft. If, however, Style and Drafting tampers with that proposal in any regard — and we spelled out the powers — you have gone through those — the powers to take out inaccuracies, unnecessary words, or whatever the case may be — to title them — if they tamper with the proposal, then the matter is resubmitted on — goes to the calendar for second passage. You will then be able to first accept or reject Style and Drafting's report. If we don't like what they did, we don't need to accept their report, and the thing stays in its original form. If we like what they did, we'll accept their report, and then it will go on the calendar for second passage.

Now, at this time, amendments will be allowed, but they will have to be related only to style and drafting, and the President will rule you out of order if you go to any attempt beyond style and drafting and, of course, this is going to be hard and difficult, because sometimes it may be a change of a word and you might think it's a change of style, and I might think it's a change in meaning, and we're just going to have a little bit of a problem if I don't think it's just a change of a word and feel it's a change of meaning in style and drafting, and the President is going to rule. If we don't like the way he rules, we'll appeal his decision. If the majority will accept his decision, it will be accepted and — or appealed. But I want to make it clear on the second passage it will be limited to style and drafting, which will be the areas set out in the powers of the Style and Drafting. In other words, we'll have the same powers that they have as a full Convention, if we don't like what they did.

Then, on No. 7: After we've considered on second passage, it will go back again to Style and Drafting, because Style and Drafting will have to incorporate

it in their final draft and then, finally, on No. 8, there will be a report by the Committee on Style and Drafting on the — and their acceptance, which would be, really, the final draft of the whole Constitution.

And No. 9 would be consideration by the Convention on the final — the final vote and passage.

Now, the old law — the old rule provided that — if you will read the language in triple brackets on No. 9 — it says that we were to consider by the Convention “of any complete revision by article and as a whole, or in the case of any amendment by sections as a whole.” And your Rules Committee did not — we’re not — we haven’t been able to agree at this point on this final draft — whether or not we should again be able to consider section by section; whether the document should be presented to this Convention on a take-it-or-leave-it basis — you vote “yes” or you vote “no,” and if you vote “no,” you reject the whole document in toto, and if you vote “yes” you take the whole document in toto. We fear that if we go section-by-section, we might be starting over again. On the other hand, there’s the concern that we’ll have to consider whether or not we want to put it on a take-it-or-leave-it basis. We could let it go, and all these sections will have passed by at least a 50 vote majority. Maybe we should let it go that way. Anyway, this is something we have not decided on yet. We feel that we don’t have to decide this issue right today. We’d like the delegates to think on the subject, because the Rules Committee — I understand Chairman Geelan will be calling meetings later, at which time we will hear you out on how you want this handled.

We did, however, add one further thing — No. 10 — and that’s the signing of the final draft by delegates. We haven’t gone into much specific on that — whether you would sign “no” or whether you would sign it at all, if you were opposed to it. But we really felt that the delegates should, as a final act, sign the document that will be presented to the electorate for approval.

One other point: We have not decided, and should probably cover this Rule — and we haven’t been able to resolve it — we feel this is an important one that will have to be resolved very quickly — and that’s the problem on alternate proposals, and there are a number of possibilities. Some have talked about if a proposal gets too few votes, it will be considered as a possibility as an alternate. Others have said maybe we should have a committee who would recommend whether or not we have alternates and in what areas they should be. Some have suggested that we would not consider an alternate proposal until you at least pass some first proposal on the same subject, and there are a lot of ramifications. We would like to have your thinking about this, and there would be meetings, I imagine, called very rapidly on this point, so we can get a rule on this point, because we’ll need it right away.

If there’s any questions on these, I’d be glad to try to answer them.

PRESIDENT WENSTROM: Are there any questions? Delegate Pearce.

DELEGATE PEARCE: Mr. President. It seems I share the same fate of everybody in not being able to operate this. Is it working now?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE PEARCE: Okay. I have had many thoughts about this rule, and they’re no strangers to the Rules Committee, since I appeared before the Rules Committee and spoke my piece on several occasions. But I do feel that I would like to call the delegates’ attention to my thoughts on it.

I am not happy with a possible three votes necessary to finally pass a proposal. I think you have to compare our procedure here to a house of the Legislature, because we are a deliberative body, composed of members. We are passing proposals in the same manner that the Legislature passes bills — with one possible exception: Presumptively we may have to incorporate all of our passed proposals into a new document, and I want to mention that, too.

I do not believe that there should be required to be a vote on a proposal unless at the time of the vote the language of the proposal is in the final form that it is to take. Otherwise, it’s a preliminary vote. It was my suggestion to the Rules Committee that when a proposal came before this body for action by a vote of the delegates, if the proposal is voted down, obviously that’s the end

of that proposal and it would not have to go — it would not have to go to any Committee on Style and Drafting. The Convention might, however, feel that there was sufficient merit in that proposal that it should then go to the Committee on Style and Drafting, so that it could be put in the form that it was to be adopted in. That vote would be merely a vote to refer it to the Style and Drafting Committee. When it came back from that Committee, it presumptively would mean the same, but the actual language would then be before this body to be debated upon. Now, the problem that I foresaw was that, if it is passed on call the first time, and then goes to the Style and Drafting Committee, then comes back, the language will not be the same. Now it might be, but, presumptively, if the Committee's going to do anything, they will have done something to it. Then, in the Committee — in the Rules Committee — when we discussed this, it was said that the real debate would have already been over before it got to the Style and Drafting Committee, and that the only thing that the Chair could permit me to say, or anybody else, would be to debate whether this Style and Drafting Committee change had done anything material. I felt that that put an impossible duty upon the Chair and I would foresee many appeals from the Chair's rulings, when I was maintaining that the addition or deletion of one word or the tense of one word or a synonym to me might change the whole meaning of this proposal, and that I would have — I want to have a chance to debate it, and knew that, in a sense, it's a different proposal than the one that was first formed. So I didn't want to commit the delegates to that, and I didn't want to have two or even three full-scale debates or delegates attempting to debate with the Chair ruling them out of order because it didn't have to do only with style and drafting. So my thought and my suggestion was that — you know, your thumb gets tired holding this up. My suggestion was that we do not debate it until we have the exact language, because here are some of the things that could happen:

If this thing falls down and this procedure bogs down, we'll have to keep extremely careful track of whether the style of the proposal is that it passed in on first passage, and that was enough, because there never was any action by the Style and Drafting Committee or, if there was some action, it would have to have two passages, and perhaps under the proposed rules would have to come back for a third time. By the time that happens, our calendar is going to be about this high (indicating), because we've only got 28 days left after today.

Now, that brings me to one more point that I want to mention while I'm on my feet, and that is the assumption — and I'm assuming it's an assumption, because it's not required — that after we have passed all these individual proposals, at some latter stage of this Convention we will have before us a whole constitution to vote "yes" or "no" on. Now, if that is the way we proceed — and I say it's not necessary — but if that's the way we proceed, we may have accumulated a rather large number of votes against individual proposals and sections of the new constitution, because I would assume that there may be many sections that are not passed unanimously by this body. If those accumulated votes feel strongly enough about the individual proposals that they voted against, they may all vote "no" on the final draft of a constitution, and we may have 60 delegates voting "no." What is the legal status then of any or all of the proposals, if the final draft of a proposed constitution is voted down? Do we then revert to the passed proposals and submit those, or have we done nothing? Have we, in effect, then reconsidered our actions on all the successful proposals by voting "no" on the final draft? And I don't have an answer to that. Well, I have my own answer, but I'm not urging it at the moment. But I do think that that is something that we need to think about very carefully, and what happens, because we may find that we may undo our work in the last few days of the Convention.

I don't have any amendments offered. Actually, I've been sitting here thinking we seem to be violating our own rules. We're amending this Committee Report as fast as it's come out, before we've adopted it, if that rule has already been passed — I'm not sure. But I do think that there should be more thinking on Rule 19. I give high credit to the Rules Committee. They have listened to me with great patience before, but I do think that it is so important that I think all the delegates should think about it. That's the close of the remarks that I had to make. Thank you.

PRESIDENT WENSTROM: Thank you, Delegate Pearce. Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I'm sure you can all see that the Rules Committee worked hard on this one. This is a tough one. So I have to agree, and to a great degree, with Delegate Pearce's point that we know that if you allow Style and Drafting to tamper in any regard, there's going to be an argument as to whether or not that changes the intent or meaning; and, of course, it is going to be a tough burden for the President. It's going to make it difficult. But I think, if you're going to have — the problem appears in Delegate Pearce's suggestion that, if you take that route, that you are not going to have style and drafting. That was, I think, the feeling of at least the majority of the Committee. In other words, if you preliminarily consider something and send it out of Style and Drafting, so you see the final thing when it comes back in, it's either going to be a take-it-or-leave-it basis, or allow amendments. Now, if you're going to allow liberal amendments, we're going to have a mess, as far as I'm concerned. So, if we are not concerned about it reading poorly or looking badly, then maybe we shouldn't have a Style and Drafting Committee. But I think that in a case of individual laws in the Legislature, I can see where you don't really care in that regard; but we're writing a constitution, and the only way we can see that we can let style — or have a Style and Drafting Committee, you've got to give them some power, and if they're going to have some power, the question is going to be raised whether or not they changed the intent. It's going to be up to this body, however, to decide that. They have to come back to us for this decision, and I can envision many appeals from the Chair and I can envision delegates being unhappy because they're going to believe that this may have changed the intent. The Style and Drafting is not going to be a very pleasant committee to serve on; but I don't know how else you're going to do this. You're going to have to have Style and Drafting, and the Committee felt you've got to give them a shot at these things, as to the language, after this body has spoken to intent; and if they go beyond language and go into intent, we'll just have to tell them that.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Is it working now?

Mr. President, some of the speakers have mentioned "if we have a Style and Drafting." Now, I've been thinking for several weeks and made the remark in my committee that I didn't want an English Professor rewriting this; just — now, we have seven attorneys in the committee I was on — reasonably good in English — a couple of ex-schoolteachers, an ex-newspaper man. I maintain that the committee can write correct sections, as well as any other committee, and I think we should abolish the Style and Drafting Committee, especially in view of all the argument of what they may or may not do. We're not writing a Shakespearean play; we're writing an ordinary document for ordinary people, and I think we put too much stress on style and drafting.

DELEGATE KELSCH: Mr. President, if I may respond.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would take issue with your point. I think some of the committees come out with some very fine work, and if we are just going to take the committees' work *carte blanche*, fine — you might have a pretty nice document; but I can envision this Convention is going to do a little amending, and we have an open rule on amending, and you know what happens when we start to tamper with the way words are written, to get a point across, by amending; and some of these sections are going to look quite peculiar. We may be saying what we want to say, but we may not say it's going to read very well. Someone also has to have the power to put this together — which section comes first, which comes second. There's another function of Style and Drafting. So I think this is a fundamental problem and I think you all should think about it.

I agree with Delegate Pearce — we may be saying they change something. In the Rules Committee, we are not sure we are making any changes, but I think we've got to decide, if you want a Style and Drafting Committee, if you feel style and drafting is an important function in writing a constitution, I don't know how you can — I think you can then accept this Rule 19. If you are opposed to the concept, then maybe we should take the suggestion and vote to refer this back to the Rules Committee to go to work and take Style and Drafting out or

possibly follow somewhat the suggestion of Delegate Pearce, if you like that better.

One other point, if I may, on the point — on any final passage with a vote of nine delegates. Mr. Pearce said he's concerned if 60 delegates who were opposed — if we had to vote on the end, we might have a problem. Well, the only answer I can give to that: If we have 60 delegates here that don't like the finished product, we've wasted our time, and I think that we should — the knowledge — the knowledge that you and I are going to have to vote finally on this document someday as a whole package is going to make us continually concerned about everyone's viewpoint. We'll not have the simple majority run roughshod as to their ideas on this Convention, because we'll all want a clear substantial majority of the delegates to sign that document, to vote "yes" on that document in the end, and if we know today that we're going to face that day of reckoning sometime, and I'm going to have to say "Do I accept it all or do I reject it all?" And you know that I'm going to have that right, and everybody else knows it, I think we'll compromise — we'll at least be aware and conscious of the others' feelings and thoughts.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I do think that the Convention should debate proposals before they're sent to the Style and Drafting, because I can take, for an example, the Legislative Functions Committee's work. Now, we, as members, probably know what the intent was of our proposals; but what about the Style and Drafting Committee? After these proposals are debated on the floor, we will know better what the intent of the Convention is as to this proposal and will be able to not change the philosophy. You know, we'll have a better knowledge of what the intent is and not be apt to change the philosophy of the proposal. So I think the rule as is would do a good job for us.

DELEGATE PEARCE: Mr. President.

DELEGATE LONGMIRE: Mr. President —

PRESIDENT WENSTROM: Delegate Pearce — I'm sorry. Delegate Longmire. I believe Delegate Pearce has spoken. Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I can see some of the objections made here by Delegate Pearce. However, I believe, from the practical standpoint here, we are assuming a lot of difficulty is going to develop, which may never develop. After all, these people on the Style and Drafting Committee, they know or they will know in most of these instances whether or not they're changing the intent or the substance of that section, and I think they're going to be very hesitant to change any word or any group of words that is going to change the intent. They know that their responsibilities are to put it in good, simple, concise language that's as understandable as possible, and I think they're going to concentrate on that, and to punctuate it properly and spell properly and have as good a grammar as we can, and that they're not going to monkey, as a practical matter, with the intent of that proposal or section that has been passed. I — also, in the final document, I think we have 98 reasonable people here that know they're not going to have their way exactly on every section of this Constitution, and I can't foresee that we will have some that will be narrow-minded enough to vote against the whole thing because one little section or two sections or something in there did not agree with their thinking. I think, as a practical matter, this thing will resolve itself when we get into the proceedings, and that we don't have to worry too much about what could happen. I think the practical thing will happen.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Thank you, Mr. President.

I only would like to remark that I have spent, in my short lifetime — the latter part of it — in arguing before courts and with people what words meant in contracts and writings of one kind or another, and it's my past experience that words may foul up what something means. The other man says, "Well, that doesn't change the meaning at all," and that doesn't convince the man. So that's the problem.

The only other thing I wanted to point out to the delegates: There has been no decision on this yet, and maybe there won't be for some time. There is no

legal mandate to this Convention to adopt a whole new constitution. That isn't a necessary thing. We can do it, if we want. We don't have to, if we want.

We talk about amendments. I also wish to remind you that every alternate proposal that we offer to the people is, in a sense, an immediate amendment of the constitution that we adopt.

PRESIDENT WENSTROM: Is there any other — is there any further discussion? Are there any questions?

DELEGATE BUTLER: Mr. President, a question.

PRESIDENT WENSTROM: Delegate Trenbeath?

DELEGATE BUTLER: Delegate Butler — over here.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Presuming we adopt the rules today, what method of changing the rules is required? Does a simple majority vote of this Convention change the rule?

PRESIDENT WENSTROM: Delegate Geelan, would you care to answer?

DELEGATE GEELAN: Mr. President, after our report is adopted, we intend to bring it to the attention of the Convention. After all, these are temporary rules. I think we can live with them and operate under them. But we are hesitant about making these the permanent rules, since there are some unsolved questions. So I would say that there — there would still be an opportunity to change these rules and there would be a need for the change, because we haven't made some very important decisions.

Now, I'm not sure if we're right on this — we have spent some time talking about it — but we believe that we could operate without making these the final, permanent rules of the Convention.

I hope that answers your question, Delegate Butler.

DELEGATE BUTLER: But I don't see any place in the temporary rules where it spells out how they are to be changed on the temporary rules, excepting at the majority holding of the Convention. Is that the present basis of operation?

DELEGATE GEELAN: Except that the organizational convention gave the Permanent Rules Committee the right to revise them. So we think that that, unless that is changed, would be the controlling factor. I think maybe we should have, maybe, our President, or somebody who understands the legal aspects better than I do — but that is the thinking of the Committee — that these would be temporary rules under which we would live, and then, after — after the delegates have had a chance and the Committee has had a chance to solve some of these unsolved problems, we would then move that these would be the permanent rules. But, even then, I think you could give the Permanent Rules Committee the right at any time to bring in an amendment to a rule.

DELEGATE BUTLER: Thank you.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, if we go all the way through and adopt the last two sentences of this proposed new set of rules, I believe that it would take a two-thirds vote until the last two days to suspend or amend the rules. Is that correct?

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, that is correct. The rules that we're recommending and, I think, have already passed, for that matter, is that it takes two-thirds vote to amend, and I believe our power — the Rules Committee power may not be to amend. It may be out, now that the Plenary Session is in convention; but we could — if the delegates are interested in doing this on a temporary basis, we could have an understanding that it be made permanent rules; that a 50 percent majority would be sufficient to amend, if the delegates are interested in that, and then figuring at some later date, maybe in the next five, ten days, we would move to make the rules permanent. Of course, once that happens, it would take two-thirds to amend.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: I'm just wondering if we aren't worrying about something here that's taken care of in the Committee of the Whole. If we are all meeting here — all 98 of us — we could then call ourselves the Rules Committee. Down there on the reconsideration it says the majority vote can change anything. So I think, if we act as a Committee of the Whole, I think the simple majority can change it.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I believe, if you read carefully, you will find the proposal is to delete the entire section calling for a provision for a Committee of the Whole.

PRESIDENT WENSTROM: Are there any further questions?

If not, the question is on the adoption of the amendments to Rule 19. I'll call for the question.

As many as are in favor of the motion will say "aye;" opposed "no."

The Chair will rule the "ayes" have it.

Delegate Geelan, do you wish to proceed now with Rule 20 or is it your desire that we go back to 16?

DELEGATE GEELAN: I think now we can go back to 16, because 16 aligns itself to Rule 19.

PRESIDENT WENSTROM: Thank you. Then, without objection, we will be giving consideration to Rule 16.

CHIEF CLERK GILBREATH: "Rule 16. ORDER OF BUSINESS

"The order of business of the Convention shall be as follows:

- "1. Call to order
- "2. Invocation
- "3. Roll call
- "4. Approval of journal
- "5. Reports of standing committees
- "6. **Consideration of amendments**
- "((6)) 7. Reports of select committees
- "((7)) 8. Communications
- "((8)) 9. Introduction ((and first reading)) and reference of proposals **to committees**
- "((9)) 10. ((Second)) **First reading and first passage** of proposals
- "((10)) 11. ((Third)) **Second reading and second passage** of proposals
- "((11)) 12. Motions and resolutions
- "((12)) 13. Unfinished business
- "((13)) 14. Special orders of the day
- "((14)) 15. General orders of the day
- "16. **Final reading and passage of proposals"**

PRESIDENT WENSTROM: Now may I have a motion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would like to move an amendment to Rule — further amendment to Rule 16.

If the delegates will please look at the large legal-sized sheet.

PRESIDENT WENSTROM: Delegate Kelsch, I believe we should first have a motion to adopt Rule 16, and then you can amend.

DELEGATE KELSCH: Mr. President, I move that the Convention adopt Rule 16 as amended.

PRESIDENT WENSTROM: Then do we have a second?

DELEGATE CHRISTENSEN: Second.

PRESIDENT WENSTROM: It has been seconded by Delegate Christensen. Now, Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I would now move an amendment — a further amendment to Rule 16.

If you'll look on the large sheet, in the middle of the page. In the old rules — this is really a corrective device. In the old Rule, the old words appeared in the triple brackets there. They said, "Any subject matter made the special order for a particular day, not having been reached on that day, shall come up for the consideration under the order of 'Unfinished Business' at the next succeeding session of the convention."

The Rules Committee felt that this would be a mistake to put everything under unfinished business, because pretty soon the whole calendar would be an unfinished business calendar, and we felt, to leave your proposals wherever they are, if they're on the tenth order or on the order for amendment, would; so we just felt this language in the rules of the Plenary Session should be amended, and I would so move.

PRESIDENT WENSTROM: We have a motion for amendment. And do we have a second?

DELEGATE GEELAN: Second.

PRESIDENT WENSTROM: Delegate Geelan seconded the motion.

Now, is there any discussion on the amendment to the amendment? Hearing none, the question then is on the amendment to the amendment.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and we're back on Rule 16.

DELEGATE KELSCH: Mr. President, if I may now explain the other changes.

What we've done on Rule 16 is more or less make it conform to Rule 20 and name the order of business. We've added the sixth order of business for consideration of amendments. This was not in our original rules, and we felt that there may be amendments of committee reports that should go on the sixth order.

The ninth order now would be the reference to the committees. We struck out "and first reading," to be consistent. The tenth order will be the first reading and first passage, and that, you recall, is the time that we have indicated under the rules to be the main debate on a proposal.

The eleventh order would be the second reading and second passage. This would only occur if Style and Drafting tampered with the proposal. If they did not tamper with the proposal, it would no go on the eleventh order; it would jump right on down to the sixteenth order. And the rest of it is your numbering, with the inclusion of the new Order 16, "Final reading and passage of proposals."

Mr. President, I would move that Rule 16 as amended be adopted by the Convention.

PRESIDENT WENSTROM: We have a motion and second that the Rule be adopted — by Delegate Kelsch. So the question now is on the debate on this order — on this Rule — on Rule 16.

Is there any debate? Are there any questions?

The question then before the assembly is on the adoption of Rule 16, Order of Business, as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the Rule will be adopted.

It is now six minutes to twelve, and what is the wish of the Convention? Do you wish to continue or do you wish to recess?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I move we recess for soup to one o'clock.

PRESIDENT WENSTROM: It has been moved by Delegate Rundle that we recess for soup until one o'clock. Do we have a second?

DELEGATE McINTYRE: Second.

PRESIDENT WENSTROM: It's seconded by Delegate McIntyre.

As many as are in favor of the motion say "aye;" those opposed say "no." The "ayes" have it.

(The Session recessed at 11:54 A.M. until 1:13 P.M., the same day.)

AFTERNOON SESSION

PRESIDENT WENSTROM: Will the Convention please come to order? May we have order in the assembly?

Without objection, we will revert to the eighth order of business, Communications and Announcements, for an announcement from the desk.

CHIEF CLERK GILBREATH: In checking the master mailing list for the Journal, I have found that all county superintendents of schools, all city superintendents of schools, and all school districts — those three — each receive a set — or one of the day's Journal. They all get one copy of the Journals. That will answer any of your mailing questions.

PRESIDENT WENSTROM: Roy, what about the courts and the libraries?

CHIEF CLERK GILBREATH: All judges and libraries.

PRESIDENT WENSTROM: Libraries, and so forth?

(Chief Clerk Gilbreath nodded.)

PRESIDENT WENSTROM: Now, are there any further questions on that?

CHIEF CLERK GILBREATH: All county superintendents of schools, all city superintendents of schools, and each school district, and the libraries, all receive a copy of the Journal in the mail in the regular mailing.

DELEGATE ROSENDAHL: How about school districts? I believe that includes all county state's attorneys and all city mayors, too.

CHIEF CLERK GILBREATH: Yeah.

PRESIDENT WENSTROM: Thank you. Delegate Rundle.

DELEGATE RUNDLE: How about newspapers and radio stations? They should be number one on the list?

PRESIDENT WENSTROM: Are they on the list, Roy?

CHIEF CLERK GILBREATH: I don't know. We'll check.

PRESIDENT WENSTROM: We will see immediately. After this, they will get the Journal.

Any further questions?

Without objection, then, we'll return to the question of rules.

CHIEF CLERK GILBREATH: "Rule 17. JOURNAL. TRANSCRIPT. CALENDAR.

"The clerk of the Convention shall keep a journal of the proceedings of the Convention in conformity with the rules, supervise the daily publication thereof (((,))) and make such corrections as may be (((necessary))) **approved.**

"The journal shall contain all formal actions of the Convention, including the introduction of all proposals, motions and resolutions, and the actions of the Convention thereon. The clerk of the Convention shall furnish each delegate a copy of the journal of the previous day.

"The clerk of the Convention, under the direction of the president, shall maintain a calendar of the business of the Convention and he shall furnish each delegate with a copy of the calendar for that day (((and a list of committee meetings scheduled for the following day))).

"A Convention reporter shall keep a verbatim record by electronic recording device or otherwise of Convention proceedings and shall, within the time prescribed in his appointment by the Convention, provide a verbatim transcript of all proceedings of the sessions of the Convention."

PRESIDENT WENSTROM: You have heard the reading of Rule 17. Delegate Fallgatter.

DELEGATE FALLGATTER: Mr. President. Just a brief explanation on the action of the Committee on Rule 17.

There has only been minor corrections made here by the Committee. But down in paragraph three, the Committee felt that the deletion that was made there would — if that was left in, it would only create a big burden, and it was really unnecessary, and I would move the adoption of Rule 17.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Fallgatter and seconded by Delegate Litten that we do now adopt Rule 17.

Is there any further discussion?

If not, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Rule 17 is adopted.

CHIEF CLERK GILBREATH: "Rule 18. INTRODUCTION OF PROPOSALS

"Any citizen or group of citizens of the State of North Dakota (((, until the 1st of September, 1971,))) submit in writing directly to the President of the Convention any ideas for consideration by the Convention. The President shall refer all such material to an appropriate committee of the Convention. The committee may, after consideration of the ideas, prepare any proposals it deems appropriate for presentation to the entire Convention.

"All other matters intended to become a part of any revised constitution or constitutional amendment shall be introduced by a delegate or delegates in the form of a proposal and endorsed by the delegate or delegates introducing them or shall originate as committee proposals.

"A proposal introduced by a delegate shall be designated a delegate proposal.

"A proposal introduced by a committee shall be designated a committee proposal.

"All proposals shall be introduced by delivery of the (((clerk))) **President** of the Convention on a form prescribed by him. Proposals shall be reproduced and distributed (((under the direction of the clerk of the Convention))) **to each delegate.**

"When a delegate proposal is introduced, it shall be referred by the President to the proper standing committee, **which committee shall report its action on such proposal to the Convention.**

"(((During the interim period between the organizational session and the plenary session of the Convention, proposals shall be received by the President and referred to the proper standing committee.)))

"**No delegate proposal shall be introduced after the fifth day of the plenary session, and no committee proposal shall be introduced after the twentieth day of the plenary session.**"

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: I move the adoption of this Rule, and after there's a second, I will give a little explanation of it.

PRESIDENT WENSTROM: Delegate Wicks moves the adoption of Rule 18. Do we have a second?

DELEGATE STANTON. Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton. Now, Delegate Wicks.

DELEGATE WICKS: The first deletion there of the September 1st date was to — because we thought this date was too early, and this was to encourage citizen participation in what the Convention is doing up to and into the plenary session.

On the second page there is a change in how proposals are to be introduced. The changes standardize the procedure for proposals during the Plenary Session and during the interim session, and just make it an easier rule to follow.

The added language in the last paragraph makes it — is in the interest of not having proposals introduced too late in the session, either in the — either delegate proposals or committee proposals — and we figured that these days in committee would probably give us time enough for all of these proposals to be in. Should,

however, something come up that we needed to have proposals introduced after the fifth day for the delegates, or after the twentieth day for committee proposals, it would be possible to suspend the rules and still have them introduced.

PRESIDENT WENSTROM: Are there any questions? Delegate Butler.

DELEGATE BUTLER: Mr. President. Do I understand, then, that a citizen proposal can be submitted at any time with no limit on that, up until the end of the Convention?

DELEGATE WICKS: As these rules read, that is my understanding — that this was the intent of the Committee. So, if a citizen should be introducing rules up to the end of the Plenary Session, they would be considered and could be presented to the Convention, if it was deemed necessary.

DELEGATE BUTLER: Would that then go in as a committee proposal on the second page, or shall — second line of the second page — “or shall originate as committee proposals” — is that to apply on the citizens’ proposals, too? If the idea is presented to a committee and referred to them and it is something that they want to bring back to the Convention, does that become a committee proposal? — is my question.

DELEGATE WICKS: I don’t know the answer to this. Does some other member of the Committee know the answer to this?

PRESIDENT WENSTROM: Would someone like to answer Delegate Butler’s question?

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I would presume that, since we are allowing citizen suggestions up to any time, then if that is referred to a committee and that committee makes the delegate proposal, then you come under the rule — the last paragraph on this rule.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, doesn’t it seem a little odd to accept citizens’ proposals through the thirtieth day when delegates have five days? There could be a case where a delegate would have to go out on the street and get a private citizen to enter a proposal.

PRESIDENT WENSTROM: May I answer the question?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I move that the Chair be allowed to answer the question.

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: Hearing no objection, I will proceed to answer Delegate Rundle’s question. I think that this matter of delegate or citizen proposals was pretty much left in the rules at my request. I think it is imperative that this Convention do consider every idea that is sent to us by a citizen. I would hate to have it said that a citizen was not given the privilege of submitting an idea or thought. Regardless of how ridiculous it might be in our minds, it would be very important in his. Otherwise, he would not make the recommendation. And because of that, I’m sure this Rules Committee, at my suggestion, did leave it in there. However, I think that — that someplace along the line, they did amend so that the ideas — we consider those that come from the public or from the citizens, as citizen ideas, and not citizen proposals. I think that that one word in there is possibly in error. However, that is the basis for continuing to allow the public to submit ideas and proposals to this Convention. I hope that answers your question, Delegate Rundle.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Under the present proposed rules, the Committee is limited to the twentieth day of the Convention for introduction of the proposals, and I would suggest that paragraph — the first two lines of paragraph — Rule 18

would indicate that we put a limitation on it, even though it was deleted under September 1, 1971, and I can appreciate the reason that was done. I think it would clarify the procedures that we are to follow, if that date of the 15th of January, or some day about halfway through our Convention, would be inserted in lieu of what's there, and the purpose of having that would be so that a committee to whom the proposal was referred would have adequate time to work it before they'd submit it on the twentieth day.

PRESIDENT WENSTROM: Would you like to offer an amendment in that regard?

DELEGATE BUTLER: I would like to offer such an amendment, but I don't have a calendar in front of me that would tell what date it would be. Perhaps the Clerk would have a calendar that would show it. I would guess it to be about halfway through the Convention, and at least three or four days before the committee is required to place this proposal before the Convention.

PRESIDENT WENSTROM: Do we have a second on his —

CHIEF CLERK GILBREATH: No, we don't have it.

PRESIDENT WENSTROM: Delegate Butler, would you repeat your amendment, so that the desk can copy it?

DELEGATE BUTLER: Yes. I would move that in the second line of Rule 18, Introduction of Proposals, that the date as now stricken, "until the 1st of September, 1971," be eliminated and insert the date of January — okay — let's do it that way. We'll make it the fifteenth day — after the fifteenth day of the Session.

CHIEF CLERK GILBREATH: Fifteenth day of the Constitutional Convention.

DELEGATE RUNDLE: Second it.

PRESIDENT WENSTROM: And the motion has been seconded by Delegate Rundle.

Now, is there any further discussion? Hearing none, the question is on the amendment as offered by Delegate Butler on the Rule 18, on the second line.

As many as are in favor — excuse me. Delegate Hendrickson.

DELEGATE HENDRICKSON: I think our President made quite a point when he said this is an idea and not a proposal. In order for the citizen idea to become a proposal, I understand it has to be taken to a committee and then is presented; but I can see no reason why we cannot at least look at ideas throughout the Session.

PRESIDENT WENSTROM: Any further comments? Any further discussion?

The question is on the adoption of the proposed amendment to Rule 18.

As many as are in favor of the motion, you will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

Are there any further amendments to Rule 18?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I understand that last night the Committee considered some change on the last paragraph of Rule 18 regarding five-day proceeding on proposed resolutions. A number of delegates would like to see that extended to ten days, to give us until about next Tuesday or Wednesday to introduce proposals. Perhaps I could have the reaction of the Committee to that — about extending the time for delegate proposals.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. President. The matter was discussed, but I think this was a matter that was decided by the organizational session, was it not? — in which we thought the fifth day was enough time. We did discuss the matter of extending it.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I think your intent is to give the Convention and the committees enough time to complete the work; but I feel that five days is a little short. We've already wasted — not "wasted" — two days — but gone through

two days, without getting some proposals from the delegates, and I would move, Mr. Chairman, that the first word in the second line from the bottom of that rule be changed to read "ten."

PRESIDENT WENSTROM: The proposed amendment to Rule 18 is that the "fifth day" be changed to "the tenth day." Am I right?

DELEGATE AUBOL: (Nods head.)

PRESIDENT WENSTROM: Offered by Delegate Aubol. Do we have a second to the motion?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Kwako.

Now, is there any further discussion? Delegate Butler.

DELEGATE BUTLER: To my knowledge, we have had knowledge of these proposals placed before us in the last six months, and I cannot conceive — I rise in opposition to the motion for the amendment. I cannot see that it's going to assist any one of these delegates in the introduction of proposals any more so than they could have accomplished in the last six months, if they have been thinking about this Constitutional Convention and the things that they have received in the way of suggestions from constituents, and I ask this Convention to vote "no" on this amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Mr. President. I rise to speak in favor of the amendment. I, for one — and I'm sure I'm not alone — would like this week-end to gather what is left of my wits to see if there's a proposal I might like to put in, without having to go back to my committee to see if there's some other people who would agree with my idea, and I see nothing wrong with extending this time to ten days. I'd settle with seven, which would take us through the week-end, anyway, not knowing whether or not we're going to work on Saturday.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I rise to oppose the ten days, although seven would be a good substitute, to give the delegates a week-end, and I oppose it only for this reason: That I don't see how committees can give fair consideration to delegate proposals by reporting out any other business until they have all the delegate proposals in their possession, because proposals may be coming in next week, and if we go to ten days, it will be all of next week that proposals will continue to come into that committee, and many of these new proposals might affect proposals that have already been reported out of the committees. Therefore, I don't see how the committees can process very much work until the proposals deadline is past. Otherwise, they might be taking action on things that are still coming in to the committee. And so I think that maybe it might be wise to have a week-end. I think ten days might be a little long before our committees are able to really get to work on the substantive matters that they have before them.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I have no objection to lowering the days; just so it goes past the week-end — until Monday or Tuesday — and I'm not sure how you are counting days. Is the sixth day Saturday?

PRESIDENT WENSTROM: Yes.

DELEGATE AUBOL: The seventh day is not Saturday. The seventh day is Monday.

PRESIDENT WENSTROM: You're right. That's right.

DELEGATE AUBOL: The eighth day is Tuesday. With the consent of my second, I would make that the eighth day.

PRESIDENT WENSTROM: Delegate Aubol has requested the permission of his second to make the change to the eighth day instead of the tenth day.

DELEGATE KWAKO: Agreed.

PRESIDENT WENSTROM: Delegate Kwako agrees. So now the date would be — the motion is that it be changed from “five” to “eight.” Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, when Delegate Aubol asked the question about Saturday, did you mean we’re going to work on Saturday. A question of information only.

PRESIDENT WENSTROM: Delegate Hubrig, that is not the question before the house. (Laughter)

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I agree one hundred percent that we are extending the introduction deadline too long, if we go even into the eighth day. The committees are sitting here, ready to turn out their documents, and if we extend the introduction deadline, we’re just killing that much time. Okay. We are now working up until the end of this week on our current deadline. We certainly should, amongst all of us delegates, be able to formulate our thoughts, and I would suggest a deadline of no later than noon Monday, rather than a specific date of the Convention, and I think that would be a better deadline than the eighth or ninth day.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President, I think that most of the objections here have been well taken, but I believe that the committees have proven themselves to be very efficient, and I really don’t see any problem in extending it a few days and giving the delegates a week-end or a couple of days to think this thing over. I think most of the objections that have been brought up are well thought of by those who are concerned about the number of days; but, again, these committees — I’ve seen them function — and they process proposals in a hurry; so I don’t think we have any real problem on extending it a few days.

Thank you.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment to change from the fifth day to the eighth day for introduction of proposals.

Hearing no more discussion, we’ll call the question.

As many as are in favor of the motion will say “aye;” opposed “no.” The “noes” carry. The amendment is lost.

Is there any further discussion? We’re back on the original motion — on that for the adoption of Rule 18.

DELEGATE HARTL: Mr. President, I ask for a division.

PRESIDENT WENSTROM: Division on the previous question — on the question?

DELEGATE HARTL: That’s correct.

PRESIDENT WENSTROM: Yes, you surely may.

Does someone recall the rule? How many have to ask for the question? Three? Eight?

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Our temporary rules provide that we have fifteen stand or rise for a recorded vote; but, really, the recorder’s vote — is the recorder’s vote correct now?

PRESIDENT WENSTROM: No, Delegate Butler. The request is not for a recorded vote; the request was for a division, and there’s quite a little difference. So my — my purpose is that — my question is that I had forgotten how many have to request a division before it’s granted.

DELEGATE GEELAN: Mr. President. Five delegates, under Rule 26, may call for a division.

PRESIDENT WENSTROM: Will five delegates please rise?

(Five delegates rose.)

PRESIDENT WENSTROM: A division will be granted. So we will open the key, and those voting green will be voting in favor of the amendment, and those opposing will vote red.

Does any delegate wish to change? If not, the vote is closed.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: I'm real green at this. But will Delegate —

PRESIDENT WENSTROM: Just a moment. Now, what is your question?

DELEGATE MILLER: Well, Delegate Meidinger pushed my button, and I don't think that's quite fair. Is there some way this can be resolved? Is he to have two votes and I have none? I'm real green at this, but I'd like to know the rules. (Laughter)

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I think he has a point, because I noticed Delegate Meidinger voted "no" on roll call this morning. (Laughter)

PRESIDENT WENSTROM: The roll call discloses 27 "ayes," 58 "nays," three absent and not voting. The Chair will sustain it.

We are now back on Rule 18 for final adoption.

Is there any further discussion? Hearing none, the question is on the final adoption of Rule 18.

As many as are in favor of the — Delegate Saugstad.

DELEGATE SAUGSTAD: No. I thought — I was just going to make a motion that we adopt Rule 18 as amended.

PRESIDENT WENSTROM: It's been moved and seconded that we adopt Rule 18 as amended.

Hearing no further discussion, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. The Rule 18 is adopted.

We'll proceed with Rule 18.1.

CHIEF CLERK GILBREATH: **"Rule 18.1. WITHDRAWAL OF PROPOSALS**

"Any committee or delegate proposal may be withdrawn from further consideration by motion of the committee, if a committee proposal, or by request of the delegate or delegates sponsoring the same, if a delegate proposal; provided the unanimous consent of the Convention is obtained."

PRESIDENT WENSTROM: The question is on the adoption of Rule 18.1.

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Do we have a motion for the adoption of the Rule?

DELEGATE WICKS: Mr. President, I move the adoption of this Rule.

PRESIDENT WENSTROM: The motion for adoption has been made by Delegate Wicks. Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Now, is there any discussion?

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: We thought, by adding this Rule, we could make for flexibility in discussions and that we could save some time so that any proposals that apparently were lost or for any reason anybody wished to withdraw, it could be done by unanimous consent of the Convention, and this would dispose of it properly.

PRESIDENT WENSTROM: Any further discussion? Delegate Cart.

DELEGATE CART: Well, Mr. President, I think we ought to strike out the word "unanimous." That might be hard to get in some cases. I think we should have that rule, but "with the consent of the Convention."

PRESIDENT WENSTROM: Any further discussion? Hearing none —

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I'll move — if we do not have a motion for that amendment, I'll move that that word "unanimous" be stricken in the last line.

PRESIDENT WENSTROM: Delegate Baker, now you're moving an amendment —

DELEGATE BAKER: Right.

PRESIDENT WENSTROM: — to strike the word "unanimous"?

DELEGATE BAKER: Right.

DELEGATE CART: Second the motion.

PRESIDENT WENSTROM: It's been moved and seconded that Rule 18.1 be amended by striking the word "unanimous" before "consent." Now, is there any discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President. As I understand it, the reason for the "unanimous" — I assume that I did not put in a proposal, because I knew of a similar or identical proposal being put in by somebody else. The deadline has passed. The other people change their mind and want to pull it out. I am hopeless, unless I could get a very substantial number. There is no harm in having that in there, because the proposal, if it doesn't meet with the majority vote, it will fail anyway. But the word "unanimous" was put in there for a protection, because we've got to have a deadline on proposals. So I'm opposed to withdrawing the word "unanimous."

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question is on the proposed amendment to strike the word "unanimous."

As many as are in favor of the motion will say "aye," opposed "no." The "noes" have it and the motion lost.

We're back on the Rule 18.1. Any further discussion? Hearing none, we'll call the question.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. The Rule 18.1 is adopted.

CHIEF CLERK GILBREATH: Rule 19 — or "Rule 20. AMENDMENTS TO PROPOSALS

"(((Proposals and amendments to be written.))) No (((delegate or committee proposal or))) amendment shall be considered unless (((it is submitted in writing and a copy thereof delivered to the floor desk of each delegate))) prior to the time the amendment is offered (((.))) **it is submitted in writing, a copy thereof delivered to the clerk of the Convention and, except for amendments offered from the floor, a copy placed on the floor desk of each delegate. Amendments may be offered from the floor of the Convention without delivery to the floor desk of each delegate, but must be in writing and a copy delivered to the clerk.**

"Amendments (((to))) shall be germane. No motion or proposition on a subject different from that under consideration shall be admitted under color of an amendment or substitute **motion.**"

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I wish to offer a further amendment as contained on your single sheet in front of you, and would the Clerk read it at the desk?

CHIEF CLERK GILBREATH: "Prior to the first paragraph of Rule 20 insert the following:

"The majority or minority report of a committee may not be amended from the floor until after the committee report is adopted from the floor." Delete the words "or substitute motion" at the end of Rule 20.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Mr. Trenbeath.

DELEGATE TRENBEATH: Roy, your reading of that isn't the same as my copy.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, I left an amendment at the desk which would be an amendment to the amendment already proposed. He doesn't know about it yet, because I thought his would be read first.

CHIEF CLERK GILBREATH: We'll take the first amendment.

PRESIDENT WENSTROM: Just so that everyone knows where we are. We're on Rule 20, right?

CHIEF CLERK GILBREATH: Rule 20.

PRESIDENT WENSTROM: On the proposed amendment that's on this sheet.

CHIEF CLERK GILBREATH: Rule 20, as in the Committee Report. We're now going to read the first amendment, which is on the long legal-sized sheet, which will read as follows:

"Prior to the first paragraph of Rule 20 insert the following:

"The majority or minority report of a committee may not be amended from the floor. After a committee report is adopted the proposals contained therein may be amended from the floor."

Delete the words "or substitute motion" at the end of Rule 20.

DELEGATE TRENBEATH: Mr. President, I move the adoption of those amendments.

PRESIDENT WENSTROM: It's been moved by Delegate Trenbeath that we adopt the amendment as read from the desk.

Now, do we have a second?

DELEGATE LITTEN: Second it.

PRESIDENT WENSTROM: It's been seconded by Delegate Litten. Now, is there any discussion?

DELEGATE TRENBEATH: Mr. President.

DELEGATE DECKER: Mr. President, I have an amendment at the desk which would change the first sentence. I don't believe it changes the meaning of the whole paragraph, but I think it makes it plainer that amendments can be made, and I'd like to have that amendment read at this time.

PRESIDENT WENSTROM: The desk will read the proposed amendment — amendment to amendment.

CHIEF CLERK GILBREATH: Rule — the amendment to Rule 20 be amended as follows — Rule 20 be amended as follows:

"Prior to the first paragraph of Rule 20 insert the following:

"The majority or minority report of a committee may not be amended from the floor until after the committee report is adopted from the floor."

Delete the words "or substitute motion" at the end of Rule 20.

DELEGATE DAWSON: Second the amendment.

PRESIDENT WENSTROM: The amendment has been seconded by Delegate Dawson.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I agree with Delegate Pearce here that we are violating, it seems to me, our own rules when we are permitting amendments to amendments. It would seem to me that the proper procedure would be to adopt or act on the first amendment, and then, if someone wants to further amend, it could be done. But I believe that procedure of amending an amendment is strange procedure.

PRESIDENT WENSTROM: However, Delegate Longmire, you will have to agree that it is permissible, and we have carried it out a number of times today — that it is permissible to amend an amendment.

DELEGATE DECKER: Mr. Chairman, I believe that everything on the long sheet is an amendment to an amendment in the first place, because the report of the Rules Committee is amending in the first place the large book you have on

the desk. The long sheet is an amendment to an amendment. My amendment is an amendment to the amendment to the amendment.

DELEGATE TRENBEATH: Mr. President. While Delegate Decker is on his feet, I wish he'd explain what he's trying to do with the Rules Committee's amendment.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President. The object of this is simply not confuse people by saying that they can't amend a proposal. The first sentence says you can't amend a proposal. The second sentence says you can; and to make it read so it will say what it means, I would say we'd have to change it around this way.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I think if you look that amendment over that the Rules Committee came in with, Delegate Decker, it says this:

"The majority or minority report of a committee may not be amended from the floor" — not a proposal. This just concerns the committee report, and this is where we want the clarity.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Possibly I'm wrong, but I thought a proposal was a committee proposal at the time it came in.

DELEGATE TRENBEATH: In essence, you might consider it a proposal; but it really is a committee report under parliamentary procedure. Under Roberts' Rules of Order, it's a committee report.

PRESIDENT WENSTROM: Any further comments?

DELEGATE TRENBEATH: Well, Mr. President, if you're going to — what's the procedure now? You're going to vote on Mr. Decker's amendment?

PRESIDENT WENSTROM: Do we want to vote on Mr. Decker's proposed amendment to yours?

DELEGATE TRENBEATH: I certainly have no objection to Mr. Decker's amendment, if he thinks it improves the language; but I just question whether it does. For that reason, I'm going to have to oppose the amendment. Either way, I think it would be out of order.

PRESIDENT WENSTROM: Hearing no further discussion or further questions, we will vote on the amendment to the amendment.

As many as are in favor of the motion will say "aye;" those opposed "no." The Chair will rule the "noes" won.

We will then be back on Delegate Trenbeath's proposed amendment to Rule 20.

Is there any further discussion on that?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: All this rule change — or all the amendment does is — as I stated before, it was discussed in the previous rule this morning — is to really add clarity as to how you're going to amend these proposals. It spells out clearly that the majority — when a majority comes in with a question or any committee report, if it hasn't a majority to report on it when it comes out of committee, it can't be amended from the floor. If the committee report as it — with the committee amendment, they'll have to have — the committee report is adopted, and then you'll go in the sixth order — the amendments will go on the sixth order for the next Convention day. If it has no committee amendments on it, it will go on the next Convention's day on the tenth order — next Convention day's tenth order, where you can amend it there, and that's all that this amendment spells out.

PRESIDENT WENSTROM: Are there any questions? Further discussion on the amendment as offered by Delegate Trenbeath? Hearing none, the question then is on the adoption of the amendment.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I'd like to announce that the Committee on Executive Functions will not meet this afternoon at 1:30. (Laughter)

PRESIDENT WENSTROM: Delegate Hernet announces, a half hour late, that the Committee on Executive Functions will not meet this afternoon at 1:30.

The question now is on the final adoption of Rule 20 as amended.

Is there any discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President, I am somewhat confused. There are now two sentences — well, at least, of course, we have added two sentences, so they are now the third and fourth sentences of Rule 20 as they are now on the — not on the single sheet, but on the bigger sheet. The first one, as I read it, says "No amendment shall be considered unless prior to the time the amendment is offered it is submitted in writing and a copy thereof delivered to the clerk of the Convention and, except for amendments offered from the floor, a copy placed on the floor desk of each delegate." But the second sentence says "Amendments may be offered from the floor . . . without delivery to the floor desk of each delegate, but must be in writing and a copy delivered to the clerk."

Now, where else do you offer amendments except on the floor? It seems to me, and I just want to be sure I'm clear, that if I think of an amendment that I want to offer, I can't do it, apparently, under this rule, unless I first get it in writing and get it up to the clerk, and if I can't write fast enough, the procedure has gone by and I'm too late.

When does it have to be delivered to the clerk?

PRESIDENT WENSTROM: Can one of the members of the Committee answer Delegate Pearce's question?

DELEGATE TRENBEATH: Mr. President, I—what you are saying, Delegate Pearce, is that because the first sentence starts out, in Rule 20, and says "No amendment" — is this what you're referring to? — and then goes on and says, "Amendments may be offered from the floor" without submitting them in writing?

DELEGATE PEARCE: Yes. I would like to know, Delegate Trenbeath, when does the first sentence have an effect? When is an amendment offered that is not offered on the floor?

DELEGATE TRENBEATH: Well, they can be committee amendments, Delegate Pearce, and of course, if they are committee amendments, then, naturally, they will be at the desk and submitted and they will be on the delegates' desks, also, if they are committee amendments.

DELEGATE PEARCE: You're thinking of a committee amendment after the committee has acted on a proposal, and then decided to amend it?

DELEGATE TRENBEATH: No. A committee may come out with a proposal, out of committee, with an amendment on it, and, as I stated before, those would be considered on the sixth order of business on the first Convention date after the committee report comes out, and those amendments will be at the desk and, also, be distributed to the desks of all the delegates — committee amendments. Now, I think what we are trying to get at, and maybe it isn't quite correct, is we wanted to make it clear that if anybody was going to further amend that on the tenth order the following day, that they would consider giving the desk a copy, so that the desk has time to give them to all the delegates, on any of these amendments that they are intending to introduce or make a motion of on the tenth order. But there are times on this floor when amendments are made on the spur of the moment and in those cases they must be made from the floor and a copy given to the desk, so that they can clear and correct it in the Journal, but they will not be delivered to all the desks of the delegates.

DELEGATE PEARCE: My question is: At what opportune instance —

PRESIDENT WENSTROM: Delegate Pearce, that thing is not working.

DELEGATE PEARCE: I'm pushing as hard as I can.

PRESIDENT WENSTROM: Delegate Pearce, if your thumb is played out, possibly Delegate Peters would hold that for you.

DELEGATE PEARCE: Rundle's had more experience. (Laughter)

My point is that on these spur-of-the-moment amendments, can I write fast enough or do we come to a standstill while I'm writing them out, before I can make the motion?

DELEGATE TRENBEATH: Mr. President. You notice in that first sentence, Delegate Pearce, it says that all amendments shall be placed in writing and given to the clerk, except those amendments offered from the floor.

Now, any amendments that are offered from the floor, without delivery to the floor desks of each delegate, but must be in writing and a copy delivered to the clerk.

Now, I don't know — that wasn't intended to mean prior to the time it was made from the floor. It wasn't intended that way. If you read it that way, why then maybe we need an amendment change.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'll ask you a hypothetical question and I think the answer will clear up the problem.

Supposing we're in the middle of debate and I come up with a thought and I want to amend something and I say, "Mr. President, I have an amendment." You recognize me. I say, "Just a moment" and I write out the amendment and I give it to a page. Will you wait while I do that?

PRESIDENT WENSTROM: Well, that all depends on whether the amendment was a page long or whether it was merely a half-a-dozen words, or something on that order.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: I would just like to conclude this, Delegate Unruh. I see your point, and I suppose 99 percent of the time the answer would be "yes." But if it was — there could be times when that just couldn't happen, if you wait that long.

Now, Delegate Saugstad.

DELEGATE SAUGSTAD: I'm having the same trouble in trying to make this button work.

I believe that under the circumstances brought forth by Delegate Pearce, that if any delegate were to state that they would like to have this matter before them either placed at the bottom of the calendar or postponed to a time certain, to allow them time to prepare their amendment, and then move to have this either placed at the bottom of the — the matter at the bottom of the calendar or to a time certain, that if the house delegates then will support that motion, then there will be no problem.

PRESIDENT WENSTROM: Thank you, Delegate Saugstad.

DELEGATE RUNDLE: Mr. President.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I can see no problem here at all. I have sat in other delegations, where every amendment and every motion had to be submitted in writing to the president or to the secretary. There are times when you make an amendment and you can make the amendment verbally. The discussion can start. You do it in writing. You get it to the clerk. If it's a long one, it might mean a wait of a couple minutes; but I don't foresee long amendments coming directly from the floor, and, as I said, it has worked in other delegations that I have been in and there has been no problem, but it certainly helped clarify the bookkeeping.

PRESIDENT WENSTROM: Thank you, Delegate Hendrickson. Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I think, in view of long legal experience of Representative — or Delegate Pearce, it might be well to allow quite a bit of time for him to write this long amendment.

PRESIDENT WENSTROM: Thank you, Delegate Rundle. Any further discussion?

The question before the body is on the adoption of Rule 20 as amended.

Is there any further discussion? Hearing none, I'll call the question.

As many as are in favor of the motion will say "aye;" opposed "no." The Chair is in doubt. I'll open the key and you will indicate your vote. Those voting "aye" will vote green. Has every delegate recorded his vote? The key is closed.

The roll call indicates 66 "ayes," 25 "nays," seven absent and not voting. Rule 20 is adopted.

Next for consideration of the amendments is Rule 21.

CHIEF CLERK GILBREATH: "Rule 21. MAJORITY VOTE REQUIRED ON PROPOSALS

"A majority of the total number of delegates (50) shall be required for approval of any section to be included in a proposed constitution or amendments to the constitution.

"The vote shall be taken by ayes and nays and entered on the Journal.

"No proposal shall be (((finally))) voted upon by the Convention except after the expiration of (((72 hours))) **two Convention days from its introduction.**

"VOTING BY ELECTRICAL ROLL CALL SYSTEM. When taking the ayes and nays on any question to be voted upon, the electrical roll call system may be used and when so used shall have the same force and effect as a roll call taken as otherwise provided in these rules.

"When the Convention is ready to vote upon any question requiring a roll call, and the vote is to be taken by the electrical roll call system, the President or presiding officer shall announce: 'The question is on the _____.' (((passage of (designation of matter to be voted upon).))) All in favor of such question shall vote 'aye'; those opposed shall vote 'nay'. The Convention will now proceed to vote.'

"After affording the delegates sufficient time in which to vote, the presiding officer shall announce: 'Have all voted?' and after a short pause shall then say: 'Does any delegate desire to change his vote?' and after another short pause shall say: 'The clerk shall proceed to record the vote.'

"The clerk shall immediately (((start the vote recording equipment,))) **call the roll** and when completely recorded the President shall announce the results to the Convention. The clerk shall enter upon the journal the result in the manner provided by the rules of the Convention.

"Any delegate shall be privileged to vote or change his vote after the vote recording equipment has started to operate and prior to the time the clerk has recorded the vote.

"No delegate shall vote for another delegate nor shall any person not a delegate cast a vote for any delegate. (((Any delegate who shall vote or attempt to vote for another delegate may be punished in such manner as the Convention may determine.)))" (Laughter)

"Following the vote on a proposal, any delegate shall have the privilege of making a brief statement on the reason for his vote which statement, if requested, shall be printed in the journal."

DELEGATE FALLGATTER: Mr. President.

PRESIDENT WENSTROM: Delegate Fallgatter.

DELEGATE FALLGATTER: Mr. President, I move the adoption of Rule 21.

PRESIDENT WENSTROM: Delegate Fallgatter moves the adoption of Rule 21. Do we have a second?

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nothing.

DELEGATE FALLGATTER: Mr. President.

PRESIDENT WENSTROM: Delegate Fallgatter.

DELEGATE FALLGATTER: Just a brief explanation here in regards to committee action on Rule 21.

In the third paragraph, with regards to time limitation, the Rules Committee felt that the deletion of "72 hours" and changing it to "two Convention days" would provide a more logical timetable.

And then, on the next page, the second paragraph — no, the third paragraph down — regarding call of the roll:

The deletion was made there because it was thought that there is a possibility of equipment failure.

And then, at the bottom of the page, the last paragraph, the new language: "This gives the delegate a chance to explain the vote.

PRESIDENT WENSTROM: Are there any questions on Rule 21?

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: I'd like, just for information, to ask if someone from the Committee had given any thought to every delegate having to vote — that it's necessary to vote on every issue, or can you pass the vote?

PRESIDENT WENSTROM: Would one of the Committee members answer the Delegate's question?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I believe Rule 35 of the rules adopted at the organizational session covers that. I don't think there's any amendment proposed.

PRESIDENT WENSTROM: Does that answer your question, Delegate Hoghaug?

(Delegate Hoghaug nodded.)

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: If the delegates have the original book — who's the delegate that answered it? — Delegate Nething. It's Rule 35. "Every delegate who is present when the vote is declared must vote, unless the Convention excuses him."

PRESIDENT WENSTROM: Thank you, Delegate Geelan. Any further questions on Rule 21? If not, the question is on the final adoption of Rule No. 21.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The Rule is adopted.

CHIEF CLERK GILBREATH: Rule 24 is deleted in its entirety.

"((Rule 24. COMMITTEE OF THE WHOLE

"**CHAIRMAN.** When the convention shall have decided to go into the Committee of the Whole, the president shall preside at sessions of the committee.

"**CONSIDERATION OF COMMITTEE REPORTS.** When the Convention deems it necessary, it may by a majority vote of those voting resolve itself into a Committee of the Whole to consider committee reports, or any other convention business, and no business shall be in order until the whole of the reports or other convention business is considered or passed over, or the committee rise. Unless a particular proposal is ordered up, the Committee of the Whole shall consider, act upon or pass over all matters referred to it by the convention in the order of their reference.

"**READING, DEBATE, AMENDMENT.** In the Committee of the Whole proposals shall be read through, debated and acted upon by sections. All amendments shall be in writing and shall be reported to the convention by the chairman.

"**MOTION THAT THE COMMITTEE OF THE WHOLE RISE.** A motion that the Committee of the Whole shall rise shall always be in order unless a member of the committee is speaking or a vote is being taken, and shall be decided by a majority vote of those present and voting.

“RECONSIDERATION. A motion to reconsider shall be in order in the Committee of the Whole and may be adopted by a majority vote of those present and voting.

“APPLICATION OF CONVENTION RULES. The Rules of the Convention shall be observed in the Committee of the Whole, as far as they may be applicable, except that it cannot adjourn the convention; a majority of those present and voting shall govern its action; it cannot refer matters to any other committee, except the Committee on Style and Drafting; and a motion to postpone indefinitely or a call of the convention shall not be in order.

“A delegate may speak more than once in the Committee of the Whole.

“A journal of the proceedings in the Committee of the Whole shall be kept as in convention.))”

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I would move that Rule 24 be deleted and that the number — yes, the number of the rules be renumbered accordingly.

PRESIDENT WENSTROM: It's been moved by Delegate Saugstad that Rule No. 24 be removed in its entirety and the balance of the numbers — or of the Rules be numbered — renumbered accordingly.

Now, do we have a second to that motion?

DELEGATE LARSEN: Second.

PRESIDENT WENSTROM: Delegate Larsen seconded the motion.

Now, do we have some discussion? Senator — Delegate Saugstad.

DELEGATE SAUGSTAD: The reason for deleting Section 24 or the — which provided for the Committee of the Whole, was — or it was felt by the Committee that the changes made, I believe, in the Rules as discussed by Delegate Trenbeath, in which proposals can be amended from the floor and adopted — I think that was Rule 13.1 and Rule 20 — that that eliminated the necessity for the Committee of the Whole. It was felt that the Committee of the Whole is a more slow and cumbersome process of attempting to accomplish the same end. I happen to be one of those that had rather mixed emotions on this particular question, but this was the feeling of the Committee.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I hope that this motion does not prevail and that this Convention will retain in its rules the machinery for the Committee of the Whole. I think we have seen ample demonstration this afternoon of why this might be wise. We have considerable confusion here as to just what these changes in the rules we have been adopting mean and what their effect will be, and if we find out that some of the steps that we have taken along the way here make it less convenient for the delegates to have their say, to make their points and seek favorable action on their propositions, a Committee of the Whole process would be mighty handy to have. If, on the other hand, the provisions for amendment and debate at various stages along the way which have been provided, and the other rules of this Convention, do give adequate opportunity for the delegates to transact the necessary business between now and the conclusion of this Convention, then it can do no harm by being in the Rules, since, presumably, then, it would not be used. It would take an affirmative vote from a majority of the Convention in order to send this group in a Committee of the Whole. And so there is nothing that could be added to the length or the complication of the process here by inclusion of a Committee-of-the-Whole provision in our Rules, which did not have the consent of the majority.

Now, if there is further debate on this, it may be that you will be hearing about time-consuming examples here and there during the legislative process, and that may be true. On the other hand, let me remind you that in the legislative process — in North Dakota, at least — we have two houses. During my experience in the Legislature, the House had in its structure the Committee-of-the-Whole process and used it not frequently, but when necessary, and at times in order to accomplish a particular thing on a particularly-complicated subject. And doesn't

it seem that this body may have before it some particularly complicated subject — something that may not yield readily to the more formal consideration that is provided in the other rules and for which a Committee of the Whole, where the rules of debate can be relaxed somewhat and when we can get back into the situation that we are all familiar with through our service on the committees of this Convention up to now — might that not be handy to have in lieu — we might not have to use it — but might you not want to use it sometime? I think so.

And then, if a corollary is considered between this and the operation of the Legislature, consider this aspect: We are operating as if — as a single house in the Legislature. If they have problems in one body that do not yield to solution, there is an opportunity to solve those problems in the other body under a different set of circumstances and at a different time. While the Committee-of-the-Whole provision in the Rules would not provide some kind of a — of another house to send it to, or anything like that, it would provide another piece of machinery by which we might untangle some of the snarls that we might get into.

I hope that the motion to eliminate this section of the Rules does not prevail.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: We discussed this Rule considerably in the Rules Committee — not once, but two or three times, as I recall, and the one thing that we were afraid of on adopting this Rule was the time consumption, because it is time-consuming, although there is merit — no question — about getting it to the Committee-of-the-Whole sometimes. We felt by the way we adopted the Rules here this morning and this afternoon that there was ample provision to get any idea exposed and every idea discussed.

Now, I have no severe objections to adopting this Rule; but I would certainly say this to the delegates here: That if we adopt it, it will require a lot of self-discipline not to use it extensively. Myself, I feel that we can do without it.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I have, I think, three questions I'd like to have answered.

How many delegates can go into a Committee-of-the-Whole? And I notice on one — in one paragraph here — it says here "a majority of those present and voting shall govern its action." And, also, one that I don't like — no call of the Convention can be called while the Convention is a Committee-of-the-Whole.

Now, will somebody clear this?

DELEGATE BAKER: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I think the reason for not having the call of a Committee of the Whole written into its language is that I would agree it would take some kind of final action. It makes no recommendation. It operates like any other operating committee, and that's my main point, and that is that it will give us another committee — a committee of all of us to unsnarl us from a situation that we might possibly get ourselves into.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The Rules Committee felt the only advantages the Committee of the Whole gives a body is two; one, bring amendments and, two, no limit of the time a delegate may speak.

Now, you pay a pretty price for that when you go to a Committee of the Whole, because then the Chair of the President steps down or he acts as Chairman — I think the Rule did call that — he acts as Chairman. Another set of reports have to be made. None of the action is final.

Now, we felt that we could unclutter the problem by taking the two advantages of the Committee of the Whole — that is, present amendments — we've got it in the Rule in the tenth order. You can amend all you want. And the other one is taking and lifting off time for debate, and we've provided the rules for

a simple motion that you would make, instead of moving to go into a Committee of the Whole. I would simply move that the revision on the time that a delegate may speak be waived, and a simple majority. There's no restrictions, and we're almost approaching a Committee of the Whole. I can stand up as many times as you will allow me to stand up and talk. Now all you have to do, instead of rising as a Committee of the Whole — someone gets up and moves we go back to normal debate restrictions, and we felt that, with these two provisions, we would unclutter this clutter that you can get into when you go into the Committee of the Whole.

PRESIDENT WENSTROM: Any further comments?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, I feel that we wouldn't use the Committee of the Whole very often, because the delegates know the things that could happen. But wouldn't we possibly need it towards the end of the Session, when it comes to either dividing or combining all of these sections or setting apart separate sections? Won't we have to operate as a Committee of the Whole or something similar at that time, or wouldn't we want to have it available at that time in case we did want to use it?

I would support Mr. Baker — Delegate Baker's vote in leaving it in at this time.

PRESIDENT WENSTROM: Is there any further comment?

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I've got something on my mind that I wanted to say when we just recently approved Rule 20, and I think this is an applicable time. Anybody that only has accommodations here for only about six weeks had better get a renewal on their lease, because if we pass this and put the Constitutional Convention on a Committee of the Whole and no additional amendments can enter the floor, we'll be here until Christmas. We'll have to call the Legislature in session to appropriate more money to keep it going. We're doing things here in preparing these rules that are going to cause considerable debate and action on the floor that will be time-consuming. We have only — I don't think I need to remind anybody — 28 days — 27 or 28 days after today. So I would urge that the Committee be supported and this be deleted.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I agree. I think it's a very wise move to remove the Committee of the Whole from the Rules.

In the last four sessions of the Legislature — and one special session — it's been used once or twice, I believe, and the biggest mess we had all during those eight years was when we had the Committee of the Whole, and I think some of you or a few may remember. It's very complicated and it's just made for real sharp parliamentarians that are trying to outfox somebody, and it's useless, I think, here. I think we should abolish it.

PRESIDENT WENSTROM: Any further comments?

The question is on Delegate Saugstad's motion to strike or repeal Rule 24, the Committee of the Whole.

If there's no further question, I will call the question.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the Committee of the Whole, Rule 24, has been stricken.

CHIEF CLERK GILBREATH: "Rule 25. MOTIONS AND RESOLUTIONS

"STATING MOTION AND RESOLUTIONS. When a motion is made, it shall be stated by the President, or if in writing, it shall be handed to the clerk of the Convention and read aloud before being debated.

"Every resolution ((, other than a proposal,)) shall be **properly numbered**, read by title, and shall be referred **by the President** to the appropriate committee. If the rules are suspended to permit immediate consideration of a resolution, the resolution shall be read in full before it is considered.

“REDUCED TO WRITING. Every motion shall be reduced to writing if the President or a majority of those voting shall request it, and all motions, oral or written, shall be entered upon the journal, together with the name of the delegates making it ((, unless withdrawn by the maker or ruled out of order by the President))).

“DIVISION OF QUESTION. Any delegate may call for a division of the question, which shall be divided if it comprehends propositions in substance so distinct that when one is removed or deferred a substantive proposition remains for the decision of the Convention. A motion to strike out and insert shall be deemed indivisible.

“WITHDRAWAL OF MOTIONS: After a motion has been stated by the President or read by the Clerk of the Convention, it shall be deemed to be in possession of the Convention but may be withdrawn by the maker at any time before being amended or put to a vote.”

PRESIDENT WENSTROM: You have heard the reading of Rule 25.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. President, I move that Rule 25 as amended be adopted.

PRESIDENT WENSTROM: Delegate Geelan moves that Rule 25 as amended be adopted. Do we have a second?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Solberg. Any discussion?

DELEGATE GEELAN: There aren't too many changes, Mr. President.

In the second paragraph, proposals don't belong in this particular rule, so it's clear to take out the words "other than a proposal," but we felt that resolutions should be properly numbered and referred by the President. So those are the changes there.

Possibly the only important change is in the third paragraph, in the deletion "unless withdrawn by the maker or ruled out of order by the President." We think even those motions should be made a part of the record.

PRESIDENT WENSTROM: Any further discussion? Hearing none, we'll call the question.

The question is on the final adoption of Rule 25, Motions and Resolutions, as amended.

As many as are in favor of the motion will say "aye," those opposed "no." The "ayes" have it and Rule 25 is adopted.

CHIEF CLERK GILBREATH: "Rule 27. DEBATE

“LIMITATION ON DEBATE. The Convention by a two-thirds vote of the delegates present may limit the time of debate on any subject matter before the Convention, designate a method of allocating the period allowed for debate among delegates and take appropriate action to control dilatory procedure.

“TIMES DELEGATES MAY SPEAK. No delegate may speak more than once on the same question without leave of the President or a majority of those present and voting unless he be the mover of the matter pending or chairman of the committee that reported it, said chairman's designee or unless another delegate has yielded his time to speak or he is asked a question on the matter by another delegate. By majority vote, limits on times delegates may speak shall be suspended and shall remain suspended until the suspension is removed by majority vote.

“CONDUCT IN DEBATE. When any delegate is about to speak in debate or present any matter to the Convention, he shall rise and address himself to 'Mr. President'; he shall not speak until recognized and when recognized he shall confine himself to the question under debate and avoid personalities.

“DELEGATE CALLED TO ORDER. If any delegate in speaking transgresses the rules of the Convention, the President shall call him to order; in which case that delegate shall immediately sit down and shall not rise unless to explain or proceed in order.

“CONDUCT ON THE FLOOR. While the President is putting any question, or while the roll is being called or taken, no delegate shall walk out; nor shall any delegate engage in discourteous conduct at any time.”

PRESIDENT WENSTROM: You have heard the reading of Rule 28 — 27.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I move that Rule No. 27 be adopted as amended.

PRESIDENT WENSTROM: It's been moved by Delegate Saugstad that Rule No. 27 be adopted as amended. Do I have a second?

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate O'Toole. Any discussion? Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President.

The changes are few. In the first paragraph, the first sentence, “The Convention by a two-thirds vote of the delegates present may limit the time of debate . . .” In other words, should it be necessary — should the Convention feel that it is necessary to limit the time of debate, it may do so by a two-thirds vote.

Then, in the second paragraph, the time a delegate may speak has been slightly amended so that if a delegate is asked a question on a matter by another delegate, he may speak more than once by virtue of having been asked; also, by a simple majority vote the limits on times delegates may speak shall be suspended and shall remain suspended until suspension is removed by majority vote.

Again, this change in the Rules is offered for the purpose of making it easier to debate complex questions. That is, in other words, where we have a number of complex questions, a single delegate may speak any number of times provided that a motion is made asking for a suspension of the rules. This goes hand in hand with making amendments from the floor and to ease the matter of making amendments from the floor and speaking a number of times by an individual delegate, and this is a part of the package that was inserted in lieu of deleting the Committee of the Whole.

PRESIDENT WENSTROM: Any further discussion? Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. Does a chairman relinquish his time if he assigns a portion of the document to a delegate?

DELEGATE SAUGSTAD: I believe that it is understood that the chairman has the opportunity to speak any number of times on a given proposal.

DELEGATE THOMPSON: Mr. President. Neil Thompson. I'm over here.

PRESIDENT WENSTROM: Oh! Delegate Thompson.

DELEGATE THOMPSON: I have a question on how the reports are going to be made by committee, and does the chairman of a committee then make the minority report or will each of those people involved in the minority report be considered as a mover under Rule 27?

PRESIDENT WENSTROM: Delegate Saugstad?

DELEGATE SAUGSTAD: I believe that the — that those who sign the minority report would be considered the movers and the makers of that motion, so that they would — they would operate under the privilege of speaking more than once.

PRESIDENT WENSTROM: Fellow Delegates, just a point of information.

Stan, I believe that when they filed the committee reports, they filed the committee report and the alternate reports with the desk, and the first to be acted on, of course, is the majority report of the committee, and then you read the alternate or substitute report that's coming in, and then it becomes the duty of those that are on the substitute or the alternate report to defend the report. I think that's the procedure that we follow.

DELEGATE SAUGSTAD: Yes, I agree wholeheartedly with the Chair's definition of that.

PRESIDENT WENSTROM: Just so that there wouldn't be a misunderstanding on that.

Are there any further questions or is there any other comment upon this rule — Rule 27?

DELEGATE TRENBEATH: Mr. President, it might be added here, if delegates are worrying a little bit about times to speak, even if they aren't on that minority or majority report, even if their names are not as prime movers, the Rules do provide that anybody else can yield their time. So, if you feel that you're going to be limited in time by just speaking once and you've got greater interest in any motion or any proposal, you just get one of your neighbors to yield his time, if he will, and you can speak more than once.

PRESIDENT WENSTROM: Any further comments? If not, the question is on the adoption of Rule 27 as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Rule is adopted.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I have a question I'd like to direct to someone — the Chairman of the Committee, perhaps. But when we were discussing Rule 25, I believe it was mentioned that this applies only to motions and resolutions — about dividing the question — and that you did not wish in that section, at least, to discuss dividing the question on a proposal.

Now, is there anyplace in these Rules where there can be a motion to divide a proposal?

PRESIDENT WENSTROM: I believe there is, Delegate Hernet.

DELEGATE HERNETT: I couldn't find it.

PRESIDENT WENSTROM: I believe there is. I believe any delegate can request that the question be divided and, in the event that after the division of the question it still makes sense, the Chair can rule that the question is divided.

DELEGATE HERNETT: Well, I believe that that is the intent. I just wonder where it is in the Rules. I haven't been able to find it — where you can divide a proposal. This is on motions and resolutions we just talked about; we can divide that. But what about a proposal? In other words, the committee can come in with a package of articles in a proposal and some member on the floor may wish to have it divided. Where can he have it divided?

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. Chairman. It doesn't take an expert parliamentarian to divide this; but it seems to me to be the fourth paragraph of Rule 25 — "Any delegate may call for a division of the question." It might be on a proposal; it might be on anything, and I would think then the delegate could ask then for a division then, even of a proposal.

DELEGATE HERNETT: Rule 25 applies to motions and resolutions, and I understood somebody to say on this second paragraph you took out "proposal." "Every resolution" — and you deleted "other than a proposal."

DELEGATE GEELAN: We did that, Mr. Hernet, because we didn't think that we needed it there, because proposals are taken care of by their numbering, and we thought taking out the words "other than a proposal" would just refer in this paragraph to a resolution.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Well, Mr. President, this is possible. The only thing is I don't know whether we have ever defined what a "proposal" is. Now, in my committee, and I think all the other committees are similar, we have been assigned proposals. I have two. One of them is a big one. It covers practically all of the sections that were assigned to my committee. Now, if we bring that on the floor, we're going to divide it up, I would hope; so it really isn't a proposal any more; it's a part of a proposal. Now, can somebody up on the floor then divide a part of a proposal? This is my question.

PRESIDENT WENSTROM: I have to go back, Delegate Hernet — Delegate Kelsch.

DELEGATE KELSCH: Mr. President. Delegate Hernet, it is our intention that the section on division of the question would apply to all questions put, and the question might be "Should Proposal No. 2-1 be adopted?" And our intention is that any delegate can then ask that that be divided and it may be divided into 40 parts, because some of them are probably that broad.

Now, we did talk about dividing the proposal. We thought dividing a question would be broad enough to cover there. I think that's our intention. There's no other place with reference to division. This is the only place — you're right — in Rule 25. If you think it should be more specific, it could be amended to include that. But our feeling was that it could be brought out and the question of whether a proposal should be adopted by this body, if someone demands a division, it will be one delegate that could force a division.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I believe that Delegate Hernet has raised an important question and one that I had on my mind since we adopted Rule 19 this morning. My committee is in a similar situation to Delegate Hernet's. We have ten sections to be submitted and one proposal. To my knowledge, at least, three of those sections are controversial. It may be evident, but at least three. If we submit that as one proposal, there's going to have to be a division someplace along the line — a possibility of a division. What about a minority report submitted on only one section of that proposal? Would there be something to cover that?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I remember distinctly, Mr. President, when we discussed this in Committee, that was the reason we used the word "question" instead of us spelling out "resolution," "proposal," "section" or "motion." We used the word "question" to be all-encompassing. Now, if it's going to be interpreted any other way, we better maybe amend it. But that's just the word "question" — it does encompass everything that we have under discussion.

PRESIDENT WENSTROM: What are the wishes of the Convention on this proposal — on this proposed Rule?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I agree that there is somewhat of a problem in the way that our committee reports have come out, at least tentatively, where the work of the committee over a long period of time may be just one or maybe two proposals and they're so broad and encompassing that they've never really sat down and decided it, I don't think. But we probably should have sat down and broken those down separately, maybe, in different concepts, rather than lumping them like we did.

Now, if we let them come in on the floor the way they are, we're going to be dividing them and breaking them down and it will drag out. It will be hard to switch from one proposal to another, because they're so lengthy and some proposals might take several days to get through. So, possibly with the Committee's remeeting, it would be wise to resubmit these, inasmuch as the printing costs haven't gone so far, to try to break these apart a little bit on ideas, rather than the whole executive section, for example, on one proposal. I'm sure most of the committees have them lumped.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Well, Mr. President, I'm sure that the committees are going to divide these proposals out and it will probably be in — well, related to the subject, if it's brought on the floor, and I suppose each committee chairman will make that decision. My only question is here, just so we're sure of ourselves, that when this does come on the floor — for instance, as my committee brought this package on the floor, part of the proposal — supposing we've already decided the proposal in the committee, and then it gets onto the floor of the Convention here and some member or a delegate decides that they don't like the way we

divided this up. I just would like to be sure that then the delegates have the right to get up and move to divide the question further, and I think this is probably going to happen sometime. My only thought here was I thought probably this would just apply to motions and resolutions and not proposals. Now, if it applies to everything, I'm sure we're all right.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: It seems to me here, too, that putting — I think the section is fine. It's just a question of where it's going to be placed, and by putting it under the motion — or under the rule entitled "Motions and Resolutions," it would insinuate, at least, that the authority to divide is a little limited. I would suggest to the Rules Committee that they might want to delete the section on the division of the question from this rule and put it in as a new Rule 27, all by itself, at the end of your Rules, and then there'd be no question whatsoever about whether or not we can do it.

DELEGATE GEELAN: Mr. President. I'm sure that since this is a matter of clarification, that the Rules Committee would have no objection. Would the intent be then to just take the section that relates to division of the question, making that a new rule? Then would you just leave in "Any delegate may call for a division of the question" and leave it there, or do you want anything added so that there's no question but what it also refers to proposals, such as Delegate Hernet has brought up?

DELEGATE LONGMIRE: I would think that leaving it in just as "Any delegate may — may call for a division of the question," period. And then there's no confusion about it.

Well, hearing the attitude of the Rules Committee, Mr. President, I would like to offer an amendment, and I move that we delete from Section 25 the Division of the Question section, and I don't know whether — I suppose I better wait until that is taken out, and then, if that is adopted, at the proper time I will move for a new rule to put it back in as indicated.

PRESIDENT WENSTROM: Delegate Longmire has moved that the section of Rule 25, Division of the Question, be removed from this Rule. Do we have a second to the motion? The motion is seconded by Delegate Geelan. Now for discussion.

Hearing no discussion, we'll call for the question. The question is on the amendment to strike "Division of Question" from this Rule.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and that section is stricken from Rule 25.

Now we're back to Rule 25 for final passage or rejection.

CHIEF CLERK GILBREATH: We've adopted 25 before, haven't we? It was already adopted.

"Rule 29. MOTION FOR RECONSIDERATION" —

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: May I have permission of the delegates now for Delegate Longmire's motion to make this a separate rule? I wonder if this wouldn't be a better time to do it.

PRESIDENT WENSTROM: Delegate Geelan, I believe at the time he made the motion, he said that at the proper time he would notify the Chair, because he wanted it, and I just took it for granted he was going to come up with a new number — maybe 28 or something like that.

DELEGATE LONGMIRE: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: We did awhile ago delete Rule 24 and to keep our sequence, perhaps we could put it back in as Rule 24. So, Mr. President, I move that we adopt a new Rule 24 to read as follows:

"Division of Question. Any delegate may call for a division of the question at any time." And, as a further part of that motion, that we renumber these rules, which we did renumber awhile ago, accordingly.

PRESIDENT WENSTROM: You have heard the motion for a new Rule 24. Is there any question on the motion? Any discussion?

Hearing none, the question is on the adoption of the new Rule 24 relative to the Division of the Question.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: The substitute part of Rule 25, I guess now numbered Rule 24, is quite a bit shorter than the original part. Could a delegate call until he was blue in the face and not have the question divided, if it comprehends propositions in substance so distinct that when one is removed or deferred a substantive proposition remains for the decision of the Convention?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I suppose we could put in the additional words "if the delegate has no objection and the question shall be divided" or "which shall be divided," and if you want to add that language, Delegate, I would not object to that being a part of my motion.

CHIEF CLERK GILBREATH: You're adding "which shall be divided"?

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: Does the second agree?

DELEGATE TRENBEATH: Agree.

PRESIDENT WENSTROM: Any further question? The question, then, is on the new rule, which would be Division of the Question. Any delegate could call for the division of the question which shall be divided, period. Any further questions? Hearing none —

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I just don't like to vote on that question in that order. Any delegate may call for a division of the question and it shall be divided, whether there's any sense to his request or not. I think the qualifying language there is necessary, and I can't understand why Delegate Longmire doesn't want to include it.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I feel, and I know that we did vote to delete it, period, but I feel I was a bit misled, because I thought that Delegate Longmire's original suggestion was to delete it in order to put it elsewhere, and I feel the whole section that we deleted should be retained and put elsewhere. 24 was good.

PRESIDENT WENSTROM: Delegate Hendrickson, would you so amend? Would you so wish to amend Delegate Longmire's motion?

DELEGATE HENDRICKSON: Mr. President. I move to amend it so that the new rule will be stated just as division of a question, formerly in Rule 25, would state it. Would that do it?

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: And it has been seconded. The motion for the amendment has been seconded. The question now is on the amendment to Delegate Longmire's motion for the new Rule 24, so that it would read in toto as the paragraph in Rule 25, "Division of Question," is in the permanent document.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I will support that motion.

PRESIDENT WENSTROM: The question then is on the new Rule No. 24 as amended. I don't think we voted on the amendment. Did we?

As many as are in favor of the amendment will say "aye;" those opposed "no." The "ayes" have it and it is amended.

Now we're on the new Rule 24. I'll call the question.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we have a new Rule 24, with the rules numbered accordingly.

Fellow Delegates, wouldn't it be in order to recess for five minutes to just stretch and move around just a little bit?

DELEGATE LONGMIRE: Mr. President, I move we recess very briefly.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved and seconded that the Convention recess for five minutes — ten minutes?

As many as are in favor of the motion will say "aye;" those opposed "no." We'll recess.

(The Session recessed at 2:58 P.M. until 3:20 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

CHIEF CLERK GILBREATH: "Rule 29. MOTION FOR RECONSIDERATION

"Any delegate may move for a reconsideration of any question at the same or next **two** succeeding (((session of the Convention))) **Convention days** or the Committee on Style and Drafting may move for reconsideration on any subsequent day if notice of the intention to do so is given in writing to the clerk of the Convention who shall enter this notice in the Journal.

"After (((the next))) **two** succeeding (((session))) **Convention days**, it shall take a two-thirds vote for a motion to reconsider.

"The motion for reconsideration cannot be made on the same question more than once in each Convention day."

PRESIDENT WENSTROM: You have heard the reading. Delegate Geelan.

DELEGATE GEELAN: I move the adoption of Rule 29 as amended.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Litten.

DELEGATE GEELAN: And then, Mr. President, I further move an amendment to the amendment on Rule 29, and I'll ask the Secretary to read the amendment to the amendment.

PRESIDENT WENSTROM: The Secretary will read the amendment.

CHIEF CLERK GILBREATH: Rule 29 be amended as follows:

Insert after the first paragraph the following language:

"The same majority shall be required to adopt a motion to reconsider as was required to take the original action."

DELEGATE GEELAN: I move that the amendment to the amendment be adopted.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved and seconded that the proposed amendment to the amendment be adopted. Is there any discussion?

DELEGATE GEELAN: Mr. President, speaking on the amendment to the amendment: This provision was put in at the request of our Chairman. Mr. President, we think it was a very good one. It was taken, as I understand it, from the Alaska Constitution Rules. The intent of it is that to adopt — to get a favorable vote on a motion to reconsider on a proposal, for example, you have to have 50 votes, because that is required for a proposal vote. Some other motion might only require a majority of those present, and we think that this is a very good addition to the Rule.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment to Rule 29 — amendment to the amendment. Hearing no further discussion, the question:

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

Now we're now back on Rule 29 and the amendments to Rule 29.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: There are some rather important changes that the Committee has suggested from the original Rule. The first two sentences, I should explain. Any delegate — there was some discussion in the Committee that we should follow the usual parliamentary practice of making it necessary for a delegate to have voted on the prevailing side. However, after some discussion on that, we decided to take the experience of Arkansas and the Maryland Constitutional Conventions and let any delegate, regardless of how he voted, move for reconsideration. We have further liberalized the Rule. The original motion said that after the same or the next — and we've changed it to "Convention days," rather than sessions of the Convention. The original rule said one day. We have made it two. So that a person could move for a reconsideration that same day and two succeeding days and would not need the two-thirds rule.

Then we have, again, "two succeeding Convention days," and that was in the original Rule, that it would take a two-thirds vote after that time for the motion to reconsider. We added the following: "The motion for reconsideration cannot be made on the same question more than once in each Convention day." We think that is a good addition to the Rule.

PRESIDENT WENSTROM: Are there any questions? Any further discussion? The question before the body is on the adoption of Rule 29 as amended.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the Rule is adopted.

Rule No. 30, Appeals.

CHIEF CLERK GILBREATH: "Rule 30. APPEALS

"FORM OF QUESTION ON APPEALS. On all appeals from decisions of the Chair, the question shall be 'Shall the ruling of the Chair stand?' which question shall be decided by a majority of those voting.

"DEBATE ON APPEALS. No delegate shall speak on the question of an appeal more than once without leave of the Convention by a majority vote of those voting.

"((TABLING APPEALS. An appeal may be laid on the table but shall not carry with it the subject matter before the Convention at the time such appeal is taken.))"

PRESIDENT WENSTROM: You have heard the reading of the proposed amendments to Rule 30.

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: On Rule 30, I think it's pretty well self-explanatory. What we're trying to do is eliminate the tabling of a question and, with that explanation, I would move the adoption of Rule 30.

PRESIDENT WENSTROM: Delegate Hubrig moves the adoption of Rule 30 as amended. Do we have a second?

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate O'Toole.

Is there any discussion? Hearing none, we'll call the question. The question is on Rule 30, Appeals, as amended.

As many as are in favor of the motion will say "aye;" opposed "no.". The "ayes" have it and Rule No. 30 is adopted.

Next for consideration is Rule 31.

CHIEF CLERK GILBREATH: "Rule 31. PRECEDENCE OF MOTIONS

"When a question is under debate, no motion shall be received but

- "1. To fix the time to which to adjourn — **debatable — majority present**
- "2. To adjourn — **not debatable — majority present**
- "3. To take a recess — **not debatable — majority present**

- “4. To reconsider — **debatable** — see Rule 29
- “(((5. To lay on the table)))
- “(((6))) 5. For a quorum call of the Convention — **not debatable — majority present**
- “(((7))) 6. To limit debate — **debatable** — see Rule 27
- “(((8))) 7. for the previous question — **not debatable** — see Rule 28
- “(((9))) 8. To postpone to a day certain — **debatable — majority present**
- “(((10))) 9. To (((commit))) **refer to committee — debatable — majority present**
- “(((11))) 10. To amend — **debatable — majority present**
- “(((12))) 11. To postpone indefinitely — **debatable — 50 votes**

“Such motions shall take precedence in the order in which they are listed (((, and shall be decided by a majority vote of those voting, except the motion to postpone indefinitely, which shall be passed only by a majority vote of all the delegates (50) elected))).

“When a recess is taken while any question is pending, consideration of such question shall be resumed upon reassembling unless otherwise determined.

“When a proposal is being considered at any stage of procedure and a motion is made to postpone indefinitely or to commit, amendments to the proposal shall first be in order before taking a vote on any such motion.”

PRESIDENT WENSTROM: You have heard the reading of the proposed Rule.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I move the amended Rule be adopted.

DELEGATE QUAM: Second.

PRESIDENT WENSTROM: It has been moved to adopt the amended Rule 31. Do we have a second? Seconded by Delegate Quam.

DELEGATE KELSCH: Mr. President, before proceeding with the Rule, in explaining it, I'd like to make one minor amendment — the last one on the long sheet — and on the third-from-the-bottom line, to strike the word “commit” and insert in lieu thereof the words “refer to committee.” If I have a second, I'll explain that.

DELEGATE SAUGSTAD: Second.

PRESIDENT WENSTROM: The motion has been seconded.

DELEGATE KELSCH: Mr. President, the reason for the change is we deleted the motion to commit because we didn't think that was a clear statement and inserted “refer to committee.” So we're just cleaning up the language on the amendment.

PRESIDENT WENSTROM: You have heard the motion to amend. Are there any questions? Hearing none, as many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and the amendment is adopted.

Any further discussion? Delegate Kelsch.

DELEGATE KELSCH: Mr. President, we have tried to set forth for the benefit of each delegate the various motions that will be in order on any question before the floor.

Now, there are eleven of them specified, and you will note that they take precedence in the order in which they are listed. So, if you want to do something, you've got to go to a lower number, and that motion will take precedence over the one that's then being acted on. In other words, if the motion is to postpone something indefinitely, you could do anything from 1-to-10, because that's the last one. We've added behind each motion the summary of the rules. For example, on No. 1, that's a debatable, to fix the time to which to adjourn, and when we say “majority present” we indicate that's the vote required. No. 2 is not debatable, “majority present” is required, and so on. In No. 4, where we

have a motion to reconsider, we say "see Rule 29," and that rule requires a simple majority on the day of the passage, and the next two succeeding days thereafter, a two-thirds majority. It also requires that, if you just amend it, if you want to reconsider it, you'll have to have as much vote as it took — required to pass it in the first instance. So a proposal which requires 50 votes will take at least 50 votes to reconsider. If another matter is being reconsidered and is carried by a smaller vote, such as 37-to-5, if there were a lot of people absent, then you'd need 37 again, minimum, to reconsider.

On No. 6, to limit debate, it takes a two-thirds vote, and we refer to Rule 27, and on the previous question, which is a motion that cuts off all debate, that will take — we refer to Rule 28, and that requires the mover, plus five seconds — five delegates must second it — and then it's put to a vote without debate, and it takes two-thirds vote.

I think the rest is self-explanatory. We contemplate these being the only motions available. We got rid of "lay on the table," because we felt that it's — it's a type of motion that confuses people, and when you lay something on the table, sometimes it never comes back. So we felt, if you want to postpone something, the proper motion to make would be "postpone for a day certain."

PRESIDENT WENSTROM: Are there any questions or any discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: In connection with the explanation of the order, a question just occurred to me. I'm wondering about the form of the motion. Should, for example, there be a motion before the body for indefinite postponement and a delegate might wish to postpone consideration of that motion to a day certain — No. 8 — would the form of his motion be a substitute motion?

PRESIDENT WENSTROM: Delegate Baker, you're requesting information from the Chair. The Chair would rule that it was not a substitute motion.

DELEGATE BAKER: Would it be possible, sir, for you to give an example of how a delegate might then make a motion? Would he simply move to postpone further consideration to a day certain, for example — something like that?

PRESIDENT WENSTROM: That would be in order.

DELEGATE BAKER: Thank you, sir.

PRESIDENT WENSTROM: Are there any further questions? Any further discussion on Rule 31?

I believe the question is on the amendments. Am I right? The question is on the amendments.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted.

Now we're back on the main motion — the precedence of motions.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Oh! Is the motion already made pending?

PRESIDENT WENSTROM. No. You go ahead. You've done that, so we have the motion and we have the second. The question is now on the adoption of Rule 31 as amended.

No discussion? No questions.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Rule 31 is adopted.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I rise to a point of parliamentary procedure.

Inasmuch as Roberts' Rules does not require a second on committee reports or committee motions, can we eliminate that for the entire Session, thus saving a little time? As I understand Roberts' Rules, that a second is not necessary for any committee report or committee motion. I believe the thinking behind

this is that a committee motion is already passed by more than two people or else it wouldn't be presented to an assembly, and I realize this is a small point, but still it saves that much time, and with 28 days, we might get home two days before Christmas. If we are operating by Roberts' Rules, I think this can be eliminated.

PRESIDENT WENSTROM: Well, Mrs. Hendrickson — or Delegate Hendrickson — we are operating on Roberts' Rules whenever Roberts' Rules do not conflict with ours. (Laughter)

That is right. That's absolutely right! We are operating on our Rules. Everything that we have in this little black book, when we adopt this, this becomes our Bible, except for those cases where we have failed to make a rule; then, if we do not have a rule, then we go to Roberts'.

Now, I don't know how to rule upon that question. If the Convention is of the opinion that we should not have a second, why then, of course, we will not have seconds. However, in the meantime, why I will proceed to ask for seconds.

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I move that on committee reports and committee motions we do not require seconds.

PRESIDENT WENSTROM: It's been moved that on committee reports, that we do not require seconds.

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Omdahl. Now, is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." That was feeble! I will rule that the motion carried and that, from here on out, unless I err from habit to call for motion — for seconds, there will be none on committee reports and motions.

The question then is on Rule 32.

CHIEF CLERK GILBREATH: Rule 32 has been deleted in its entirety.

"((Rule 32. MOTIONS NOT DEBATABLE

"A motion to adjourn shall always be in order except when a motion to fix the time to which to adjourn is pending.

"A motion to adjourn, a motion to lay on the table, and all matters relating to questions of order shall be decided without debate.

"A motion for a recess, pending the consideration of other business, shall not be debatable.))"

PRESIDENT WENSTROM: You have heard the reading. Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I move the Committee's recommendation to delete all of Rule 32 be accepted by the Convention.

PRESIDENT WENSTROM: Delegate Kelsch moves that the amendment to the Rules — that Rule No. 32 be deleted.

Is there any discussion?

DELEGATE KELSCH: Delegates, the reason for this motion, as long as — the last one we just had — we set the order and, also, the vote required, and so 32 became unnecessary.

PRESIDENT WENSTROM: Delegate Kelsch, a question from the Chair:

I presume, then, you would like to add to the motion that the rules be re-numbered accordingly.

DELEGATE KELSCH: I so move; yes.

PRESIDENT WENSTROM: Thank you.

The question then is on the adoption of the motion that Rule 32 be eliminated and that the Rules be renumbered accordingly.

Are there any questions?

Hearing none, as many as there are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

We will next have the consideration of Rule 34.

CHIEF CLERK GILBREATH: "Rule 34. CONVENTION FLOOR

"ASSIGNMENT OF SEATS. Except in the cases of the delegates who have been elected as officers of the Convention, the seats of the delegates on the Convention floor shall be arranged in alphabetical order by surnames.

"If a vacancy occurs the person selected to fill the vacancy shall continue to have the seat of the delegate who vacated the position.

"ADMISSION TO FLOOR. No person, other than a Convention delegate, an officer, employee or news correspondent accredited by the President shall be admitted on the floor of the Convention unless by the vote of the delegates. **While on the floor, employees of the Convention may answer questions or inquiries made by the President.**

"The words 'Floor of the Convention' shall mean the space of the main floor of the Convention, excluding the space designated for visitors and for the press.

"PRESS REPRESENTATIVES. The President shall assign accredited news correspondents press facilities in the Convention chamber. News correspondents using cameras, tape recorders and similar devices shall conduct themselves so as not to interfere with the orderly course of the proceedings of the session."

PRESIDENT WENSTROM: You have heard the reading of the Rule.

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: I move the adoption of this amended motion — this amended Rule.

PRESIDENT WENSTROM: Delegate Wicks moves the adoption of the Rule as amended. Is there any discussion?

DELEGATE WICKS: The only addition here is the language —

PRESIDENT WENSTROM: Delegate Wicks, I don't believe your loud speaker is switched on.

DELEGATE WICKS: The only addition here — is this all right now?

PRESIDENT WENSTROM: Yes.

CHIEF CLERK GILBREATH: That section might be out, because the page lights just went out.

DELEGATE WICKS: They don't work.

The only addition is in paragraph 3. This language was added at the suggestion of our President. He felt, without it, he would not be able to ask questions of the employees on the floor.

PRESIDENT WENSTROM: Any questions?

Hearing none, the question is on the adoption of Rule 32 as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Rule 32 as amended is adopted.

CHIEF CLERK GILBREATH: 34.

PRESIDENT WENSTROM: 34. I'm sorry.

Next for consideration, Rule 37.

CHIEF CLERK GILBREATH: "Rule 37. AMENDMENT OR SUSPENSION OF RULES

"While the Convention is not in session, the Rules Committee may amend the rules from time to time subject to the unanimous approval of the president and vice presidents.

"This shall include the right to change the composition of standing committees as regards number, scope, and membership, with the consent of the committee and delegates concerned.

"Upon reconvening of the Convention, any such amendments to the rules shall be presented to the Convention and before they may be deemed thereafter binding must be approved by an affirmative vote of a majority of all the delegates (50) to the Convention.

"The President shall mail each delegate the text of any rule so amended within ten days of the amendment.

“The operation of these rules may be suspended or amended by a two-thirds vote of delegates-elect.

“During the last two days of the Convention, the rules may be suspended by affirmative vote of fifty delegates.”

PRESIDENT WENSTROM: You have heard the reading of the amendment to Rule 37. Is there any discussion?

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I'd like to amend this. Is it in order now or do we wait for one of the committee to move for adoption of the Rule?

DELEGATE GEELAN: Mr. President, I move for the adoption of Rule 37 as amended.

PRESIDENT WENSTROM: Delegate Geelan moves the adoption of Rule 37 as amended.

Now, Delegate Chase.

DELEGATE CHASE: I'd like to amend that Rule, where, under the new language, in the second-to-last paragraph, and insert the following language:

“The operation of these Rules may be suspended or amended by a majority vote of delegates-elect — until such time as these temporary rules are made permanent by the Convention. When these Rules are made permanent, then two-thirds vote of the delegates shall be required to suspend or amend the Rules.”

If I get a second, I'll explain this.

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Delegate Aubol seconded.

DELEGATE CHASE: I'm assuming that these temporary rules will be in use for at least a week or two, and at that time made permanent. Meanwhile, many of us here are not certain just exactly what some of these rules mean. In fact, the Rules Committee themselves, in spite of the fact they have done a very commendable job, are uncertain on some things and some of the questions that have been raised, and I'm thinking of Delegate Baker and Delegate Pearce and many others here. I don't think those questions have been fully resolved. So I believe we should amend this thing and operate under it for a week or so and see how it's going, and be able to change it by a simple majority when we can see that that change should be made.

PRESIDENT WENSTROM: Thank you, Delegate Chase.

Is there any further discussion? Now, do we have the amendment at the desk as offered?

The question, then, is on the adoption of the amendment as proposed by Delegate Chase. Any discussion?

Hearing none, as many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it, and the Rule is amended.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I would like to offer a further amendment to Rule 37, to delete the first paragraph:

“While the Convention is not in session, the Rules Committee may amend the rules from time to time subject to the unanimous approval of the president and vice presidents.”

Well, we're now in session and this is not necessary or even desirable, I wouldn't think.

PRESIDENT WENSTROM: Delegate Rundle moves that the first line in the Rule be stricken. Is there a second?

CHIEF CLERK GILBREATH: The first paragraph.

PRESIDENT WENSTROM: Yes — I guess you're right. It's the first paragraph, I guess.

Is there any further discussion?

DELEGATE BYRNE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: Was Delegate Rundle referring only to the first paragraph of that Rule?

PRESIDENT WENSTROM: That's what he stated, Delegate Byrne.

DELEGATE BYRNE: Well, if you take that out, the second paragraph doesn't have the full meaning, when you stop to think about it.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: The message has been gotten to me from all corners. I would like to restate the motion.

PRESIDENT WENSTROM: Permission is granted.

DELEGATE RUNDLE: I move that one, two, three and four paragraphs be deleted.

DELEGATE SAUGSTAD: Second.

PRESIDENT WENSTROM: It's been moved and seconded that paragraphs one, two, three and four of Rule 37 be stricken.

Now, is there any discussion? Hearing none —

DELEGATE TRENBEATH: Mr. President. I'm sorry. This mike doesn't work.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President. This mike doesn't work. But there is no necessity of this language being in here, except there are other places in the Rules that we have adopted that shows what action was taken prior to the Plenary Session, and you know I don't want to claim any pride of — in inventing any new rules here, but we know our deliberations certainly look upon what has transpired in other states, as to how they set their whole convention thing up, and if we're going to set any example for other states to follow, and they might look at what we have done, then we're pulling something out that just destroys a little continuity in how we originally got started, and I think it might just as well be left in.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question is on the amendment to strike paragraphs one, two, three and four of Rule 37.

As many as are in favor of the motion say "aye," opposed "no." The "noes" have it and the motion fails.

We're back on Rule 37 as amended.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I now move that the Report of the Permanent Rules Committee be adopted as amended.

PRESIDENT WENSTROM: Delegate Geelan, if you'll just hold that a moment.

DELEGATE GEELAN: I'm sorry.

PRESIDENT WENSTROM: We haven't voted on Rule 37. The question then before the assembly is the adoption of Rule 37 as amended.

As many as are in favor of that motion, would you say "aye," opposed "no." The "ayes" have it and Rule 37 is adopted.

Now —

DELEGATE OMDAHL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I move the action by which we adopted Rule 18 be reconsidered.

PRESIDENT WENSTROM: It's been moved that the action by which we adopted — was it Rule 18?

DELEGATE OMDAHL: 18.

PRESIDENT WENSTROM: — 18 be reconsidered. Do we have a second?

DELEGATE ROSENDAHL: Second.

PRESIDENT WENSTROM: Delegate Rosendahl seconded.

DELEGATE OMDAHL: After giving some consideration to our action on Rule 18, on which we left "the fifth day" in the bottom of the paragraph stand, I think that when we think this out, we should recognize that the deadline is now probably Friday at midnight. At least it says "until after the fifth day," which would be the coming Friday. As I understand it, or get the impression, we probably will not be here on Saturday. This means that, if we would move the deadline for the introduction of proposals until noon Monday, January 10th, that would make some — it would give some delegates — 28 of them, as a matter of fact, recorded on the board — an opportunity to think out some proposals that they might want to introduce. I don't happen to have any proposals to introduce, but I think there are other delegates that would like to introduce proposals and think about them over the week-end. And if the motion to reconsider is approved, I will then move that we go — have the deadline moved to noon Monday, January 10th.

PRESIDENT WENSTROM: Is there any further discussion?

The question is on the reconsideration of our action on Rule 18.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no."

The Chair is in doubt. I will open the key and you will indicate your choice.

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Will you clarify what we're voting on, please?

PRESIDENT WENSTROM: You're voting on the reconsideration of Rule 18, and as I recall, Rule 18 is a rule that provided the introduction of proposals. I think we had a debate on it, and it was "five" in the Rule — five days — up until the fifth day, and I believe it was proposed that we go to ten or to eight, and then we defeated that and then we adopted the — we adopted the Rule as it had previously been. I think that's it. Yes, that's right.

DELEGATE CHASE: This motion, then, is only for reconsideration?

PRESIDENT WENSTROM: That is correct.

We will open the key and you will record your choice.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll indicates ayes 66, nays 29, absent and not voting 3. So the motion carries, and we now have Rule 18 before the assembly.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I move that we strike the language in the first sentence of the last paragraph beginning with the word "the", and strike out "the fifth day of the plenary session" and in lieu of those words insert "noon Monday, January 10th."

PRESIDENT WENSTROM: You have heard the motion. Do we have a second?

It's been seconded by Delegate Stanton.

Now, is there any discussion?

DELEGATE OMDAHL: Mr. President, if we do not work this Saturday, as I expect we will not do, and the committees will not be meeting on Saturday and Sunday, so the delegates may be thinking freely on Saturday and Sunday, we'll only be changing the deadline one-half of a working day, and if 38 delegates feel that they ought to have this extra half-day, I think it's worth it.

PRESIDENT WENSTROM: Any further discussion? Delegate Hubrig.

DELEGATE HUBRIG: It might be out of order, again, Mr. President, but I raise the question, again, before we vote, and I think we should know before we vote if we're going to work on Saturday.

PRESIDENT WENSTROM: Is there any further discussion? Is there any further question?

The question then is on Delegate Omdahl's motion to amend the Rules so that proposals could be introduced up until noon on Monday.

Hearing no further questions or discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the motion is carried.

The question before the assembly is now the adoption of the Rule as amended — Rule 18.

Is there any discussion?

Delegate Saugstad.

DELEGATE SAUGSTAD: Did you need a motion to adopt the Rule? I so move. I move that Rule 18 be adopted as amended.

PRESIDENT WENSTROM: It's been moved by Delegate Saugstad that Rule 18 now be adopted as amended. Is there a second?

It's been seconded by Delegate Haugen. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Rule 18 is adopted as amended.

Now Delegate Geelan.

DELEGATE GEELAN: I delayed, Mr. President, thinking maybe there were some other motions, maybe, that they wanted to reconsider, but hearing none, I now move that the Report of the Rules Committee be adopted as amended.

PRESIDENT WENSTROM: It's been moved by Delegate Geelan that the Rules — or the Report of the Rules Committee be adopted as amended.

DELEGATE HARDMEYER: Mr. President.

PRESIDENT WENSTROM: Delegate Hardmeyer.

DELEGATE HARDMEYER: I would like to direct a question to the Chairman of the Rules Committee.

Have you given any consideration to a rule in regards to alternate proposals?

DELEGATE GEELAN: Mr. President. Yes, we have.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I think Delegate Kelsch explained that the Committee has given consideration to all alternate proposals; however, the Committee is not ready to report at this time. I will say, on this matter and on this other matter, the final vote are two unresolved matters, and the Committee will hope to have a meeting promptly on these two matters and any other rules that we think might — the delegates might want to change.

PRESIDENT WENSTROM: Thank you, Delegate Geelan. Any further questions?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delebate Dobson.

DELEGATE DOBSON: I just learned today, Mr. President, that we also have a document called a "Resolution" in this Convention. Will the Monday deadline apply to introduction of resolutions by delegates?

PRESIDENT WENSTROM: Delegate Dobson, it is my understanding and my interpretation that resolutions are not being considered on this particular motion. Resolutions can happen and can come before the Assembly at any time. So I would interpret your question as saying that this does not apply to resolutions.

The question then is on adoption of the Rules as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

I'm sorry, Delegate Hoffner. Did you have —

(Delegate Hoffner shook his head.)

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Then may I just make one more statement here?

The two matters that Delegate Hardmeyer asked about are still unresolved, and I hope the Committee can meet promptly to decide on those things. We will announce the meeting of the Committee, so that any delegate who might have some feeling about the rules that we have amended now, or any of the other rules, will appear before our Committee. And one more thing — and I am going to thank the Committee myself, but I believe if I — that I'm expressing the sentiments of all the delegates when I thank the members of the Rules Committee for their excellent cooperation.

PRESIDENT WENSTROM: Thank you very much. (Applause)

The Chair will recognize Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, now that we have adopted the Rules, I would like to have the attention drawn to Rule 11, and in order for the Chairmen to carry out our duties, we should decide whether we can have a time set for our meetings, and I think, in order for the general public to know when they can come in and appear before a committee, I think the Convention should decide some hour in the afternoon where all the committees can hold hearings.

PRESIDENT WENSTROM: Delegate Hoffner, would you like to offer a proposal or an amendment or a suggestion or a motion?

DELEGATE HOFFNER: Mr. President, just for the sake of discussion, I will say that I move that the Convention recess at three o'clock every afternoon for the next week, to go into committee hearings.

PRESIDENT WENSTROM: It's been moved by Delegate Hoffner that the Convention recess at three o'clock each day for the following week to go into committee hearings.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, what are we going to do until three o'clock?

PRESIDENT WENSTROM: It's strictly up to the wish and the will of the Convention.

DELEGATE RUNDLE: Well, Mr. Chairman. Delegate Hoffner, why don't you, instead of an amendment, make it one o'clock. We have the Rules now. Tomorrow is our third day.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. Delegate Rundle, I was — I just assumed that we could begin to debate proposals until three o'clock in the afternoon. We have our Rules. We have our proposals that have been introduced.

PRESIDENT WENSTROM: Well, Delegate Hoffner — Delegate Hernet.

DELEGATE HERNETT: I don't know — is this thing working?

PRESIDENT WENSTROM: Yes, it is.

DELEGATE HERNETT: In the first place, I don't think there was a second to Delegate Hoffner's motion; but I'll discuss it, anyway.

We determined when the Plenary Sessions are to be called each day — if it's going to be nine o'clock in the morning or if it's one o'clock in the afternoon, or when do we — when do we decide that one?

PRESIDENT WENSTROM: Excuse me, Delegate Hernet.

DELEGATE HERNETT: I, too, would like to know, as a committee chairman, when we can call these meetings. But until we decide when we're going to have our sessions each day, I think we're just guessing, aren't we, as to what we are going to do?

PRESIDENT WENSTROM: All I can answer your question, Delegate Hernet, is it's strictly at the will of the Convention. Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, I think the first thing we should settle, even before we go to Delegate Hoffner's motion, is whether or not we are to hold sessions on Saturdays, and I have a motion in that connection that I would like to make, as soon as I can get in.

PRESIDENT WENSTROM: Delegate Hoffner, will you yield? Would you withdraw your motion until we get this settled?

DELEGATE HOFFNER: Mr. President, I'll withdraw my motion.

PRESIDENT WENSTROM: Thank you. And Delegate Maxwell has the floor.

DELEGATE MAXWELL: Mr. President, I have this motion.

Move that during the month of January this Convention meet in general session on Monday, Tuesday, Wednesday, Thursday and Friday of each week, and that it be recessed on Saturdays.

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: You have heard the motion and it's been seconded. Is there any discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, may I inquire? This would add eight days to the length of the Session, wouldn't it? Four? By one month. And what about — I would like to know — are we still talking a ten-day recess? This also connects with the Saturday business.

Now I know that a lot of people don't want to work on Saturday. I'd like to. I'm maintaining two places of residence. But I kind of suspect I'll be in the minority on that. I'm going to resist the motion.

I would like to know — I think we should settle, if we are still talking recess — well, I'll withdraw that and will ask nothing. Vote "no" on this motion. I'd like to be done with this, and I know others are going to vote their convictions. I thank you.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: Mr. President. This Saturday matter, I believe, can lead to unretractable problems that we have here. There has been considerable discussion, primarily since the meeting in Grand Forks, as I understand — I read notices in the paper of the reversal of the procedure that the Convention has been thinking about, and I'm wondering — this week, in particular, I think we ought to think about the problems about it. Now today we have resolved substantially the matter of the Rules. Yesterday, the various proposals were introduced and will be referred to more so the rest of the week. They are being re-referred to committees. It has been mentioned by many that we will meet in session in the morning and have committee meetings in the afternoon. Now let's stop and think right this week — the waste of time, if this is going to be done, by not reversing that practice. It would seem to me to be very time-wasting if we do not, this week, at least, have committee hearings in the morning to get these matters out of committee and get your committee action taken, and then have your Plenary Session in the afternoon. It would seem to me, from a practical standpoint, as you go further on into the Session, that it would even be more so because, if you have your Plenary Session, where you're going to be cutting off, if you have your Plenary Session in the afternoon, I hope this is understood — that this is not going to be an in-at-nine and out-at-five process. If you get it at one o'clock in the afternoon, or whatever time it might happen to be, and you're not through at five o'clock, you can certainly recess and get to some of the work — a lot of it, if a lot of it is going to take a lot of time — and you can come back that evening. But it seems to me, from a practical standpoint, what is the purpose of having a Plenary Session without anything substantial to have in front of it? In fact, that would be the substantial problem this whole week. The committees certainly have many proposals before them that they — it would seem to me — and I know, in talking with Chairman Hernet of the Executive Functions Committee, that we certainly would like to get going in the morning on that Committee, and I presume that would be some of the judgment of the other committees, also. But, if you stop and think about it, we're going to waste a considerable amount of time by merely meeting here tomorrow morning in Plenary Session and not having committee hearings until, as suggested, one o'clock or three o'clock tomorrow afternoon.

Now there is nothing settled, outside of just straw votes and some suggestions by various members of the Convention, as to how they would like to have this process handled. But I think we ought to stop and think a little bit about the mechanical difficulties we're going to be arriving at by having your Plenary Session in the morning and setting your committee hearings over until the after-

noon. It would seem to me, frankly, to be absolutely reversed insofar as getting your work successfully out of the way. I merely give this to you as an observation. I think we ought to try to resolve it today, because tomorrow and Thursday and Friday, particularly, it would seem to me that we would want to devote as much time as we can in committees to process the work out, with proposals to report to the Plenary Session. We can't let this stuff set in committees forever.

PRESIDENT WENSTROM: May I call the question? Delegate Paulson. Excuse me. The question is on Delegate Maxwell's motion that we work Monday, Tuesday, Wednesday, Thursday and Friday of each week.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I would simply point out I am heartily in favor of Delegate Maxwell's motion. I think debate on the timing of the sessions should come after action on the Saturday recess, and I have a suggestion to make at that time.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

I feel the motion in front of us has strong merit. However, I'm going to vote against it, because I, in reviewing Rule 18 that we have just now adopted, I note that we have a Committee on the Calendar, and it was my understanding that this Committee was to decide the calendar under which we would function, which I presume to be not only during the day, but during the time that we're in session, and I would like to see that Committee function and come back tomorrow morning with a report as to what their recommendations are, and that I really feel that this is the — including the matter of Saturdays — it's before that Committee to decide; and, for that reason, I'm going to vote against this motion.

PRESIDENT WENSTROM: Delegate Hernet. Excuse me. Delegate Cart has the floor.

DELEGATE CART: Well, Mr. President, all I wish to do is to object to carrying out four Saturday vacancies. I think, if we go along for three, that's the limit we should go, because we're going to have to meet all the time we can to finish up. The stenographic committee is going to have to have some time after the work is completed on the floor here, and if we've used up or not used four days, why we're going to be short. I would certainly oppose going any farther than up to the 22nd.

PRESIDENT WENSTROM: Thank you, Delegate Cart. Delegate Hernet.

DELEGATE HERNETT: Mr. President. Well, I'm certainly going to oppose the motion. I don't think that we at this time should commit ourselves for the whole month of January as to what we're going to do on these Saturdays. I assume that many of us would like to go home this Saturday, this week, and there's a possible chance we might want to go home the following Saturday. But I don't think we should plan ahead for the whole month of January. I see nothing — I don't see any need for this motion at all today. I see nothing wrong with, on Friday afternoon, with somebody making a motion to recess until Monday morning. This is a common practice in the Legislature, and I don't see why it won't work here. I certainly hope that we do not commit ourselves to not working on Saturdays for the whole time of this Convention. We may need this time.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I rise in support of the motion. I know there are many delegates here in this assembly that are in the same position that I am. We have to devote some time to our private businesses and professions back home, and my previous experience in some of these Saturday meetings is that you do have a higher rate of vacancies, just because some people do have to get home to attend to some of their business and professional duties. It would be almost impossible for me, as one, to be here every Saturday and work in connection with the duties that we have here, and I certainly don't want to get into the habit of being absent even one day from the deliberations of this

assembly. I think we would still have enough time in the end, if we see that we are going to run short, where we could meet on Saturdays, even in the month of February or, if we ran into a situation toward the end of January where we had to do something, we can certainly undo what we've done here.

But, in having some idea as to when we will be available to our clients and people back home, we ought to know a little bit in advance when we can tell them when they can come to our offices and be seen on Saturdays. And I know it would help me a lot if we had some idea as to when we could be there and when we couldn't. And for that reason, I'm supporting this motion.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: This is my third time on Saturday, and I don't think I'll be through this time. But I don't oppose, myself, working on Saturdays. I'm used to working on Saturdays. But I would only like to know if we're going to work on Saturdays or not — like Delegate Longmire stated — so that we could make arrangements as to the place we're staying here in Bismarck and at the same time telling the people back home, to whom we are somewhat responsible, also, if we are going to be around on the week-end or not. So I would have to support the motion for this Saturday, of not working, at least, or, if we're going to work, at least we can get word back that we're not going to be available. But I think we should know if we are going to work on Saturday or not.

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President, on a point of information:

If we do not work on Saturdays, does this count against the ten days recess? I'm not sure on that, myself. I don't know if other delegates are or not.

PRESIDENT WENSTROM: Good question!

Delegate Pearce, I believe — you were directing that in the form of an infor-

Delegate Chase, I believe — you were directing that in the form of an information question, aren't you?

DELEGATE CHASE: Yes; that's correct.

PRESIDENT WENSTROM: Delegate Pearce, I believe, can answer the question.

DELEGATE PEARCE: Mr. President, in answer to Delegate Chase's question, we — various people have been discussing this for some time, and several weeks ago I conferred with the Attorney General's office — the Attorney General and his First Assistant — and they stated that their opinion, if asked, would be that, yes, Saturdays had to count, and I was unable to persuade them otherwise. So it appears that the Saturdays we do not work will count as one of the recess days. If we took four days, according to Delegate Maxwell's motion, we would have six working days left for a recess.

PRESIDENT WENSTROM: Does that answer your question, Delegate Chase?

(Delegate Chase nodded.)

PRESIDENT WENSTROM: Now I think Delegate Sanstead asked for the floor.

DELEGATE SANSTEAD: Mr. President, I believe that there is a very definite advantage to being home on Saturdays. Certainly, one of our responsibilities is to talk to people at home, to be available for questions and comments, and I think that might well be the fact of the next four Saturdays, if we make ourselves available and if it's known to the public that we're going to be home at those times. I think some of the best advice I've had in the Legislature has been with that little mental health recess on Saturday and getting home and looking at what the people are saying at home on the week-end, and coming back to the session on Monday. And I think anything we do on Saturday is going to be what might in all likelihood have to be done over anyway.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question is on Delegate Maxwell's motion that we do not work on Monday, Tuesday — that we do work. (Laughter)

I thought that was really too good a motion from one of my fellow delegates. But that we do work — there's little difference — Monday, Tuesday, Wednesday, Thursday and Friday of the weeks in January.

Hearing no further discussion, as many as are in favor of the motion say "aye;" those opposed "no." The "ayes" have it.

The Chair will recognize Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, in relation to the time we have on our hands during the next three days, I would suggest that it should be up to your Program Committee or Committee Chairman to set a schedule of committee hearings and I would suggest that they not be all at the same time, so that the delegates can move from one to the other and ask questions about what the other committee has done. Now, we could come in tomorrow morning at nine o'clock and work for half-an-hour to get the details taken care of, and go into a whole day of committee sessions, and then come back in the afternoon, if there are reports to be made and entered into the Journal.

PRESIDENT WENSTROM: Thank you, Delegate Paulson.

Any further discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I'd like to announce that the Bill of Rights Committee meeting set for two o'clock is cancelled.

PRESIDENT WENSTROM: Did the delegates hear the announcement from the Committee Chairman?

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: The Education Committee meeting that was called for two o'clock, as provided, has also been cancelled.

DELEGATE SAUGSTAD: Mr. President.

DELEGATE HAUGEN: —

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Are we open for announcements? Can you receive announcements?

PRESIDENT WENSTROM: We are on this particular order of business. I guess we're open for announcements. Go ahead.

DELEGATE SAUGSTAD: There will be a short meeting of the Calendar Committee immediately following this recess and, namely, in the President's Office.

PRESIDENT WENSTROM: You will meet in the President's office.

Delegate Haugen.

DELEGATE HAUGEN: Mr. Chairman, it was my recollection that the meeting of Delegate Meidinger's committee was called for 1:59. I believe he cancelled it as of two o'clock. Anyway, I will withhold making an announcement of when my committee will meet, until we decide what we're going to be doing tomorrow. Are we going to be reaching a determination on this this afternoon?

PRESIDENT WENSTROM: I think we are, Delegate Haugen.

DELEGATE HAUGEN: Do we have any motions?

PRESIDENT WENSTROM: We have none at the moment. Excuse me. We have no motion before the house, do we?

CHIEF CLERK GILBREATH: No.

PRESIDENT WENSTROM: We have no motion before the assembly.

DELEGATE HAUGEN: Well, Mr. Chairman — Mr. President, I was impressed by the argument of Joe Byrne. I would move at this time that we schedule committee meetings in the mornings — at least for the near future — for the balance of this week — the balance of this week. If I could have a second, I would like to say a few words on that motion.

DELEGATE PEARCE: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Pearce.

DELEGATE HAUGEN: Mr. Chairman, I just can't see what we are going to do as a Convention until we get some committee reports in. I can't see what we're going to do. So I think it's important to get those committee meetings in. We can still meet at 1:00 or 1:30, or whatever period will be required to take care of the formalities, and then even possibly hold committee meetings after that.

PRESIDENT WENSTROM: Delegate Haugen has moved, and it's been seconded, that we hold committee meetings in the mornings for the balance of this week. Is there any discussion?

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Well, Mr. President, I would like to speak in opposition to that. There isn't any reason in the world why we can't meet here for any announcements that you may have, at nine o'clock, and go into committee meetings at 9:30 and go into committee all day. The turn-around was suggested because we could make better use of our time. What are we going to do all afternoon tomorrow, when we'll only meet in committees tomorrow? Are we going to have split sessions of committee meetings? Why don't we just make our announcements here in the morning and go to work on committee work? We'll get plenty of floor work if we have a couple of full days of committee work.

PRESIDENT WENSTROM: Thank you, Delegate Meidinger. Are there any further questions?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I would like to suggest or I'd like to resist the motion of Donnell Haugen at the moment. For one thing, I'd like to have the Calendar Committee meet, or the committee chairmen, and discuss this problem briefly, and, actually, it would appear to me that a short meeting in the morning — general session in the morning, followed by the full day for committee hearings, that we could perhaps accomplish or make more efficient use of our time, and so on. Are there any further announcements or any — is the desk clear. Are there any further announcements from the desk?

PRESIDENT WENSTROM: We have a motion before the body, and that is on Delegate Haugen's motion that the committees meet in the mornings for the balance of this week. Any further questions or suggestions? Hearing none — Delegate Sanstead.

DELEGATE SANSTEAD: Is it clear at this time, Mr. President, whether the committees are going to have the responsibility to, in effect, hold hearings at which public testimony can be received on the proposals before they would be returned to the body?

PRESIDENT WENSTROM: I don't remember, Delegate Sanstead, exactly how that rule reads. Possibly one of the members of the Rules Committee could enlighten us on that. The question was on when we could have — how much notice we had to give before we could hold a meeting and on a particular proposal that the public might be interested in.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, if my recollection serves me right, we took out any requirement beyond notice to the Clerk of the Convention that a committee was in session, and the Clerk is ordered to post that notice, and the reason we did that, we just didn't feel that — at least it was my feeling, I think — that in most cases you heard as much testimony at least in the session that you worked on that you want to hear. I don't know that you're going to get more. I think we've got to get to the business of working on proposals, and I personally would oppose seeing us go on holding more hearings. Now, possibly, if I were on someone else's committee, I wouldn't mind doing it — hearing what they had to say in theirs. But I think there's work to be done and I think the best that we can hope for is to post on the board that tomorrow morning these committees are meeting and will be considering all proposals before them. I don't know what else we can do. We've got to get some proposals so we can start acting on them.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: I agree that there's reason for dispatch; but, at the same time, I don't think that there ought to be any kind of evidence that we are moving here at a rather rapid pace through some of the very deliberate proposals that are in front of us. I think that would be true. It seems to me that, if we go into those proposals, that people at home thought we were going to come in and talk on them, how come they get a call tonight that tomorrow morning they're going to be hearing that proposal, or maybe all day tomorrow they're going to be hearing proposals? I think the committee chairmen — and maybe that can be done in Mr. Saugstad's group — the committee chairmen, in their meetings, all should realize that some of those proposals, at least, are highly controversial and might well want to be opened up. I can think of one in our committee that, except for delegate notice, received hardly any public input, and I've had a number of calls on that resolution and we've assured people that you should be there at such and such a time to talk about that particular proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Any reason for bringing up the meetings in the afternoon? And I think that we should be doing this later on in the afternoon, in case someone from out there in North Dakota wants to come in and appear before us. I think they should have an opportunity to do so.

I agree with Delegate Kelsch that tomorrow morning we can go into meetings and, if we meet all day, certainly we can grind out enough work to start debate the following day, and then we can meet in the morning. I think Delegate Saugstad has a good idea — that the chairmen meet and work out some kind of a schedule. But I do agree that — I do believe that we have set up a rule here that the chairmen have to post the meetings with the Clerk, notice of the meetings with the Clerk, and I think the public should know when these meetings will be held, and even if it's just an hour in the afternoon or an hour in the morning, that the public should know.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: One other point that I might request that the Committee on Calendar consider, and that is the order that they consider proposals. Now, on some of the controversial proposals, we could conceivably hold the hearings three weeks from now, because just in the course of events you aren't going to get to that proposal and they will hold it at four o'clock or seven o'clock in the evening and we can have everybody in the State come in, and that can be arranged; but we should have some idea as to who's going first and in what order. Are we going to take a whole section at once and then move to the next section? Are we just going to take it as we come out of the committee? Are they going to hold back all controversial things? I think there should be some consideration as to how we get at these things and in what order.

PRESIDENT WENSTROM: Delegate Kelsch, I would like to announce to the Convention that, hearing your remarks, it almost sounds like you were eavesdropping at the last meeting of that Committee.

Delegate Jestrab.

DELEGATE JESTRAB: I realize, Mr. President, for this week that we should do whatever gets the job done in the best manner; but I have heard that if we meet in morning sessions, our costs will skyrocket — in Plenary Sessions in the morning. I wonder if Delegate Pearce has information on that.

PRESIDENT WENSTROM: Thank you, Delegate Jestrab.

Delegate Pearce, do you have any information?

DELEGATE PEARCE: I apologize. I was reading proposals in the bill book and I didn't get the question.

PRESIDENT WENSTROM: The question was relative to the difference in the cost of operating the Convention if we hold meetings in the morning, as compared to holding the sessions in the afternoon.

DELEGATE PEARCE: I've heard that mentioned.

I don't know what the cost differential might be, unless it were employee time. I don't know. There's some cost items I haven't thought of. I yield to Delegate Longmire.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, we had this kicked around a little in Grand Forks. However, I wasn't convinced that the cost items were legitimate. The printers there, of course, try to have the Journals out on the desk for every session the day following the business done the day before. So they indicated they would have to have an extra crew to stay on all night to get those out. However, we came to the conclusion that we didn't have to have them out the day following and that the cost items should not be considered in the price. He could bring them on when he could. But I am convinced by Delegate Byrne's remarks that we might be able to make better time here if we did, at least, have our meetings — our committee meetings in the morning and the other meetings in the afternoon and, of course, tomorrow I don't see that it make a great deal of difference, because we could meet briefly and then recess and go into committee meetings. But that was where the cost item arose, anyhow — in printing.

PRESIDENT WENSTROM: Thank you, Delegate Longmire. Any further discussion?

If there is none, the question before the body is on Delegate Haugen's motion that the committees meet in the morning for the remainder of this week.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President, I'd like to move an amendment to that motion. I'm sorry. Our speakers aren't working over here.

I'd like to move that we recess until nine o'clock in the morning and that, following completion of business by the Plenary Session, that we then go into committee meetings.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: You mean — your amendment, then, is to the effect that you amend Delegate Haugen's motion so that it would be, in effect, that except for tomorrow morning, we would open as we did this morning, and then, at the will of the Convention, we go into committee sessions? Are you aware of the proposed amendment? Is there any discussion on the amendment? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President —

PRESIDENT WENSTROM: I'm sorry, your speaker is not working.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: The substitute motion, I think, effectively took care of my motion — the passage of that motion — and I have no objection to that procedure. I would like to announce now, if I may —

PRESIDENT WENSTROM: Will you hold, unless this is pertaining to this motion?

DELEGATE HAUGEN: Excuse me. Yes.

PRESIDENT WENSTROM: Let us — go ahead.

DELEGATE HAUGEN: Yes. I just wanted to point out I think the passage of the substitute motion eliminated any need for a vote on my motion.

PRESIDENT WENSTROM: Well, I think we have the motion before the house, and we have to dispose of it. So the question, then, is on Delegate Haugen's

motion, and as many as are in favor of the motion say "aye;" opposed "no." I'm going to rule that the "ayes" have it, and the motion is adopted.

Now, Delegate Haugen, I believe you had an announcement. Did you wish to make an announcement about — or, no. I'm in error. I'm in error. You're going to make that announcement in the morning.

DELEGATE HAUGEN: Well, I think, for the information of my committee members, I would like to announce that the meeting that was to be held at 1:30, or following this afternoon's session, will be postponed until tomorrow morning, as an announcement at that time will be made.

PRESIDENT WENSTROM: Thank you.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: We've been here two days now and we haven't adjourned. I wonder what the procedure — this is a point of inquiry I'm making — on whether or not we're going to — what are we going to do about the adjourning business, and so forth?

PRESIDENT WENSTROM: Delegate Longmire, I believe you have failed to consult your Journal. I think we adjourned.

DELEGATE LONGMIRE: Well, we may have it in the Journal, Mr. President, but I don't remember any motion to. That's fine, if we did.

PRESIDENT WENSTROM: Any further discussion on any matter to be brought before the Convention?

DELEGATE LONGMIRE: Mr. President. If a motion for adjournment is in order — it's not in order. I withdraw it.

PRESIDENT WENSTROM: That's sort of a — well, I guess I don't have the right attitude. I would like to revert back on our agenda — I believe it's the eighth order of business — for announcements, and I would like at this time to announce the members of — officially announce the members of the Committee on Calendar — they consist of Delegate Saugstad as Chairman, Delegates Maxwell, Hoffner, Longmire, Haugen, Meidinger and Hernet — the records should indicate — Delegate Saugstad, did you request a meeting at some time here for that Committee?

DELEGATE SAUGSTAD: Yes; immediately following our recess or adjournment of this session, meeting in the President's office.

PRESIDENT WENSTROM: The committee chairmen, then, on the substantive committees, are aware that Chairman Saugstad is calling a meeting of the Calendar Committee immediately after adjournment.

Now, Delegate Longmire.

DELEGATE LONGMIRE: Renew my motion, Mr. President.

PRESIDENT WENSTROM: Delegate Longmire moves that this assembly be now adjourned, and it's been seconded by Delegate Hildebrand.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and this group will stand in recess — or in adjournment until nine o'clock tomorrow morning.

(The Plenary Session adjourned at 4:37 P.M., Tuesday, January 4, 1972, until 9:00 A.M., Wednesday, January 5, 1972.)

V O L U M E I I I

(January 5, 1972)

MORNING SESSION

(The third day of the Plenary Session commenced at 9:10 A.M., Wednesday, January 5, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is The Reverend John H. Nicolai, Pastor, Trinity Lutheran Church, Bismarck, North Dakota.

REVEREND JOHN H. NICOLAI: Let us bow our heads in prayer.

Eternal and Almighty God, we turn to Thee on this new day, thanking Thee for Thy continued presence and your daily grace. As the members of the Convention proceed in these beginning days, guide and direct them. We thank Thee that Thy Holy Spirit does break into the lives and minds of people and leads them into right and correct ways, and so move here that a constitution may be established that will be right for the people of this State and pleasing unto Thee.

In the name of Jesus Christ, we pray. Amen.

PRESIDENT WENSTROM: We will have roll call. The Clerk will open the key. You will reflect your presence.

Has every delegate recorded his presence. We will close the key.

The roll discloses 95 "ayes" — or present, three absent. A quorum is declared.

We will be on the fourth order of business, Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the third day of January, 1972, and recommends that the same be corrected as follows:

On page 87, line 44, delete "didn't" and substitute in lieu thereof "don't."

On page 87, line 57, delete the balance of the line following the words "first thing," and insert in lieu thereof "to do is to kill all the lawyers."

On page 93, in lines 2 and 3, delete "Legislative Functions" and substitute in lieu thereof "Education, Resources and Public Lands."

On page 93, in lines 34 and 35, delete "Preamble, Bill of Rights and Suffrage" and substitute in lieu thereof "Legislative Functions."

On page 95, in line 37 and 38, delete "Preamble, Bill of Rights and Suffrage" and substitute in lieu thereof "Legislative Functions."

On page 99, line 23, delete "Allen" and substitute in lieu thereof "Allin."

And when so corrected recommends that the same be approved. Delegate Simonson, Chairman.

Delegate Paulson moves that the report be adopted.

PRESIDENT WENSTROM: You have heard the Report of the Committee on Revision and Correction of the Journal. It has been moved and seconded that it be adopted.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. The report is adopted.

We will be on the eighth order of business, Communications and Announcements.

CHIEF CLERK GILBREATH: I would like to ask the delegates, to facilitate distribution of the material by the pages, would you please not lock up your proposal books or your Journals in your desk or remove them from the chamber. If they're not here, we are not able to keep them up to date. I would also like to ask you to add the zip codes on your Journal mailing list, if at all possible.

The Executive Functions Committee will meet on Wednesday, January 5th, at 9:30 A.M. in Room G-5 and 6.

The Public Information Committee will meet Thursday at 4:00 P.M. to discuss post-Convention activities with members of the North Dakota Extension Council. Several Council members will be here Thursday.

DELEGATE SCHEEL: Mr. President.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I would like to be put on the eighth order of business.

PRESIDENT WENSTROM: We are under the eighth order at this time.

DELEGATE SCHEEL: I would like to make an announcement that a group of delegates feel that, to this point, they have been knowledgeable, perhaps, in only one-sixth of the Constitution, each of us only having worked on one of the six substantive committees. We would like to know a little bit more about the rest of them.

Now, with the limitations imposed by 30 days of the Plenary Session, it appears necessary that we employ some other means. And so, reviewing the alternatives open, it appears that a better way might be to schedule meetings in the evening. We want to do it on a rather informal basis. So we did contact, through myself, the Highway Department, and they agreed that they would reserve a room over there — the Highway Auditorium — for meetings at 7:30 each evening, and I believe it would be propitious for us to do so.

Now, on that basis, we have scheduled one meeting for tonight and we look at more in the future. The one tonight will be on the right to work, and we have looked at these issues in the order we would think that they would create interest among the delegates.

Now, first of all, we must say that these are for the information of the delegates and, consequently, no one will be allowed to take part in them, except delegates. Tonight's meeting will be moderated by Delegate Kessel and will have 15-minute limitation on the advocates of right to work and on the opponents of right to work. There can be either one, two or three, or more, advocates; the same number of opponents; but, altogether, they are allowed 15 minutes on this panel. After that, it's thrown open to questions and discussion from the floor. We emphasize that the press will probably be there, if they wish. It's open to anybody; but only the delegates will be allowed to participate.

Now, we look at the other subjects coming up here, and of course we're wide open to any suggestions you have. I have talked to some others that might moderate some of these subjects, and we look at unicameral versus bicameral as probably being one of the next things that would be of interest to all of us. After that, it would be perhaps reapportionment — not necessarily in that order — and reorganization of the executive branch of our government.

With that announcement, I'll just conclude to say that this will be held tonight at 7:30 in the auditorium of the Highway Building. All of you are welcome to participate and to be there; and if anyone has any other questions or announcements on it, I would appreciate those. Thank you.

PRESIDENT WENSTROM: Thank you.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate — or Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, the Committee on Education, Resources and Public Lands will meet at 9:45 in G-1.

PRESIDENT WENSTROM: Thank you. Delegate Tudor.

DELEGATE TUDOR: Mr. President, are we still on the eighth order of business?

PRESIDENT WENSTROM: We are on the eighth order.

DELEGATE TUDOR: May I make an announcement?

PRESIDENT WENSTROM: You may, sir.

DELEGATE TUDOR: Being a history buff, I have felt, since the Convention assembled, that a few words — maybe one or two minutes — should be said about an individual whose heritage we honor.

Even as the delegates to the original Federal Constitutional Convention were inspired by the work of George Mason and Thomas Jefferson, so the original delegates to the First Constitutional Convention in North Dakota were inspired by the skeleton draft of a constitution which was written by Judge James Bradley Thayer.

It so happens that in a tin box in the law library at Harvard University repose these original documents. This box is labeled "Thayer Draft — North Dakota State Constitution."

I have probably the only copy of this original draft in the State.

James Thayer was born in 1831 at Haverhill, Massachusetts. With the aid of friends, he entered Harvard College in 1848. After a brief period of teaching, he entered the Harvard Law School in 1854. In December 1856 he was admitted to the Boston Bar.

In 1874, having previously refused a Harvard professorship of English, he accepted the professorship in the Harvard Law School which he held for the remainder of his life. This period witnessed great changes in the school, resulting from Dean Langdell's introduction of the case system of study and teaching. Langdell, Thayer and James Ames together laid the foundation for the future success of the method of the school.

Aside from this contribution, Thayer's reputation rests on his work in constitutional law and in the law of evidence. On both subjects, he became recognized as the leading scholar in the United States.

In regard to constitutional law, to which Thayer also devoted himself, he early adopted and always upheld the view that no legislative act should be held unconstitutional unless it was so beyond a reasonable doubt and, further, that the function of a constitution is to lay down in general terms broad fundamental principles. "Constitutions," he said, "were not made to be codes of laws or to embody the opinion of a momentary majority."

On questions of local, as well as of national politics, his tongue and pen were also at the service of what he deemed the righteous cause.

He died at his home in Cambridge in 1902.

Thank you for your indulgence.

PRESIDENT WENSTROM: Thank you.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: The Committee on Finance and Taxation will meet approximately fifteen minutes after recess in the Blue Room — I hope about 9:45.

PRESIDENT WENSTROM: Thank you.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I'd like to announce that the Legislative Functions Committee will meet about fifteen minutes after recess, and I would like to report that it's going to be a very important meeting.

Now that we have adopted the Rules, we find for sure that we do not have a majority report on the unicameral. We have two minority reports.

PRESIDENT WENSTROM: Delegate Hoffner, I believe now I should say I've heard everything!

Thank you very much.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I would like to announce that the Bill of Rights Committee will meet after this session closes, in the Lewis and Clark Room.

PRESIDENT WENSTROM: Thank you, Delegate Maxwell.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: The Committee on the Correction of the Biographies has met and we have received complaints, and they are duly noted and a few

minor ones must be overlooked. For example, I understand John Paulson was not born, and we regret this oversight. (Laughter)

That's not an error, you say? I don't know. But there's one serious error that was made, but I don't know if I should blame this on an excellent assistant at the University — Lloyd Wright, who is a very staunch Republican. But Delegate Trenbeath over there suggests that Delegate Sinner is not recovering from back surgery, but from a change of party that showed up in his biography. (Laughter)

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, the Judicial Functions Committee will meet in the Gold Room fourteen minutes after we recess today.

In order to expedite some of the work of these committees, Mr. President, if Delegate Hoffner has no objection, sometime today I want to move that the bicameral - unicameral problem he has been referred to the Judicial Committee. We'll straighten it out!

PRESIDENT WENSTROM: Thank you, Delegate Longmire. Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President. I — well, I'll ask the Chair, first: Is it — will the remarks of Dr. Tudor be placed in the Journal and, if they're not, I would move that they be placed in the Journal.

PRESIDENT WENSTROM: It has been moved that the remarks of Dr. Tudor be placed in the Journal.

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate O'Toole.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the remarks of Delegate Tudor will be placed in the Journal.

Any further announcements? Mr. Clerk, is the desk clear?

CHIEF CLERK GILBREATH: It's clear.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: May we be on the eleventh order for a moment?

PRESIDENT WENSTROM: Without objection, we'll be on the eleventh order of business.

DELEGATE LONGMIRE: Mr. President, one of the very fine members of my Committee has left a note with me, and I understand that there's one at the desk, that because of an emergency he had to be called away. I'm speaking of Delegate Gipp. I believe we had one or two other absences this morning. We know that Delegate Sinner is ill.

So, Mr. President, if you would accept it, I would like to move that all three of the absences this morning — I understand Delegate Butler also has some problem — be excused, because of their absences, because it's obvious that they have good reasons for that.

PRESIDENT WENSTROM: The record will show, Delegate Longmire that the three delegates that are absent this morning will be excused.

I do have a written request from Delegate Gipp as to the reason for his not being here today.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I don't know what order this is on, but I'd like to ask a question.

PRESIDENT WENSTROM: You may ask a question.

DELEGATE HERNETT: This order of business — Delegate Longmire referred to the eleventh order of business, which, I see, is the second reading and second passage of proposals.

PRESIDENT WENSTROM: Delegate Hernet, I think that's typical.

DELEGATE HERNETT: I'm reading this.

DELEGATE LONGMIRE: Well, this is my own copy.

DELEGATE HERNETT: That's what I'd like to know — is where he finds this order.

PRESIDENT WENSTROM: Well, Delegate Hernet, I think that the result — I think that because the Rules have been amended and reamended, that a number of these things are — the numbers are not correct, and I'm sure that when the new cards come out today, that this problem will be alleviated.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Would you recognize Delegate Hernet for a moment of apology?

DELEGATE HERNETT: I would, Mr. President, but I don't know what order of business that would be. (Laughter)

PRESIDENT WENSTROM: Well, I think that the delegates are especially sharp this morning, but I think we better get on with the work at hand.

The desk is clear.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President. I move that we recess for committee hearings.

PRESIDENT WENSTROM: To a time certain or to —

DELEGATE RUNDLE: The time set by the President; unless you want a time certain. I'll put it in there.

PRESIDENT WENSTROM: Well, Delegate Rundle, I think it would be pretty much up to the will of the Convention. If they want to come back at one o'clock, fine. If they want to continue to work on the committee hearings, that's fine.

DELEGATE RUNDLE: Well, I'll compromise with the remarks. One-thirty.

PRESIDENT WENSTROM: One-thirty?

It has been moved that the Convention do now recess until one-thirty.

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: It has been seconded by Delegate Nothing.

A question — just an explanation here, before we vote on this.

One of the reasons that I have — or I should say the reason that I have possibly been made to stall here a little bit on getting a second is because the gentleman down here that is taking a verbatim record of the proceedings of the Convention has requested that the name of the person making the second be — that he be given that. So, when I have asked who made the second, to get the name, it's for the gentleman down here to put it on the record.

Now we will vote on the motion before the house.

As many as are in favor of standing in recess until one-thirty, say "aye;" opposed "no." The "ayes" have it and we will be in recess until one-thirty.

(The Session recessed at 9:32 A.M. until 1:34 P.M., the same day.)

AFTERNOON SESSION

PRESIDENT WENSTROM: The Convention will please come to order. May we have order in the Convention? We'll be on the fifth order of business — reports of standing committees.

CHIEF CLERK GILBREATH: "Mr. President: Your Committee on Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-14 has had the same under consideration and recommends that the same be amended" —

PRESIDENT WENSTROM: The question is on the adoption of the committee report.

CHIEF CLERK GILBREATH: — "and when so amended, recommends the same do pass.

“Delegate Longmire, Chairman.”

Delegate Longmire moves the same be passed.

DELEGATE BILLEY: Second.

PRESIDENT WENSTROM: Any discussion? Hearing none, as many as are in favor of the motion say “aye;” those opposed “no.” The “ayes” have it and we have had adopted our first committee report.

Committee Proposal No. 1-14 will be placed on the sixth order of business for tomorrow.

CHIEF CLERK GILBREATH: “Mr. President: Your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-22 has had the same under consideration and recommends the same do pass.

“Delegate Haugen, Chairman.”

Delegate Haugen moves this report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the committee report on Committee Proposal No. 1-22.

Is there any discussion? Hearing none, as many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and Proposal No. 1-22 will be placed on the tenth order of business for action tomorrow.

We have nothing further at the desk.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: May we be on the twelfth order of business — Motions?

PRESIDENT WENSTROM: Without objection, we’ll be on the twelfth order of business.

DELEGATE GEELAN: I move that Rule 16, which is the rule on Order of Business, be amended as follows:

In the eighth order of business, following the word “Communications” add the words “and Announcements.”

PRESIDENT WENSTROM: Does the desk have the proposed amendment?

The proposed amendment is to section 8, Rule 16, to add the words, following the word “Communications,” “and Announcements.”

You have heard the proposed amendment to the Rules. Is there any discussion? If not, as many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and the Rules are amended.

We will be back on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: “Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-1 has had the same under consideration and recommends that the same do pass.

“Delegate Maxwell, Chairman.”

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report No. 1-1.

Is there any discussion? Hearing none, as many as are in favor of the adoption of the report will say “aye;” opposed “no.” The “ayes” have it and this will go on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: “Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-2 has had the same under consideration and recommends that the same be indefinitely postponed.

“Delegate Maxwell, Chairman.”

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the report — Proposal No. 1-2 — which calls for the indefinite postponement of Proposal 1-2.

Is there any discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I would like to explain that the purpose of moving to indefinitely postpone this article, which comprises the entire Bill of Rights section, is merely so that the Committee can resubmit this article in separate sections.

PRESIDENT WENSTROM: Are there any questions?

The question, then, is on the adoption of the committee report that we indefinitely postpone Proposal No. 1-2.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I have a question.

Is the intent of this Convention that we break up each of these proposals that have been combined as they were submitted by the committee report into individual sections?

PRESIDENT WENSTROM: Delegate Maxwell, would you care to answer?

DELEGATE MAXWELL: Mr. President. In the case of our committee, that is true; however, I believe there are some committees where it will not be true.

PRESIDENT WENSTROM: Any further discussion? Yes, Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President, under our Rules, is this the last chance? Supposing someone likes the present constitution — those sections of it. Is this the last we're going to hear of it?

PRESIDENT WENSTROM: I don't — I don't follow you.

DELEGATE RUNDLE: Well, on an indefinite postponement of the entire thing —

PRESIDENT WENSTROM: Maybe — Delegate Rundle, I think, before we vote on this proposal or on this motion, I'm going to ask that the Chairman of the Committee on Calendar — I believe the Committee has been in session this morning and the committee chairmen have agreed on a pattern to follow, and I think that, in fairness to the members of the Convention — maybe I did take this motion ahead of time — but I think we will ask that we just hold the action on this one in abeyance until we hear the report of the Committee on Calendar. I'm going to ask Stan to report at this time. We'll just hold this action on this in abeyance until after you have heard this report.

DELEGATE RUNDLE: Thank you very much.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: President Wenstrom, Delegates:

The Calendar Committee, after — met this morning. At that time, each of the chairmen had met with their respective committees. It developed that the chairmen of the various committees decided among themselves that, because of the highly-controversial nature of some of the material in some of the proposals — I'm talking now about some of the proposals that contain a considerable number of sections — the one that is before us now is a good example, in that it contains controversial — some controversial sections — and that because of the controversial nature of a proposal containing several controversial sections, it was felt that we would expedite handling of these controversial issues on the floor if they were separated and came in as separate proposals.

Now, this does not follow that — it does not necessarily follow that there will be a separate proposal for each and every section — that is, related materials can still be together in several sections under one proposal, but in this manner — in the manner that has been reporting now, the motion to indefinitely postpone Committee Proposal No. 1-2 — there will be a series of proposals entered as committee proposals covering this same area. Now that committee will decide — the committee itself will decide which of these articles it will combine in a proposal.

DELEGATE HOUGEN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: Mr. Chairman, do I understand the Committee on Preamble, Bill of Rights and Suffrage —

PRESIDENT WENSTROM: Delegate Hougen, I doubt that your speaker is working.

DELEGATE HOUGEN: Am I heard now?

PRESIDENT WENSTROM: Yes.

DELEGATE HOUGEN: Do I understand, Mr. President, that the Committee on Preamble, Bill of Rights and Suffrage is going to reintroduce all of Committee Proposal 1-2?

PRESIDENT WENSTROM: That is correct. But it will be broken into one, two, three, four sections.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, for the information of the delegates, am I correct in understanding that where the recommendation of a committee is for an indefinite postponement, that we will go on the board and a recorded vote will be taken?

PRESIDENT WENSTROM: Not necessarily.

DELEGATE KELSCH: I think indefinite postponement requires 50 votes, doesn't it? I just want to make it clear to me. Do the delegates understand that the report is for an indefinite postponement and that that carries, in the end, a proposal for amendment or for do pass; that it will get another chance to review it the next day on the calendar?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I believe that would be taken care of, Delegate Kelsch, unless somebody wants to call for a division, because the record will show that it did pass or fail, and it would have to have 50 votes to pass, or at least the majority that is here, and I don't think, as a matter of practicability, if that's the right word, that we would be faced with it, unless somebody wanted a division.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. During the noon hour, a number of us had lunch together and we were talking about this very thing, and we — at our meeting this morning, we didn't talk about the minority reports.

Now, all the minority reports — and I missed part of your discussion, Delegate Saugstad — I was working on this thing I'm putting together — we didn't talk about minority reports. Not all minority reports would have to be renumbered and, since minority reports — some of them take in two sections, and if the new proposal doesn't necessarily deal with these two sections, that would also have to be renumbered and reintroduced, and I'm just wondering if this Convention — if the majority of this Convention couldn't pass the motion that I have scratched down here, and if that wouldn't take care of our problem, since not all committees are talking about splitting up their proposals: That Committees be allowed to bring to the floor portions of their respective proposals on a section-by-section basis or with sections grouped according to subject matter or in some logical way as the members of the Committee see fit.

Now: Then we get away from reintroducing bills. We get away from withdrawing our proposals. In our Committee, for example, the people's section would be still the same proposal. I think the committee members mostly are agreed that this would stay the same. So only in the legislative portion of it would the committee divide that into a group of probably three different sections. That would be brought to the floor, voted on, put in the Journal, recorded as voted on and disposed of. They are identified as sections and proposal heads in our Journal — in our bill books — and I'm wondering if we couldn't have a discussion on that and if this wouldn't be a solution to our problem.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. We are not necessarily — we do not have to change every word in the Constitution. We may change them all; but, as a matter of public opinion, this motion may not mean a thing — to indefinitely postpone. But it has a pretty tough sound. In a lot of cases, it has more implications than show up, and I question it would be wise for one of our first major pieces of business to indefinitely postpone the first 24 articles, including the Pre-

amble, even though we'd do it later. I think this would be a poor way to start — to tell very many people, who do not want everything changed.

I'd oppose this motion very much. I don't think it's in time. When they come in with it and it's all settled, then would be the time to kill out — knock out the ones you don't want. I think it's unwise from a public-sentiment standpoint, if nothing else.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, now, Mr. President, it would seem that this motion is simple on its face; but there are certain mechanics that the desk force have to go through with in order to properly get these proposals before us, and one of them is that they have to have in full the proposal that's being considered by the Convention at that time. And it was my understanding this morning, in our Calendar Committee meeting, that the reason for handling it in this way or in some other way would be so that the Clerk would have before him the exact proposal that was being considered and voted on at the time we did act on it.

I don't think the public is going to mind what we do the first day or the second day or the third day. What they're going to be considering is what we did the last day, with the full document before them. I don't think we need to worry about, at this moment, starting something or changing something and starting over again on it, and according to the desk force, according to our Secretary, who appeared before us, this is the easiest way mechanically to do it.

Now it could be done one other way — through the proposal or through the Chairman of the Committee asking for unanimous consent of the Convention to withdraw the proposal and then start over again in the manner proposed. But it was a question of orderly procedure and time saving and mechanics that I felt that we had, at least, an understanding on in the Calendar Committee that we would handle it one or the other of these two ways — namely, indefinite postponement or withdrawing it with unanimous consent.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: One of the reasons that the Bill of Rights Committee would like to submit separate sections is that in Proposal 1-2, there are 27 separate sections. Of those, at least a dozen are noncontroversial, and we could take rapid action on them and get them before this assembly. There has been some restlessness amongst the delegates because there has been no work that has been ready for them to sink their teeth into. We can act quickly and bring before this assembly quite a few sections to start looking at, if we can separate them. However, if we must wait until all 27 sections have been dealt with in our Committee, many of them highly controversial, several of which we expect to have extended public hearings on, we can't present anything to this general session for two or three weeks.

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I think I was following what Delegate Hoffner was suggesting or asking. Would it — and I'd like to address this to Judge Maxwell: Would it be feasible to introduce to the Convention your proposals by keeping numbers such as 1-1 and adding a subnumber that referred to that particular section, such as 1-1-7, 1-1-20 — and what other ones were not of a nature that would be controversial?

DELEGATE MAXWELL: Mr. President, if I may respond.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Yes, that would be possible; but, as I understand it, there would be a great deal of mechanical difficulty involved in that kind of an arrangement. I don't know just what all those difficulties are, because I'm not that familiar with this type of legislative proceeding. But the Chief Clerk has indicated that it would be extremely difficult to try to keep the matters straight, if it's handled on that basis.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, after listening to this discussion, it seems to boil down to one simple thing: We want to get the committee report back before the committee to revise it, and if it's going to be a cloud on the record by using "indefinite postponement" as the terminology, I think the other method suggested by Delegate Longmire that the committee report be withdrawn under unanimous consent and then the committee would have it back and they could take whatever action was necessary.

PRESIDENT WENSTROM: Any further discussion? The question before the assembly is on Delegate Maxwell's motion on the committee report that Proposal No. 1-2 be indefinitely postponed.

As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it.

DELEGATE HERNETT: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I'm sure some on the committee are wondering why I'm not making a similar motion, but I think I'm going to hold this in abeyance until tomorrow and give our Calendar Committee another day to talk this over. And I agree — I think it would look better if we withdraw this, if we are going to, rather than indefinitely postpone it, and so I'll tell my committee I'm not going to make this motion, as we decided to, and we'll probably do it tomorrow morning. I would like to see us at this time, as soon as our regular work is completed, to recess and let's get back to the business of committee work.

PRESIDENT WENSTROM: We have an announcement at the desk.

CHIEF CLERK GILBREATH: Trinity Lutheran spaghetti supper January 6th, Trinity Lutheran Church, serving from 5:00-to-7:00 P.M., at 310 Avenue A. Adults, a dollar; youths from six-to-twelve fifty cents; children free. Free babysitting service.

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: Are we on the eighth order?

PRESIDENT WENSTROM: We may be on the eighth order, without objection.

DELEGATE SIMONSON: I don't know if it's a coincidence or Delegate Sinner's well-known underground communications, but this morning I used Scope and George showed up this afternoon. So I personally would like to welcome George, and I know the rest of you are happy to see him here, too. (Applause)

PRESIDENT WENSTROM: Thank you, Delegate Simonson.

The desk is clear.

DELEGATE SAUGSTAD: President Wenstrom.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I move that the Plenary Sessions begin at 9:00 A.M.

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: It's been moved that we establish an opening time for the opening of the Plenary Session, and it opened at 9:00 A.M.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: The reason for that — for setting a definite time — is so that the committee chairmen can plan their committee meetings and can set definite times for their committee meetings. This is particularly important if there are to be public hearings, and there will be people appearing before the committees, and at any later date or sometime in the future, of course, or any time, by motion, this body can elect to change the meeting time.

PRESIDENT WENSTROM: The question is on Delegate Saugstad's motion that we establish a definite time for opening the morning sessions of the Plenary Session.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: There will be a very brief — very short meeting of the Calendar Committee immediately following the recess. And are you ready for a motion for a recess?

PRESIDENT WENSTROM: Delegate Hoffner has a motion.

DELEGATE HOFFNER: Mr. President. Has this group then made the decision that the method of removal should be by indefinite postponement or by withdrawal?

PRESIDENT WENSTROM: Delegate Hoffner, I would have to say that they made a decision on one proposal.

DELEGATE HOFFNER: Okay. I'd like to ask the question: Would it be possible for the desk to handle the suggestion I have made in a motion, and I would repeat the motion, if it is so desired.

That the committee pass out — like my committee decide to pass out section 8 — that that section be put on the calendar with an identity of it as 1-7, section 8, Legislative Functions, and then, if it's approved, that that be entered in the Journal as such and disposed of.

Would this create a real desk problem?

PRESIDENT WENSTROM: Delegate Roy — or Clerk, would you answer that?

CHIEF CLERK GILBREATH: I can see no way that we could handle it by breaking it up in that way.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I then move that the Convention give the unanimous consent to the Legislative Functions Committee withdrawing Committee Proposal No. 1-7.

PRESIDENT WENSTROM: Delegate Hoffner has moved or requested unanimous consent of the Convention to withdraw Proposal No. 1-7.

DELEGATE HOFFNER: If I could get a second —

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It has been seconded.

DELEGATE HOFFNER: And the Legislative Functions Committee has talked about this. Their intention is not to change any portion of 1-7, but to break it down into groups of sections — into probably three or four proposals, instead of one proposal containing umpteen sections — a total number of 29 sections, and I certainly hope that the Convention grants us this privilege, so that the Committee can meet shortly after recess and go to work reintroducing new sections — new proposals.

PRESIDENT WENSTROM: The question is on Delegate Hoffner's request that the Convention grant unanimous consent to the withdrawal of Proposal No. 1-7.

As many as are in favor of his motion will signify by saying "aye;" opposed "no." You have the unanimous consent of the Convention.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, in the enabling legislation for this Convention, passed by the 1971 Legislature, there's a provision, as you know, for ten recess days, and these days can be used for committee meetings, if necessary. Well, it occurs to me that tomorrow, at least, probably 95 percent of our time will be consumed in committee meetings. If we meet here in Plenary Session, we're using one of our 30 days, and I don't think it will be used to any good purpose, because what business is transacted will probably be of a routine nature that can be handled in a very short space of time at a subsequent date. So I think we should at least consider the possibility of how we're going to allocate these ten recess days, because it seems to me that it might be a good idea to use one of them this week.

PRESIDENT WENSTROM: Well, Delegate Dobson, I believe that we had a motion yesterday to not work Saturday, and if we don't work Saturday, we have used one of those this week.

DELEGATE DOBSON: Mr. President. Mr. President, that is true, if we don't work on any Saturday, that we will take up probably six of the ten recess days, leaving four, and we probably want to save a couple for about three-fourths of the way through the Convention. But if we do meet in Plenary Session tomorrow, for example, it will be day four, and it seems to me that we're going to need all the days possible later on, when we're debating substantive matters.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

Along the line of what Delegate Dobson said, personally I prefer to keep the ten days to the latter part of the session, primarily because no one will get paid for those days nor will they receive any expense money, as I understand it, and sometimes it has an effect of making people work harder to accomplish the job when they know they're not going to be paid for being here and they're on their own expense money. But I think, in preparing the budget, and perhaps the Budget Chairman could answer it — I would assume it was prepared on the basis of 30 days for delegate expense and delegate per diem.

PRESIDENT WENSTROM: Any further comment?

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I think you gentlemen and ladies are overlooking the fact that, if we take a recess day tomorrow, we save a day out of the 30. We haven't lost anything. If we meet in committee, everybody will get paid for doing committee work, at \$25 a day, and they will earn their expense money. You won't lost any expense money there and you really haven't lost any time, but you have added a working day at the tail end of the Session when you may need the time to get the work done. I don't know whether it will work out that smoothly, but it seems to me that you are saving a working day, as against a recess day.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: My thought would be that we may need to take a week off later in the session, after we've gone through all the material once, and to allow the delegates an opportunity to go back to their respective districts to get some more thinking on the matters, give them a time to mull over some of the decisions they have made, and it will give the Styling and Drafting Committee an opportunity to catch up with their work, give the rest of the staff a chance to catch up with their work, and if we're going to take, say, a full week off, that will be five or six weeks as of today, and if we take of the four Saturdays in January, that would be our ten days, and I have a sneaking suspicion some of the delegates are also going to want to count several of the Saturdays in February as recess days. So I'm more concerned about the fact that we'll run out of recess days before we really need them.

PRESIDENT WENSTROM: Any further comments?

For the information of the Convention, we do not have a motion before the house.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, just a few minutes ago we unanimously agreed to have a proposal withdrawn, and I think any one of us, probably, that said "no" in jest or not, it would have remained where it is, and I'm just wondering if Rule 33, which sets forth the precedence of motions, eight — or excuse me — Rule No. 10 provides that to refer to a committee, that it only takes a majority of those present to do that, and if a report has come in from the committee, it is now back in the hands of the assembly. It would seem to me that all it would take then to refer it back to that committee would be a majority, instead of

having to have unanimous consent. I'm just wondering if the Chairman would make a ruling on that — as to whether or not that rule would be applicable in that case, because I think it could save some time.

PRESIDENT WENSTROM: Well, Mr. — Delegate Nething, we had two situations here; we had one where we indefinitely postponed one proposal in order that the committee can break it down — break the proposal down into a number of sections and reintroduce them. The other one was the process of withdrawing in place of indefinitely postponing, and by the Rule, it states that it requires unanimous consent of the assembly to withdraw. However, had Delegate Hoffner not received unanimous consent of withdrawing, he simply had to rephrase his request and move that the rules be suspended and that he be permitted to withdraw his particular proposal. Under those terms, he would only need a two-thirds vote of the Convention.

I hope that — I don't know whether that answers your question, but I may be not entirely sure on your question.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Just yield to Delegate Nething first, will you, Delegate Hernettt?

DELEGATE NETHING: Mr. President. Thank you, Delegate Hernettt.

What I'm thinking about, of course, when you indefinitely postpone a proposal, it's gone — there's nothing to take back to work with — and of course I realize that at this time the committee can come out with their own proposals because all they have to do is introduce them. But, as I understand the Rules, after the twentieth day, this will no longer be possible, and so at that time we're going to have a method, I think, where a majority simply will permit it to go back to the committee.

Now, two-thirds — I think you're right — to suspend the rules would permit Delegate Hoffner's situation to function; but if we indefinitely postpone after 20 days, there's nothing left to take back and the committee cannot bring up and introduce new proposals at that time. That — so I —

PRESIDENT WENSTROM: Again, excuse me now. I'm not trying to argue the point with you. But, again, the Rules that we operate on are strictly man-made rules and, if it's the will of the Convention that this particular proposal be reintroduced, they will reintroduce it, if you again fear the rule that two-thirds vote would suspend the rule and bring it back.

DELEGATE NETHING: I so agree.

PRESIDENT WENSTROM: So I think that — I don't think it's a problem.

DELEGATE NETHING: It may get to the point where a two-thirds vote in this assembly is going to be difficult to get, and that's what I was looking ahead for.

PRESIDENT WENSTROM: Delegate Hernettt.

DELEGATE HERNETT: Well, Mr. President, I just don't think we actually have to do anything with the proposals today or any time. In fact, I wonder if we can even act on them. They're not before us. They're in the committee, and if we treat them like you do a bill, you have to return it from the committee to the floor of the Convention. We went through all, or indefinitely postpone, or anything else. I just don't think the action on withdrawing or indefinitely postponing — that you could do this. But I think, further — I don't think we have to do anything with these until the Convention — the final day of the Convention. Isn't that right, Mr. President? Can't we bring in —

PRESIDENT WENSTROM: Oh, I can't —

DELEGATE HERNETT: Can't we bring in proposals — new proposals from our committee?

PRESIDENT WENSTROM: Well, Delegate Hernettt, I sure can't agree with you that we don't have to do anything with them until the last day of the Convention. I can't agree to that.

DELEGATE HERNETT: Well, some such a time — the twentieth day. But my question originally was: Can we withdraw or indefinitely postpone if the proposal is not before us — it's in the committee?

PRESIDENT WENSTROM: Well, possibly, Delegate Hernett, the motion should have been that Proposal No. 1-2 be returned before the Convention, and after they agree to that, then we could have had another motion to the effect that it be indefinitely postponed, and we'd just have one more — do we have one more?

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: A point to clear up as far as the delegates are concerned here, and I think this might be a point for Delegate Nething, also:

It does not take two-thirds vote to suspend the rules as they are now. Is that right? A majority vote is all it takes under the temporary rules. Is that right, Mr. Chairman?

PRESIDENT WENSTROM: The way I understand it. I think it is. When we incorporate the final draft, that that will be one of the —

DELEGATE CHASE: I have one other question to the Staff, and that is: Is it possible to present an entire proposal and, as part of that proposal, recommend the division of that proposal for separate voting? Are we causing a problem there?

PRESIDENT WENSTROM: Would you repeat that?

DELEGATE CHASE: Is it possible to present an entire proposal, such as has been referred back to the committee, and along with that proposal recommend its division of the question?

PRESIDENT WENSTROM: That's permissible.

DELEGATE CHASE: Would that help solve some of the problem?

PRESIDENT WENSTROM: That would. You see, Fellow Delegates and Delegate Chase, we are not going to get away from the division of the question or the division of the action on the proposal, because there are in — we will, in an instance, but in many cases, even after this is divided, even after this proposal comes back, it may be three, four, five sections — there's still going to be a number of sections in each one of those. But at the moment, the way this is, as I understand it there may be 20-some sections in this proposal, and if we bring the proposal before the Convention in that form in the first place, I agree with Delegate Maxwell that it will be weeks before the proposal can come before the Convention, unless he is permitted to cut it up, and then when it does come, we're still going to have to divide the question, except in very rare occasions when nothing in the proposal is controversial. I mean — when I say "controversial," I don't mean — I mean just a difference of opinion here on it. So your suggestion, Delegate Chase, is workable.

DELEGATE HOUGEN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: I'm rather mixed up in my thinking about it. I don't believe we had any right to indefinitely postpone this committee proposal. No. — or 1-2. I don't think we've had this on our calendar before — have we?

PRESIDENT WENSTROM: No, we didn't have it on the calendar before us, Delegate Hougen, but the Convention has unlimited power and, if you get two-thirds of the vote in, as we did in this particular case — I'm sure we had more than that — the Convention can do pretty much as it pleases.

DELEGATE HOUGEN: But there has to be an order that we would call, Mr. President. I don't think that we —

PRESIDENT WENSTROM: Excuse me, but this did come in on a committee report.

DELEGATE HOUGEN: Did it?

PRESIDENT WENSTROM: Yes, it did come in on a committee report and the committee report was adopted.

DELEGATE HOUGEN: Well, I was unaware of this.

Now where was this done at, may I ask, please?

PRESIDENT WENSTROM: Well, this was done almost at the start of the afternoon session. We had one, two, three — I believe we had four committee reports come in.

DELEGATE HOUGEN: Excuse me. I stand corrected then.

PRESIDENT WENSTROM: Three reports came in and are still with us for further action of the Convention, and this one came in for being indefinitely postponed.

Now, inasmuch as Delegate Hougen did miss this point, and I think it is well, just as a word of caution and of warning to all delegates, that this is something that can happen. This is something that can happen on the floor of the Convention very easily, and the delegates become involved in either reading a letter that they received from a constituent or they're looking at a proposal that they're going to vote on a little later, and they're really not aware of the committee reports as they come in, and it's real easy to have the Convention adopt a committee report for indefinite postponement or for adoption — either way — and many of the delegates never even realize that this has happened. So it's just — I just want to emphasize the fact that Delegate Hougen missed this, and this is a common happening.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If I may, so that I understand, at least for myself. Now, as I understand it from the Calendar Committee's suggestion, except for those proposals that have been reported out and have already been acted on, all the other proposals are in the committees' hands right now, because they have been referred to it — to the committees. We can proceed to break those down and come in with new proposals on individual sections and we do not have to do away with or table or postpone the proposals that are presently in our book at this time. That could be done later, couldn't it?

PRESIDENT WENSTROM: Yes, it could.

DELEGATE KELSCH: So we are now in a position, then, to recess or adjourn this Plenary Session, go to committee work, and come out with new sections.

PRESIDENT WENSTROM: Yes.

DELEGATE KELSCH: If the motion hasn't been made, I'd like to make it.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: What is your motion?

DELEGATE KELSCH: I don't know if we want to adjourn or recess.

DELEGATE HAUGEN: Mr. President, could I make some announcements, before we recess?

PRESIDENT WENSTROM: We will be on the eighth order of business — Announcements.

DELEGATE HAUGEN: Mr. President, I would like to ask the Committee on Finance and Taxation to get to work in the Blue Room as soon as possible. Evidently, I won't be able to be there until the calendar meeting — whatever it is — but I hope that they will be there working when I do get there. How about it, fellas?

PRESIDENT WENSTROM: Any further announcements?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I would like to call a meeting of the Bill of Rights Committee to convene immediately, and I'd like to ask the Vice Chairman, Delegate Decker, to preside.

PRESIDENT WENSTROM: Thank you.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: In line with what we discussed a little earlier and in an effort to save one of our 30 valuable days, I move that when we adjourn, we stand adjourned to 9:00 A.M. Friday.

PRESIDENT WENSTROM: It is moved that when we do adjourn this session, that we stand adjourned until 9:00 A.M. Friday. Is there a —

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Kwako seconded the motion.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I'd like to speak in opposition to the motion.

I think the intent of the motion is very good — to allow as much time as we can here for committees; however, I think we can accomplish that in the same manner by meeting briefly here tomorrow morning, as we're scheduled to do, at nine o'clock, and then recess for the purpose of committee meetings after that time.

I agree with Delegate Hill that toward the end of this Convention we may need these recessed days more than we will need the working days for the purpose of a lot of drafting and writing and catching up by ourselves in connection with our final document that we will be presenting and approving and presenting to the people. I don't believe that we will save any more time by passing this motion than we would to meet here briefly tomorrow on routine matters and then say that we will go to work at ten o'clock on committee work. I would hate to see us use up one of these recessed days unnecessarily when we may need them at the end of the Session.

PRESIDENT WENSTROM: Any further discussion?

The question is on the motion to adjourn to a time certain, and we would adjourn this afternoon until we come back into session at nine o'clock on Friday.

Any further discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it. The motion lost.

The Chair will recognize — was it Delegate Kelsch that wanted to make a motion?

DELEGATE KELSCH: Mr. President, I move we adjourn for committee hearings.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Did you have something further? Will you yield to Delegate Hoffner?

DELEGATE KELSCH: Yes, Mr. President.

DELEGATE HOFFNER: Mr. President. A very alert delegate, Clare Aubol, has just pointed out to me Rule 18.1 — "Any committee proposal may be withdrawn from further consideration by motion of the committee" — and since I am not on that committee, I was out of order. So at this time I would like to have a ruling from the Chair on that, and then, if you rule in favor of that, I have a motion I would like to make.

PRESIDENT WENSTROM: I don't follow the —

DELEGATE HOFFNER: Mr. President. The Rule 18.1, "Withdrawal of Proposals," and since the proposal that I requested be withdrawn is Committee Proposal No. 1-7, that by moving that motion, I was out of order. I was violating the Rule, as I read it now.

PRESIDENT WENSTROM: Well, Delegate Hoffner, that's your — it's in your -- you are the Chairman of the Committee that has the rule — that has the proposal. You had, as I recall, unanimous consent of the Convention to withdraw it. I can see how it — I can see no reason for having it interfere, or anything about the procedure. You had more than two-thirds vote of the Convention to — you had a unanimous vote of the Convention, so I don't think I can argue with that.

DELEGATE HOFFNER: Thank you very much.

DELEGATE AUBOL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Although I was attending the Convention, I, for one, did not vote, and I perhaps would vote differently if the question were put before the floor now. But what Delegate Hoffner was saying is that he made the motion on a committee proposal on his own. He was not instructed by his committee

to make the motion for withdrawal, and our Rules provide that a committee proposal may be withdrawn upon a motion of the committee, and that would be ruled out of order.

PRESIDENT WENSTROM: Your question is well-taken, Delegate Aubol. I think on these actions of committee chairmen, that the Chair has to assume that they are acting at the will of their committee, and that was my assumption.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, may we be on announcements?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE MEIDINGER: Mr. President, I would like to have the Committee on Education, Resources and Public Lands meet at 2:45 in G-1.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, the Committee on Legislative Functions will meet in the Large Hearing Room immediately after the recess.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: The Committee on Executive Functions will meet in the usual room. 2:45 sounds good. They can have time for coffee then.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. The Judicial Committee will meet, with Delegate Roney, Vice Chairman, presiding, immediately after the session. They seem to get along better when I'm not there. So they'll go into session immediately, right after we recess.

PRESIDENT WENSTROM: Any further announcements?

Then the Chair will recognize Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I move we adjourn.

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Delegate Kelsch moves we adjourn. It has been seconded.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it and we will now adjourn.

(The Plenary Session adjourned at 2:28 P.M., Wednesday, January 5, 1972, until 9:00 A.M., Thursday, January 6, 1972.)

VOLUME IV

(January 6, 1972)

MORNING SESSION

(The fourth day of the Plenary Session commenced at 9:12 A.M., Thursday, January 6, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is the Reverend Walter Dingfield of Bismarck Baptist Church.

REVEREND WALTER DINGFIELD: Let us pray.

Our loving Heavenly Father, we approach Thee this morning in the precious name of Thy Son, Our Savior. We come to Thee with thanksgiving for Thy wonderful grace and the goodness showing us daily that You still love us and care for us. We enter into this day with the realization that Thou art God — the Creator and the Redeemer. We do acknowledge our dependence upon You for strength, for guidance and for wisdom. Guide these delegates in their deliberations. Help them to discern that which needs to be changed and that which still remains as valid and needful for our society.

May there constantly be the fear of the Lord and the love for fellowman in the hearts and souls of each. May all things be done to the glory of God. These petitions, Our Father, we are asking in the name of Christ, who is our life. Amen.

PRESIDENT WENSTROM: We will have the calling of the roll. The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence? You will close the key.

The roll call discloses 97 present, one absent. A quorum is declared.

Delegate Sinner, on behalf of the Convention, we want to welcome you back. We want you to know that we're sure happy to see you here this morning.

We will be on the fourth order of business — the Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the fourth day of January, 1972, and recommends that the same be corrected as follows:

Page 101, lines 9 and 10, delete the words "Church of the Nazarene" and insert in lieu thereof "First United Methodist Church."

Page 116, line 49, delete the word "main" and following the word "motion" delete the word "or" and substitute in lieu thereof "on."

Page 116, line 54, following the word "motions" delete the word "or" and substitute in lieu thereof the word "on."

And when so corrected, recommends that the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Revision and Correction of the Journal.

Are there any corrections?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

We will go to the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-4 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the report on Committee Proposal No. 1-4. We have the question that the report be adopted. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report will go on the tenth order of business.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-20 has had the same under consideration and recommends that the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Proposal No. 1-20. The Committee recommends that the proposal do pass. Are there any questions?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report is adopted and will go on the tenth order of business.

One more?

CHIEF CLERK GILBREATH: Yes. Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Delegate Proposal No. 2-43 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Delegate Proposal No. 2-43, which recommends that the proposal be indefinitely postponed.

Delegate Lamb.

DELEGATE LAMB: Mr. President. The Committee — a majority of the Committee felt that there was a definite problem in the sales and distribution of these particular items, but we felt that this was a clear example of using — trying to get legislation into the Constitution, and this is why it was recommended for indefinite postponement.

PRESIDENT WENSTROM: Thank you, Delegate Lamb. Is there any further comment?

Hearing none, the question is on the adoption of Delegate Proposal — the report on Delegate Proposal No. 2-43, which recommends that the proposal be indefinitely postponed.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it and Proposal No. 2-43 is indefinitely postponed.

Are there any further committee reports?

We will be on the sixth order of business — Consideration of Amendments.

CHIEF CLERK GILBREATH: Delegate Longmire moves that the amendments to Proposal 1-14 as recommended by the Committee on Judicial Functions and Political Subdivisions, as printed on page 120 of the Convention Journal, be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the amendment.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire, I think this should be read. The amendment should be read. Just one second.

DELEGATE LONGMIRE: Okay.

CHIEF CLERK GILBREATH: The amendments are on page 2, line 10. After the word "seal" delete the word "to" and insert in lieu thereof the word "shall."

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, this is a minor amendment. We only put in the word "shall" to make a complete sentence. Other than that, the proposal is as previously introduced. We'll discuss it more on second reading. I move the adoption of the amendment.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: The adoption of the amendment has been moved by Delegate Longmire. Are there any questions? Any further discussion? If not, the question is on the adoption of the amendment on Proposal No. 1-14. As many

as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted.

We will be on the ninth order of business — Introduction and Reference of Proposals to Committees.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Don't you have a committee report on Committee Proposal 1-10 for amendment? I thought that was handed in yesterday.

Well, Mr. President, we'll try and find it for you. I hope we don't recess before we find it.

PRESIDENT WENSTROM: Thank you. The calendar only shows the one, Delegate Hernet.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: If we're on the order for making inquiries, I'd like to inquire about four delegate proposals that our Committee has acted on about two or three days ago, with committee reports indefinitely postponing them. Maybe that has already gone in, but I haven't — don't recall.

CHIEF CLERK GILBREATH: I have in possession all delegate proposals — 2-1 through 2-42 — in for indefinite postponement, waiting for the Calendar Committee to —

PRESIDENT WENSTROM: Now we'll be on the — is this the ninth order?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: Yes, the ninth order. Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. What order of business are we on? I'd like to make a motion.

PRESIDENT WENSTROM: What order?

DELEGATE HOFFNER: What order of business are we on?

PRESIDENT WENSTROM: We're on the ninth order — Introduction and Reference of Proposals.

DELEGATE HOFFNER: I don't have the order of business, but may we be on the order of business that allows us to make motions?

PRESIDENT WENSTROM: Well, we'll be on the twelfth order. Without objection, we are on the twelfth order.

DELEGATE HOFFNER: I then move that Proposal No. 2-26 be returned from the Committee on Legislative Functions before the chamber.

PRESIDENT WENSTROM: Delegate Hoffner moves that Delegate Proposal No. 2-26 be returned to the floor of the Convention. Do we have a second to that motion?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

You have heard the question.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And Proposal No. 2-26 is returned to the floor of the Convention.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: It's been moved that Proposal 2-26 be referred to the Committee on Preamble. An explanation is that it was referred to the wrong committee yesterday. Not that we couldn't deal with it.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Hoffner, I have a question. Have you conferred with the Chairman of the Committee on Preamble, Bill of Rights and Suffrage?

DELEGATE HOFFNER: Mr. President, I have not; but I just assumed, since the Proposal was assigned to that Committee before, that it should go back to that Committee.

PRESIDENT WENSTROM: We'll take a chance.

The motion before the Convention is that Delegate Proposal No. 2-26 be referred to the Committee on Preamble, Bill of Rights and Suffrage.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Proposal will go to the Committee on Preamble, Bill of Rights and Suffrage.

We'll be on the ninth order of business — Introduction of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-23, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that sections 174, 175, 178, 179 and 186 be repealed; and that new sections to the constitution of the state of North Dakota be created; all of which pertain to finance and taxation and state moneys."

PRESIDENT WENSTROM: Proposal No. 1-23 will be referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-24, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that sections 177, pertaining to hail tax; 180, pertaining to poll tax; 181, pertaining to passage of laws to carry out provisions of finance and taxation article; and 187, pertaining to certificate of indebtedness to be signed by auditor and secretary of state; of the constitution of the state of North Dakota, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-24 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-53, introduced by Delegate Brakke:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to obtain employment or practice a profession, and preclusion of corporations from engaging in farming, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-53 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-54, introduced by Delegate Hubrig:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to environment, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-54 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-55, introduced by Delegate Hubrig:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to environment, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-55 is referred to the Committee on Education, Resources and Public Lands.

We will return to the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-10 has had the same under consideration and recommends the same be amended.

Delegate Hernet, Chairman.

Delegate Hernet moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Proposal No. 1-10 for amendment, as recommended by the Committee.

As many as are — are there any questions on the proposal?

Hearing none, as many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and it will go on the sixth order.

We will be on the tenth order of business — First Reading of Proposals — First Reading and First Passage of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-1, introduced by Committee on Preamble, Bill of Rights and Suffrage:

“Be it resolved by the North Dakota Constitutional Convention that the Preamble of the constitution of the state of North Dakota be amended.”

“SECTION 1. Amendment.) The Preamble of the Constitution of the State of North Dakota is hereby amended to read as follows:

“We, the people of North Dakota, grateful to Almighty God and desiring to secure the blessings of civil and religious liberty for ourselves and our posterity, do ordain and establish this constitution.”

PRESIDENT WENSTROM: The question before the Convention — it is the first passage of Proposal No. 1-1. Is there any discussion?

DELEGATE CART: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, I would like to inquire why the change from the existing Preamble to the new one. It seems like when the original Constitution was adopted in 1882, they recognized that we have civil and religious liberty. Now it would appear, the way this is written, that we’re going to go out and secure it.

PRESIDENT WENSTROM: Any member of the Committee or any delegate.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: This preamble had much discussion, not only in the Committee, but in the public press.

I believe that we spent as much time on the words and the semantics as on any other section, and I believe that as we have it in its final form, “We, the people of North Dakota, grateful to Almighty God and desiring to secure the blessings of civil and religious liberty for ourselves and our posterity, do ordain and establish this constitution” is the result of many hours and many days of work on this portion of the Constitution. I don’t — I do not believe that it weakens the original Preamble. I believe it strengthens it and emphasizes the original points, and this is the feeling of the other members of the Committee on Preamble, Bill of Rights and Suffrage.

PRESIDENT WENSTROM: Are there any further questions?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I think that the meaning of the word “secure” as used in the version of the Preamble that we have suggested is not to go out and get, but, rather, to firmly embed.

PRESIDENT WENSTROM: Delegate John Paulson.

DELEGATE PAULSON: Mr. President, I think that this Convention has gone along with its work far enough to realize that by the time we are through, we are going to present to the people of North Dakota a completely new constitution, and I think that the Preamble should so state. I, therefore, move the following amendments:

In line 2 of the bill, that the word “amended” be changed to “adopted.”

In line 4, the word “Amendment” be deleted.

In line 5, the words “amended to read as follows” be deleted and the word “created” be inserted, followed by a colon.

I’m in complete agreement with the wording of the Preamble as presented by the Committee.

PRESIDENT WENSTROM: Do you have a copy of your suggestions?

DELEGATE PAULSON: Well, it will take me a little bit to write it out. I just put it up in a hurry.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I don't — I don't actually understand what Delegate Paulson is getting at. In order to rework and reemphasize the Preamble, we must amend the original Preamble to get this before the floor of the Convention, and I — I don't see clearly how inserting the word "create" will allow us to do this. I suggest that we continue to amend the Preamble and other sections of the Constitution. Actually, we're creating — everything we do is creative, but I believe that the parliamentary matter we expect to amend.

PRESIDENT WENSTROM: Delegate Tudor, I believe when we get this typed out and have the rereading of the proposed amendments, possibly we'll have a better understanding about how it appears.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I'm assuming that if this section passes and all of the other sections that will be passed, that when the Constitution is prepared in its final form by the Style and Drafting Committee, that section 1 on Proposal 1-1 will no longer appear and that what is now section 2 will be the only language that will appear. It may be simply section 1 of the Constitution. Certainly, the final Constitution will not have all of the amending sections or repealing sections in it, or it will be no longer than the one we have now.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: By doing this type of thing, are we then assuming that this is going to be a final thing that we will take up, after all proposals and the whole document has been written; then we take up a universal or a total amendment to delete all of the errors of the old Constitution that have not been incorporated into the new, so that then we amend it in its final stage and then adopt the new? Is that going to be the procedure? Otherwise, if we don't use the amendment or deletion, we are assuming that the new document is total and complete and acceptable and that the old is gone and it's going to go through a vastly different process, as I see it, and that is that the electorate will make that decision, not us. Therefore, do not we need the machinery of either amendment or deletion for the purpose of doing away with the old, in case the new is adopted, and if that's going to be done as a final thing at the end of the Convention when we accept the whole document, then I have no quarrel.

PRESIDENT WENSTROM: Delegate Solberg, I'm at a loss for an answer. However, I'm confident that the Convention will have to do as you say; otherwise, we'll have two constitutions. So I — I would say that the Convention will have to carry out the different functions which you suggest — that they must be; otherwise, we'll just have one section piled on another section.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I agree here with Delegate Pearce. These are matters of procedure in the title part and in the commencing of all of these proposals, if we adopt these amendments, we'll have to adopt them on practically every proposal we have before us. The final Constitution, as it goes into the law books and other books recording the Constitution, will contain nothing as indicated in section 1, and as I understand it, when it's finally printed, and that we will have a new Constitution before us, but we, in order to get to that point, we have to use this procedure to delete and to amend other sections of the old Constitution.

For instance, in our committee, we are contemplating cutting down tremendously the compact part of the Constitution with the U. S. Government by putting in one paragraph referring to the old Constitution in 1889, rather than having to type all of that again into the proposal or into the new Constitution. So it seems to me, Mr. President, that these amendments are not necessary; that in its final form none of that wording will be there and that we will have our new Con-

stitution to consider when we finally sign it and when the final vote is made on it by the people.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I may be confused, which happens occasionally.

How many times — is this the time and place — I oppose the original motion. Is this the time and place to say so?

PRESIDENT WENSTROM: Delegate Rundle, are you making reference to the motion as presented by John Paulson?

DELEGATE RUNDLE: Well, I oppose the amendment; but, largely, I oppose the original motion, so —

PRESIDENT WENSTROM: Well, the question before the assembly — before the Convention is on the amendment at the present time.

DELEGATE RUNDLE: Thank you.

PRESIDENT WENSTROM: Will the Clerk read the amendment?

CHIEF CLERK GILBREATH: As I have it, in line 2 of the Proposal, delete the word “amended” and insert in lieu thereof the word “adopted”.

In line 4, delete the word “Amendment”.

In line 5, delete the words “amended to read as follows” and the word “created:” be inserted in lieu thereof.

PRESIDENT WENSTROM: You have heard the reading of the amendment. Are there any further questions?

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Were we to have quotations around the section that would actually appear in the Constitution, I feel this amendment is unnecessary, because we would start with the word “Preamble,” going somewhat after the — going after the pattern in the old Constitution, and none of this language would be in the new Constitution. I’m probably reiterating what George said, but it seems very unnecessary to have this motion on the floor for an amendment.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson — John Paulson.

DELEGATE PAULSON: I don’t intend to be divisive, but I do think that this Convention is dedicated to writing a new Constitution and I think, by eliminating references to amending the old in our phraseology, that we will all be on the same track.

In the committee reports that I have seen, they are universally writing new language and condensing sections and there is no possible way to really incorporate any part of the old in the new, as I see it, and I think that these few changes would put the whole Convention on notice that this is what we are going to do. It may not be necessary at this time, but I thought it was a good idea to interject that thought.

PRESIDENT WENSTROM: Any further comment?

DELEGATE OMDAHL: Mr. President.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle, let Delegate Omdahl have the floor, first.

DELEGATE OMDAHL: Mr. President, I think that adoption of Delegate Paulson’s motion is very important, because we’re here suffering from a hangup on legislative procedure, where the ordinary practice is to be amending existing statutes, and we’re not really doing that in this assembly. Each committee has gone through its allocated sections of the Constitution and it has adopted some of the old provisions in the old constitution, as well as created some new provisions. And so we’re not really saying we’re going to adopt a totally new Constitution, but the committees have taken care of adopting those old sections, and these sections will be coming out of those committees and it isn’t really necessary to be saying that we’re going to amend this and delete this, because when we get

to the end of our job, we are going to place on the ballot, as well as side issues, I suppose, but the main document will say that — “Shall this Constitution be adopted in lieu of the old Constitution?” — and I’m sure that’s the way the wording of it is going to be. And so, rather than come and make the processes cumbersome by referring to language on amending and deletion, we can have a very much more simplified process by just coming forth with sections of the new Constitution as created, rather than amending and worrying about deleting old sections.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Thank you, Mr. President. I’ll wait until after the amendment.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: In several other sections of the proposals that were put in — I’m looking right now at Proposal 1-7, and then there’s Proposal 1-6 — the action of the committee to repeal various sections. I speak in favor of the amendment, but I personally feel that our effort and work to be done here is to repeal the present Constitution in sections and, if we like what’s in the present Constitution as it would be in the Preamble, put the new section in. But I think the amendment proposed by Delegate Paulson is necessary to correct this particular situation. Some areas that have stated to be amended will have to have this same action taken. Other places, where we have repealed the original Constitution, will cover it.

PRESIDENT WENSTROM: Any further comment?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: We’re at a point here where we are deciding now or we are attempting to decide on a major — that is, we will be making a more or less major decision on which path to follow in the enacting of the various sections of our Constitution — our new Constitution.

I, personally, have rather mixed emotions on Delegate Paulson’s motion, and because under some circumstances I think it would be easier to refer back — that is when we get into some of the other parts of the Constitution, it would be somewhat easier to refer back to the existing Constitution to determine what language has been changed, and I think the mechanics — there might be some instances where the mechanics of that may be a little simpler. On the other hand, I certainly appreciate the fact that when we’re talking about writing a new instrument, we should not be referring to the amendments; we should be adopting.

Now, this — we have a motion before us now, and I cannot — and it would be improper for me to make another motion, but I am suggesting that, if Mr. Paulson’s motion prevails and that indicates that the consensus of opinion here is that we are writing a new document, period, then, if that motion prevails, then I would move that further action be withheld on Committee Proposal 1-1, and possibly have it referred back to committee and for the Calendar Committee then to take up with the various committee chairmen a revision of our — some of the proposals that are already in the mill, so that they will — we will start out afresh and all of — they will all be uniform. But, in any event, now, when we’re voting on this, you people here should be informed that you will be determining and setting a pattern which we will be following or which we will very likely follow in the future on voting on the way proposals are prepared and will appear before us.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, in following what Delegate Saugstad just said, I wonder if it wouldn’t be a good idea to have a report from each of the chairmen. Now, the Legislative Functions Committee is doing exactly what has been mentioned here by Delegate Omdahl, in that I think the Executive Functions Committee is, and if most of the committees are doing this, maybe it would be a good idea for it to be revealed at this time when the vote is taken.

DELEGATE HERNETT: Well, Mr. President, I —

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I'm sure that I can say the Executive Functions Committee is doing that very thing. We are not referring it. When we get through, my idea would be we are writing a whole new section.

PRESIDENT WENSTROM: Thank you, Delegate Hernet.

DELEGATE HERNETT: We are not going to refer in anything we come out with as amending anything, that I know of.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I agree here with Delegate Saugstad that the action we take here will affect every proposal that we bring in. Of course we all know that these proposals were prepared by our staff, so they followed the same procedure all the way through. I would suggest, like Delegate Saugstad, that we either ask Delegate Paulson to withdraw his motion for the time being, until we can discuss this with the Staff, and perhaps with the Attorney General's office, on the procedure that we are to follow here. We could save a lot of time by that, and then we could vote on — have him renew his motion at a later date, or if we either vote this motion down, and then we consult with our legal staff and with the Attorney's office on it.

I still feel, as I did before, that these are matters — this is machinery, rather than content of what we're doing, and it's just a matter of procedure and does not affect the final document that we're going to pass.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Since this is all going to run through the good old Style and Drafting Committee before this is over, I think we're dealing in semantics to some extent. Certainly, before we're through, we're going to slough off all the references to amendments, and if you adopt Paulson's motion, you're going to slough off the references to "here we are creating." I think it would be easier for us in the Style and Drafting to use the amendment process for reference back to the old Constitution, and I'm urging that the motion of Paulson be defeated.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Under our constitutional authority which set up this Convention, we are authorized to either write a new Constitution or to amend the old, and I think that the Paulson amendment brings that issue squarely before this Convention for the first time — as to whether or not we are going to write a new document or whether we are going to amend the old one.

Now, in our committee, we have gone by the amendment procedure because we didn't think that we should presume that a new document was to be written before the Convention had actually acted on that issue.

DELEGATE DOBSON: Mr. President:

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, I rise to support the amendment of Delegate Paulson. As these committee proposals now stand, the entire old Constitution is being repealed, starting with Section 1 on, right on through — Section 216, I think, is the last one, plus the amendment articles.

Now, it seems to me that, if we proceed in that way, it will provide a good opportunity for a demagogue to go out to the people and say, "They have repealed the old Constitution," and, in effect, we will have. So I think it would be better to proceed as Delegate Paulson has suggested, and what that would actually amount to is incorporating the meritorious features of the present Constitution, along with new proposals that we voted through, and then, as Delegate Pearce suggested in the committee yesterday, there will have to be something in the Constitution to the effect that this supersedes any provisions in the 1889 document when adopted.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, as long as we're going to have the issue enjoined right away, so be it. We could just as well draw some battle lines.

As Delegate Maxwell said, we may amend or we may rewrite, and I don't know too many people who went out and said they were going to completely

write a new — completely new Constitution, and I know one committee, for example, yesterday — Delegate Longmire is the chairman — we spent probably a full day, and yesterday, when we went back and we eliminated everything but a proposal and went back to the compact with the United States — the enabling Act of Congress in 1889 — and one other feature — Section 23, 24 and 25 — we couldn't improve on them. We didn't have legal right to improve on them, practically, and as Delegate Longmire said, they will appear by reference, if we can get the proper legal help and advice, and probably will appear as supplements in the new books. You can go back and look, but they will not actually be printed in them.

Now this was one committee's idea of retaining a section, and quite a section, of the old Constitution, and if this vote on this amendment means — and it seems to me that, if we are saying right here and now we're going to write a completely new document, I'm absolutely opposed to it. If it's just a matter of procedure, it will be different.

And I don't care much about the use of the word "demagogue" because there are demagogues in other businesses, besides farming, and the mere fact that the first major action we are taking will be this, it will appear to a lot of people who are not demagogues as not a very desirable start, and I'm one of them.

That isn't all. I firmly believe that this — some parts of the Constitution are very good. I don't think that we're so much smarter than they were in 1889; that everything they said was bad. And if this means that we're setting a precedent here, I am very much opposed to this amendment, and I hope it is defeated.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. We have a job, after — after we finally recess or adjourn here, of having this document agreed to by the public and unless we can have some method of showing to the public what we intend to do and what we retained of the old and where the changes are, we're going to be in trouble. We're not going to sell any kind of a brand new total document.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President, I apologize for speaking twice.

I would like to reiterate that, if we pass Proposal 1-1, that all that there will be in the final draft will be lines 6 through 9. I think it's way too early to debate whether we're going to write a new Constitution or whether we amend the old. We won't know until the last day. It may well be that many of the proposals to amend a certain section of the Constitution will not pass through this Convention. We still, then, if a new section doesn't pass, we may not want to eliminate the section that we already have, whatever that section may be. If so, then any blanket repealer should not repeal that section which failed to be amended. It may be that when we get through, we will have amended every section of the Constitution. If that's true, then I assume we will have passed a new Constitution. It may be we will not need to amend every section of the Constitution. In that event, I would say that we had amended it, perhaps wholesale, but still amended it.

Actually, I think any change in language is an amendment. If I understand the amendment of a statute or the amendment of a constitutional provision, it's to change it. Many statutes amend statutes by a word or two. You may call it a new statute in one sense, or you may call it an amendment. I think it's all a matter of semantics.

I don't think we should get excited today or tomorrow about whether we're writing a brand new one or not. We'll see when we get through whether we have written a brand new one or not.

The only reason why I feel constrained to vote against Delegate Paulson's amendment is that, as I look to the — what I still call the "bill book" or the proposal book, I see that if we have to make this kind of a language amendment on this one, we're going to have to do it on practically every proposal that's in so far, except for relatively few that start out saying, "We hereby create a new section of the constitution," and it doesn't bother me at all that we've got language in to amend it, which is actually what we're going, whether we call it writing a new one or not. All I'm saying is, if we pass this and if the proposals continue

to be in this form, then it's easy enough for any delegate to look at his copy of the Constitution and see the new section and the old section and see exactly what's being changed, and if he wants that new section, he votes for it; if he doesn't, he doesn't vote for it.

So I think we're having a tempest in the chamber here at this point on this proposition.

PRESIDENT WENSTROM: Any further questions?

Delegate Paulson — John Paulson.

DELEGATE PAULSON: Mr. President, I just wanted to point out that the only purpose of my amendment was to **impress other delegates and the public** that we are writing a new Constitution. Every delegate proposal, every committee proposal that I have examined repeals various sections of the new Constitution — of the old Constitution and creates new ones, or repeals old sections entirely. I just think that, by this small change in wording, we will set our course to writing a new document which will contain all of the good parts of the old document, I am sure, but in such a way that it will be an amendment and will be actually described as a new section or a new article in our document. I think that we are just putting ourselves on notice that this is what we are doing, and it serves that purpose, only.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, just a short comment.

There seems to be a lot of fear here, and that is not necessary. Now, I'll refer to our portion of it — Legislative Functions. I'm sure that when the committee reports come out on these proposals now, that the person reporting that committee report is going to refer back to the old Constitution, is going to explain the changes that were made. Just because all this underlined language is there doesn't mean it's new language, and there's much of the old Constitution incorporated in the Legislative Functions portion of it, but I don't think that, by passing or rejecting this motion, we're all going to have to go back to our committees and all follow the same procedure.

PRESIDENT WENSTROM: Any further discussion? Any questions?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Just one point. I agree with Delegate Pearce. I don't think that — I'm going to vote against the Paulson amendment. I think it's a good idea, but I'm going to vote against it because I don't want to see us go back and redo the ten or twelve proposals we've got on the books, just to save time. But I think we're going to end up writing a new document and I think all a new document is — it speaks to every subject. Certainly many times we're going to keep the good in the new from the old document. Certainly I don't think that this, though, should create any difficulties. My vote will be "no." But I agree — we don't have to come to the people with a new document, but I agree that will be all decided when we get all done.

PRESIDENT WENSTROM: The question before the Convention is on the amendment stated by John Paulson.

If there is no further discussion — if there is no further discussion, the question is on the adoption of the amendment.

As many as are in favor of the amendment will say "aye;" opposed "no." The "noes" have it and the motion lost.

Now we're back on the main motion — the question for the first passage of Committee Proposal No. 1-1.

Now, is there any further discussion on that?

Delegate Rundle:

DELEGATE RUNDLE: Mr. President, Members of the Convention:

I at this point would like to have the good, beautiful speaking voice or the good looks of some of you people and this and that, but, anyway, I'm going to have my say to the best I can. I think that the wording of the current Constitution is pertinent. It's very hard, if not impossible, to improve upon it, and the mere fact that yesterday we heard — or the day before, possibly — the days

are going rather fast here — that a distinguished Harvard professor had quite a bit to do with writing this, might show that they weren't so slow in 1889.

Now, as you read this, the way it is presently, there is absolutely nothing wrong with it. It's a beautiful piece of literature. That isn't all. The objection has already been brought up — no matter how you explain the word "secure," it has that connotation to many people. We have liberty. We're proud of the liberty we have in North Dakota. We've had it since 1889. We're not going out and getting something new.

Then the words "for ourselves and our posterity," which is added — which were added. This is just one of those things that's strictly understood. Anything we do, we won't be here too long — many of us — and we're naturally, doing it for our children and grandchildren, as well as for ourselves, and I would ask and urge that you reject this motion to change the first section.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of Committee Proposal No. 1-1.

Hearing no further discussion, we will call the question.

Those in favor of the motion will vote "aye." I'm sorry. This is — I'm only reiterating what the rule says and informing the Convention that those that are in favor of the motion will vote "aye" on the official roll call. Those that oppose the proposal will vote "nay."

DELEGATE CART: Could we make an inquiry before we put the —

PRESIDENT WENSTROM: Yes.

DELEGATE CART: Will there be an opportunity, when this comes back again, for amendment?

PRESIDENT WENSTROM: Only — amendment only to the point as to the alterations that have been made by the Committee on Style and Drafting. Only in that part.

The Clerk will open the key and you will record your vote.

Has every delegate voted?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: My key, apparently, does not work.

PRESIDENT WENSTROM: How do you vote, Delegate Thompson?

DELEGATE THOMPSON: I vote "aye."

PRESIDENT WENSTROM: You vote "aye." Any further? Does any delegate wish to change his vote?

The key is closed.

The roll call discloses 74 ayes, 23 nays, one delegate absent and not voting.

DELEGATE HOUGEN: Mr. Speaker.

PRESIDENT WENSTROM: Delegate — Proposal No. 1-1 has been adopted. Delegate Jim Hougen.

DELEGATE HOUGEN: Yes. I would just like to say that I do agree with Delegate Rundle in his appraisal that the old language was certainly right, and I had no fault with it.

I also would have to say that I think we, as delegates, right now should realize that each committee has perhaps spent hours and hours on some certain small section, and if the changes in words do not affect what is old, I, myself, feel inclined to go along with the committee report. If we are going to rise and object each time when just a word is changed that might not change the meaning of the Constitution, I think we're going to waste an awful lot of Convention time.

PRESIDENT WENSTROM: Fellow Delegates, just a point of information.

This morning, I addressed Delegate Paulson as "Delegate John Paulson." I've also addressed Delegate Hougen as "Delegate Jim Hougen." I don't know whether you are aware that we have a Paulson and a Poulson and we have a Haugen and a Hougen, and it's just a little bit difficult in the record. Someone might — it might be confusing to the recording here just who did make the motion and

which one did the talking. So, with your permission, from here on I'm going to address just "John Paulson" and "Delegate Jim Hougen," and then I'll refer to the others as "Poulson" and "Haugen."

The next order before the Convention is still on the tenth order — Committee Proposal 1-22.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-22.

"Be it resolved by the North Dakota Constitutional Convention that articles 14 and 19, pertaining to mills and elevators in Minnesota, Wisconsin and North Dakota; article 24, pertaining to rail tax; articles 59, 65 and 67, pertaining to veterans' bonuses; article 60, pertaining to the medical center; and article 76, pertaining to bonds, of the amendments to the constitution of the state of North Dakota, be repealed.

"SECTION 1. REPEAL.)

"Articles 14, 19, 24, 59, 60, 65, 76 and 87 of the amendments to the constitution of the state of North Dakota are hereby repealed."

PRESIDENT WENSTROM: The question is on the adoption of Proposal No. 1-22.

The Chair will recognize Delegate Nicholas.

DELEGATE NICHOLAS: Mr. Chairman.

Article 14, dealing with the creation of a terminal elevator in Minnesota and Wisconsin: The Committee felt that this should be repealed, as there was sufficient language in the present Article 185 to deal with these statutes, and under the new section that the Committee has created, this would be taken care of in Section 8.

On Article 19, which provided for the mill and elevator, that was also taken care of, we felt, in Section 185 and, also, under the new Section 8.

On Article 24, the Committee also felt that should be repealed. It allowed for the Legislative Assembly to levy a tax on land for the purpose of creating a fund to insure the owners for hail loss. The Committee recommended deletion of this at the present time, as there is no hail tax and no Hail Department any more.

The Committee decided that it was a matter that could better be handled by legislation, if the need arose in the future.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE QUAM: Yes, Mr. President.

PRESIDENT WENSTROM: Delegate Quam.

DELEGATE QUAM: Mr. President, Article 59 deals with World War II veterans' bonuses. The bonus has been paid and the bond has been retired. The Committee on Finance and Taxation recommends that this be deleted.

Article 65 deals with compensation paid Vietnam or Korean Conflict veterans. This has been paid and the Committee on Finance and Taxation recommends that this be deleted.

Article 87 deals with compensation paid veterans of the Vietnam Conflict. The bonds have been issued and the veterans are now receiving compensation, and this is also taken care of in new Section 8 — Article 87.

PRESIDENT WENSTROM: Any questions? Any further discussion on this proposal?

Delegate Peterson.

DELEGATE PETERSON: Article 60 pertained to the Medical Center. I wanted to call it to the attention —

PRESIDENT WENSTROM: I'm sorry. Just one moment. Delegate Longmire, did you have a question on the — on one of these sections that we just talked on?

DELEGATE LONGMIRE: No, Mr. President. I believe the delegate is just about to answer the question I was going to ask.

PRESIDENT WENSTROM: You may proceed, Delegate Peterson.

DELEGATE PETERSON: Article 60, pertaining to the Medical Center. In our — I'm on the Medical Advisory Council, and in our Council meeting we all

felt that that portion should be retained and that dedicated funds should remain in the Constitution. I want to make the statement on behalf of the Medical Advisory Council Committee.

PRESIDENT WENSTROM: Are there any questions?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I certainly agree with the Committee action in considering at least removing from the Constitution many of these dedicated tax funds that we have; however, I feel there are some exceptions that ought to be considered, instead of eliminating them entirely; one, of course, being the road tax funds that we will consider in another proposal, and certainly this one here with regard to the medical funds levy.

I think we can all be proud in the State of North Dakota that we have one of the best two-year medical schools in the country today. It is recognized throughout the United States, and our students that have graduated from there in the past have had no trouble in transferring to other schools. However, that situation is changing, and we are going to be considering, no doubt, in the years ahead the establishment of a four-year medical school in this State in order to be able to train our young men and women who are going into this profession.

Now, it has not been just a matter of money alone as to why we have been able to develop this high-grade school that we have, or that we will be able to develop the four-year school. We have one of the best men in the country today in the field of biochemistry in this State, who is recognized worldwide as being one of the top world authorities in that field, in Dr. Cornatzer at the Medical School. Many times I have talked with him and asked him why he has stayed on at the Medical School here in our State, rather than to accept positions in other states where he could be drawing twice or three times the salary that he's drawing with us, and each and every time he has said it was not a matter of money, but it was the interest that the people of our State had demonstrated in the medical facilities and the Medical School, as indicated by the fact that they had even earmarked funds in taxation for the operation of this program, and it was this, more than anything else that influenced him in continuing to stay in his work and in his research there at the Medical School. I'm afraid that, if we do not in some way guarantee to these people — he and others — that we are going to maintain this interest, that we are going to provide this — or this means of financing the Medical School, that we may lose some of the best people that we have at the present time.

Some of the others say, "Well, the way we have it here, it keeps it out of politics. We don't have to go down and politick each time to get the funds or the majority of them." Certainly now it doesn't cover all of the expenses of operating the Medical Center; but it certainly substantially does that, and it is the fact that it is impressive on these people that is important, as much as the amount of money that it raises. I think we ought to be careful in repealing some of these sections, unless they're going back in somewhere else in some of these special dedicated funds that we have.

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President and Members of the Assembly:

I've been waiting for someone from the Tax Committee to explain why they repealed Article 60. I would like to say that I support the repeal. I don't feel that repeal of this section is any criticism of the Medical School. It is a criticism of the method of taxation. I'm a property taxpayer and I'm quite critical of many of the ways property taxes are paid. I'm firmly convinced that taxes levied on property should be for some purpose that can be directly related as a service to the property, and I don't feel that this tax is. I suppose I can say, as well as Delegate Longmire, that we are proud of our Medical School. I don't feel that this is the right way to finance it.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: There may have been a misunderstanding on my part about the committee feeling on this section, so I'm just going to take a few minutes to explain the committee viewpoint.

Dr. Clifford appeared before us, as well as — I'm not very good at remembering names — I could look them up — but we had four people from the Medical Center appear before us, and I think we made it plain to them that we were proud of the job that they are doing there, and that we want to see the Medical Center continued and we want to see it improved, if the State can finance it; but we do not believe that property taxes is the way to do it.

The philosophy of my committee — of the Tax Committee — is that the State, except in emergency, should no longer levy any type of property tax, and we will be proposing this in our — in our new sections.

This is, basically, the philosophy for withdrawing this part of the Constitution — this Medical Center levy. Then there's the further point that when the levy was first enacted, it created more than enough money to operate the Medical Center. Now it creates only about half — approximately half of the necessary funds, so that the Medical Center at the University does have to come to each session of the Legislature and ask for additional funding. And our Committee could see no reason why the Legislature will be any more stingy with them on the basis of an outright appropriation than if they had this \$700,000 which the fund — which the levy raises each biennium. We think that it is no criticism of the Center to make this change. We do think the property tax — property taxes should no longer carry this type of a load, and we do hope that the membership will support the actions of the Committee.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. Speaker. The Committee certainly considered all the points which Delegate Longmire brought to the attention of this floor in its discussion. But we, also, considered some of the other factors as relates to the real estate tax for a tax to support a medical center.

At the time that this tax was originally passed, it adequately supported the Medical Center, and then some, and it was building up a reserve. It wasn't long before the Legislature realized this and established a School of Nursing and a number of other subsidiary schools at the University, and now the \$700,000 it brings in each biennium is about half of what is needed to operate the Medical School. It seems inconceivable to the members of the Finance and Taxation Committee that we should use real estate taxes to support one facet of education at the State level, as it does here, and not use it for other sections. It is, also — it became very apparent to the Committee that real estate taxes are high enough at the present time, that it's going to be difficult to continue to add to the real estate load. It was very apparent to this group that we cannot continue with real estate taxes as a dedicated fund, as it is in this instance, and we felt that there are other means, and certainly the Legislature is going to take care of this Medical School, and we can see no reason why the Medical School should be supported by a real estate tax.

I might add that I was attending the University back in the late Forties and I was one of the circulators that helped get this one mill levy passed at that time, and now I stand here in support of removing it from the Constitution.

DELEGATE McELROY: Mr. President.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: I guess I have to learn how to use this, too.

Mr. President, another factor of interest on this real estate tax is that approximately half of the assessed valuation of the State of North Dakota is in farm or ranch lands, and it's easy to see that farm and ranch population is nowhere near the fifty percent that they pay in toward this one mill levy for this Medical School, and it doesn't seem equitable to assess this high a tax on farm and ranch lands for the benefit of this particular institution.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Is there further discussion?

DELEGATE HOFFNER: Mr. President.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, under Rule 24 of this assembly, I move the division of the question before us so as to provide for a separate vote on the repeal of Article 60.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Delegate Baker, a point of inquiry:

You only want Section 60 taken out of the proposal?

DELEGATE BAKER: Correct.

DELEGATE LANDER: Second the motion.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, just a brief comment.

I would be for retaining Section 60, if an amendment was attached requiring all doctors that train in North Dakota be required to practice in North Dakota for five years.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. We certainly have no objection to the removal or a separate vote on Article 60; but there is one more article involved in the repeal here that I would like to say a few words about, and that's Article 76. If you want to look at it, it's found in the section — the second page from the back in your blue-covered — in your blue-covered thing. This is an amendment to the Constitution, enacted in 1962 through the efforts of the Rural Electric Cooperatives of the State. They immediately directed an amount of financing over the years, and they have needed low-interest financing in order to do the job of bringing power to the farms of North Dakota in order to build generating plants, such as we have up the River here at Stanton and Center. They have explored for a good many years a means of securing some other low-cost financing, and have done that through the REA because Congress sometimes is stingy with appropriations, and there's been a terrific backlog and they have had to wait years to do some of the jobs that they have done. But, after this was enacted, it would have provided for revenue bonds — tax-free bonds at the guarantee of the State, and they assumed that they could have been sold at a low interest rate; but after it was enacted, the Congress changed our tax laws so that this type of revenue bond was no longer tax-exempt; so it became of no use. We never used it. We had two of the representatives of the Rural Electric Cooperatives at our Committee meetings and discussed this with them. They still have a problem of financing, but they agree that this Section 76 could be removed from the Constitution.

PRESIDENT WENSTROM: Is there further discussion?

The question is on the first passage of Committee Proposal No. 1-22.

DELEGATE CART: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Is the question on the division?

PRESIDENT WENSTROM: Yes. I just hadn't quite gotten to that point yet.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, the Board of Higher Education, by a vote of six-to-one, went on record as supporting the extension of the one mill levy, which is a mandatory levy for the Medical School at the University. I voted against that resolution and notified the Board that, as a delegate, I could not in principle support the position of the Board. I think the explanation of the Committee has been adequate — that the task of taxation and funding is, without

question, a job of the Legislature; and to tie the Legislature's hands into a mandatory levy is simply not logical, it seems to me, in the planning of government. And so I have to regretfully, I think, go on record in opposition, again, to the position of the Board and hope that the motion and the action of the Committee be supported.

PRESIDENT WENSTROM: Any further comments? Delegate Cart.

DELEGATE CART: Mr. President. Quite a change has occurred since this amendment was adopted in our assessed valuation and taxes levied and collected against property. We have repealed or exempted personal property from taxation. There is still some question of how broad that coverage is. The chances are that about 43 percent of our total assessed valuation in the State would no longer be subject to taxation under the exemption that was granted here in 1969. Farm lands constitute about 47 percent of your total assessed valuation. City lots and leased sites constitute probably three-to-four percent. Public utilities, about 11 percent — that is, railroads and public utilities. The rest of our property — buildings of every description — our personal property — is under constitutional classification. So you can see that this burden is falling back on the rural people, on the farmed land — when you have a property tax levy brought under the Constitution.

Being a farm owner, I don't want that to influence anyone; but the rural people are going to have to carry the burden of retiring a lot of bonded indebtedness to schools, and things like that, in our expanded school districts.

So it seems to me rather unwise to keep a levy in force to support a State-operated institution and one that's of benefit to every citizen in this State. I think we should go along with the Committee's recommendations.

PRESIDENT WENSTROM: The question is on the adoption of Proposal No. 1-22, which originally consisted of — or does consist of three, six — eight articles, and it has been requested that Article 60 be removed and be voted on separately.

So the question now is on the adoption of Proposal 1-22. It would be Articles 14, 19, 24, 59, 65, 87 and 76.

All in favor of the question shall vote "aye;" and those opposed shall vote "nay," and we'll open the key and you will record your vote.

Have all delegates voted?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: My key still does not work.

PRESIDENT WENSTROM: Do you vote "aye"?

DELEGATE THOMPSON: Yes.

PRESIDENT WENSTROM: Delegate Thompson votes "aye."

Does any delegate wish to change his vote?

The vote is closed.

The roll call discloses yeas 94, nays 3, one absent and not voting. So the proposal, with the exception of Article 60, is adopted.

The question before the Convention is on the vote on Article 60.

Is there any further discussion?

Hearing none, all in favor of the adoption of the motion will vote "aye;" those opposed vote "nay." I will have the Clerk open the key and you will record your vote.

Has every delegate voted. Delegate Thompson.

DELEGATE THOMPSON: I vote "yes."

PRESIDENT WENSTROM: Delegate Thompson votes "aye."

Is there and delegate who wishes to change his vote?

The vote is closed.

The roll call discloses there were 82 ayes, 15 nays, absent and not voting, one.

So the proposal is adopted.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: A point of information.

Now, we have just voted on a divided proposal, with two different vote totals. Now, it's clear on both of them we're over 50, so the proposal is carried. But is that going to show "carried" in the Journal by a divided vote, or how? Just a point of information as to how that's done.

PRESIDENT WENSTROM: I'm sure it will, Delegate Kelsch.

Anything further? Do you have anything at the desk?

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: May the record show an explanation of my vote on Proposal 1-1.

I strongly favor religious liberty, but I did favor the 1889 version.

Thank you.

PRESIDENT WENSTROM: Delegate Saugstad moves that the Committee Proposal No. 1-1 and 1-2 — 22 — I'm sorry — 1-22 — be referred to the Committee on Style and Drafting.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: The motion has been seconded.

Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. The two proposals as adopted this morning will be referred to the Committee on Style and Drafting.

DELEGATE SAUGSTAD: President Wenstrom.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I'd like to make a — well, let's see. May we be on the — yes, the twelfth order — Announcements?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order.

DELEGATE SAUGSTAD: It has been called to my attention that some of the delegates here are or were unaware of the — from the procedures that were followed — that we followed this morning — namely, one, after looking at the calendar from now on, watch your calendar, and anything that's under the tenth order means that it will be up for a vote or first reading or first passage.

I should also like to point out that it is — while a proposal is in the tenth order, and before the final vote has been taken, that that is the time in which you may make an amendment or offer an amendment from the floor.

Now, the procedure: Should any of you have, say, a feeling that you would like to try to amend or further amend either Committee Proposal No. 1-1 or Committee Proposal 1-22, if you were to offer a motion either today or tomorrow — a motion to reconsider — and if that motion prevailed and which motion requires only a bare majority, then this proposal could be brought back before this body. It could be called back from the Style and Drafting Committee and be before this body to be acted upon, and then an amendment could be offered. If more than two days elapse, then the Rules must be suspended in order to get this proposal back before this body and a two-thirds vote is required.

Thank you.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: In order to clarify a little further, I want to elaborate on Delegate Saugstad's remarks.

Remember this: On the tenth order, Delegates, you can amend; but if you have intentions of amending, it would expedite the work of the group here if those amendments were placed in writing and handed to the desk in plenty of time. Then we wouldn't have this delay until the desk got them, so that the Chair could repeat exactly what the amendments were, and if it would have to be lengthy, it would be advisable to give the desk maybe a considerable length

of time and possibly the work force here could even place those amendments on your desk, which would help out a lot.

PRESIDENT WENSTROM: Thank you, Delegate Trenbeath.

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Am I right in assuming that on the day's calendar, when a proposal is in the sixth order, that this feasibly might come up tomorrow or soon?

PRESIDENT WENSTROM: When it's in the sixth order, it is up for amendment, and when I placed one in the sixth order today, it would come up for amendment tomorrow.

DELEGATE HENDRICKSON: Thank you.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Could we be on the eighth order — Announcements? — or are we on the eighth order?

PRESIDENT WENSTROM: We can be on the eighth order.

DELEGATE TUDOR: I should like to announce that, after a very successful and informative discussion last night at the auditorium of the Highway Department, at which over one hundred delegates were present — (laughter) — we are planning another discussion this evening at 7:30. This will be concerning unicameral versus bicameral forms of the Legislature.

Delegate Earl Chase will be the moderator. We would like to ask you, if you do come, to use the east door by the parking lot, because you will not be able to get in on the upper door — the west door. Thank you.

PRESIDENT WENSTROM: Thank you, Delegate Tudor.

We will be on the ninth order of business — Introduction of Proposals.

DELEGATE LITTEN: Mr. President, may I rise to a point of information?

PRESIDENT WENSTROM: Delegate Litten. The question?

DELEGATE LITTEN: Mr. President.

My question, Mr. President, is if we have very much left to do this morning? I want to suggest a 10-minute recess.

PRESIDENT WENSTROM: We have introduction of — oh, I suppose 15 proposals. Okay? We will proceed.

The ninth order of business.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-25, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 79 and 80 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to the veto power of the governor, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-25 will be referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal 1-26, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 77 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to gubernatorial succession, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-26 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal 1-27, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 75 and 76 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to power and duties of the governor, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-27 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-28, introduced by Committee on Executive Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 73 and 84 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to qualifications and compensation of elected officials, be created.”

PRESIDENT WENSTROM: Committee Proposal No. 1-28 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-29, introduced by Committee on Executive Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 29 of Article II of the constitution of the state of North Dakota be repealed; and that section 4 of Article II to the constitution of the state of North Dakota be created; both of which pertain to reapportionment of the state legislature.”

PRESIDENT WENSTROM: Committee Proposal No. 1-29 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-30, introduced by the Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 211 of Article II of the constitution of the state of North Dakota be repealed; and that section 27 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the oath of office.”

PRESIDENT WENSTROM: Committee Proposal No. 1-30 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-31, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 194 of Article II of the constitution of the state of North Dakota be repealed; and that section 22 of Article II to the constitution of the state of North Dakota be created; both of which pertain to grounds for impeachment.”

PRESIDENT WENSTROM: Committee Proposal No. 1-31 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-32, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 194 of Article II of the constitution of the state of North Dakota be repealed; and that section 22 of Article II to the constitution of the state of North Dakota be created; both of which pertain to grounds for impeachment.”

PRESIDENT WENSTROM: Committee Proposal No. 1-32 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-33, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 197 and 198 of Article II of the constitution of the state of North Dakota be repealed; and that sections 23 and 24 of Article II to the constitution of the state of North Dakota be created; all pertaining to impeachment.”

PRESIDENT WENSTROM: Committee Proposal No. 1-33 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-34, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 29 of Article II to the constitution of the state of North Dakota, which pertains to the matter of legislative ethics, be created.”

PRESIDENT WENSTROM: Delegate — or Committee Proposal No. 1-34 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-35, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 202 of Article II of the constitution of the state of North Dakota be repealed; and that sections 25 and 26 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the manner in which the constitution may be altered."

PRESIDENT WENSTROM: Delegate — or Committee Proposal No. 1-35 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-36, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 202 of Article II of the constitution of the state of North Dakota be repealed; and that section 25 and 26 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the manner in which the constitution may be altered."

PRESIDENT WENSTROM: Committee Proposal No. 1-36 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-37, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 41 of Article II of the constitution of the state of North Dakota be repealed; and that section 8 of Article II to the constitution of the state of North Dakota be created; both of which pertain to a legislative timetable."

PRESIDENT WENSTROM: Committee Proposal No. 1-37 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-38, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 37 of Article II of the constitution of the state of North Dakota be repealed; and that section 7 of Article II to the constitution of the state of North Dakota be created; both of which pertain to restrictions on the office-holding capabilities of state legislators."

PRESIDENT WENSTROM: Delegate — or Committee Proposal No. 1-38 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-39, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 45 of Article II of the constitution of the state of North Dakota be repealed; and that section 10 of Article II to the constitution of the state of North Dakota be created; both of which pertain to legislative compensation."

PRESIDENT WENSTROM: Committee Proposal No. 1-39 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-40, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 28 of Article II to the constitution of the state of North Dakota, which pertains to the office of legislative auditor, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-40 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-41, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 29 of Article II of the constitution of the state of North Dakota be repealed; and that section 4 of Article II to the constitution of the state of North Dakota be created; both of which pertain to reapportionment of the state legislature."

PRESIDENT WENSTROM: Committee Proposal No. 1-41 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-42, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the constitution of the state of North Dakota be repealed; and that section 1 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the legislative system.”

PRESIDENT WENSTROM: Committee Proposal No. 1-42 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-43, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the constitution of the state of North Dakota be repealed; and that section 1 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the legislative system.”

PRESIDENT WENSTROM: Committee Proposal No. 1-43 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-44, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 27 and 30 of Article II of the constitution of the state of North Dakota be repealed; and that sections 2 and 5 of Article II to the constitution of the state of North Dakota be created; all pertaining to legislative terms of office.”

PRESIDENT WENSTROM: Committee Proposal No. 1-44 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-45, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 28 of Article II of the constitution of the state of North Dakota be repealed; and that section 3 of Article II to the constitution of the state of North Dakota be created; both of which pertain to qualifications for legislative office.”

PRESIDENT WENSTROM: Committee Proposal No. 1-45 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-46, introduced by Committee on Preamble, Bill of Rights and Suffrage:

“Be it resolved by the North Dakota Constitutional Convention that section 1 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to inalienable rights.”

PRESIDENT WENSTROM: Committee Proposal No. 1-46 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-47, introduced by Committee on Preamble, Bill of Rights and Suffrage:

“Be it resolved by the North Dakota Constitutional Convention that section 3 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the supreme law of the land.”

PRESIDENT WENSTROM: Committee Proposal No. 1-47 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-48, introduced by Committee on Preamble, Bill of Rights and Suffrage:

“Be it resolved by the North Dakota Constitutional Convention that section 10 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to right to assemble.”

PRESIDENT WENSTROM: Committee Proposal No. 1-48 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-49, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 12 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the military being subordinate to the civil power."

PRESIDENT WENSTROM: Committee Proposal No. 1-49 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-50, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 17 of the constitution of the state of North Dakota, which pertains to slavery, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-50 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-51, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 19 of the constitution of the state of North Dakota, which pertains to treason against the state, be repealed."

PRESIDENT WENSTROM: Committee Proposal 1-51 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-52, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 21 of the constitution of the state of North Dakota, which pertains to provisions of the constitution being mandatory and prohibitory, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-52 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-53, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 23 of the constitution of the state of North Dakota, pertaining to freedom to obtain employment, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-53 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal 1-54, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 209 of the constitution of the state of North Dakota, which pertains to child labor, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-54 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-55, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 212 of the constitution of the state of North Dakota, which pertains to blacklists, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-55 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-56, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 213 of the constitution of the state of North Dakota, which pertains to property rights of women, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-56 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-56, introduced by Delegate Burke:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to the limitation of terms of elected officials, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-56 is referred to the Commission — Committee on Judiciary — Judicial Functions and Political Subdivisions.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: May we be on the eighth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order of business.

DELEGATE HAUGEN: I would like to announce to the members of the Finance and Tax Committee that we will meet immediately in the Blue Room, and I believe that the Clerk will have coffee for us there, so we won't have to go get coffee. We will be talking about Delegate Proposal 2-45, introduced by Delegate Dobson, and, Dick, I hope that you will be able to come down and meet with them.

PRESIDENT WENSTROM: Any further announcements? Delegate Geelan.

DELEGATE GEELAN: Mr. President.

The Rules Committee will have a meeting tomorrow afternoon in the Large Hearing Room, between 1:00 and 2:00, to consider three things: What rule, if any, should be adopted for placing alternate proposals on the calendar;

Two, what rule should be adopted for the final vote on the Constitution; and

Third, are we then ready to make the temporary rules the permanent rules of the Convention?

We have cleared this and talked to President Wenstrom and the Chairman of the Calendar Committee and it is our hope that the substantive committees would then delay their meetings tomorrow until two o'clock so that, if there are delegates who wish to appear, we suggest they may do so.

PRESIDENT WENSTROM: Thank you, Delegate Geelan.

Delegate Saugstad.

DELEGATE SAUGSTAD: There will be a very brief meeting of the Calendar Committee immediately following recess.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: There will be an organizational meeting of Style and Drafting today at three o'clock in G-7.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I'd like to announce that there will be a meeting of the Executive Functions Committee immediately, and I think there's coffee down in that room, too. I may be a little late, but if the room is ready, I'm sure we can take over.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I want to announce a meeting of our Committee — the Judicial Committee — immediately after the recess. Delegate Roney, Vice Chairman, will take over, since I have to attend the Calendar Committee.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, the Committee on Legislative Functions will meet also immediately after this recess.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I'd like to announce the Bill of Rights Committee will meet immediately upon recess.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: The Public Information Committee will meet at 4:00 P.M. this afternoon, or as near to that time as possible, in the West Balcony of the House Chamber.

PRESIDENT WENSTROM: I believe we have some announcements at the desk.

CHIEF CLERK GILBREATH: Legislative Functions Committee will hear Proposal 1-8, Powers Reserved to the People, at 3:00 P.M., Large Hearing Room, Monday, January 10th.

Legislative Functions Committee will hear Unicameral - Bicameral at 3:00 P.M. in the Large Hearing Room, Tuesday, January 11th.

Judicial Functions Committee will hear Committee Proposals 1-11, 1-12 and 1-13 tentatively at 9:30 in the Gold Room, January 6th.

Executive Functions Committee will meet on Thursday, January 6th, in Room G-5 and 6, following the Plenary Session.

Committee on Education, Resources and Public Lands will hear Committee Proposal 1-17 and 1-18, Trust Lands and Public Institutions, Monday, January 10, 1972, at 1:30.

They will hear proposal — Committee Proposal 1-16 on Environment, Tuesday, January 11th, at 1:30.

They will hear Committee Proposal 1-15, Education, Wednesday, January 12th at 1:30.

Public Information Committee will meet Thursday, tentatively at 4:00 P.M., to discuss post-convention activities with members of North Dakota Extension Council — several Council members will be there — Thursday.

PRESIDENT WENSTROM: The Chair wishes to announce the following additions to the Committee on Style and Drafting:

Delegate Hendrickson, Delegate Jestrab, Delegate Urdahl and Delegate Jim Hougen.

Are there any further announcements?

Any further business to come before the Convention? Delegate Saugstad.

DELEGATE SAUGSTAD: If there be no further business, I move that we adjourn until 9:00 A.M., January 7th.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It has been moved that the Convention be now adjourned until 9:00 A.M., January 7th.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we will be — we stand adjourned until tomorrow morning at nine o'clock.

(The Plenary Session adjourned at 11:06 A.M., Thursday, January 6, 1972, until 9:00 A.M., Friday, January 7, 1972.)

VOLUME V

(January 7, 1972)

MORNING SESSION

(The fifth day of the Plenary Session commenced at 9:07 A.M., Friday, January 7, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is James M. Butler, Pastor of the First United Presbyterian Church of Bismarck, North Dakota.

Fellow Delegates, I think you will remember this gentleman, as he is the Pastor that pronounced the invocation at the opening of the April 6th Convention.

REV. JAMES M. BUTLER: We join in prayer.

God, Our Father, you hear us and you care about us, and we pray, because we would meet others with all that we have to give, and because we would infuse the temporal with eternal, and because we want to be ready to respond to your judgments and your love along the way of our voyage;

And so here we are, where the very precious heritage meets in white-heat the pressures of the new and the ever-changing. Lord, that we might be good householders, bringing out a treasure — things old and things new. We do not ask you for more favors. It is beginning to dawn upon us that we are in trouble not from your lack of bounty, but from our own poor stewardship. And men's cries of pain and a ravaged earth, and our own angry voices testify against us. Being ashamed, we ask forgiveness. And knowing our weakness, we ask Thy strength.

Here in this place let the sons of men find that there is faith in the earth. Quiet the clamor of greed and of demagoguery and let the complaint of the faithless and the cynic die away. And may the lines forged here proclaim an ancient faith and undying hope that there shall be a commonwealth where men can be trusted with freedom because they acknowledge Thy sovereignty. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — calling the roll.

The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence? The key is closed. The roll call discloses 97 present, one absent.

A quorum is declared.

Fellow Delegates, while we're on the question of roll call: In case that you miss a roll call and then appear — join the Convention at some later period during the day — it would be appreciated if you would rise at that time and announce your presence, because at this time, when there is so little debate, it might be that your name would not appear in the Journal, and when it comes to figuring out the payroll, you might be missed. Just — just to facilitate and make it easier for those that are keeping the record, that when you miss a roll, if you would announce it, so that it will be definitely recorded in the Journal that you are here at the specific time. It will indicate that you are here. It will alleviate that problem. I say if you do it, we will appreciate it.

Thank you.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, as long as we aren't too busy early this morning, I would like to have a couple gentlemen — Representatives Johnson and Rivinius, from the southwest corner, stand up. They're both big, old cowboys, and they've both had more bones broken by horses than you can shake a stick at. (Applause)

Mr. President, I believe Delegate — Representative Arne Boyum is around here, too, from Carrington, and these boys tell me they're here to see that we take good care of their House. (Laughter)

PRESIDENT WENSTROM: Thank you. We'll be on the fourth order of business — Revision and Correction of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 5th day of January, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Simonson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the committee report on the Revision and Correction of the Journal.

Any question?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

We will be on the sixth order of business — Consideration of Amendments.

CHIEF CLERK GILBREATH: The amendments to Proposal 1-10, as recommended by the Committee on Judicial Functions and Political Subdivisions as printed on page 125 of the Convention Journal are: In line 12 delete "state militia" and insert in lieu thereof "military forces."

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: All this does is change the title of the article to conform with the body of the article, where it states "the state's military forces."

Now, this will be explained on Monday, when the Committee Proposal is on the calendar. The whole proposal will be explained at that time.

PRESIDENT WENSTROM: Are there any questions?

The question is on the amendment to Committee Proposal No. 1-10.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

That completes the fifth and sixth order.

Are there any Committee Reports? No Committee Reports.

Anything under Communications? Introductions.

We will be on the tenth order of business.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-4, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that article 1 of the amendments to the constitution of the state of North Dakota be repealed and section 1 of repealed Article I of the amendments to the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: The question is on the adoption or the final — or the first passage of Committee Proposal No. 1-4.

Is there any discussion? Delegate Thompson.

DELEGATE THOMPSON: Mr. President.

If I might explain a little bit the action of our Committee. We had some substantial testimony on this matter from the State's Attorneys Association of the State and, also, from the lodges — fraternal lodges throughout the state, and I believe it was the feeling of the Committee, first of all, that this was legislative and, therefore, should be removed and, secondly, that — I think that the Committee also felt that the Legislature should have the responsibility of examining the so-called social atmosphere of the State of North Dakota and determine whether or not there are some types of lotteries that are now being utilized throughout the State and which possibly should be made legal or not. I'm sure that we all are aware that we are turning our backs on some forms of gambling now, and that is especially true of your State's Attorneys organization, and I think it's the consensus of opinion in their organization that they would like to be placed in the same position as the rest of the citizens of the State of North Dakota.

I think that, because of the change in the social atmosphere of this State, this matter should be given to the Legislature, and I, therefore, move the passage of the Committee Report.

PRESIDENT WENSTROM: Any further discussion on Committee Proposal No. 1-4?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I think my eyes and ears must be deceiving me. I wonder if everyone here is aware that what we are doing at this point is, for all practical purposes, so far as the substantive matter is concerned, taking final action. If we pass Committee Proposal 1-4 at this time, it is my understanding that, from this point on, under our Rules, the only thing that we can consider is changes in the language having to do with grammar, punctuation — things like that — maybe order in which it should appear, and that sort of thing; that the question of whether or not we'll have before us the present language in the Constitution dealing with lotteries, gift enterprises, will no longer be before us, and if this were on this one subject alone, I think I might be inclined to go along with Delegate Thompson; but inasmuch as this action will be a part of our whole action, I'm just wondering if we want to take such a step at this time. What we will be doing, if we do so, is direct that the people of the State of North Dakota repeal the section of the Constitution which makes it illegal to have — which says that there shall be no power to authorize lotteries, gift enterprises, for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets.

It just seems to me that, inasmuch as this is such an important stage in the action that we take, that there really ought to be some debate on the subject.

PRESIDENT WENSTROM: Thank you, Delegate Baker.

Any further discussion?

Delegate Sinner.

DELEGATE SINNER: Mr. President. Fellow Delegates, I have for a long time thought this was a silly provision in our Constitution. Not very long ago, a friend of mine from another state, whose judgment in such things is very good and very perceptive, heard that we were having a Constitutional Convention, and warned me that the influence of gambling organizations in many states is so powerful and that it extends into so many areas, including punchboards, distribution of vending machines, and he warned me that we better know what we are doing if we were going to open this matter up.

I have to confess that I can't see how this belongs in the Constitution, and yet I trust my friend's judgment enough so that I have to — I feel compelled to say it here — and I don't know what we should do, but this man knew whereof he spoke, and he said that no one knows the terrific pressure that these forces can bring to bear on not only state businesses, but legislators and everybody else.

I — I just don't know what to say. I have to — I've talked to one or two members of the Preamble Committee, but they have been unable to get at this problem, I think. And so I just bring it up for — as Delegate Baker says, for more discussion.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President. I wonder if Delegate Sinner would yield to a question.

PRESIDENT WENSTROM: Delegate Sinner yields.

DELEGATE LAMB: Delegate Sinner, are these punchboards and these things that you are referring to in existence in North Dakota today? (Laughter)

DELEGATE SINNER: I think you know they are. Mr. President.

PRESIDENT WENSTROM: Delegate Sinner?

DELEGATE SINNER: Everybody knows they are, and the object of my friend's warning was that, if you remove the — if you remove this kind of provision, he said, "How then can you get the hard-core problems when they come?"

Well, I — I just don't know. I can't believe it would be a problem. I agree with the Committee Report, and yet I'm worried about what he told me.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. Speaker, I wonder if Delegate Thompson or one of the members of the Committee would yield to a question.

PRESIDENT WENSTROM: Will a member of the Committee — Preamble —

DELEGATE THOMPSON: Yes.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE AAS: Mr. Speaker, I would like to ask if we have had any recent elections, in the last 10 or 15 years, in which this question was on the ballot and, if so, what was the vote on that — in that election — and what were the results?

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I believe I can answer the question — not as to the result — but South Dakota had their last election in 1970. The '69 election had these precise constitutional provisions on the ballot, and it was removed from the constitution by a fair majority, but I don't know what it was — if it was two-to-one, or what. But it was no problem that it passed, and they took it out of the South Dakota Constitution. Illinois, I believe, recently changed their state laws on the bingo-type thing, and it went through.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President.

I think Delegate Aas might be referring to the sound trouncing that dog racing or pari-mutuel betting had on the ballot here a couple years ago. But I also want to mention one election which was held in the 1965 session of the Legislature. I drafted a bill for the Attorney General, in conjunction with the U. S. Attorney's office in Fargo, regarding the continual nuisance we had with coin-operated gambling devices and wagering stamps.

At that time I think the Associated Press reported there were 37 such of the demons in North Dakota, but the Attorney General was only glad to report that there were only 622 in South Dakota, and I think even more yet in Montana. So we had the least gambling from that respect. But we had the bill introduced in the Senate by sponsors from all around the State, and it passed the Senate 48-to-nothing, and they were all against gambling because it was against the State of North Dakota.

The fraternal organizations got wind of it over in the House, and a legislator from Williston, where they had this problem quite often — he was the City Attorney up there — he at least made the House get up and have a roll call vote before they killed that — put that measure on the table. They didn't want to go on record. But they also recognized the practicalities of the situation, and this kind of situation, if we're going to — any my friend, the State's Attorney in Traill County, he said he didn't care if the Mafia came and set up an operation on Main Street after the abuse he took after trying to enforce the gambling laws in Traill County. They trailed him around town. They burned crosses on his lawn. They took the rotor out of his distributor, and many other things. And, consequently, if you expect our State's Attorneys in North Dakota to prosecute the Elks Club, the Catholic Sons — or the Knights of Columbus, the Moose Lodge, the Eagles Club, the Elks, the American Legion — you're expecting a lot more than our State's Attorneys expect to do.

And then they are expected to enforce the laws on the books; but they know when they go ahead and do something the public will not accept, they're in trouble, and I believe the provision is truly unworkable at this time.

The legislative committee that is working on the revision of the criminal code has directed their staff to come up with a provision barring gambling totally and, also, a provision which will provide for limited lottery operations by charitable organizations.

I defy any member here to start a criminal complaint against the St. Mary's Carnival, which will be held while we're here in town here this year.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I have the information that Delegate Aas would like.

In 1964, we voted on the repeal of Article I, and it was defeated 76,198-to-41,871. In 1968, we voted on the horse-racing betting. That was 133,713 noes, 85,235 ayes.

Now, you could interpret this in a couple ways. You could say, "Well, if we repeal this, we're going to have all these people against the Constitution." You could say that. You could say that, "If we pass this and the Legislature chose to repeal it on their own, that the people would refer to or beat it in the referendum." So you could probably interpret this on either side of the argument.

I find myself in a very precarious situation on this, because I feel that it is extraneous language that could be dealt with by the Legislature, and there are sufficient guarantees; however, as some of you have probably checked in the biographies, you know that I'm a Baptist and I have some real problems. Here I've only been here one week. Yesterday I voted against the one mill levy for the University of North Dakota. So I don't know if I can go back to work. If I'm required to vote on this today, I probably won't be able to go to church on Sunday.
(Laughter)

DELEGATE AAS: Mr. Speaker.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: I want to thank him for the information. This is what I was seeking for, and I think that when we do vote on some of these things we should consider what the people have done in the past as to what they might do in the future.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President.

As a member of the Committee, one of the things we took into consideration is the respect for law allotted by youth. They see gambling, church raffles, and things like that, which they know are illegal, and we felt it was a lot better to let the Legislature set up controls of that type, so we can retain the respect of these people for the law and for how it's handled.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I think the people of North Dakota are concerned about living with a Constitution with some guarantees, and we can presume and we can suppose and we can guess about what the Legislature might or might not do. I agree with Delegate Aas that the people in North Dakota have spoken very strongly on this issue. I would like to ask a straight question and I'd like a straight answer.

If we repeal Article I, does it mean that pari-mutuel betting is free to come into the State of North Dakota?

PRESIDENT WENSTROM: Will someone answer the lady's question?

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Our last chapter, 12-23 and 12-24 of the North Dakota Century Code, prohibits all forms of lottery and gambling at this point; but I think, in all fairness, if this Convention removes the provision on lotteries and it were upheld by the people of North Dakota, I think the Legislature might take that as a sign that limited gambling or lotteries might be permissible.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: To come to the aid of Delegate Omdahl, I would move that that Proposal 1-4 be laid over until Tuesday.
(Laughter)

PRESIDENT WENSTROM: It has been moved that Committee Proposal No. 1-4 be laid over until Tuesday.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Just a second. May I have a second?

DELEGATE LONGMIRE: That's what I was rising for, Mr. President. I want to go to church, being a Baptist, too, as Delegate Omdahl, on Sunday, and I second the motion. (Laughter)

PRESIDENT WENSTROM: The motion has been seconded by Delegate Longmire. Is there any further discussion?

The question is on the motion that Committee Proposal No. 1-4 be laid over until Tuesday.

As many as are in favor of the motion say "aye;" opposed "no." The "noes" have it and the motion lost.

DELEGATE DEVINE: Request for a division, Mr. President.

PRESIDENT WENSTROM: A division has been requested by Delegate Devine.

DELEGATE CART: Is the question to lay over?

PRESIDENT WENSTROM: The question is to lay over until Tuesday.

The key will be opened and you will record — you will not record your vote. On your vote now, if you vote in favor of Delegate Kelsch's motion to lay over, then you will vote "aye;" and if you are in opposition to his motion, you will vote "nay."

Now, I said that this would not be a recorded vote. It will not be recorded in the Journal, but of course it would be up on the board.

So the key will be opened and you will cast your ballot.

Has every delegate voted?

The key will be closed.

The vote indicates there were 46 "ayes," 51 "nays," one delegate absent. So the motion lost.

The question before the Convention is on the passage of Committee Proposal No. 1-4. Is there any further discussion?

Hearing none, we will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

The key is closed.

The roll call disclosed 64 "ayes," 33 "nays," one delegate absent. So the proposal is adopted.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-14, introduced by Committee on Judicial Functions and Political Subdivisions:

"Be it resolved by the North Dakota Constitutional Convention that sections 206 and 207 of the constitution of the state of North Dakota be repealed; and that article XV to the constitution of the state of North Dakota be created; all of which pertain to state boundaries and the state seal.

"SECTION 1. REPEAL.) Sections 206 and 207 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Article XV to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XV

"BOUNDARIES; SEAL

"Section 1. The name of this state is 'North Dakota.' The state of North Dakota shall consist of all the territory included within the following boundary, to-wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the state of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

"Section 2. The following described seal is hereby declared to be and hereby constitutes the great seal of the state of North Dakota, to-wit: A tree in the

open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left, a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars surrounded by the motto 'Liberty and Union Now and Forever, One and Inseparable'; the words 'Great Seal' at the top; the words 'State of North Dakota' at the bottom; 'October 1st' on the left and '1889' on the right. The seal shall be two and one-half inches in diameter."

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I am about to make a motion on this, to lay it over, for the reason that I have been told by one delegate, who has talked with a geography specialist, that in modern-day descriptions of territories and land, and so forth, that they are no longer using the word "meridian," and I have not had an opportunity to contact the geographer specialist since this information was brought to my attention. For that reason, I would like to move that this proposal be laid over until Monday, in order to give our Committee an opportunity to check the description part of it. If we find that the word "meridian" is not being used, then we will desire to amend the proposal at that time.

PRESIDENT WENSTROM: Delegate Longmire moves that Committee Proposal No. 1-14 as amended be laid over until Monday.

Do we have a second?

Seconded by Delegate Roney.

Any further discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: May I direct a question to Delegate Longmire?

PRESIDENT WENSTROM: Will Delegate Longmire yield?

DELEGATE LONGMIRE: Yes.

DELEGATE AUBOL: Is this an item that could be handled by the Style and Drafting Committee?

DELEGATE LONGMIRE: I suppose, technically, it could; but our Committee, being a highly-efficient committee, we'd like to put them out in their final form when we act on them. For that reason, I would ask that this be done.

PRESIDENT WENSTROM: Is there any further discussion?

The question is on the motion to lay Committee Proposal 1-14 as amended over until Monday.

As many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it and the motion lost.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that Committee Proposal 1-14 be returned to the Committee on Judicial Functions and Political Subdivisions.

PRESIDENT WENSTROM: It has been moved by Delegate Longmire that Committee Proposal 1-14 as amended be returned to the Committee on Judiciary and Political Subdivisions.

DELEGATE HOUGEN: Second.

PRESIDENT WENSTROM: Delegate Hougen seconded the motion.

Now, Delegate Cart.

DELEGATE CART: This is a serious question. We're one of the public lands survey states and they have used all of these phraseologies since Congress enacted the Public Lands Survey Law back in 19 — or 1818, and I don't think we should tamper with this without pretty thorough checking. I certainly support the position of the Chairman of the Committee.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on Delegate Longmire's motion that Committee Proposal No. 1-14 be returned to the Committee on Judiciary and Political Subdivisions.

As many as are in favor of the motion will say "aye;" opposed "no." The motion won. (Laughter)

The motion carried and the proposal will be returned to the Committee on the Judiciary and Political Subdivisions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-20, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145 and 146 of the constitution of the state of North Dakota be repealed; and that article X to the constitution of the state of North Dakota be created; all of which pertain to corporations.

"SECTION 1. REPEAL.) Sections 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145 and 146 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Article X to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE X

"CORPORATIONS

"Section 1. No charter of incorporation shall be granted, modified or amended by special law, except in the case of municipal corporations or such other corporations as may be under the control of the state. The legislature shall provide by general laws for the organization of all corporations.

"Section 2. No law shall be passed by the legislature granting the right to construct or operate any public utility or similar service within any city without requiring the consent of that city."

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Speaking on behalf of the Committee on Education, Public Lands and Resources: Basically, what our Committee has tried to do is to remove those sections of the existing Constitution which are no longer in force and effect either because of federal jurisdiction or because some of these sections were merely transition sections, and we have also tried to remove those sections which the Committee felt were more properly a matter for the Legislature.

We'll run through them quickly, section by section, and if there's questions afterwards, we'd be happy to answer them.

Section 131 of the Constitution we have incorporated in Section 1 of Article X. Section 132 was obsolete after the adoption of the original Constitution. This is also true of Section 133, which referred to existing corporations at the time of the adoption of the first Constitution.

Section 134 was combined with Section 14 and was referred to Delegate Geelan's Committee, and this pertained to the fact that corporations were subject to eminent domain. We felt that this would best be combined with the other sections on eminent domain.

Section 135 provided for accumulative voting in corporations. We felt that this was a matter that the Legislature could deal with.

Section 136 provided that foreign corporations had to have a place of business or a resident agent in the State. Again, we thought this was a matter for the Legislature.

Section 137 was a limitation on corporations doing business. Again, we thought this was a matter for the Legislature.

Section 138 was a provision on watered stock. Again, we thought this was a matter of general law for the Legislature.

Section 139 was a provision that prohibited the Legislature from granting the right to construct and operate certain enumerated utilities within a city without the permission of the local authorities. We have attempted to bring this up to date and, instead of enumerating the utilities, used the broad term.

Delegate Christensen will speak as to the other sections.

PRESIDENT WENSTROM: The Chair will recognize Delegate Christensen.
DELEGATE CHRISTENSEN: Mr. President, I'll make reference to 140, 141, 142, 143, 144, 145 and 146, which the Committee, too, is recommending for repeal in connection with the Proposal 1-20.

The Committee bases their decision on the fact that the sections are made up of legislative material or they are no longer pertinent.

Section 140 applies to domestic railroad corporations, of which there are none in North Dakota.

Section 141 has to do with railroad consolidations. Railroad consolidations are heavily regulated by the Federal Government under the Commerce Clause in the Federal Constitution, and the State law is not operative.

Section 142 declares that railways are common carriers and subject to legislative control. This section also provides that the Legislature should provide for the regulation and control of rates charged for transportation of passengers and freight. This area is covered by the government under federal law, which takes precedence over state law.

Section 143 has to do with corporations organized for the purpose of constructing and operating railroads within the State. This, we don't feel, is a constitutional matter.

Section 144 defines the word "corporation." The Committee feels that this is — that it is questionable whether the Constitution is a proper place to define terms.

Section 145 provides that if a general banking law is enacted, that it should provide for the registration and countersigning of notes and bills which would be designed for circulation as money. The area of money being printed and circulated is government-regulated by the Federal Reserve System; so this thing would be inoperative, as far as state law is concerned.

Section 146 forbids price fixing. This section appears to be in conflict with the fair trade laws which allow limited price fixing and which is regulated by federal law. This could be handled by the Legislature, should it be necessary to effect anything with regard to price fixing.

Then, in our Article X, you will — by comparison, you will find that there are no substantial changes made in the Article.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President. Members of the Convention:

I would call your attention to the fact that the interim report does contain a real detailed explanation of each of these, starting on page 9, for each of the sections in this 1-20, and if you have reason to explain our action on your action in voting for this proposal, you could well find it there from each of the deliberations that we conducted over our hearings, and I think that's a good place to follow the report of our Committee.

DELEGATE HOGHAUG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, I go along with nearly all of this, but I wonder if someone from the Committee could — I would like to refer to Section 135. I see they're doing away with these unnecessary items, but now it seems to me that Section 135 is a different substance altogether, and I'd like to have the Committee give us their thinking on that.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Section 135 deals with cumulative voting, which is a measure designed to protect minority stockholders in a corporation. Here we felt that, while there was a protection for the people, that this is a matter that properly should be handled in the general laws of corporations. There are areas where there's some questions as to cumulative voting — when you get into the co-ops and this type of thing. We felt that, simply, it was a matter for the Legislature to deal with in their general laws. I believe the statutes carry such a provision.

PRESIDENT WENSTROM: Any further discussion? Are there any questions?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I might just add that the Legislature — the Committee — the Constitutional Research Commission that was created by the 1965 Legislative Assembly had considered these same sections and, after their study of these sections, had agreed with our Committee's action; and so they recommended a repeal of most of these provisions, also.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I have a question. I think it refers to these repealed, and perhaps others too, but when we repeal sections which are felt to be legislative matters, will there be any provisions or safeguards provided where needed that would control rules or legislation between the time the new Constitution is adopted and legislative — and legislators would have time to enact these repealed matters? Do I make myself clear?

PRESIDENT WENSTROM: Delegate Hendrickson, I think that that would depend entirely upon the effective date of the new Constitution.

DELEGATE HENDRICKSON: You mean we could possibly save that —

PRESIDENT WENSTROM: Well, if the new Constitution went into effect with the election day or immediately thereafter, where, then, of course, it would be in effect before the meeting of the next session of the Legislature.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think, at least in the case of the repealers relating to corporations and banking, they almost — at least to my general knowledge — would be that the Legislature has spoken to all of these subjects and it's quite typical where the Constitution prohibits or directs certain conduct, that many laws have been passed in conformance of that. So I don't think this repeal of these constitutional provisions on corporations will change that, and an alternate might be present where the scheduling committee could say it would not be effective until the next Legislature were to meet. But I would like to ask somebody on the Committee for their comments or their thinking on repeal of Section 146, which is the prohibition of the fixing of prices by any individuals, corporations or associations. The Constitution prohibits the fixing of prices on products from the soil or any other product. I wonder what the Committee's thoughts are on that.

PRESIDENT WENSTROM: Could someone inform Delegate Kelsch — a member of the Committee — on the Committee's thoughts on Section 146? Is that the right section that I stated, Delegate Kelsch?

DELEGATE KELSCH: Yes.

PRESIDENT WENSTROM: 146.

DELEGATE CHRISTENSEN: Mr. President.

PRESIDENT WENSTROM: Delegate Christensen.

DELEGATE CHRISTENSEN: I would just refer to the material we have on hand.

This section forbids the fixing of prices of any product of the soil or any article of manufacture or commerce and provides for the revoking of franchises as a penalty for violation of this section. This section appears to be in conflict with Chapter 51-11 of the North Dakota Century Code, the fair trade law, which allows limited fixing of prices. The area of price fixing is extensively regulated by Federal law, and the Committee appeared to feel that the matter is better handled, if at all, by the Legislature, which could more easily adjust to changing circumstances at the federal level.

PRESIDENT WENSTROM: Any further questions?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I would like to ask one of the Committee members: Is there any significance in using the words "special law" as stated in Section 1? I really have never seen that term used before in a constitution. Is there any significance in that word — using "special"?

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I'm not real sure, to be completely candid. Based on what we were thinking about, is something that was in the newspaper here a couple months ago — was a position before Congress to grant special copyright provisions to an organization. We thought that this should not be the case in North Dakota; that no corporation has a benefit that other corporations do not. This was our intent.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I can't help but be a little bit concerned. I don't think the Committee's explanation that they're going to repeal Section 146 because it conflicts with the statutory law is a satisfactory explanation. The statute conflicts with the Constitution — not the Constitution conflicts with the statute.

I was frankly not aware this was in the Constitution. I think that we should know what we're doing. I'm not saying that I'm opposed to our repeal of it, but I think this Section prohibits, in the first sentence — if you look at your Constitution — "Any combination between individuals, corporations, associations, or either having for its object or effect the controlling of the price of any product of the soil or any article or manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy."

Now, I frankly don't know how an organization like the National Farmers Organization could operate in the State with a constitutional prohibition like this, because certainly that's a group of people organized for the purpose of fixing the price of products of the soil, and there are many other organizations or groups of people that organize or associate. Now, maybe it's a good — maybe this is a matter that should be left to legislation; but I think we should appreciate, when we repeal 146, that we are — what we're doing.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President. We appreciate the comments which Delegate Kelsch has made, because in our Committee, we spent a great deal of time talking about this particular section, and it is true that, except for those two which we are recommending be included, that this is the one where we still have a very substantive question before us. We hope that we brought that out.

Here, again, despite the fact that — that our Staff has done a very good job with this report, I think, in the effort to keep it brief, there are some of the things which are not in there, and it is very — very relevant that, if you do repeal this particular section — and you accept our thinking, you're — you're making a rather significant decision; that's true.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President. Under Rule 24, I call for a division of the question so that a separate vote will be taken on the question of the repeal of Section 146.

PRESIDENT WENSTROM: Your request shall be granted.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: I, also, feel that Section 135 — we're talking here about the rights of individuals. All the rest of these are about corporations, and I ask that Section 135 be divided.

PRESIDENT WENSTROM: Your request will be granted.

Delegate Baker, might I inquire: Your request was on 124. Was that the question?

DELEGATE BAKER: No. 146.

PRESIDENT WENSTROM: Oh! 146.

Is there any further discussion on Committee Proposal No. 1-20?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Does the repeal of 142 in any way restrict the ability of the Legislature or the Public Service Commission to deal with intrastate actions and intrastate practices of railroads?

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: To answer Delegate Sinner's question: It is our information it does not. We have discussed this provision with the Public Service people, and they say it's fine. Again, the LRC Committee that Delegate Omdahl referred to recommend that this section be repealed in 1965.

PRESIDENT WENSTROM: Any further questions?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: A question of information, Mr. President.

If a divided — if part of the question is moved to be laid over, does that lay over the whole matter?

PRESIDENT WENSTROM: Pardon?

DELEGATE KELSCH: If a motion to lay over a portion of a question is made and carried, would that take the whole proposal with it?

PRESIDENT WENSTROM: I believe it would.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Following the Delegate's line of thinking a little bit:

When it came to the time now to vote separately on the tenth order for first passage on one of the questions that has been divided out of the whole, could that vote be laid over?

PRESIDENT WENSTROM: I don't believe it could, Delegate Baker. Of course, Delegate Baker, you realize we are on the tenth order now.

DELEGATE BAKER: Right.

PRESIDENT WENSTROM: No further discussion on Committee Proposal No. 1-20?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I ask that Section 142 also be divided.

PRESIDENT WENSTROM: Section 142?

DELEGATE RUNDLE: Yes.

PRESIDENT WENSTROM: Delegate Rundle has requested that Section 142 be voted on separately. That request is granted.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I certainly don't want to infringe upon the rights of the committee that considered this; but, surely, it seems to me that, in dividing this into about four different parts, we are wasting our time. A much better decision would be to send it back to the committee for consideration, and those people who have questions on these subjects can appear before the committee and get their questions answered.

Might I move — this is before the Education Committee. Might I move that the Clerk — that the Secretary — that Proposal — that Proposal No. 1-20 be returned to the Committee on Education?

PRESIDENT WENSTROM: Do you wish to move, Delegate Haugen, that Committee Proposal No. 1-20 be returned to the Committee on — what committee?

DELEGATE HAUGEN: Education, Resources and Public Lands.

PRESIDENT WENSTROM: On Education, Public Lands and Resources? Yes, you may move that.

DELEGATE LANDER: Mr. President, I would like to second the motion.

PRESIDENT WENSTROM: It has been seconded. The motion has been seconded.

The question before the Convention —

DELEGATE LANDER: Is that debatable, sir? I don't have my book in front of me.

PRESIDENT WENSTROM: Yes, that is debatable.

DELEGATE LANDER: I would like to speak on behalf of the Committee.

I think that we are happy to have this re-referred to us. We thought that we had something that would help the Convention move forward; but if we don't, we're very happy to have it before us again.

PRESIDENT WENSTROM: The question is on Delegate Haugen's motion that Committee Proposal No. 1-20 be re-referred to the Committee on Education, Public Lands and Natural Resources.

As many as are in favor of that motion will say "aye;" opposed "no."

I believe the "ayes" have it. The proposal will be re-referred to the Committee.

We will be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-30 has had the same under consideration and recommends that the same do pass.

Delegate Hoffner, Chairman. Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on — on Committee Proposal — Committee Proposal No. 1-30, and the Proposal would be placed on the — no, that's for a vote. Is there any discussion?

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: A question, please.

Is this — then do we understand that, if we accept this today, it will be on the Monday calendar, sir?

PRESIDENT WENSTROM: That's right.

DELEGATE LANDER: My question is: We still don't have them in the book and haven't been able to see them and can't do our homework. I was just wondering about that.

PRESIDENT WENSTROM: Yes, this will be on the calendar on Monday. This is the Committee Proposal No. 1-30.

DELEGATE LANDER: All right. Then I repeat my question. See, this is a part of the division of that question. I don't know what it is, because we don't have it, have we?

CHIEF CLERK GILBREATH: You don't have it in your book?

DELEGATE LANDER: I don't think so. I go up to 1-22, and I quit. Am I wrong? Please correct me.

DELEGATE HERNETT: Mr. President, these were just introduced yesterday. I'm sure they aren't printed. How could they be?

CHIEF CLERK GILBREATH: Monday. They'll be here Monday.

PRESIDENT WENSTROM: Well, if we place these on the tenth order and the bills are not printed and they're not made available to you, we'll lay them over on Monday so there will be no action, of course, unless a printed copy is available to the delegates. So then this Proposal No. 1-30 will be placed on the tenth order until Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-33 has had the same under consideration and recommends that the same do pass.

Delegate Hoffner, Chairman. Delegate Hoffner moves the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Proposal No. 1-33.

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: The motion is seconded. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-33 will go on the tenth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-34 has had the same under consideration and recommends that the same be amended as follows:

On line 8 after the word "officials" insert "legislators,"

Delete all of lines 11 through 15.

And when so amended recommends the same do pass.

Delegate Hoffner, Chairman. Delegate Hoffner moves the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report or Committee Proposal No. 1-34, which is to be amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-34 will be on the sixth order on Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-39 has had the same under consideration and recommends that the same do pass.

Delegate Hoffner, Chairman. Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Proposal No. 1-39.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and that was really getting a feeble "aye" vote there.

It will be on the tenth order of business on Monday.

We will be on the ninth order of business — Introduction of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-57, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to equal enjoyment of public accommodations, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-57 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-58, introduced by the Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 5 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to release from unlawful detention or imprisonment."

PRESIDENT WENSTROM: Committee Proposal No. — no — Delegate Proposal No. 1-58 will be referred to the Committee —

CHIEF CLERK GILBREATH: No. Committee Proposal —

PRESIDENT WENSTROM: That's what it says — "Delegate Proposal." No — Committee.

CHIEF CLERK GILBREATH: No. Committee — Committee Proposal.

PRESIDENT WENSTROM: Committee Proposal No. 1-58 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-59, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 9 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom of press."

PRESIDENT WENSTROM: Committee Proposal No. 1-59 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-60, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 8 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to indictment and information."

PRESIDENT WENSTROM: Committee Proposal No. 1-60 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-61, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 16 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bills of attainder and ex post facto laws and non impairment of obligations of contracts."

PRESIDENT WENSTROM: Committee Proposal No. 1-61 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-62, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 15 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to not being imprisoned for debt."

PRESIDENT WENSTROM: Committee Proposal No. 1-62 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-63, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 18 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to search and seizure."

PRESIDENT WENSTROM: Committee Proposal No. 1-63 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-64, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 2 of the present constitution of the state of North Dakota, which pertains to political power in the people, be retained in its present form."

PRESIDENT WENSTROM: Committee Proposal No. 1-64 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-65, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 11 of the present constitution of the state of North Dakota, which pertains to uniform operation of laws, be retained."

PRESIDENT WENSTROM: Committee Proposal No. 1-65 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-66, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 13 of the present constitution of the state of North Dakota, which pertains to rights of a defendant in criminal prosecutions, be retained."

PRESIDENT WENSTROM: Committee Proposal No. 1-66 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-67, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 20 of the present constitution of the state of North Dakota, which pertains to not granting special privileges and immunities, be retained."

PRESIDENT WENSTROM: Committee Proposal No. 1-67 is referred to the Committee on Preamble, Bill of Rights and Suffrage:

CHIEF CLERK GILBREATH: Committee Proposal No. 1-68, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 24 of the present constitution of the state of North Dakota, which pertains to declaration of rights remaining inviolate, be retained."

PRESIDENT WENSTROM: Committee Proposal No. 1-68 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-69, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 31, 46, 47, 48, 49, 58, 63, 64 and 66 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 6, 11, 12, 13, 14, 16, 17, 18 and 19 of Article II to the constitution of the state of North Dakota be created, all of which pertain to matters of legislative procedure."

PRESIDENT WENSTROM: Committee Proposal No. 1-69 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-70, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 31, 46, 47, 48, 49, 58, 63, 64 and 66 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 6, 11, 12, 13, 14, 16, 17, 18 and 19 of Article II to the constitution of the state of North Dakota be created, all of which pertain to matters of legislative procedure."

PRESIDENT WENSTROM: Committee Proposal No. 1-70 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-71, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 6 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bail."

PRESIDENT WENSTROM: Committee Proposal No. 1-71 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-72, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 22 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to courts being open as suits being brought against the state."

PRESIDENT WENSTROM: Committee Proposal No. 1-72 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-73, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 4 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to religious freedom."

PRESIDENT WENSTROM: Committee Proposal No. 1-73 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

Fellow Delegates:

Just a matter of correcting my reference, when I had the wrong list. I did indicate that 1-57 was referred to the Committee on Legislative Functions. However, Committee Proposal No. 1-57 should rightfully be referred to the Committee on Preamble, Bill of Rights and Suffrage. So, if you'll make your correction.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. Just for the information of the delegates, the two proposals that were reported out of the Legislative Functions Committee Proposal 1-30 and Proposal 1-33 — if you will turn to your bill books and look up I — or 1-7 — Proposal No. 1-7 — and I can give you the sections in that Proposal, and you can see what we've done. We've broken down our Committee Proposal No. 1-7, and I'm sure you'll want to look at it this week-end, and you could find these sections.

Now, if you'll turn to section 27 — that would be on the sixth page — section 27 is actually now Proposal No. 1-30, and will be on the calendar on Monday.

Now I know you don't have copies. The Committee members had copies when we worked on this. We thought, to help the Convention move and to move some of these — and the other proposal, 1-33, will be Section 23 and 24 — and, incidentally, you will get copies of this bill to take home with you in the bill book.

PRESIDENT WENSTROM: We will proceed.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-57, introduced by Delegate Hubrig:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to the uniform legislative treatment of corporations, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-57 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-58, introduced by Delegate Hendrickson:

"Be it resolved by the North Dakota Constitutional Convention that section 29 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution to the state of North Dakota be created; both of which pertain to legislative apportionment."

PRESIDENT WENSTROM: Delegate Proposal No. 2-57 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: "58."

PRESIDENT WENSTROM: 58. Delegate Proposal No. 2-58 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-59, introduced by Delegate Hendrickson:

"Be it resolved by the North Dakota Constitutional Convention that section 29 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to legislative apportionment."

PRESIDENT WENSTROM: Delegate Proposal No. 2-59 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-60, introduced by Delegate Ketchum:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to property taxation, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-60 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-61, introduced by Delegates Trenbeath, Saugstad, Miller, Erickson and Ketchum:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to eminent domain, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-61 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-62, introduced by Delegate Haugen:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to uniformity of taxation and the power to define and exempt classes of property from taxation, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-62 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-63, introduced by Delegate Baker:

"Be it resolved by the North Dakota Constitutional Convention that section 72 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the election of the governor and lieutenant governor."

PRESIDENT WENSTROM: Delegate Proposal No. 2-63 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-64, introduced by Delegate Lamb:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, setting forth a date on which the provisions of the convention's product would become effective, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-64 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

Does that take care of that?

CHIEF CLERK GILBREATH: Yes. All I have is announcements.

PRESIDENT WENSTROM: Any announcements at the desk? We'll be on the —

CHIEF CLERK GILBREATH: Public hearing by the Finance and Tax Committee Monday, January 10th, 1:30 P.M., in the Blue Room, Sections 1, 2, 3, 4 and 9 of 1-21, and Section 10 of 1-21.

The Rules Committee will meet in the large Hearing Room at 1:00 P.M. today.

Please sign your Journal mailing lists and turn them in at the desk, so we can start sending the Journals out. Until we have a complete mailing list, we can't turn the IBM machine on; so please get your Journal mailing lists in at the desk so we can start mailing the Journals out.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, may we be on the twelfth order of business? Yes — Motions and Resolutions.

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business.

DELEGATE CART: At this time I move that we reconsider the action by which Committee Proposal 1-1 was adopted — be reconsidered.

PRESIDENT WENSTROM: Delegate Cart moves that the Convention action on Committee Proposal No. 1-1 be reconsidered.

DELEGATE JESTRAB: I second it, Mr. President.

PRESIDENT WENSTROM: Delegate Cart moves that the Committee Proposal 1-1 be returned to the Convention floor from the Committee on Style and Drafting. Do we have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: It's been seconded.

As many as are in favor of the motion will say "aye;" opposed "no."

DELEGATE CART: Division.

PRESIDENT WENSTROM: The question — I believe the "noes" won; so the motion lost.

DELEGATE CART: I ask for a division.

PRESIDENT WENSTROM: Division. The question — a division has been called. Will eight delegates rise?

DELEGATE SAUGSTAD: Mr. President. President Wenstrom.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Now that the motion has — there is a motion before the house that has been made and seconded. Is this not the proper time for a discussion of the motion?

PRESIDENT WENSTROM: The question before the body is that the Proposal No. 1-1 be returned to the Convention floor from the Committee — from the Committee on Style and Drafting. I believe you're right, Delegate Saugstad — that this would be the time for discussion on the question.

DELEGATE SAUGSTAD: Yes. My point is that whoever made the motion and whoever is interested in that, I think should explain at this point why the motion is being made.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I think at this point I'd like to call your attention to Rule 29 and ask if there is a written notice at the desk that this is to be reconsidered.

PRESIDENT WENSTROM: Delegate Butler, I don't believe that there is a need for notice at the desk, in that this was passed only yesterday. This particular proposal that is being asked to reconsider was passed by this assembly yesterday.

DELEGATE BUTLER: I understand that. But I believe, according to our Rules, that any delegate may move for reconsideration of any question at the same or the next two succeeding Convention days, or the Committee on Style and Drafting may move the reconsideration on the subsequent date, if notice of the intention to do so is given in writing to the Clerk of the Convention, who shall enter this notice in the Journal.

PRESIDENT WENSTROM: Well, Delegate Cart, your motion — I believe that we will have to disregard the two motions that are before the body. They were accepted in error, and your proper motion at this time is that the rules be suspended and that Proposal No. 1-1 be referred to the floor of the Convention, and that will take at the present time a simple majority to pass. Normally, it would take two-thirds.

DELEGATE GEELAN: Mr. President.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate — do you have a question?

DELEGATE GEELAN: Yes, a question on a point of order.

Rule 29 says that "the Committee on Style and Drafting may move for reconsideration on any subsequent day if notice of the intention . . ."

Now, I'd like an interpretation. It's my understanding only if the Committee on Style and Drafting wanted to do it on any subsequent day, they would have to file notice; but it was my thought on this Rule that any delegate may move for reconsideration without that qualifying phrase being attached to their motion.

PRESIDENT WENSTROM: It was always my intention, too — or my interpretation of the Rule. However, it's been challenged, and possibly it's something that could be straightened out at this afternoon's meeting of the Rules Committee.

So, under the present Rule, I'm going to have to ask —

DELEGATE CART: Mr. President, at this time I would move that the Rules

PRESIDENT WENSTROM: Yes.

DELEGATE CART: Mr. President, at this time I would move that the Rules be suspended, so — should I continue?

PRESIDENT WENSTROM: Proposal No. 1-1 —

DELEGATE CART: — so that Proposal No. 1-1 can be returned to the body —

PRESIDENT WENSTROM: — from the Committee on Style and Drafting.

DELEGATE CART: — from the Committee on Style and Drafting.

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: And the motion has been seconded.

Now, the motion before this Convention is that the Rules be suspended and that Committee Proposal No. 1-1 be returned to the floor of the Convention from the Committee on Style and Drafting.

Delegate Aubol.

DELEGATE AUBOL: Mr. President, I would expect that this is the time for discussion on the motion.

PRESIDENT WENSTROM: This is the time.

DELEGATE AUBOL: And continuing with Delegate Saugstad's thinking, I would like to know for what reason the proposal is being returned.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I think all of you who read the press items yesterday evening realize that you were in somewhat of an embarrassing position. If we go out to the public with this new Preamble and the implication that we are starting on a new course and going to have religious and civil rights, and so forth, which we have enjoyed for 80 years or more, there's going to be a lot of confusion, and I think that language has got to be cleared up, so we're going to get this Convention off on a good start. We're in trouble before our public if we go out there with a question like this not cleared up.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE JESTRAB: Mr. Chairman.

DELEGATE PEARCE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I rise, again, to a point of order.

My interpretation of Rule 29 would constrain me to agree with Mrs. Geelan, the Chairman of the Rules Committee. I believe there are other motions for reconsideration in the offing — is the reason why I bring this up; that I believe that the notice at the desk is required only by the Committee on Style and Drafting at any future time, and if all delegates would look at Rule 29 — if that is not a fact.

Then, one more reason why I speak now: I understand the Rules Committee is meeting this afternoon. I would request the Rules Committee to clarify that, because any actions we took yesterday, if anybody wants to reconsider them, they have only Monday now to do that, without getting through the desk.

PRESIDENT WENSTROM: Thank you, Delegate Pearce.

Delegate Jestrab.

DELEGATE JESTRAB: Mr. President, I agree with Delegate Cart. There are many of us, I think, that felt that the new words were no improvement, and we would like to see the original 1889 constitutional wording in that proposal.

PRESIDENT WENSTROM: Any further discussion on the question? If not, the question is on the motion that the Rules be suspended and that Delegate Proposal No. 1-1 be returned to the Committee — be returned to the Convention from the Committee on Style and Drafting. Hearing no further discussion, those in favor —

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, just one other little item.

There has been a lot of publicity about shortening the Constitution, and many committees are working in that respect, and I would like to point out to the delegates that the old one, which reads, "We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution." is 24 words, and the new one, which means very little difference, is 33 words.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: In deference to all the extremely capable delegates who have spoken to reconsider this, I do want to say that the Committee on Preamble, Bill of Rights and Suffrage, and our subcommittee on this, spent many, many days and many, many hours on this question, and I hope that you will not reconsider this and that you will not bring this back to the Committee or to the floor for discussion.

PRESIDENT WENSTROM: The question — we'll call the question.

The question is on the motion to suspend the Rules and reconsider it — or to have the proposal returned to the floor of the Convention, and we have — Delegate Sinner.

DELEGATE SINNER: Mr. President, I would support the Committee action.

I'd like to point out that the Declaration of Independence, which is, I think, one of the greatest American documents, points out very clearly that it is the purpose of forming governments to secure the rights that are spoken of here. That's pointed out very clearly in the Declaration and, again, in the American Constitution, that that's why governments are formed — to secure these rights — and I think our Committee did an excellent job in sorting out that reason for the North Dakota Constitution. It is that we may secure these rights for which we are grateful to Almighty God.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I'd like to point this out: That under the new language, the use of the word "secure" implies that we have not had these in the past. If the word "retain" had been used, it would certainly imply then and clearly be specific that we had them from the starting out of the State 82 years ago and that they were given to us way back when our national constitution was adopted, and I think we shouldn't imply at all that we're starting out on a new path.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I would like to redefine this word for Delegate Cart. It's used in the sense of "strengthen" or "emphasize" and it's not used in the sense in which he defined it.

DELEGATE CART: Well, I've tried to use Webster's.

DELEGATE SOLBERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I think we need a full analysis of the word "secure."

Dr. Tudor has given the meaning of the word "secure," and I compare it to a bank vault where we have stored our valuables from generation to generation.

PRESIDENT WENSTROM: Any further questions? Again, the question is that the Rules be suspended and Committee Proposal No. 1-1 be returned to the Convention floor from the Committee on Style and Drafting.

As many as are in favor of the motion will say "aye;" those opposed say "no." The "noes" have it. The motion lost.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I move that Proposal No. 1-22 be returned from the Committee on Style and Drafting.

PRESIDENT WENSTROM: Delegate Peterson moves —

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: — moves that the — that the Rules be suspended

DELEGATE PETERSON: I do have it —

PRESIDENT WENSTROM: Do we have it at the desk?

DELEGATE PETERSON: Yes, you do.

PRESIDENT WENSTROM: Will you read the motion, Delegate?

CHIEF CLERK GILBREATH: Delegate Peterson moves that the Rules be suspended.

PRESIDENT WENSTROM: Oh! She did file a notice. Fine.

Then the question is — in this case, we have had a notice filed. So that Delegate Peterson moves that the Convention reconsider its action on Article 60, contained in Proposal No. 1-22, which was passed yesterday; that this be referred to the Convention from the Committee on Style and Drafting, and the motion has been seconded.

Now, for the discussion.

DELEGATE PETERSON: I move to reconsider the Convention action. I'm going to read my remarks. I feel that I was sort of snowed yesterday. I had no idea it was coming up, and I think this may be something that comes up quite often, until we get used to the Rules. So I would like to state my position. It refers to the dedicative funds for the Medical Center, and I want to explain my position, because I'm in favor of the mill levy.

Number one, I represent agriculture on the Medical Center Advisory Council, and no one has to remind me of taxes. My husband and I own and operate a farm. I don't know whether that's bragging or complaining.

Number two, the Medical Center is not only made up of the Medical School; it includes the Rehab Center, the four-year college of nursing, and related laboratories, and I want to bring to the attention of the delegates that 20 percent of the Medical Center budget is set aside for the College of Nursing.

The argument that dedicated funds for the Medical Center would be unfair to other institutions, in my opinion, is not valid, because we do not have more than one Medical Center in the State, and there is a pressing need for doctors and nurses. I know what it means to be 30 miles from the nearest hospital, and I can assure you that we get very few house calls.

The argument that too few of our Medical School graduates stay in North Dakota needs a long, thoughtful look, because, with a two-year school, the last two years must be put in out of state, and by that time the graduate may have formed other preferences as to localities, and the most important impact of the one mill levy for the Medical Center appearing in our Constitution, again, in my opinion, is the psychological factor. It lends stability and moral support to the faculty. Even more important in my estimation, it establishes a priority guideline for the legislators.

PRESIDENT WENSTROM: Is there any further discussion?
Delegate Haugen.

DELEGATE HAUGEN: Mr. President. I'm sure, as Chairman of the Committee that considered this, we have no objection to giving a delegate an opportunity to reconsider it. I hope that, if it is brought back on the floor, that it is not returned to the Committee, because the Committee did give the representatives of the University and the Medical Center every opportunity to present all of these arguments to the Committee, and yet we were unanimous in our action recommending the deletion; so I would hope that you do not ask that it come back to the Committee, but that, if your motion passes, that it be taken up then on the floor.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: It may seem strange to you to hear me arguing against the return of this measure; but, in all candor, I must report to you that last night I visited personally with President Clifford, and he said, "We feel that there is no reason to continue this one mill levy. We would rather take our chances with the Legislature. We feel that's the most businesslike way of handling it."

Therefore, you can understand I have somewhat mixed emotions in arguing against a mill levy for a University project, since I am from Grand Forks. But I think, in all fairness, I should report to you on this, and I'm going to vote against the return of the measure.

PRESIDENT WENSTROM: Any further comment?

The question is on the motion to return Article 60 to the Convention floor from the Committee on Style and Drafting.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it and the motion lost.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: May we be on the proper order for a further motion?

PRESIDENT WENSTROM: We'll be on the twelfth order, without objection.

DELEGATE LONGMIRE: Yes. Mr. President, in discussing this matter with Delegate Peterson, I realized that it was very important to her, personally, that she wanted a record made of her position, being a member of this Advisory Council, and she has stated her position very well, and I believe she has a copy of the written remarks of that. For that reason, Mr. President, I move that the remarks of Delegate Peterson be printed in the Journal.

DELEGATE POULSON: Second.

PRESIDENT WENSTROM: It has been moved and seconded that the remarks of Delegate Peterson be placed in the Journal.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the remarks will be in the Journal.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I move that Delegate Proposal 2-45 be returned from the Committee on Finance and Taxation.

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: 2-45. Delegate Dobson moves that Delegate Proposal No. 2-45 be returned from the Committee on Finance and Taxation.

Do we have a second?

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: Any discussion? Those in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the Proposal is before the Convention.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I now request unanimous consent to withdraw Delegate Proposal No. 2-45.

PRESIDENT WENSTROM: Delegate Dobson moves unanimous consent of the Convention to withdraw Delegate Proposal No. 2-45.

DELEGATE DOBSON: The Committee felt, Mr. President, that the best way to handle this matter was through a committee proposal and not through a delegate proposal. The Committee was unanimous on this, and, therefore, I changed my mind so I could join with the feeling of the Committee.

PRESIDENT WENSTROM: Are there any objections to Delegate Proposal No. 2-45 being withdrawn.

Hearing none, the Proposal will be withdrawn.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: May we be on the proper order to ask a question?

PRESIDENT WENSTROM: For a question?

DELEGATE JESTRAB: Yes, please.

PRESIDENT WENSTROM: I would say this: We receive the printed order of procedure. We will try not to be too formal. You may ask a question.

DELEGATE JESTRAB: Mr. President, I think some of us novices, who have not had legislative experience, are floundering a little bit — at least I am — and to follow up Delegate Lander's question about doing homework, I know that you have printing problems, but would it be possible that the tenth order of business

be publicized at the conclusion of our meeting or posted, or could we know when we have completed our Plenary Session what the next day's tenth important item of business is?

PRESIDENT WENSTROM: Delegate Jestrab, we have discussed this at the desk, and we first thought that we would try to have it printed; however, it is almost impossible to have it printed before the delegates leave the Convention floor; so we find ourselves with something printed and no one here to use it. So we decided that we would read the numbers and the proposals to the Convention under Announcements, and then any delegate that is concerned about a proposal, you can record it — write it down — and then you can refer to your book and see just what you have. So we're going to follow that procedure from now on, until it's changed.

DELEGATE JESTRAB: Thank you, Mr. President. Might I also request, then, that Mr. Gilbreath use his loud and important-sounding voice when he reads this?

PRESIDENT WENSTROM: Thank you.

Roy, do you have that list ready? As long as this is fresh in the minds of the delegates, why don't we read that list right now?

CHIEF CLERK GILBREATH: On tomorrow's calendar — or it would be Monday's calendar — for action on the tenth order, which would be first passage, I have — my notes show Delegate Proposal 1-10, Delegate Proposal 1-30, Delegate Proposal 1-33, and Delegate Proposal 1-39.

Under the sixth order, which would be consideration of amendments, I have Delegate Proposal 1-34.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I announce that 1-30 and 1-33, and I also have a copy now of 1-39 — so if you'll turn again to Committee Proposal 1-7, and it will be Section 10 of that Committee Proposal. This is salaries, in other words, and the 1-34 will be the one to amend. I'm sure that copies will be printed before that. That will be Section 29, and that's been amended quite a bit. So I just thought, for your information —

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: In the Clerk's reading of the tenth order and the sixth order, I'm wondering if reference to these delegate proposals might have been in error. Are they possibly committee proposals?

CHIEF CLERK GILBREATH: Committee proposals. I'm sorry. They're all committee proposals.

PRESIDENT WENSTROM: I think a point of correction should be made — that those were all committee proposals. They were not delegate proposals.

Fellow Delegates, while we are on the subject that we are now discussing, on Monday's calendar we have a number of proposals, and these are all delegate proposals that we heard at committee hearings during the interim session, and it turns out that there are 42 of these, and because you are the people that have introduced these in the first place, and because each of these proposals are coming in on committee report to be indefinitely postponed, now these — this is not as bad as it sounds — in many cases the material that was in your original proposal has been incorporated in the committee proposal, so there is no need for having the two. So the delegate proposal will be — is on the committee report to be indefinitely postponed, and this will be on the order of business on Monday.

Now, I am going to read the numbers and the person that introduced the proposal, so that in the event that you do not feel that your proposal should be indefinitely postponed, that you will have an opportunity to prepare an argument for a rebuttal to the committee report by the time it comes on the floor on Monday.

Now the proposals are the number — the first one is 2-1, and it was introduced by Delegate Tudor. 2-2, by Geelan. 2-3, by Geelan. 2-4, by Geelan. 2-5, by Tudor. 2-6, by Tudor. 2-7, by John Paulson. 2-8, by John Paulson. 2-9, by Hoffner. 2-10, by John Paulson. 2-11, by William Engelter. 2-12, by Rundle. 2-13, by Rundle. 2-14, by Rundle. 2-15, by Tudor. 2-16, by Tudor. 2-17, by Tudor. 2-18, by Tudor. 2-19, by Devine. 2-20, by Devine. 2-21, by Fritzell and Sanstead. 2-22,

by Hill, and 2-23, by Thompson. 2-24, by Hubrig. 2-25, by Vogel. 2-27, by Byrne. 2-28, Warner. 2-29, Rundle. 2-30, Baker. 2-31, Nething. 2-32, Chase. 2-33, Hill. 2-34, Omdahl. 2-35, Saugstad. 2-36, Peterson. 2-37, Hubrig. 2-38, Omdahl. 2-39, Thompson. 2-40, Lamb. 2-41, Lamb, and 2-42, Saugstad.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: In connection with this matter, Mr. President, I have a question regarding the procedure in dealing with the committee reports for indefinite postponement. Some of us are accustomed to a procedure by which a substitute motion is offered at that point to return the proposal to a committee for further consideration. I understand that this sort of motion might not be accepted. Is this true?

PRESIDENT WENSTROM: Delegate Baker, at the time that we were having the Rules Committee — may I — may I clarify this question?

At the time that we had the Rules Committee downstairs, someone directed the question to me: Would I accept a substitute motion? And I stated, "No." And that would be my policy. However, I did specifically state at that time that I do not consider the substituting of a committee report or an alternate on a committee report as a substitute motion, and I made that clarification at that time. So that, in the event that a committee report that you people — you delegates desire to offer a proposal or a question, that rather than have your committee proposal or delegate proposal indefinitely postponed, you are at liberty to move that your committee be — or your delegate proposal be placed on the calendar for further consideration. There is no objection to that. But there is an objection on my part, and I think on your part and on parliamentary procedure, that simply a committee motion to substitute simply so that you vote "yes" on the motion in place of "no," I see no sense in that; but on this type of a motion, where you're going to offer that because you feel that your proposal has merit and that you wish that it be debated in place of killing it on that point, that if you want it on the calendar for full discussion on the Convention floor, that motion is in order.

Does that answer your question?

DELEGATE BAKER: Not quite, Mr. President.

I understand that part of it all right. What I'm trying to get at is — I guess perhaps my question should be this:

What should a delegate do if he wishes to have the whole body — the whole Convention — consider a question of returning it — returning this matter to the committee, rather than voting to kill it at that point?

PRESIDENT WENSTROM: Your motion would be that the proposal be referred to the committee from whence it came, or to a different committee, rather — to a different committee.

DELEGATE BAKER: In other words, simply don't use the word "substitute"?

PRESIDENT WENSTROM: In my opinion, it's almost a bad word.

DELEGATE BAKER: All right. Thank you, sir.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: This is a question that has bothered me somewhat.

Rule 13 requires that every committee must report delegate proposals under one of four things; one, that the proposal is adopted; two, that it's amended, and when amended, be adopted; three, that no recommendation is made, and, four, that the proposal be indefinitely postponed. If the delegate — I hope I can make this clear, because I've been sort of a voice crying in the wilderness on it. Will the delegates turn to Delegate Proposal 2-2 in your books? I maybe can explain it, if you do that.

I realize this is a matter of interpretation, and I wondered if we could have another interpretation on it.

Now, there is a proposal that I personally have introduced. It is incorporated in the committee proposal without any change whatsoever. So it would come under

No. 1. To save time, could not the committee, when they recommend this particular section — say this is Delegate Proposal 2-2 — accept it without amendment — adopt it, in other words? So we wouldn't have to go through this procedure of indefinitely postponing — getting rid of the delegate proposal.

And another reason I feel rather strongly on this is: I feel that the order of business on the indefinite postponement should be only for those proposals that are killed. I don't know whether I've made my point clear. I maybe haven't all along, but it seems to me —

PRESIDENT WENSTROM: Delegate Geelan —

DELEGATE GEELAN: Yes?

PRESIDENT WENSTROM: May I ask you a question?

DELEGATE GEELAN: Yes.

PRESIDENT WENSTROM: Now, as I understand the situation, the Committee has kidnapped or they have stolen your proposal, and then they have introduced it as a committee proposal.

DELEGATE GEELAN: That's right.

PRESIDENT WENSTROM: That's what they've done. They're culprits.

DELEGATE GEELAN: Then why should we indefinitely postpone two — why don't the chairman — I notice he has to sign that — why couldn't the chairman hand in a report that this is Delegate Proposal 2-2, rather than have a motion on the floor to indefinitely postpone it?

PRESIDENT WENSTROM: You have a point. However, at the present time we do have two doing the same thing, apparently. We must have a committee proposal that is doing exactly what Delegate Proposal 2-2 is doing. So I think that's the point of it there. We have two. One has to meet a certain fate.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, in our Committee, we are doing just what Delegate Geelan says, in another way. In our committee report, when we do indefinitely postpone one because we have already incorporated it in our committee proposal, we state on our report, and that will go into the Journal. For instance, the first one I see here is 2-11. That was by Delegate Engelter. We state on our committee report "That it be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-11."

Now, when it's just merely a matter of mechanics in getting the proposal disposed of — and I suppose that when we come out on the floor here with a proposal that has been handled in that manner, any delegate could get up and ask for a unanimous consent to withdraw the proposal. I think if we didn't have some mechanical way here of disposing of it on the record, we would have a lot of confusion, if we just indefinitely postpone those that we didn't put in a committee proposal, because we, in our committee, have been, as other committees, I'm sure have been, studying these matters for months, and most of these delegate proposals that we have already had in there long before they were proposed, or at least we felt we'd have them in there — we didn't have a final report at that time — and out of the four that my committee has acted on already, three of them we did incorporate into the main committee proposal and had it in there before they were given to us. In the other one, we didn't buy it anywhere, so we indefinitely postponed it, period.

So I think, as a practical matter, why the record will show that these were incorporated in — at least their committee reports are showing that — so that the delegate will be given proper credit for the proposal which he or she is on.

PRESIDENT WENSTROM: Thank you, Delegate Longmire.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. President, I was not worried about the President. I'm worried about the kind of mechanics. So I feel that, if we could avoid a motion to indefinitely postpone these that we accept, we could save that much time.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'd like to carry this one step further.

When my committee made their first report, which has now been sent back to the committee, included in it was my proposal 2-23, I think it is, and now we have separated that original proposal, and I suppose we'll have 24 or 5 second proposals.

Now, I find that my committee has changed their mind on my proposal substantially, and I think they're going to cut it up pretty bad. If we vote on this to indefinitely postpone it on Monday, I don't think that these proposals will be back in by then, and I want to know for sure whether they're going to put my proposal in their report or not, and I wonder where I stand in that position?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Does someone wish to answer — make an endeavor to answer Delegate Thompson's question?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Baker, did you rise to answer his question?

DELEGATE BAKER: I have a similar problem, and I was going to explain what I think I'm going to do. Maybe that would help some.

PRESIDENT WENSTROM: Then, Delegate Kelsch, will you yield to Delegate Baker?

(Delegate Kelsch nodded.)

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President and members of the Assembly:

This may be a very important thing for all of us as a body, as well as for each of us individually, and on Monday, when the committee report comes in on Delegate Proposal 2-30, which has to do with whether we — as to how we choose most of the state officials in North Dakota, I'm going to resist the motion — the committee report for indefinite postponement, despite the fact that in the committee I made the motion.

The situation is similar to that that's been explained by Delegate Thompson. Back in the earlier stages of this Convention, when the committees were working, we had one plan of procedure. At that time the committee of which I am a member had prepared a majority report which I did not agree with, and which, I believe it was, three other members of the committee did not agree with, and we prepared a minority report. The Convention met and decided a day or so ago — I forgot just when — and decided that this bulk action would not do because of the difficulties that we already recognized in dividing up these questions and getting a separate debate on a specific matter. So we went back in committee and began working again on what we would do and what I am sure would be the same division. In the meantime, however, the delegate proposal which I presented early and which now is before us with the recommendation to indefinitely postpone, may become valuable to at least the minority of that committee.

So my intention is, on Monday, to move that, instead of indefinitely postponing that proposal at that time, that this body vote, instead, by a simple majority vote, to return it to the Committee. So that if it has some value in producing the final report of the committee on that particular subject, it can be used and will not be dead; and if it does not have any value, then, later, it can come in for indefinite postponement.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I believe it is quite important on these indefinite postponements that, where the delegate who, say, is sponsoring the proposal, where he doesn't care that it be in those, are the kind that we can act on, and if the delegate who's introducing it would speak on the motion to indefinitely postpone, that would give us all an idea as to that he's satisfied as to what the committee's done is okay and he doesn't care what happens to the proposal. Now, in many cases, this is not going to be the situation, because the committee's not acted

accordingly. I don't know if this is a scheduling problem. I don't know if we want to send these back to the committee, because we are going to all the trouble of reporting it in and out again. But I can't see why the chairmen of the respective committees cannot hold it back until they act on their report to prevent it from being indefinitely postponed, with this understanding: That they would inquire of the delegate sponsoring it. If he felt he wanted to go ahead and have it indefinitely postponed, fine. If he wanted to have it held, the chairman would agree — would have an understanding that it would be held back to be introduced after we act on the tenth order on the committee's report covering the same subject. This would keep the thing alive in case — when we were acting on the tenth order, when we would attempt to amend the contents of the indefinitely-postponed matter, but keep it alive before us in case we want to use it. But I think it would be just a matter of scheduling; hold it back until they first act on the report, and then, if this Convention adopts the committee's idea on the subject, we might as well kill the delegate proposal by indefinite postponement.

PRESIDENT WENSTROM: Thank you, Delegate Kelsch.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: We discussed this at the Calendar Committee meeting, and I would certainly be agreeable, as one of the committee chairmen — in fact, if this is the procedure that we're going to use on all the indefinite postponements from here on in, the only question is I don't know if we cleared this with Roy or not — it would be the desk's problem, as the committee reports were handed to the desk, I believe, on the day that the Convention — that this Session started; is that right?

CHIEF CLERK GILBREATH: Yes.

DELEGATE HERNETT: Can we still jerk them back?

CHIEF CLERK GILBREATH: Yes.

DELEGATE HERNETT: If we can, then I would certainly agree with Delegate Kelsch's idea, and that would solve Delegate Baker's problem, and probably mine, too.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. I agree with Delegate Geelan — possibly for a different reason, and I'm not — I'm not really thin-skinned.

In the Legislature, they call it blood-letting, and I'm pretty pale lots of times. I've lost lots of ballgames.

But it does seem kind of harsh at that to have the record show that I introduced four proposals, all indefinitely postponed. I'm perfectly happy with the committee on one, at least. If you get a 25 percent average in this business, you're lucky! But to show that I was so dumb I introduced four, and actually about two — two of them were incorporated — I think that — that's a pretty harsh record when you were trying — and I wouldn't — I wouldn't like to withdraw them — that admits that you were wrong and a coward to start with. So I would appreciate Delegate Kelsch's idea to kind of hide it by the committee chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman. On the first or second day the Committee on Preamble, Bill of Rights and Suffrage asked for an indefinite postponement of 1-2, and in this we have a number of these committee proposals currently not acted upon or not reintroduced, and they also have delegate proposal numbers that are scheduled for indefinite postponement and, therefore, I think it is premature for us to indefinitely postpone all of these until the passage of these similar-type matters that we have before us from the committees.

PRESIDENT WENSTROM: Thank you, Delegate O'Toole.

You may have the floor, Roy — or Mr. Clerk.

CHIEF CLERK GILBREATH: I have one little explanation that might help on this.

The committee reports are made up in this manner, and I'll use one that we've got up here that is in this list that we were talking about.

This would be Delegate Proposal No. 2-2. “. . . has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-2.” And that’s the way the report would come out and go in the Journal. If this would help you.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I don’t see any reason why any of these proposals have to be disposed of now. After our proposals are passed, it’s just a simple matter of a few motions, and they can be disposed of after all proposals are passed.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I don’t think we have to worry too much in this Convention about pride of authorship. The records of this Convention are going to show where the ideas germinated, and if any future historian wants to go look at it, they’re going to find out what delegate instigated what idea.

PRESIDENT WENSTROM: Is there any discussion — further discussion on the matter before the Convention?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think we should clear the point that Delegate Hoffner raised. Is there any reason why we have to act on that list of indefinite postponements?

PRESIDENT WENSTROM: Delegate Kelsch, only in the Rules of Procedure, that they come in, and then, at a certain date and time, why they have to be on the calendar — is all.

DELEGATE KELSCH: Well, would the President like a motion that we postpone action on that phase of the calendar for five or ten days, or something like that?

PRESIDENT WENSTROM: Delegate Kelsch, why don’t you move that the reports be returned to the committee of origination? Okay? There is a — to be honest, according to the information the Clerk gives me, and it’s absolutely right, that until such time as a committee report is acted on by the Convention, the report is the property of the Committee. So, if its the desire of any one of the committee chairmen that they pick these reports up, they come back and hold them — they can hold them just — just so they don’t hold them past the 30 days — why you’re — they can belong to the committee; but once we start action on them up here the Convention either defeats them or adopts them, then they become the property of the Convention. At the moment, they are the property of the committees.

So, if the committee chairmen would like to pick these up, why that’s your prerogative.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I believe, to simplify things, I’ll make a motion — or it may even complicate it more — that all proposals that have been read — that all the delegate proposals that are up for indefinite postponement be held by the committees.

DELEGATE O’TOOLE: Second.

PRESIDENT WENSTROM: It’s been moved by Delegate Hoffner, and seconded by Delegate O’Toole, that the 42 proposals that are before the Convention for indefinite postponement be returned to the respective substantive committees.

As many as are in favor of the motion will say “aye,” opposed “no.” The “ayes” have it. They will be returned to the committees.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: A point of inquiry:

In connection with that, I assume now it is understood that, as soon as we bring out of the committee the committee proposal that does deal with that particular delegate proposal, that then we are at liberty to bring these back out on the floor for action. Is that the understanding under your motion, Representative Hoffner?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Once these proposals come out of the — the committee can then proceed to pass them out as they see fit, and I think that's the intent of this body.

PRESIDENT WENSTROM: Delegate Longmire, I'm confident that those committee reports, if they are properly in the committees, then it becomes the prerogative of the committees to treat them as they wish.

Delegate Devine.

DELEGATE DEVINE: Mr. President, as a point of information: Would it be possible for the delegates to withdraw their proposals and dispose of them that way?

PRESIDENT WENSTROM: There is procedure here for withdrawal of proposals, and they may be withdrawn in that way.

DELEGATE DEVINE: In that way, we could clear them off the floor and they would be done once and for all.

PRESIDENT WENSTROM: That is true.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Of course I think it should be understood that it takes unanimous consent to withdraw the proposal. Those introduced in the Convention are the property of the delegates, and you may like the idea of a delegate's proposal and may not want it withdrawn, and it takes unanimous consent.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: For a point of information for myself:

I see that the Education and Taxation Committee has partially considered my Proposal 2-23, and I wonder if it is possible for them to look at the rest of the proposal to see if they could incorporate it in their committee report.

PRESIDENT WENSTROM: Delegate Thompson, will you direct it to Chairman Meidinger?

DELEGATE THOMPSON: Yes.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: I'm sorry. I just arrived. I didn't hear the question.

DELEGATE THOMPSON: I'm wondering if we could have the dual consideration of my Proposal 2-23 both by my own committee and by yours, in view of the fact that you have partially adopted it in your committee report and — I'm sorry, I've forgotten which one — in reference to the veterans' bonus — is what I'm referring to.

DELEGATE FRITZELL: Mr. President.

PRESIDENT WENSTROM: Delegate — could you answer the question?

DELEGATE FRITZELL: Yes.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: This was not referred to our committee — any part of it. So he must have the wrong committee, as far as this goes. The Education, Resources and Public Lands Committee did not receive Proposal 2-23 from Delegate Thompson.

DELEGATE THOMPSON: Excuse me. I wanted it to go to the Committee on Taxation, if I'm not mistaken.

PRESIDENT WENSTROM: I believe you did state, though, the Committee on Education. But if it's a question for the chairman of the Committee on Finance and Taxation, then you would direct it to Delegate Haugen.

DELEGATE HAUGEN: Excuse me? I'm sorry.

PRESIDENT WENSTROM: Delegate Thompson has a question.

DELEGATE TRENBEATH: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President, I think that probably I could clear that question up for Delegate Thompson.

We previously noted that anybody or any delegate that introduced an individual proposal — we've decided that that should be held in committee, if that same idea was incorporated in a committee proposal, in a lump, and hold that there until that got first passage, and if it was deleted prior to first passage and amended out, of course then the delegate could come in with his proposal again before the Convention, and this is the way we do it, primarily, in the Legislature.

Now, to answer Delegate Thompson:

If you had a proposal, Delegate Thompson, that's only been partially incorporated in a committee proposal, then the way we would generally work it in the Legislature — we allow then what portion was left out. Then you try to get it amended in on either the sixth or the tenth order of business. It would be the tenth order of business in our case. You try to get that amended into the committee proposal when it gets on the floor.

PRESIDENT WENSTROM: Delegate Thompson, does that answer your question?

DELEGATE THOMPSON: I think so.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. I'm sorry. I was visiting a little with Mr. Kelsch. Was there a question?

PRESIDENT WENSTROM: I believe that Delegate Thompson did have a question. However, I believe that Delegate Fritzell and Delegate Trenbeath answered the question for him.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: President Wenstrom. I have a further question on this matter. My question is this:

Are the delegate proposals — that is — I think this would be 2 through 42 — are they printed in bill form?

CHIEF CLERK GILBREATH: Yes, they were printed, but in a very low number, only 200, the idea being that they were going to be indefinitely postponed on the first day, so that we would have to put in another order. But there were 200 of each printed.

DELEGATE SAUGSTAD: The reason I raised the question: I do not believe that these are presently in our books, and —

DELEGATE TRENBEATH: They are.

DELEGATE SAUGSTAD: Are they?

DELEGATE TRENBEATH: Yes.

DELEGATE SAUGSTAD: If they are in the book, then there's no further question. But I had wondered if they had been printed, because they were recommended for indefinite postponement.

PRESIDENT WENSTROM: Anything further? If not, we will go to the ninth order of business — Introduction of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-74, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 182 of the constitution of the state of North Dakota be repealed; and that a new section of the constitution of the state of North Dakota be created; both of which pertain to state debt."

PRESIDENT WENSTROM: Proposal No. 1-74 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-75, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 42, 67, 68, 69 and 70 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 9, 20 and 21 of Article II of the constitution of the state of North Dakota be created; all of which pertain to the legislative process."

PRESIDENT WENSTROM: Committee Proposal No. 1-75 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-76, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 50 of Article II of the constitution of the state of North Dakota be repealed; and that a new section 15 of Article II of the constitution of the state of North Dakota be created; both of which pertain to the openness of legislative sessions."

PRESIDENT WENSTROM: Committee Proposal No. 1-76 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-77, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that sections 183 and 184 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to political subdivision debt."

PRESIDENT WENSTROM: Committee Proposal No. 1-77 is referred to the Committee on Finance and Taxation.

Any further announcements?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, am I to assume that we're about to recess or adjourn?

PRESIDENT WENSTROM: I imagine that's not very far away.

DELEGATE HOFFNER: Well, I would like to call a meeting of the Legislative Functions Committee at 1:00 in the Large Hearing Room.

PRESIDENT WENSTROM: Any further announcements?

Delegate Hoffner, it was just called to my attention that the Rules Committee, possibly if there's some other committee that is not going to meet — that you could meet in their room.

DELEGATE GEELAN: Mr. President. We made the announcement yesterday in the hope that the substantive committees might hold off meetings until two o'clock, so that members of the committees could come and express their opinions as to those two very important rules; however, of course, I have no control over the Legislative Functions Committee.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I'm sorry. A number of our members are on the Rules Committee. In that case, I would like to call a meeting — you say until two o'clock? I'd like to call the meeting of the Legislative Functions Committee at two o'clock.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, the Committee on Education, Resources and Public Lands will meet immediately after adjournment or a recess here, in G-1.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: The Committee on Executive Functions will meet immediately upon recess down in our usual meeting room.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: The Bill of Rights Committee will meet immediately in the Lewis and Clark Room.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. The Judiciary Committee will meet immediately after recess, in the usual place.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Some of my delegates have expressed a desire to meet now until 12:30, and I'd like to announce that we'll meet immediately after this recess.

PRESIDENT WENSTROM: Delegate Sinner, did you wish the floor?

(Delegate Sinner shook his head.)

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I move that the absent members be excused.

PRESIDENT WENSTROM: Delegate Saugstad moved that the absent members be excused.

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: It's been seconded. As many as are in favor of the motion will say "aye;" opposed "no." Carried.

Delegate Saugstad moved that the following proposal be referred to the Committee on Style and Drafting: Committee Proposal No. 1-4.

De we have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: The motion has been seconded. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

Delegate Paulson, did you wish the floor?

The Chair will recognize Delegate Binek.

DELEGATE BINEK: Mr. President, I move that the Convention stand adjourned, subject to the call by the President.

PRESIDENT WENSTROM: Delegate Binek moves that the Convention stand adjourned until 9:00 o'clock Monday morning.

Is there a second to the motion?

DELEGATE BIRKELAND: Second.

PRESIDENT WENSTROM: Delegate Birkeland seconded. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Convention is adjourned.

(The Plenary Session adjourned at 11:29 A.M., Friday, January 7, 1972, until 9:00 A.M., Monday, January 10, 1972.)

VOLUME VI

(January 10, 1972)

MORNING SESSION

(The 6th day of the Plenary Session commenced at 9:13 A.M., January 10, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our chaplain for this morning is Reverend Walter J. Schott, Pastor, Church of Good Shepherd, United Methodist, Mandan, North Dakota.

REV. WALTER J. SCHOTT: Let us unite our hearts in prayer.

Our Eternal God and loving Heavenly Father, we give Thee thanks for this day that You have given to us. We are grateful for the opportunities that will be ours to serve Thee, and to our fellowmen. We ask for Thy divine blessing to rest upon this assembly that is gathered here.

We are grateful to these men and women who've taken the time out of their busy lives to come here to be a part of a session that will ultimately affect the lives of all of us now as well as in the future. May they not only be guided by their consciences, but may each one of them be willing to let their minds, their wills and their emotions be guided by Thy Holy Spirit. And may, through the many dedicated hours of work, there come forth a constitution that will help to make this a better state, and the people that will be able to serve both God and man in a more effective way in the days to come. This we ask in the name of Christ Our Lord and Our Savior. Amen.

PRESIDENT WENSTROM: We are commencing with the third order of business — Roll Call.

CHIEF CLERK GILBREATH: Mr. President, your Committee on Revision and Correction of the Journal has carefully examined —

PRESIDENT WENSTROM: Better have the roll call.

CHIEF CLERK GILBREATH: I'm sorry. We'll be on the third order of business. Pressing on your key will record your presence.

PRESIDENT WENSTROM: Has everyone recorded his presence? So then close the key.

CHIEF CLERK GILBREATH: Three absent, Benz, Peters and Sanstead.

PRESIDENT WENSTROM: Roll call discloses 95 present, three absent. A quorum is declared.

Fellow Delegates, I'm sorry to report that Delegate Darold Benz is hospitalized this morning. He called in from the hospital. He had a flare-up of an ulcer, so he may be missing for a day or two.

On the fourth order of business — approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 6th day of January, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: Question on the adoption of the Committee Report on Revision and Correction of the Journal.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. The report is adopted.

Then on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-19 has had the same under consideration and recommends the same do pass.

Delegate Meidinger moves the proposal be adopted.

PRESIDENT WENSTROM: Question on the adoption of the Committee Report on Proposal No. 1-19, the Committee Report, that it do pass.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. The report is adopted.

Proposal No. 1-19 will be placed on the tentative order of business for tomorrow.

We'll be on the sixth order of business — Consideration of Amendments.

CHIEF CLERK GILBREATH: The amendments to Proposal 1-34 as recommended by the Committee on Legislative Functions as printed on page 135 of the Journal are:

On line 8 after the word "officials," insert "legislators."

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I move that the amendments be adopted to 1-34 as recommended by the Committee on Legislative Functions.

PRESIDENT WENSTROM: Delegate Hoffner moves that the amendments be adopted as recommended by the Committee on Legislative Functions.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Mr. President. My recollection is to delete lines 11 through 15 on that. Would you look at that again?

CHIEF CLERK GILBREATH: That is correct. On line 8 after the word "officials" insert "legislators" and delete all of lines 11 through 15. That was my mistake.

PRESIDENT WENSTROM: Any further comments?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, some of us it appears don't have 1-34 in our books.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I thought they would be in our books. But in view of that, I'll move that the 1-34 be laid over one day.

PRESIDENT WENSTROM: It's been moved that Proposal No. 1-34 be laid over one day.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Kwako.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Proposal No. 1-34 is laid over one day.

Be on the ninth order of business — Introduction and Reference of Proposals to Committees.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-78, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to the death penalty, be created."

PRESIDENT WENSTROM: Proposal No. 1-78 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-79, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to keep and bear arms, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-79 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-80, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 208 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the right of debtors."

PRESIDENT WENSTROM: Committee Proposal No. 1-80 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-81, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to cumulative voting for candidates for legislative office, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-81 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-82, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 127 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to voting disqualifications."

PRESIDENT WENSTROM: Committee Proposal No. 1-82 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-83, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 129 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to duties of the legislature with regard to elections."

PRESIDENT WENSTROM: Committee Proposal No. 1-83 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-84, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to counsel for indigents in civil Proceedings in which the state or its subdivisions are adverse parties, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-84 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-85, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that sections 121, 122, 123, 124, 125, 126 and 128 of the constitution of the state of North Dakota and articles 36 and 40 of the amendments to the constitution of the state of North Dakota be repealed; and that three new sections to the constitution of the state of North Dakota be created; all of which pertain to the elective franchise."

PRESIDENT WENSTROM: Committee Proposal No. 1-85 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-86, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to making all persons over eighteen years of age adults for all purposes, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-86 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-65, introduced by Delegate Meidinger:

"Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149, 150, 151, 152 and article 54 of the constitution of the state of North

Dakota be repealed; and that article V to the constitution of the state of North Dakota be created; all of which pertain to education.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-65 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-66, introduced by Delegates Saugstad and Trenbeath:

“Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to state debt, be created.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-66 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-67, introduced by Delegate Cart:

“Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to uniformity of taxation and exemptions, be created.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-67 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-68, introduced by Delegate Dobson:

“Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to the right to family farming, be created.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-68 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-69, introduced by Delegate Thompson:

“Be it resolved by the North Dakota Constitutional Convention that section 127 of the constitution of the state of North Dakota is hereby repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to voting disqualifications.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-69 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-70, introduced by Delegate Burke:

“Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to uniformity of taxation and tax exemptions, be created.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-70 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-71, introduced by Delegate Rundle:

“Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to trust lands, be created.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-71 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-72, introduced by Delegate Dobson:

“Be it resolved by the North Dakota Constitutional Convention that sections 29 and 35 of Article II and section 214 of Article XVIII of the constitution of the state of North Dakota be repealed; and that section 4 of Article II to the constitution of the state of North Dakota be created; all of which pertain to reapportionment of the state legislature.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-72 is referred to the Committee on Legislative Functions.

We will be on the tenth order of business — First Reading and First Passage of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-10, introduced by Committee on Executive Functions:

“Be it resolved by the North Dakota Constitutional Convention that article XIII, sections 188 through 193 of the constitution of the state of North Dakota be repealed; and that a new article to the constitution of the state of North Dakota be created; all of which pertain to the state militia.

“SECTION 1. REPEAL.) Article XIII, sections 188 through 193 of the constitution of the state of North Dakota is hereby repealed.

“SECTION 2.) Article XVII of the constitution of the state of North Dakota is hereby created to read as follows:

“ARTICLE XVII

“STATE MILITIA

“The legislative assembly shall provide by law for the establishment of the state’s military forces.”

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President. Fellow Delegates, Committee Proposal No. 1-10 came about as the result of a study of the section that was referred to the Executive Functions Committee, namely Article XIII of our Constitution.

Upon reviewing Article XIII, sections 188 through 193, it was felt by the Committee that many of those sections are extremely legislative in nature. For example, 188 talks about the ages of people that should be in the state militia. 189 was the position that we have taken or the language more closely reflects to 189 than any of the others. Section 190 talks about the legislature providing for voluntary organizations. 191 talks about the fact that the militia officers shall be appointed or elected as the legislative assembly will provide. Section 192 points out that commissioned officers shall be commissioned by the governor, and talks about the removal of them. And then 193 explains that the militia forces shall in all cases, except treason, felonies, or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from their particular meetings.

The Committee heard General Melhouse on the subject and came up with the proposal which very basically provides that the legislative assembly shall provide by law for the establishment of the state’s military forces. And that is the extent of the proposal. And we feel that it will replace completely Article XIII, doing away with much excess verbiage.

There is some question in some people’s mind as to really whether or not it is necessary that a militia, or as we have now termed it military forces, be provided in the constitution. General Melhouse felt quite strongly about this particular subject.

I should point out that the constitution that we’re working on is basically a framework of our state government. And that the military forces are certainly a part of that framework. The relationship between the state and federal regarding the National Guard seems to indicate that we’re better to make sure that we have these provisions in our constitution than leave it to the Legislature.

First of all, the federal funds will only participate in a state National Guard organization, one that is, so to speak, recognized. And this, of course, will assure that.

Secondly, the National Guard is a back-up to the federal Armed Forces. And it’s very important that we have the federal-state relationship in funding this organization. If we were to attempt to do this by ourselves, we would find it extremely expensive.

The benefits of a military force, I think, are many. There are times of not so much a military conflict as we might think with another state or with another country. However, there are times within the state when it’s necessary that

there be a state military force to assist. And I would refer you to just recently a few years ago when there was the incident at Zap where the National Guard was very instrumental in resolving it.

The Committee did feel that there is a place in our constitution for establishing a state military force. And the recommendation of the Committee is that the language as we have proposed in Committee Proposal 1-10 be adopted.

PRESIDENT WENSTROM: Is there any further discussion? Hearing none, the question is on the passage of Committee Report No. 1-10 as amended. No further discussion, that will open the key to record your vote. Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 94 "ayes," two "nays," two absent and not voting.

Committee Proposal 1-10 is passed and will be referred to the Committee on Executive Functions.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: I wonder if we could move at this time to the twelfth order of business, off the tenth?

PRESIDENT WENSTROM: Without objection, we will move to the twelfth order of business.

DELEGATE NETHING: Mr. President. I would move that Committee — excuse me — Delegate Proposal No. 2-31 be returned to the assembly from the Committee on Executive Functions. And if I get a second, I'll explain why.

DELEGATE KWAKO: Second.

DELEGATE NETHING: The reason I'd like to do this is in order to get a proposal before the committee. I've submitted Delegate Proposal No. 2-31 regarding the matter of the state militia. And now that we have acted on it there is no reason to have this proposal in front of the committee any more. And I'd like to have it returned here so that I can then move to have permission to withdraw it.

PRESIDENT WENSTROM: The question is Delegate Nothing's motion that Delegate Proposal No. 2-31 be returned to the Convention.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. And the proposal is now before the Convention.

DELEGATE NETHING: Mr. President. At this time I would request permission from the assembly to withdraw Delegate Proposal 2-31.

PRESIDENT WENSTROM: Delegate Nothing requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-31. Are there any objections? Is there any objection? Hearing none, permission is granted to withdraw Delegate Proposal No. 2-31.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I rise under the Rules for the privilege of explaining my vote on Proposal 1-10 —

PRESIDENT WENSTROM: State your opinion.

DELEGATE PEARCE: — in which I voted no for the simple reason that the militia as presently in the constitution is all of us, all able-bodied men. I am in favor of that. The proposal would create a different body, perhaps a particularly military body or military force. I approve of the militia, not of a separate military body. That's why I voted no.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Since I'm the only other one who voted "no" I suppose I have to explain my vote simply by saying that I thought it was strictly a legislative matter and should not be in the constitution.

PRESIDENT WENSTROM: The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President, I would move that Committee Proposals 1-30, 1-33, 1-39 be laid over one Convention day.

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: It's been moved and seconded that Proposals, Committee Proposals 1-30, 1-33 and 1-39 be laid over one Convention day. Now is there any discussion?

DELEGATE SAUGSTAD: I do not have those proposals, committee proposals, in my bill book. And I asked some of my surrounding people here, and they do not have them either. So I'm assuming that they are not before us since they are not in our bill books.

PRESIDENT WENSTROM: Is there any further discussion? Are you ready for the question?

The question is on Saugstad's motion that Proposals, Committee Proposals No. 1-30, 1-33, 1-39 be laid over one Convention day.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and they will be laid over one day.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I had intended to make the motion to lay the two proposals over one day. We have Proposal No. 1-39, and we find now that there is a delegate proposal and this delegate would like to be heard on this matter. So I now move that Proposal No. 1-39 be returned to the Committee on Legislative Functions.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposal No. 1-39 be returned to the Committee on Legislative Functions. Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Second by Delegate Kwako.

Is there any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And Committee Proposal No. 1-39 is referred to the Committee on Legislative Functions.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: May we be on the eighth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the eighth order of business.

DELEGATE SCHEEL: I'd just like to announce that there will be a meeting of the Executive Functions Committee at 7:30 in the auditorium in the Highway Building. Subject will be the reorganization of the executive branch. And four panel members that are members of that committee will speak on the subject for half an hour. And afterwards we'll have about an hour of questions and discussion. Thank you.

PRESIDENT WENSTROM: Thank you, Delegate Scheel.

Are there any further announcements? We are on the eighth order of business. The desk has some announcements.

CHIEF CLERK GILBREATH: Finance and Taxation Committee will hear Section 1-36 of the Constitution. This is the exemption section relating to exemption from tax of schools, churches, charities. Time: 1:30 P.M. in the Blue Room, Tuesday, January 11th.

Finance and Taxation Committee will hear Committee Proposal 1-21, section 8, being Section 185 of the Constitution. Relates to state and its subdivisions and business. 1:30 P.M. in the Blue Room, Wednesday, January 12th.

Finance and Taxation Committee will hear Committee Proposal 1-21, sections 5, 6 and 7, these being Sections 182, 183, 184 and 187 of the Constitution. Relates to state bonding limits, debt limits, and majorities required to raise debt limits. 1:30 P.M. in the Blue Room, Thursday, January 13th.

Preamble, Bill of Rights and Suffrage will hear section 14, Article I, pertaining to eminent domain at 2:30, Lewis and Clark Room, January 13th.

Preamble, Bill of Rights and Suffrage will hear section 19, Article I, pertaining to the right of citizens to keep and bear arms at 2:00 P.M., Lewis and Clark Room, January 12th.

Preamble, Bill of Rights and Suffrage will hear Committee Proposal 1-53 repealing section 23 of the Constitution of the State of North Dakota, pertaining to freedom to obtain employment at 2:00 P.M. in the Lewis and Clark Room, January 11th.

Executive Functions will meet on Tuesday, January 11th, at 1:15 in Rooms G-5 and 6. Proposals taken up will be 1-25, 1-26, 1-27 and 1-28.

Committee on Education, Resources and Public Lands Monday, January 10th, at 1:30 P.M. in Room G-1. It will hear Committee Proposal 1-17 on trust lands, Committee Proposal 1-18, public institutions. 3:00 P.M. they will hear Committee Proposal 1-20 on corporations.

Tuesday, January 11th, in Room G-1 at 1:30 P.M. it will hear Committee Proposal 1-16 on environment.

Wednesday, January 12th, at 1:30 P.M. in Room G-1 they will hear Committee Proposal 1-15 on education, and Delegate Proposal 2-44 on State Board of Education.

On the calendar tomorrow I have one on the tenth order, that is Committee Proposal 1-19.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I didn't hear a report from our Committee on what we would be hearing. I don't know why it's not there. Evidently it wasn't turned in. But I'd like to announce for the benefit of any delegate who is interested, as well as the public, that our committee will be considering 1-11, 1-12, 1-13 and 1-14, or as much as we can of each of these, beginning at 1:30 today when we meet.

And also that we will consider any delegate proposal that relates to those particular committee proposals, as much as we can get to them. So if any of you do have a proposal in that affects those particular sections or those particular committee proposals, why we'll be glad to hear you this afternoon.

PRESIDENT WENSTROM: We will be on the ninth order of business — Introduction and Reference of Proposals.

DELEGATE HAUGEN: Mr. President. Could we remain on the eighth order for a minute?

PRESIDENT WENSTROM: Without objection, we will be on the eighth order.

DELEGATE HAUGEN: I would like to announce the Finance and Tax Committee will meet at 10:15 this morning. I presume that we are going to be completed with our morning work in a few minutes.

PRESIDENT WENSTROM: We'll be on the ninth order of business — Introduction and Reference of Proposals to Committees.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-73, introduced by Delegate Hill:

"Be it resolved by the North Dakota Constitutional Convention that section 25 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to the initiative and referendum, be created."

PRESIDENT WENSTROM: Delegate Proposal No. 2-73 is referred to the Committee on Legislative Functions.

Fellow Delegates, that clears the calendar for today, and it also clears the desk. One thing we have to remember is that this session has to be — we have to remain in session until twelve to receive delegate proposals. So unless there is some business to come before the Convention at this time — Delegate Hougen.

DELEGATE HOUGEN: Yes. Mr. President, perhaps I missed this. But I think that the Clerk should also state that 1-30 and 1-33 are going to be on the calendar.

CHIEF CLERK GILBREATH: That's right. 1-30 and 1-33. I'm sorry. I have got them marked over.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I would like to announce that the Legislative Functions Committee will meet at 1:30 — will this be possible — this afternoon.

PRESIDENT WENSTROM: At 1:30?

DELEGATE HOFFNER: At 1:30. That will be in the Large Hearing Room.

PRESIDENT WENSTROM: I'm sure it will.

DELEGATE HOFFNER: I would like to mention to Mr. Cart that 1-39 will be heard at 1:30.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: Did I understand that when you announced that Delegate Benz phoned and said that he couldn't come that he would be automatically excused or do we need a motion to excuse him from the official meeting?

PRESIDENT WENSTROM: Well, he is automatically excused, Delegate Hildebrand.

DELEGATE HILDEBRAND: Very well. That answers my question.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I wish to announce a meeting of the Executive Functions Committee this morning at 10:30 down in our usual room. That will give us a half an hour to make some phone calls and find some coffee maybe.

PRESIDENT WENSTROM: Delegate Baker, did I see you — Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, I would like to announce that the Bill of Rights Committee will meet at 10:30 in the Lewis and Clark Room.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I was under the impression that we had to be at ease until noon, is that correct?

PRESIDENT WENSTROM: That is correct.

DELEGATE HOFFNER: But it's still possible for our committees to meet?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE HOFFNER: Well, then I'd like to change the meeting time to 10:30 this morning.

PRESIDENT WENSTROM: Then I will continue with my oration and say that because we cannot recess for the balance of the day, that we have to be here to receive delegate proposals up until twelve o'clock, unless there is someone else that would like the floor — Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I'd like to announce that the Judiciary Committee will meet then at 11:00 o'clock in its usual place for some preliminary discussion of our hearing this afternoon.

PRESIDENT WENSTROM: Delegate Peters.

DELEGATE PETERS: I was late for the roll call, and I wish to advise the Clerk that I am present now.

PRESIDENT WENSTROM: Thank you, Delegate Peters.

The record will show that Delegate Peters is present.

Then I will declare the Convention at ease until 11:30 this morning. Until 11:30 this morning.

(The Session adjourned at 9:53 A.M. until 11:41 A.M., the same day.)

PRESIDENT WENSTROM: Fellow Delegates, we will continue at ease until possibly ten minutes until twelve. We only have two proposals at the moment.

(The Session adjourned at 11:42 A.M. until 11:58 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, could the record show that Delegate Sanstead is present?

PRESIDENT WENSTROM: The record will show that Delegate Sanstead is present.

We will be on the ninth order of business — Introduction and Reference of Proposals to Committees.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-74, introduced by Delegate Lamb:

“Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to rights of debtors and homesteads, be created.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-74 is referred to the Committee on Judicial Functions and Political Subdivisions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-75, introduced by Delegate Omdahl:

“Be it resolved by the North Dakota Constitutional Convention that sections 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 and 120 of the constitution of the state of North Dakota be repealed; and that article IV to the constitution of the state of North Dakota be created; all of which pertain to the judicial branch of government.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-75 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-76, introduced by Delegate Engstrom:

“Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the constitution of the state of North Dakota be repealed; and that three new sections of Article II to the constitution of the state of North Dakota be created; all of which pertain to the legislative branch of government.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-76 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-77, introduced by Delegate Kwako:

“Be it resolved by the North Dakota Constitutional Convention that sections 29, 35 and 214 of the constitution of the state of North Dakota be repealed; and that new sections to the constitution of the state of North Dakota be created; all pertaining to legislative reapportionment.”

PRESIDENT WENSTROM: Delegate Proposal No. 2-77 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-78, introduced by Delegates Burbidge, Aas, Baker, Bender, Benz, Berg, Binek, Burke, Butler, Byrne, Cart, Christensen, Dawson, Decker, Devine, Diehl, Engstrom, Erickson, Fallgatter, Hartl, Hernet, Hoghaug, Hougen, Huckle, Kessel, Ketchum, Knudson, Kretchmar, Kwako, Lander, Lerberg, Litten, Longmire, McElroy, McIntyre, Meidinger, Miller, Nething, Nicholas, Peters, Poulson, Quam, Roney, Rundle, Saugstad, Scheel, Solberg, Stanton, Thompson, Trenbeath, Tudor, Unruh and Wallin:

“Be is resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to non-discrimination in licensing and employment be created to read as follows:

PRESIDENT WENSTROM: Delegate Proposal No. 2-78 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Saugstad moves that Committee Proposal No. 1-10 be referred to the Committee on Style and Drafting. Do I have a second to the motion?

DELEGATE CART: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Cart.

As many as are in favor of the motion say “aye;” opposed “no.” The “ayes” have it.

DELEGATE AAS: Mr. Speaker.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, did I understand you to say that 2-75 was being referred to the Finance and Taxation Committee?

CHIEF CLERK GILBREATH: That's what he said.

PRESIDENT WENSTROM: 2-75; that is correct. That's the way it reads on my script here.

DELEGATE AAS: It seems to me, Mr. President, that from the heading that that should be a judiciary referral; am I right?

PRESIDENT WENSTROM: It did sound that way to me, too, when I read it. I mean when I read it when it was right at the desk. Just one second. Maybe we've got an error.

Delegate Aas, would you move that Delegate Proposal No. 2-75 be returned to the floor of the Convention?

DELEGATE AAS: Mr. President, I so move.

PRESIDENT WENSTROM: Delegate Aas moves that Delegate Proposal No. 2-75 be returned to the floor of the Convention. May I have a second?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Aubol.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Delegate Proposal 2-75 is again before the Convention.

Now the Committee Proposal — Delegate Proposal No. 2-75 is referred to the Committee on Judicial Functions and Political Subdivisions.

Delegate Longmire.

DELEGATE LONGMIRE: May I hear the repetition of that title again? It seemed to me that it would be a Preamble, Bill of Rights. We're very happy to consider it, but we're just on the sections that deal strictly with the judges.

CHIEF CLERK GILBREATH: "That sections 85, 86, 87, 88, 89, 90, 92, 93, 94, 96, 97, 98, 100, 101, 102 —"

DELEGATE LONGMIRE: You don't need to read all the sections. Does that relate to the judicial branch article?

CHIEF CLERK GILBREATH: ". . . all of which pertain to the judicial branch of government."

DELEGATE LONGMIRE: Yes. Well, that's fine. It must have been 2-74 that I heard then that seemed to me shouldn't come to our committee. But that was sent to the Judiciary Committee?

PRESIDENT WENSTROM: 2-74. Delegate Longmire?

DELEGATE LONGMIRE: Yes, Mr. President.

PRESIDENT WENSTROM: Would you move that Committee Proposal No. 2-74 be returned to the floor of the Convention?

DELEGATE LONGMIRE: I so move, Mr. President.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: It has been moved and it has been seconded. The question is before you that Delegate Proposal No. 2-74 be returned to the floor of the Convention.

As many as are in favor of that motion will say "aye;" opposed "no." The "ayes" have it. And the Delegate Proposal is now before you.

DELEGATE LONGMIRE: Would the Clerk please just read what that refers to? Not all the sections.

CHIEF CLERK GILBREATH: ". . . pertaining to rights of debtors and home-steads, be created."

DELEGATE LONGMIRE: Yes. Mr. President, it sounded to me, and still does, like that should be in the Preamble and Bill of Rights Committee. And if you want to accept the motion, I move that it be re-referred to that committee.

PRESIDENT WENSTROM: It has been moved that Delegate Proposal No. 2-74 be referred to the Committee on Preamble, Bill of Rights and Suffrage. Now do we have a second?

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: It has been seconded by Delegate Lamb.

There being no further discussion, as many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it, and Proposal 2-74 is with the Preamble, Bill of Rights and Suffrage.

Anything further at the desk?

CHIEF CLERK GILBREATH: One announcement.

PRESIDENT WENSTROM: One announcement at the desk.

CHIEF CLERK GILBREATH: I would like to announce that the lunch cart is now in Memorial Hall.

PRESIDENT WENSTROM: Anything further to come before the Convention?

DELEGATE JESTRAB: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: May I ask that the Education, Resources and Public Lands hearing on environment is tomorrow afternoon to call attention to anyone that is interested in that today? Hearing is tomorrow at 1:30, G-1.

PRESIDENT WENSTROM: Thank you.

Anything further?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I move that we do now stand adjourned until nine A.M. January 11th.

PRESIDENT WENSTROM: It has been moved that the Convention now stand adjourned until nine A.M., January 11th. As many as are in favor of that motion will say "aye;" opposed "no." The "ayes" have it. The Convention is then adjourned.

(The Plenary Session adjourned at 12:10 P.M., Monday, January 10, 1972, until 9:00 A.M., Tuesday, January 11, 1972.)

VOLUME VII

(January 11, 1972)

MORNING SESSION

(The following proceedings commenced at 9:08 A.M. as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is Reverend Richard Hagestuen, First Lutheran Church of Mandan.

REV. RICHARD HAGESTUEN: Dear God and Heavenly Father.

We ask Your presence today in our individual lives as we deal with issues that concern the lives of many. We pray that Your will might be done individually and corporately. We see Your hand at work in the history of mankind. Help make us aware and desirous of that will which is Yours. You are with these men and these women as they consider the Constitution of this State which will help them to be Your servants. Amen.

PRESIDENT WENSTROM: We will be on the third order of business — Roll Call. The Clerk will open the key and we will establish our presence.

Has every delegate recorded his presence? If so, the key will be closed.

CHIEF CLERK GILBREATH: Aubol, Benz, Hartl, Litten, Paulson and Peterson.

PRESIDENT WENSTROM: Roll call discloses 92 present, six absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal for the 7th day of January, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Paulson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Revision and Correction of the Journal. Do I have a second?

DELEGATE POULSON: Second.

PRESIDENT WENSTROM: As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it and the report is adopted.

We will be on the sixth order of business — consideration of amendments.

CHIEF CLERK GILBREATH: The amendments to Proposal 1-34 as recommended by the Committee on Legislative Functions as printed on page 135 of the Journal are:

On line 8 after the word "officials" insert "legislators," delete all of lines 11 through 15.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I move that the amendments in Proposal 1-34 be adopted.

PRESIDENT WENSTROM: Delegate Hoffner moves that the amendments to Committee Proposal No. 1-34 be adopted. Do I have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Kwako.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I believe I assigned the explanation of the amendments to one of the committee members. I don't have the list here with me.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: The amendments on this particular proposal, line 8, to placing of the word "legislators" behind the — at the end of the line. And it is for the purpose of specifically including the legislators in the definition of employees and officials who are to be governed by any public duty in this part of the Constitution.

The second portion of the amendment is the deletion of lines 11 through 15. And our committee, on the strong majority vote, decided to take that out of there because the wording of the language in that section is difficult to interpret, and also we feel that it should be a legislative prerogative. It would be fine, but the conflict of interest will be for state officials and legislators.

I move for approval of the amendment.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: The committee was fairly well divided on this report to amend as the committee had introduced the measure with that sentence on it in the first place. However, since I plan to add a little additional language to this, I plan to resist the amendment today but not go into a lengthy discussion of this until we get on the tenth order tomorrow.

And I would like to refer the delegates to Delegate Proposal 2-34 so that they can see what language I am going to propose that we add to this present proposal when it comes up on the tenth order tomorrow.

PRESIDENT WENSTROM: Thank you, Delegate Omdahl.

Is there any further discussion?

The question is on the adoption of the amendments. Committee Proposal 1-34. Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, a question of inquiry to the committee. Does the last part of this provision mean that no legislator who may be an attorney can contact a state department or a state official or state employee about any matter on behalf of his clients?

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: We are literally speaking, Delegate Longmire. That would be the effect.

One of the reasons that we could not see leaving that clause in there, it almost precludes any member of the legislature, legislative assembly — whether it is two houses or unicameral makes no difference — from conducting any business with the State of North Dakota or any departments of that. Because any little thing you do could be challenged as having been in the position of influencing that agency, that individual or the legislature in favor of your client.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I want it clear to the delegates as to what this is doing and what this would mean in that case. You would almost eliminate any attorney from serving in — or perhaps other professional people, too, that might have some contact with the State — from serving in either house of the legislature, or one house if we should have one house.

Now I know that we've had similar provisions in the past, but in connection with any attorney's practice there will be some time or another when he will have to contact some state official or some state department about somebody, sometime. And if you do that you are eliminating this class of people from serving in the legislature.

PRESIDENT WENSTROM: Delegate John Paulson.

DELEGATE PAULSON: Thank you, Mr. President.

I rise to speak and to record my presence and to point out to Delegate Longmire that if he adopts the amendment as proposed by the committee the grounds for his protest are completely gone. That's why we're taking the language out, so we don't put that ban on legislators.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I would like to ask why Section 40, some abbreviation, shouldn't be retained in the present Constitution?

PRESIDENT WENSTROM: Would some member of the committee answer Delegate Cart's question?

DELEGATE BUTLER: Mr. President. We recognize that Sections 38, 40 and 43 of Article II are not in repeal as of yet but are affected by this change. And we believe that Section 29, as it is proposed, is preferable language over Section 40 as this would not be used.

PRESIDENT WENSTROM: Thank you, Delegate Butler.

Any further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-34.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted. And Proposal No. 1-34 will go on the tenth order of business for tomorrow.

Without objection, we'll be on the ninth order of business — Introduction and Referral of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-87, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that article 56 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to revenue from gasoline and motor vehicle registration and license taxes."

PRESIDENT WENSTROM: Committee Proposal No. 1-87 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-88, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 44, 51, 53, 54, 57, 59, 60 and 62 of Article II, section 199 of Article XIV and Article 75 of the amendments to the constitution of the state of North Dakota be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-88 is referred to the Committee on Legislative Functions.

We'll be on the tenth order of business — First Reading and First Passage of Proposals.

CHIEF CLERK GILBREATH: First for consideration is Committee Proposal No. 1-19 introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 210 of the constitution of the state of North Dakota be repealed; and that article IX to the constitution of the state of North Dakota be created; both of which pertain to appropriation of waters."

"SECTION 1. REPEAL.) Section 210 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2. Article IX to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE IX

"WATERS

"Section 1. All surface and subsurface water shall forever remain the property of the people and subject to appropriation for beneficial uses as provided by law."

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business — Motions and Resolutions.

DELEGATE MEIDINGER: Mr. President, I move that Proposal 1-19 be re-referred to the Committee on Education and Resources and Public Lands.

PRESIDENT WENSTROM: Delegate Meidinger moves —

DELEGATE MILLER: Second.

PRESIDENT WENSTROM: — that Delegate Proposal 1-19 be re-referred to the Committee on Education, Resources and Public Lands.

DELEGATE MEIDINGER: Mr. President, we have scheduled additional hearings on this proposal for 3:30 this afternoon, and we would appreciate having it returned to the committee.

PRESIDENT WENSTROM: The question is on the motion that Committee Proposal No. 1-19 be re-referred to the Committee on Education, Resources and Public Lands.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. And it will be re-referred to the Committee.

Next for consideration is Committee Proposal No. 1-30.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-30, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 211 of Article II of the constitution of the state of North Dakota be repealed; and that section 27 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the oath of office.

“SECTION 1. REPEAL.) Section 211 of Article II of the constitution of the state of North Dakota is hereby repealed.

“SECTION 2. Section 27 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

“ARTICLE II

“Section 27. All elected officials shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: ‘I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; that that I will faithfully discharge the duties of the office — blank — according to the best of my ability, so help me God.’ (If an oath), ‘under pains and penalties of perjury’ (if an affirmation), and no other oath or declaration shall be required as a qualification for any office or public trust.)”

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: The Legislative Functions Committee unanimously approved 1-30. And to clarify why we have made only one change, if you know section 211 of the present Constitution, why it indicates there or states there that “members of the Legislative Assembly and Judicial Departments, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices . . .” and so forth. We have merely made this one small change in creating section 27. And that is “All elected officials shall . . .” So that’s the only change from the one that is now in the present instrument. And we feel, and the Committee felt unanimously that this was much better wording instead of spelling out each one of the specific areas and officers who had to take this particular oath. And this covers all of those that should take the oath before entering on the office. So the Committee unanimously recommends its approval.

PRESIDENT WENSTROM: Is there any further discussion? Any question?

DELEGATE O’TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O’Toole.

DELEGATE O’TOOLE: I certainly have no opposition to this, but I would like to direct a question to Delegate Solberg, if I may.

PRESIDENT WENSTROM: You may.

DELEGATE O'TOOLE: I was wondering why the committee left in the details of the oath. Would it not, since we are trying to shorten the Constitution and the verbiage in it, could we not have just allowed the oath to have been made by the legislative body? Is there some reason for leaving this in?

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: We have, I believe, shortened it from the one that is in section 211 of the present Constitution. We have merely said, "All elected officials shall." Then we have not tampered with the oath whatsoever, because at the desire of an individual being sworn in, why we have allowed him to take the oath under God or in affirmation under pains and penalties of perjury. So there is no change. And we don't think that any shortening of the oath should be provided for in the Constitution because this then becomes a uniform thing for all state officials and other officials that are elected, regardless of what area of government they may serve. And hence we feel that this must be said this way so that it is uniform without the entire State.

PRESIDENT WENSTROM: Thank you, Delegate Solberg.

Delegate Sinner.

DELEGATE SINNER: Mr. President. There is a typographical error in the proposal printing in line 6. I move that the Roman numeral "II" be stricken and replaced with Roman numeral XVII".

PRESIDENT WENSTROM: Delegate Sinner moves that the Roman numeral — "22"?

DELEGATE SINNER: 2.

PRESIDENT WENSTROM: — "II" be stricken, and that it be replaced by the Roman numeral "XVII."

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: And it has been seconded by Delegate Kwako. Is there any further discussion on the amendment?

Delegate Sinner.

DELEGATE SINNER: I'm sorry. May the motion include line 1 as well? I missed that.

PRESIDENT WENSTROM: Will the second agree to the addition?

DELEGATE KWAKO: Yes.

PRESIDENT WENSTROM: Delegate Sinner? Question: Does the same typographical appear in two places?

DELEGATE SINNER: Yes.

DELEGATE SOLBERG: Line 1 and 6.

DELEGATE SINNER: 1 and 6.

DELEGATE CART: Three places.

PRESIDENT WENSTROM: Well, now let's be certain.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: It's in line 1, which is the repeal of the old article. And that was in Article XVII. The new language will be in Article II, so the Roman numeral "II" in line 2 and line 8 is correct. It's only misprinted in lines 1 and 6.

PRESIDENT WENSTROM: Is that agreed now? The question is on the amendment as proposed by Delegate Sinner.

As many as are in favor of the amendment will say "aye;" opposed "no." The "ayes" have it. The amendment is adopted.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I note in line 19 the word "test" does not appear in the new version. Might we have an explanation of that?

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: We felt that the last line, "and no other oath or declaration shall be required as a qualification for any office or public trust," that this should be adequate without spelling out the specifics of the "test".

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Has that completed the adoption of the amendments to this Proposal 1-30?

PRESIDENT WENSTROM: Yes.

DELEGATE SAUGSTAD: I would now move that the Rules be suspended and that Committee Proposal 1-30 be placed at the head of the calendar for final passage.

PRESIDENT WENSTROM: Delegate Saugstad moves that the Rules be suspended and that Delegate Proposal — or Committee Proposal No. 1-33 be placed at the head of the calendar for final passage as amended. The question is on suspending the Rules and placing Committee Proposal No. 1-33 at the head of the calendar for final action.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I apparently misspoke. I intended to say Committee Proposal 1-30, and it should be on first passage.

PRESIDENT WENSTROM: The question is on Committee Proposal 1-30 as amended for final passage.

DELEGATE SAUGSTAD: First passage.

PRESIDENT WENSTROM: For first passage. I'm going to get that right yet. The question then before the Convention is on the first passage of Committee Proposal No. 1-30 as amended. Is there any further discussion?

Hearing none, those in favor of it will vote "aye;" those opposed vote "no." I will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 95 "ayes," no "nays," three delegates absent and not voting. So the proposal has been passed for the first time.

Next for consideration will be Committee Proposal No. 1-33.

CHIEF CLERK GILBREATH. That on the board is supposed to be 1-33. Evidently the one 3 is not registering.

Committee Proposal No. 1-33, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 197 and 198 of Article II of the constitution of the state of North Dakota be repealed; and that sections 23 and 24 of Article II to the constitution of the state of North Dakota be created; all pertaining to impeachment.

"SECTION 1. REPEAL.) Sections 197 and 198 of Article II of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2. Sections 23 and 24 of Article II to the constitution of the state of North Dakota are hereby created to read as follows:

"ARTICLE II

"Section 23. All officers not liable to impeachment shall be subject to removal as may be provided by law for misconduct, malfeasance, crime or misdemeanor in office, or because of chronic and continuing inability to perform the duties of office.

"Section 24. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial. No person shall be liable to impeachment twice for the same offense."

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President, by assignment of the Committee Chairman my duty is to explain these complicated sections. I will have a technical motion to make to add some amended sections, but first I would like to explain that

section 23 is in substance section 197 of the Constitution, except that the last phrase "or because of chronic and continuing inability to perform the duties of office" take the place of the present words "habitual drunkenness or gross incompetency". There is a subtle difference there.

Section 24 is the rephrasing of present section 198, 200, 201, embodying the three ideas, that after he has been impeached before his acquittal he shall not exercise his duties of his office; that he must have the impeachment provision twenty days prior to trial, and he cannot be impeached twice.

Now I have been informed by our good Chairman that it would be in order for me at this time to move some very technical amendments merely adding repealant clauses. Am I in order on this order of business?

PRESIDENT WENSTROM: You are in order, Delegate Pearce. This is on the tenth order.

DELEGATE PEARCE: Thank you.

I move that the Proposal 1-33 be amended as follows:

On line 1 after the numeral "197," delete the word "and" and insert a comma. And after the numeral "198" inserting the numerals "200" and "201". And after the word "Article" delete the Roman numeral "II" and insert in lieu thereof the Roman number "XIV".

On line 6 after the numeral "197" delete the word "and" and insert in lieu thereof a comma, and after the numeral "198" insert "200" and "201". And after the word "Article" delete the Roman numeral "II", inserting in lieu thereof the Roman numeral "XIV", and renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Solberg.

Now, any discussion? Discussion?

DELEGATE PEARCE: The purpose of the amendments is to add the two sections, 200 and 201, which were inadvertently overlooked at the time of the printing.

PRESIDENT WENSTROM: Are there any questions?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: May I offer an amendment to the amendment that following number "198", insert a comma? I think we've mentioned that.

DELEGATE PEARCE: Yes. Perhaps I didn't.

DELEGATE SAUGSTAD: But there should be a comma following the numeral "198."

DELEGATE SINNER: Second.

DELEGATE SAUGSTAD: Then the numbers "200" and "201".

PRESIDENT WENSTROM: We have an amendment to the amendment. The amendment has been seconded by Delegate Sinner. The question is on the amendment to the amendment.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President. I have a question about the language of section 2 in this proposal. And actually also about the language in section 2 of 1-30.

PRESIDENT WENSTROM: Delegate Baker, I believe we are on the amendment to the amendment. That being, you're out of order.

The question before the Convention is on the amendment to the amendment as offered by Delegate Saugstad. I believe it was the insertion of a number of commas.

CHIEF CLERK GILBREATH: One comma.

PRESIDENT WENSTROM: One comma.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the amendment is adopted.

Now we are back on the amendment as offered by Delegate Pearce as amended.

Now, Delegate Baker, does your question come on this amendment or is it on the subject matter, on the main motion?

DELEGATE BAKER: Well, I'm not exactly sure. It may be what I'm interested in would just be further amendment. And if amendment is still open then I would be glad to wait.

PRESIDENT WENSTROM: It will be following the adoption of Delegate Pearce's amendment.

DELEGATE BAKER: Thank you.

PRESIDENT WENSTROM: The question now before the Convention is on the amendment as offered by Delegate Pearce and amended by Delegate Saugstad.

As many as are in favor of the adoption of that amendment will say "aye;" opposed "no." The "ayes" have it. And the amendments are adopted.

Now, Delegate Baker, if you wish to further amend.

DELEGATE BAKER: Mr. President, I'm not sure that I wish to further amend. Perhaps if I tell you what I have in mind some member of the Committee or some other delegate can straighten it out.

I'm referring to the language in section 2 of 1-33. And this same sort of language, although not exactly the same language, occurs in section 2 of 1-30, which we passed. And it creates certain numbered sections of a particular numbered article. And I'm wondering what that — what effect that has in the light of the rule which provides that the Style and Drafting Committee has the authority and the responsibility to establish the order and to number the various sections of the new document that this body will produce.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: If I might answer the question.

The sections 23 and 24 I think came about because they were sections in our original Proposal 1-7. We have to have some section. I have no qualms at all that, if the Constitutional Convention has not already done so, it will authorize the Committee on Style and Drafting to completely renumber the sections of what we are passing as the language in the section. And if it takes action, and I think perhaps it should before the Convention is through, to specifically empower the changing of section numbers, I'm sure the Convention will do that. It should give us no problem at this time.

PRESIDENT WENSTROM: Delegate Baker, does that answer your question?

DELEGATE BAKER: Yes.

DELEGATE PEARCE: At this time, Mr. President, may I move that the Rules be temporarily suspended and Proposal 1-30 be incorporated, engrossed and placed on the calendar for first reading and passage. 33, excuse me.

PRESIDENT WENSTROM: Delegate Pearce moves that the Rules be suspended and that Committee Proposal No. 1-33 be placed on the calendar for final passage as amended. And a second?

DELEGATE AAS: Second.

PRESIDENT WENSTROM: Delegate Aas seconded the motion.

Now is there any further discussion? Hearing none, the question is on the first passage of Committee Proposal No. 1-33. I will open the key and you will record your vote.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I just want to report in, sir.

PRESIDENT WENSTROM: Thank you.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 95 "ayes," no "nays," three absent and not voting. So the proposal is passed.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: As a point of inquiry, I didn't hear the vote taken on the motion to suspend the Rules, but I assume that the record shows that it carried. We then went into voting on the bill. But maybe I just didn't hear it. And I'm sure the record will show that the motion carried.

PRESIDENT WENSTROM: Did we neglect to vote on the adoption of the amendments?

CHIEF CLERK GILBREATH: No. Suspension of the Rules.

PRESIDENT WENSTROM: On the one on the suspension of the Rules.

CHIEF CLERK GILBREATH: Placed on the first passage.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I was hoping that our secretary up there could straighten this out without recalling your attention, but since we started it, you did not vote on the suspension of the Rules on 1-30.

PRESIDENT WENSTROM: On 1-30?

DELEGATE HERNETT: I don't think so.

PRESIDENT WENSTROM: Well, for the record that was voted on. Stan Saugstad's motion was voted on on 1-30. But I could be in error on 1-33.

For the record, on Delegate Pearce's motion that we do suspend the Rules, being Committee Proposal No. 1-33, properly be engrossed and placed on the calendar for final passage.

DELEGATE LONGMIRE: Mr. President, are you on that matter now?

PRESIDENT WENSTROM: We are going to vote.

DELEGATE LONGMIRE: Yes. Mr. President, if you wanted to be technically correct — this is nit picking, I suppose — our motion now would be to reconsider action by which we voted on it before the Rules were suspended. But if you want the proper motions to get us back technically, I'd be glad to make them.

PRESIDENT WENSTROM: Well, I think, Delegate Longmire, that inasmuch as the proposal passed and everyone voted, there wasn't a vote in opposition to the proposal, that I do think that we move to reconsider and go back, that we would be nit picking.

So on that basis, I'm going to ask the Convention to adopt Delegate Pearce's motion. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And now the record is correct. I'm sorry for neglecting to call your attention to voting on a suspension of the Rules.

Anything further at the desk?

We will be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-3 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-3, that the proposal be indefinitely postponed? Is there any discussion? The question is on the indefinite postponement of Committee Proposal No. 1-3.

Delegate Hubrig.

DELEGATE HUBRIG: Yes. The Committee was in unanimous feeling that this should be indefinitely postponed.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: To further explain, we have submitted individual proposals relating to each of the sections contained in Committee Proposal 1-3.

We have individual repealers. It appears to be the sentiment of the Convention that repealers should be handled separately.

PRESIDENT WENSTROM: Thank you. Any further discussion?

The question then is on the adoption of the Committee Report that Committee Proposal No. 1-3 be indefinitely postponed. Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And Committee Proposal No. 1-3 be indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-5 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption that Committee Proposal No. 1-5, that proposal be indefinitely postponed. Is there any discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: If I'm not mistaken, first paragraph of section 203 is part of the compact with the United States. Is that not correct? Can that be repealed?

PRESIDENT WENSTROM: Pardon?

DELEGATE AUBOL: And can that be repealed without consent of the United States and Congress?

PRESIDENT WENSTROM: I don't think it can be.

DELEGATE LONGMIRE: No.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Our committee has originally suggested in that the wording of the first sentence of the compact is somewhat repealed in the Bill of Rights, that this first sentence be repealed. It is the feeling, however, of the Judicial Committee that this compact not be changed, can never be changed, and that they will submit wording referring to this compact. And so the Committee on Preamble, Bill of Rights and Suffrage felt that discretion was the better part of valor and that we should not delete this first sentence and that it should stand for future reference for our Constitution.

PRESIDENT WENSTROM: Thank you.

The question then is on the Committee Proposal 1-5, that it be indefinitely postponed.

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President. Our committee has given a lot of thought to this. If we repeal it at this time where does our committee stand when we bring the exact words back to you and we present the compact? I think it would be out of order repealing this at this time.

PRESIDENT WENSTROM: Delegate Hoghaug, this would not be repealing. This is killing a proposal. So I don't see how you could be repealing anything by defeating a proposal.

Delegate Aubol.

DELEGATE AUBOL: Sorry I made the inquiry so loud.

PRESIDENT WENSTROM: The question is on the indefinite postponement of Proposal No. 1-5. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And Proposal No. 1-5 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-6 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-6, that the proposal be indefinitely postponed. Any discussion?

DELEGATE FIEDLER: Mr. President.

PRESIDENT WENSTROM: Delegate Fiedler.

DELEGATE FIEDLER: The Committee recommends indefinite postponement and that it be resubmitted in separate sections.

PRESIDENT WENSTROM: Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And Proposal No. 1-6 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal 1-18 has had the same under consideration and recommends the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the Committee Report on Committee Proposal No. 1-18, that it be adopted as a do pass. Is there any question? Any discussion? The question is on the adoption of the Committee Report on Proposal No. 1-18, that the proposal do pass.

Hearing no discussion, as many as are in favor of the motion will say "aye;" — Delegate Cart.

DELEGATE CART: I just wanted to make inquiry of the Chairman, I would assume, if there is conflict with Section 2 of Article VII.

DELEGATE MEIDINGER: Mr. Cart, I don't think so. Mr. President, I don't believe so. The committee at length discussed both of those areas. We had no one appear at previous committee meetings. And we posted it for hearings yesterday, and no one appeared.

PRESIDENT WENSTROM: Any further discussion? The question then is on the adoption of the Committee Report on Proposal 1-18, that it do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-18 will go on the tenth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-23 has had the same under consideration and recommends the same be amended, and when amended recommends the same do pass.

Delegate Haugen, Chairman.

Delegate Haugen moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-23, that the proposal be amended and then that it do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-23 will go on the sixth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-46 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on adoption of the Committee Report on Proposal No. 1-46. That it do pass. Is there any discussion?

Hearing none, the question is on the adoption of Committee Report on Proposal No. 1-46, that it do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the proposal will go on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-47 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report No. 1-47, that the proposal do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-47 will be placed on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-48 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

PRESIDENT WENSTROM: The question is on the adoption of Committee Proposal No. 1-48, that the proposal do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-48 will be on the tenth order of business for consideration tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal 1-49 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report that Committee Proposal No. 1-49 do pass. Is there any discussion? Hearing none, the question is on the adoption of the report.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Proposal No. 1-49 will go on the tenth order for consideration tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-50 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-50, that it do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-50 will be on the tenth order of business for consideration tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-51 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-51, that it do pass. Is there any discussion?

Hearing none, the question: As many as are in favor of the adoption of the Committee Report will say "aye;" opposed "no." The "ayes" have it, and the report is adopted, and Committee Proposal No. 1-51 will be on the tenth order of business for consideration tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal 1-52 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of Proposal No. 1-52, recommending that it do pass. Is there any discussion?

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Section 25 of the Declaration of Rights is one of the most important sections in the Declaration of Rights. If we delete this section, we will, in effect, be saying that our Constitution does not have definite meaning. The provision — I'll read it to you — section 21: "The provisions of this constitution are mandatory and prohibitory unless, by express words they are declared to be otherwise." This State, since the beginning of statehood, has had this section in its background all the time. And I certainly think that it's unwise to repeal this section from our Constitution and lay the door open to the charge that our Constitution, the new one, will not have specific meaning. And I think we should retain this by all means.

PRESIDENT WENSTROM: Delegate Cart, I believe that you will have time on the tenth order tomorrow we all will have time on the tenth order tomorrow to further discuss this proposal. This is merely adopting the committee report.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, it's usual to explain these matters. And I was on that committee actually at the same time as Delegate Cart just merely asked an explanation from a committee member.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: Mr. President, our committee has gone over this and studied it with help of the Staff. And we have found that in wanting to strike out some of the surplus wordage in our Constitution that this is a section which is now firmly rooted and well-accepted in our present system of justice, and there are quite a few Supreme Court and other court cases which support our position.

PRESIDENT WENSTROM: Any further discussion?

The question then is on the adoption of the Committee Report on Proposal No. 1-52, that it do pass.

As many as are in favor of the motion will say "aye;" opposed "no." I believe the report lost. I think it failed.

DELEGATE CART: Division.

PRESIDENT WENSTROM: Division has been called for. Members stand. That's a sufficient number. The key will be opened and you will indicate your preference.

Those that are in favor of adopting the report now will vote "yes;" those opposed will vote "no." The clerk will open the key and you will record your preference.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

CHIEF CLERK GILBREATH: 72 - 22.

PRESIDENT WENSTROM: There were 72 "ayes" and 22 "nays", so the report is adopted.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Just for my own information, and I am assuming for information of others here, if this motion had lost — now this was a motion just to put this on the calendar, wasn't it?

PRESIDENT WENSTROM: This was a question of adopting the Committee Report and to place the matter before the Convention; that's true.

DELEGATE HENDRICKSON: If it fails, what happens to that proposal then?

PRESIDENT WENSTROM: Well, I would imagine that we would send it right back to the committee. That's what I would do with it.

DELEGATE HENDRICKSON: I'm wondering if all delegates understood this was not a time to argue pro and con on the motion; isn't that right?

PRESIDENT WENSTROM: That is true.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I would point out that the time to argue on any of these things is any time we please under our Rules. We have changed the Rules so many times. And I think a delegate is entitled to know 24 hours in advance why the committee did this. I asked it and I found out. I know what they were thinking. It may or may not have influenced my — the way I vote tomorrow, but I have the right at any time to ask. And I think that this is the way we've been operating. Thank you.

PRESIDENT WENSTROM: Delegate Hendrickson, it was not my intention to infer, and I don't believe that I did, that you couldn't ask questions. And if I didn't make that impression — if I did give you that impression, then I am in error. You are perfectly at ease, I hope, and if you do wish at any time to ask a question on the subject matter that is being discussed or on parliamentary procedure or anything else, I sure hope that all the delegates feel free to ask questions at any time.

DELEGATE HENDRICKSON: Frankly, I think I understood the process, Mr. President. But what I did wonder, realizing that this was going on the calendar, do the people that vote — and I have to clarify this procedure before we go any further — do the people that vote against putting it on the calendar mean they want to appear for a hearing, or how do they feel they want the committee to reconsider this? Are they going to go to the committee and influence them and every time it comes up will they again send it back to committee? I mean I can't —

PRESIDENT WENSTROM: This —

DELEGATE HENDRICKSON: I mean I can't understand why we don't let a proposal coming out of committee stay on the calendar unless we specifically hope to go to the committee and argue against it there and then get back on the calendar.

PRESIDENT WENSTROM: I believe we have to say that delegates vote against adopting committee reports for many, many reasons. But basically in the procedure that we try to follow at the time — now the amendments are argued under the sixth order. Under the sixth order of business is when we argue the amendments to the proposal. And then when the amendments are either adopted or they are defeated, the bill or the proposal goes on the tenth order. And that is the time that the amendment can be made from the floor or the main argument on the proposal normally comes up at that time.

DELEGATE CART: Wouldn't the situation be simply this: If the report had been rejected then the item, 1-52 — whatever it was — would have been in the possession of the committee and they would have taken further action to bring it back and make further report?

PRESIDENT WENSTROM: Well, Delegate Cart, I believe that's in line with what I've stated. That when Delegate Hendrickson asked me what the result would have been had there been a "no" vote, I said I thought I would send it back to the committee.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think the delegates might keep in mind that we have a rule that a committee cannot kill a proposal. So if you are opposed to something and you want to ultimately dispose of it, you'll have to let it on the board sometime. Because I believe it has to come back into the committee when we reject a report. Some day, however, you'll have to let it come on the floor so you can kill it, if you are against it, or amend it to suit us.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: May we be on the eighth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order of business.

DELEGATE SCHEEL: Tonight our public information meeting is going to be in the Highway Building again at 7:30. It will be on two questions or considerations from the Legislative Functions Committee; one will be initiative and referendum, and the other on the same night, each having about fifteen minutes on a panel discussion, questions afterwards, will be the reapportionment. And moderating will be Delegate Dawson. Thank you.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: As long as we're on the eighth order of business, will the record show that Delegate Aubol is present?

PRESIDENT WENSTROM: Let the record show that Delegate Aubol is present.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Will the record please show that Delegate Hartl is present?

PRESIDENT WENSTROM: Delegate Hartl is present.

For the benefit of our visitors in the gallery, the delegates that just asked that the record show that they are present, they missed roll call this morning. And we have no way — unless they make a speech or they do something to get their name in the record, we have no way of recording that they were present. So that's why that they were making these announcements.

We will be back on the ninth order of business — fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-54 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-52 —

CHIEF CLERK GILBREATH: 54.

PRESIDENT WENSTROM: — 54.

DELEGATE CART: Mr. President:

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-54.

DELEGATE CART: Don't have it on our books.

PRESIDENT WENSTROM: Fellow Delegates, in that this is adopting a report and it is merely putting it on the calendar for consideration tomorrow, and they tell us the printed proposal will be available this afternoon, unless there are some objections from the floor we will adopt the report and it will go on the calendar in the morning. Are there any objections?

DELEGATE SINNER: Mr. President: The proper time for us to make amendments is when the committee report comes in really —

PRESIDENT WENSTROM: No.

DELEGATE SINNER: — because if we do it on the tenth order then we've got to suspend the Rules in order to pass it. Isn't that correct?

PRESIDENT WENSTROM: The Rules provide that the only place where a delegate can make an amendment is on the tenth order.

DELEGATE SINNER: Okay.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: For the information of the delegates, this Committee Proposal No. 1-54 concerns the repeal of section 209, which prohibits the child — the labor of children under twelve years of age in mines, factories and workshops.

PRESIDENT WENSTROM: Thank you, Delegate Tudor.

If we do not wish to consider this proposal, will someone move that we lay it over one day?

DELEGATE SINNER: Bring it out.

DELEGATE KWAKO: Bring it out.

PRESIDENT WENSTROM: The question then is on the adoption of the Committee Report on Proposal No. 1-54, that it do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-54 will be on the calendar for action tomorrow.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Do I understand that this now cleans up the business on this order?

PRESIDENT WENSTROM: Yes, sir, this does clean up the business.

DELEGATE BAKER: May we be on the eighth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the eighth order of business.

DELEGATE BAKER: Mr. President, I wish to move at this time that Committee Proposal 1-4, which passed on first reading Friday, that this be returned from the Committee on Style and Drafting. And if I get a second, I will explain.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: The motion was seconded by Delegate Stanton.

DELEGATE BAKER: Mr. President, Committee Proposal No. 1-4 would repeal Article I of the amendments to the Constitution of the State of North Dakota. And it received substantial vote on first passage on Friday, at which time the merits of the proposal were pretty well discussed. And I don't wish to open that again at this time, but simply use that division of opinion as an illustration for the reason for asking that this be returned at this time.

I think that a majority, at least a majority of this body, recognizes the subject of the elimination in the Constitution of prohibition on lotteries and other games of chance contained in that article is sensitive to some degree. Some of us feel it is more sensitive than others. But to some degree I think it must be clear this is a sensitive matter.

The people who have the final say on the work that we do here have expressed themselves several times in the past on this general subject. And I think all of us can recall the heat that is generated by this kind of a question on the ballot, whenever it comes up. And so therefore we can expect that the inclusion of this kind of a change in our Constitution will produce some kind of heat, some kind of vigorous, strong debate on both sides of the question.

And inasmuch as the law of probability will produce a number of other questions more — with more or less heat, I hope that we can in some fashion separate these questions aside and give a little further consideration to them than would ordinarily be the case if they passed on first reading, went directly to Style and Drafting, came back late in the Convention for final approval of any changes that might be suggested by that committee, or if nothing is wrong with them technically, to not come back at all perhaps for any action by this body again. So that we might find ourselves at the end of the Convention with a sizeable number — I mean a large number, like twenty or thirty or more — of these sensitive or semi-sensitive questions that could produce a real problem.

Now as you know, there's been a lot of conversation about procedure here for set-asides. Questions that will be presented separate on the ballot, or the most controversial issues will be set aside from the rest of the material so as to give a better chance to passage of that which is not particularly sensitive, but just changes almost everyone agrees should be made.

However, we do not as yet have this procedure established. The Committee on Rules has been studying the problem, and they will produce a report soon now. And then that will furnish us some kind of an idea of how we might go about

separating these obvious controversial or somewhat sensitive issues from the other body of the document that we produce when the time comes.

What I am suggesting now is that we return the Committee Proposal 1-4 from Style and Drafting, then reconsider our action, then put it at the bottom of the calendar and do nothing further at this point until we find out what sort of vehicle there may be available for possibly — not certainly — but possibly setting up this question, among others, as a separate item for the people to vote on.

The reason that I raise the question at this time is that this is the second day after the passage on first reading of this proposal. And if some reconsideration is desirable — if reconsideration is desirable at all, we can do it today with a simple majority vote. After today, under our Rules, it would take a two-thirds vote to reconsider. That's the reason for bringing it up at this time. And if there is any doubt about the — about the sensitivity of this matter, I hope that delegates who realize that it is and who have not spoken before on that particular facet will speak now.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I would like to oppose this suggestion from Delegate Baker. I do not believe that this is a sensitive issue, only as we ourselves make it a sensitive issue. We have all heard the discussion of the many facets of this article which are now going on in North Dakota. The committee simply feels that the people of North Dakota have reached the maturity where their legislature may decide these problems, these things, on a day-to-day basis or on a biennial basis. And I would ask you not to reconsider this and send it back to the committee.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: I oppose the motion. I believe it is premature. I believe Mr. Baker is trying to anticipate and circumvent the Rules Committee. We are here to make an instrument. And if every so-called sensitive issue is called back and held in abeyance we will never get through with our work. I would ask that the delegates vote down the proposal.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: I also resent the motion. I don't believe that we can have fifteen, twenty set-aside issues. And if this is the mood of the Convention, that we do have fifteen, twenty set-aside issues, we might as well have two hundred — some set-aside issues. I think it's too early at this time to make any determination that there are any set-aside issues. All we are doing is advocating more set-aside issues by this attempt. I therefore resist the motion as put to the floor.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, I likewise resist bringing this motion back. Because I think that every motion that we're going to have is going to be a sensitive issue. And I think that we have to realize that fact that everything that we do is before the public and very sensitive.

PRESIDENT WENSTROM: The question before the Convention is on Delegate Baker's motion that the Committee Proposal No. 1-4 be returned to the Convention floor from the Committee on Styling and Drafting.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Members of the Convention. I'm not going to oppose it to stall. I voted against it yesterday, I believe it was. Some of the delegates may have voted for this without realizing all the implications. There's one if a church — a church organization and some of the lodges that are using these methods now will lose their illegal status if this is passed, at least the Legislature would be entitled to — would be enabled to remove them. Now here is the case at the moment. And I'm in an area where we have lots and lots of gamblers, we are used to gambling on the weather all the time anyway. I'm not speaking out on moral grounds on this. But supposing you have a big celebration and the State's Attorney won't say anything because you're a lodge or a church. Now anyone would be able to put on a doing that same night in another hall. So that illegal protection that they now have will be lost. And, anyway, I opposed

years ago the horse racing, the gambling set-up. Whenever you get gambling you have people who are a little less than honest. And you can't always pay the officials enough to keep things lined up. And if you recall, any time — I believe any time in history that a gambling proposition has been up before the voters, I believe they have rejected it. I can recall of two in the last few years that were turned down by decisive margins. And I would support this motion to reconsider. I thank you.

PRESIDENT WENSTROM: Fellow Delegates, now we're not moving to reconsider; we are only moving to bring the proposal back to the Convention floor. I've heard the motion talked on here as being reconsidered. That's not the question before the body.

Delegate Lander.

DELEGATE LANDER: Mr. President. I have a question. The statement was made that after today it would take a two-thirds vote. And am I correct that as long as we operate under the temporary rules, those rules could be suspended and it could be brought back by a majority vote up until such time as the permanent rules are adopted?

PRESIDENT WENSTROM: That is correct.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I, too, would like to speak in favor of the proposal, motion, call it whatever you will. I think that this is an extremely sensitive area. I don't think that everything we are considering here is that sensitive. I think you cannot forget that 76,000 people voted against pari-mutuel betting in the State of North Dakota. And if we are going to confront the people in the State of North Dakota, I think we ought to know this Constitution.

PRESIDENT WENSTROM: Any further comment? The question is on Delegate Baker's motion.

Delegate Knudson.

DELEGATE KNUDSON: Mr. President, perhaps what I have to say is not exactly germane to the motion either, but it can't be said unless this motion passes.

I do support Delegate Baker's motion. After we passed this proposal last Friday I was reflecting on what Delegate Sinner said at the time about organized gambling interests. And I looked up in Dr. Robinson's history of North Dakota the reason why this amendment was originally added to our instrument. It was the result of some of the events of the very first Legislature of North Dakota.

At the time there was an organized gambling set-up, the Louisiana Lottery, which was chartered in that state; gave prizes of approximately \$15 million per year. Over the years this organization became very corrupt. They lost their Louisiana charter as of 1893.

North Dakota was a new state. They thought they'd move into North Dakota and get started before the Louisiana charter played out. A bill was introduced in the first Legislature, passed the Senate by approximately two-thirds vote.

The governor, Miller, our first governor, became excited and worried about what was going on. He imported a couple of Pinkerton detectives from the East who came out and circulated among the House members in the guise of reporters. These gentlemen found out that bribery and corruption was going on in attempts to influence the House Members. Before the thing came to a vote they exposed themselves as detectives. In other words, they blackmailed House Members. The thing was defeated. And the next Legislature passed this amendment which was added to our Constitution.

It's kind of interesting to speculate what the early history of North Dakota might have been if we'd had a one-house Legislature in 1890.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: After listening to some of the arguments on this, I voted against the repeal of this the other day. And I realize the legal implications of it. I think when we voted on it we also realized at the same time

that we were giving a mandate to a Legislature to write a new lottery law which permits churches and lodges and everybody else that holds these. In fact, it practically instructs them to do so. Because it says it is not possible to enforce the law the way it is now written in the Constitution.

I wonder what would happen if on our highways — anybody driving down to this meeting today or driving home and back here over the week-end — had anybody pass them that was going over the speed limit. I wonder what would happen to our highway department if all of a sudden they started arresting everyone that went one mile an hour over the speed limit. And then you decided to instruct the Legislature to prevent that happening, so they would always write a law that said you can go five miles an hour over the speed limit, and then ten miles an hour over the speed limit. And now with the interstates I'm sure that we all wouldn't even have to have an Indianapolis race to develop our race cars.

I believe the test of this thing is not in the enforceability of it, but what has been the result of it. I don't think there's been any particular danger or harm done. Because you can't enforce a law against having a bingo game in a church or having a punch bowl at the Elks Club. I think the Internal Revenue handles it if it gets out of hand. They are looking for all kinds of money, and they'll find it.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I voted against this repeal the other day. I want to support Delegate Baker's motion. I know that we are faced with problems of lack of enforcement. There's no question that it's a problem in any community. However, I don't believe that we can take the attitude that because we are unable to handle a situation that we legalize it. And I firmly believe that if we repeal this section or if it is carried through, we are not going to have less gambling in any community, but we are going to have more. So I would mightly support Delegate Baker's motion.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President, Fellow Delegates. I have to support Delegate Baker's motion. I would hope that I didn't — expect, rather, that we'd get into the discussion on the merits or demerits of it, but just simply to keep this in the light to give us a little more thought in this regard. Because you can't erase the fact that it is on a division. I have had calls from home on this thing. I have talked to delegates that have a little question mark in their mind in this regard. And I think probably we should keep it alive before it requires two-thirds vote to get it back.

I realize the tremendous circumstances that the State's Attorneys in this state are under under the present situation. But the same situation is going to prevail if it's in the statute. I can realize what is going to happen to the Legislatures every session. But my main objection is to taking it out of the Constitution, would be my main objection. As long as it is in that Constitution, the big, bad gambling situation primarily from outside this state will be influenced and be hesitant about stepping in. And this is why I'd like to see this thing kept alive for a little bit longer and let us think about it.

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I, too, support Delegate Baker's motion. I want to clarify in my own mind, and perhaps some of the delegates' minds, I think what this does is only bring it back and place it on the bottom of the calendar for one consideration; and that is until we find out what the rules are for an alternate proposal. I think that's what we have to consider. If some of the delegates here think this might — might, just might, have to be an alternate proposal, this is the thing we're considering. So I support Delegate Baker's motion. And I think this is what it does, it places it back on the bottom of the calendar. And when we find out what the machinery is —

PRESIDENT WENSTROM: Delegate Chase, you are in error.

DELEGATE CHASE: Excuse me. Is that right?

PRESIDENT WENSTROM: No, no, Delegate Chase. The question that is before the Convention is that the Proposal No. 1-4 be returned to the Convention from the Committee on Style and Drafting. At the moment we are not to consider further action until — it is presumed that that's what's going to happen. But let's not get too far ahead of ourselves.

DELEGATE CHASE: Okay. Thank you. I presume then that this is what might happen, that it be placed at the bottom of the calendar until the Rules Committee permanently establishes what the procedures shall be for an alternate proposal.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I voted against repeal of lotteries because I live near Montana and have seen the effect of all sorts of gambling being prevalent.

I would support Delegate Baker's position and hope that it would be returned to the Convention and would go to the foot of the calendar eventually. Thank you.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. I will speak in opposition to the motion because if Mr. Baker's proposal is merely to place this section in a proposal or in a position to determine if it's sensitive enough to be a set-aside issue, that that could be done with another motion. We've argued the merits of this, which I don't know if it's proper or not, but I will also argue the merits.

I'm a State's Attorney, in a position that Mr. Thompson's in, some of the others have discussed. I have been in a position where we have gone out and shut down all of the gambling in Nelson County. We went out, took the bingo cards away from little old ladies, we told the school athletic clubs that they could not sell their half of beef, everything that we could think of, punch boards under the bars. We did this for about a year and a half. Well, at the end of that time we had a delegate from Nelson County down to the Legislature proposing that the laws be changed. This was done; there was a law introduced to allow non-profit organizations to engage in lotteries with certain limits.

Now, I would suggest that if the Convention retains this in the Constitution that we are giving a mandate to the Attorney General and all of the State's Attorneys in the State that this law be enforced, period. That we can't wink at this provision. If this is not what we want, then let's take it out or change it to recognize what's going on.

Now to answer Delegate Scheel's question about highway law or enforcement of the speed limit, I don't feel that we put these officers out there to be a judge and a jury. They are out there to enforce the law; not to interpret it, not to decide that one mile or five miles or ten miles is all right. This is why we have courts, and this is why we have — excuse me — laws. So I feel that this matter should not be reconsidered at this time.

DELEGATE AAS: Mr. Speaker, Mr. President.

PRESIDENT WENSTROM: Just one moment. Delegate Kessel, did you wish the floor?

DELEGATE KESSEL: Yes. I rise to support Delegate Baker's motion.

And I, as a State's Attorney in Sargent County for over twenty years, am going to disagree with the previous speaker. They are going to test you, they are going to try everything. If they know that you're going to enforce it, you shall have no more trouble. And if this body gives a mandate that this is what the majority of the delegates want, the Attorney General then and the State's Attorneys can enforce it and there will be no problem.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, I support the motion of Delegate Baker. I think that if we have not yet decided whether or not we can place this on the — on a ballot as a separate issue, this is one of the problems with which the committee is concerned. And certainly we're not here necessarily to decide if we're all gamblers or non-gamblers. But let us remember that if we bring in legal gambling we also bring in the possibility of bringing in some outside gambling forces, we bring in the possibility of bringing in some outside problems that the

State's Attorneys are not now facing. They might be facing some more severe problems than they are at the present time with the minor gambling offenses which they are encountering. And certainly if we are going to speak to the people and respond to the people, then we should take a look at what has been done in some of the prior votes which the people have had. The last vote, as I recall, was about 1965, or not very long ago, and we had an overwhelming response at that time. I don't think that our people have become more sophisticated in the gambling area as has been indicated. They have told us that they do not want legalized gambling in this state. They probably have not told us that they don't want gambling at all, but they have certainly told us they don't want it legalized. And under those conditions, I think it's time that it is important that we recall this and give us a chance to reconsider it if we have an opportunity to place it on the ballot as a separate issue.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President, I, too, will support Delegate Baker's motion. I think perhaps we were just a little hasty in working on this proposal.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. Since I have the honor to be the Chairman of the Committee who is responsible for submitting this proposition to the Convention, I would like to comment that if Delegate Baker's motion carries it will set a precedent and encourage a tenacious minority on any proposal before this body to continue to re-invite matters that the Convention has acted upon. Now this can be extremely time-consuming, as the argument on this motion has demonstrated. And I urge a "no" vote on the motion.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President. I hope I've got this working. I would like to oppose Delegate Baker's proposal. I think it's far more a statutory measure than a Constitutional measure. I do feel — I don't know whether I have different friends than you have, but I'm sure they would feel that I was less than honest if I voted for this measure.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, I believe that we aren't discussing the merits of the question at this time. And if we support Delegate Baker's motion we are going to say at this time that we can't vote on anything controversial until the Rules Committee comes in with a rule. And I will resist it, because I think up until that time a simple majority can bring it back at any time anyhow. I think we should keep it where it's at. When the Rules Committee comes in with their proposal, then we can decide whether we want to bring it back with a simple majority.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre, did you wish the floor?

DELEGATE MCINTYRE: He answered.

PRESIDENT WENSTROM: Delegate Fiedler?

DELEGATE FIEDLER: Mr. President, I hope we in the majority haven't created the impression we are calloused people. We are as sensitive to this situation as anybody else. I think the prime objective of this amendment or this proposition was to point up the hypocrisy of the present position.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: On Rule 28 I move the previous question.

PRESIDENT WENSTROM: The previous question has been moved. Ask for five seconds to stand. Just a moment. I want the names of the delegates. We have Nething, Sanstead, O'Toole, Fritzell and Burke. That's a sufficient number.

Now the question is called. And the question is shall we vote on the question immediately without further debate? Now the question before the Convention is on Delegate Baker's motion that the Committee Proposal No. 1-4 be returned to the Convention floor.

DELEGATE FALLGATTER: Mr. President, apparently there's a break-down here in the voting machine next to Fiedler. I think I made my point on the last issue by now. And I may wish to vote "nay" on the next issue.

PRESIDENT WENSTROM: Is yours still lighting?

The question then before the body is on Delegate Baker's motion that Delegate Proposal 1-4 be returned to the Convention floor from the Committee on Style and Drafting.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: I believe the motion has to be on the motion of the previous question as seconded by Delegate Burke.

PRESIDENT WENSTROM: You are right; what the previous question is on. The question we are voting on is the previous question, and requires a two-thirds vote.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: I would submit that the previous question is the question whether we are going to vote on Delegate Baker's motion later.

PRESIDENT WENSTROM: The question that we are voting on at the moment is on the previous question motion.

DELEGATE SANSTEAD: That is correct.

PRESIDENT WENSTROM: That is correct.

DELEGATE SANSTEAD: Whether we're — right.

PRESIDENT WENSTROM: We all agree.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: For the clarification of the delegates, it would have the effect of shutting off debate —

PRESIDENT WENSTROM: That is correct.

DELEGATE SANSTEAD: — on the motion that Delegate Baker made.

PRESIDENT WENSTROM: That is correct.

DELEGATE SANSTEAD: And if you want to shut off debate on that you vote "yes" on the motion to be taken, if you do not wish to shut off debate vote "no".

PRESIDENT WENSTROM: Thank you.

The question now is on the previous question to shut off debate. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the previous question is adopted.

Now we're back on Delegate Baker's motion that we return Committee Proposal No. 1-4 from the Committee on Style and Drafting to the Convention floor.

As many as are in favor of the motion will say "aye;" opposed "no." The Chair is in doubt. We will open the key and you will record your vote. Now remember those in favor of the motion will vote "aye," those opposed vote "nay." The key will be opened. You will indicate your preference.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call indicates 44 "ayes" and 52 "nays", two absent and not voting. The motion failed.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Too many of us feel too sensitively and too strongly about the one-house issue to let the humorous remark of Delegate Knudson go unresponded to.

I would like to point out that had the North Dakota Legislature been a unicameral body in 1889 it would undoubtedly have done just what we have in this unicameral body done, reconsidered its action.

PRESIDENT WENSTROM: Thank you, Delegate Sinner.

Fellow Delegates, just as a point of information, there were 24 delegates that expressed themselves on that issue.

Delegate Hubrig.

DELEGATE HUBRIG: Can we move to the eighth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the eighth order of business.

DELEGATE HUBRIG: I see we do have quite a delegation of people from Minot here today in the balcony, some down here behind the railing. And most of them that are here today from Minot are representing organized labor. I understand there are more coming from Grand Forks and other parts of the State today. But in recognition of the people from Minot that are up in the balcony and back behind the railing here from organized labor — we have with us also Ray Vendsel of Minot, a good friend of mine.

PRESIDENT WENSTROM: Will the delegation in the balcony from Minot, or the visitors from Minot, please stand and receive the recognition of the Convention. (Applause)

PRESIDENT WENSTROM: Without objection, we'll be on the ninth order of business, Introduction and Reference of Proposals to Committees.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-89, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 14 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to eminent domain."

PRESIDENT WENSTROM: Committee Proposal No. 1-89 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-90, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section of the constitution of the state of North Dakota, which pertains to laws fostering dependence on state government, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-90 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

Are there any further announcements? Do you have announcements at the desk?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to announce a meeting of the Finance and Tax Committee in about fifteen minutes when the Convention adjourns for lunch.

PRESIDENT WENSTROM: Announcements at the desk.

Delegate Saugstad moves that Committee Proposals No. 1-30 and No. 1-33 be referred to the Committee on Style and Drafting. May I have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the two committee proposals are referred to the Committee on Style and Drafting.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. The Committee on Legislative Functions is to meet at 11:15 in the Large Hearing Room.

PRESIDENT WENSTROM: Any further announcements?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: The Judicial Functions and Political Subdivisions Committee will meet in the usual spot at one o'clock.

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: No. We have some announcements at the desk.

CHIEF CLERK GILBREATH: Legislative Functions Committee will hear reapportionment, 1-29, 1-41; qualifications of legislators, 1-45; length of service of legislators, 1-37; 1-42 and 1-43 at three P.M. in the Large Hearing Room Wednesday, January 12th.

Preamble, Bill of Rights and Suffrage Committee will hear Delegate Proposal 2-48, creating a new article to the instrument of the State of North Dakota pertaining to a bill of rights for minors, 1:30 P.M., Lewis and Clark Room, January 18th.

Committee on Education, Resources and Public Lands will hear Committee Proposal 1-20 dealing with corporations at 1:30 P.M., Monday, January 17th, in G-1.

I take it this is the Committee on Education, Resources and Public Lands. Tuesday, January 11th, will hear Committee Proposal 1-16 on environment, Delegate Proposal 2-54 and Delegate Proposal 2-55 and at 3:30 P.M. will hear Committee Proposal 1-19, waters and appropriations of, in Room G-1.

PRESIDENT WENSTROM: The Chair would like to announce the appointment of a Committee on Resolutions; Delegate Scheel is Chairman, Delegate Binek is Vice Chairman, Delegate Daniels, Delegate Engelter, Delegate Kessel, Delegate McElroy, Delegate Hildebrand, Delegate Larsen, Delegate Peters, Delegate Stanton, Delegate Thompson, Delegate Lerberg, Delegate Kretschmar, Delegate Rosendahl and Delegate Hartl.

The desk is clear.

DELEGATE SAUGSTAD: I was wondering, Mr. President —

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: if I could move — are we ready for the adjournment?

PRESIDENT WENSTROM: I think we should have the delegates that are absent excused.

DELEGATE SAUGSTAD: I'll move that the absent delegates be excused.

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: It's been moved, seconded by Delegate Longmire, that the absent delegates be excused. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the absent delegates are excused.

DELEGATE SAUGSTAD: I was wondering if Chairman Agnes would like to make an announcement, I believe.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. President, we haven't set a meeting of the Rules Committee. We have been wondering if there is going to be any meeting on parliamentary procedure as was discussed at the meeting of the Rules Committee.

PRESIDENT WENSTROM: Delegate Geelan, there will be discussion on parliamentary procedure. But in the explanation between Delegate Kelsch and Dean and Dave Peterson and myself, the story or the chart to follow is in the process of being printed. And it isn't available. At least it wasn't when we went into session. So I am reluctant to announce a meeting until such time as that report or the format is completed.

DELEGATE GEELAN: And, Mr. President, I think I'm reluctant to call a meeting of the Rules Committee until we have such a meeting to see if there are some, if I can say it, bugs in our Rules that need to be corrected. And even though this matter of alternate proposals is a problem, we have a subcommittee report now. But I think if there's no objection we will delay calling a meeting of the Rules Committee until we have had the meeting on parliamentary procedure.

PRESIDENT WENSTROM: Thank you.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I just have received a draft of that paper, document, she referred to. And I think if the President would care to set this, I think it should be gone over before the 98 copies are prepared by the President. But four o'clock this afternoon might be a possibility, or tomorrow, then we could meet. I don't know how the hearings are set tomorrow. We have hearings at 1:30, so there are problems there.

PRESIDENT WENSTROM: I would be reluctant to set a time this afternoon with the importance of the committee hearings that are coming up before the Convention. So I believe we should postpone that until tomorrow morning.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I move we adjourn until 9:00 A.M., January 12th.

PRESIDENT WENSTROM: It has been moved by Delegate Saugstad — will the delegates please remain in their seats? It's been moved by Delegate Saugstad that the Convention now adjourn until 9:00 o'clock tomorrow morning. May I have a second?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: The motion has been seconded.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The Convention is adjourned until 9:00 o'clock tomorrow morning.

(The Plenary Session adjourned until 11:01 A.M., Tuesday, January 11, 1972, until 9:00 A.M., Wednesday, January 12, 1972.)

VOLUME VIII

(January 12, 1972)

MORNING SESSION

(The eighth day of the Plenary Session commenced at 9:15 A.M., January 12, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is Father Christopher Davis of the Annunciation Priory.

REV. FR. CHRISTOPHER DAVIS: In the name of the Father and of the Son and of the Holy Spirit.

And, Father in Heaven, and Ruler of the World, allow these delegates here assembled to proceed with confidence and skill to frame a new instrument for the State of North Dakota. Remind them of the wisdom of those whose work they follow, so that these deliberations may never be arrogant, nor corrupted by a spirit of foolish pride; instead, let them be humble, impressed with the difficulties which attend the making of statements which are to serve the people as principles of legislation for many years to come.

Make them conscious, Father, of the heritage of their country and of its leading ideas. Give them a sense of the continuity of purpose which prevails among men who are responsive to their trust. Do this so that all of us who must walk through life with its dangers and deceits may not forget the words which the angels sang: "Glory to God in the Highest, and on earth peace among men with whom He is pleased."

May you be pleased with us always, Father. And may the citizens assembled here serve peace in this state and nation; for the increase of respect for law, for the expansion of domestic harmony, for confidence in public affairs, and for a growing understanding among nations. May this new Constitution of the State of North Dakota be both instrument and example. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call.

The Clerk will open the key; you will record your presence.

Has every delegate recorded his presence? The key will be closed.

The roll call discloses 96 present, two absent. A quorum is declared.

Fellow Delegates, this morning I am sorry to announce that Delegate Benz is going to have to have surgery, and he's going to have this surgery performed tomorrow morning. He's at the Bismarck Hospital. He's in Room 438.

We'll be on the fourth order of business — Revision and Correction of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 10th day of January, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Dobson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report of the Committee on Revision and Correction of the Journal.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. And the report is adopted.

We will be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-20 has had the same under consideration and recommends the same be amended and when so amended recommends the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The report — the question is on the adoption of the Report on the Committee Proposal No. 1-20, that it be amended. As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. It will be on the sixth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-39 has had the same under consideration and recommends that the same be amended and when so amended recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-39, that it be amended and then be adopted.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it, and Proposal No. 1-39 will be on the sixth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-43 has had the same under consideration and recommends the same be amended and returns the same without recommendation.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-43 for the Committee on Legislative Functions, that the report be — that the proposal be amended, and then it is to be on the calendar without recommendation.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. It will be on the sixth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-56 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-56, that it be adopted and that it do pass.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. The report is adopted, and it will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-57 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-57; that it be given a do pass.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. And the Proposal No. 1-57 will be on the tenth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-58 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-58; that it be given a do pass.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. The proposal will be on the tenth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-59 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-59; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-59 will be on the tenth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-60 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the report on Proposal No. 1-60; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the Proposal No. 1-60 will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-61 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the report of Committee Proposal No. 1-61, that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-62 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-62; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted, and Proposal No. 1-62 will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal 1-64 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-64; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Proposal 1-64 will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal 1-65 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-65; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-65 will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-66 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-66; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: The report is adopted.

Delegate Aubol.

DELEGATE AUBOL: I don't believe our books have 1-65 and 1-66 in our books.

PRESIDENT WENSTROM: Sorry, Delegate Aubol, we were informed that they were here and had been placed in the books. I'm glad you did bring it to our attention, however.

What is the wish of the Convention? Shall we adopt those and —

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I move that we adopt the resolutions on the assumption that they will be printed, in the book and ready for debate.

PRESIDENT WENSTROM: It has been moved by Delegate Butler that we do accept these two Committee Reports on 1-65 and 1-66 on the premise that they will be in the book at the time that they are up for debate. Could we have a second to that motion?

DELEGATE NICHOLAS: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Nicholas.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it, and the reports will be adopted.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-68 has had the same under consideration; recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-68; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. 1-68 will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-71 has had the same under consideration; recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-71; that it be given a do pass.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and the Proposal No. 1-71 will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal 1-73 has had the same under consideration; recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-73; that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Proposal No. 1-73 will be on the tenth order of business for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Delegate Proposal No. 2-5 has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-15.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-5; that the proposal be indefinitely postponed.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates. This is a very simple matter. 2-5 was a proposal that was introduced by Delegate Tudor. The Committee has visited with Delegate Tudor. He is satisfied to have the proposal indefinitely postponed because, as was stated from the rostrum, it's been incorporated in 1-15. With that in mind, I will move that it be — the Committee action be confirmed.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report on Delegate Proposal 2-5; that it be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted and Committee — or Delegate Proposal 2-5 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Delegate Proposal No. 2-15 has had the same under consideration and recommends that the same be indefinitely postponed; such proposal having been incorporated into Committee Proposal No. 1-15.

Delegate Meidinger, Chairman.

Delegate Meidinger moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Delegate Proposal — of the report on Delegate Proposal No. 2-15; that it be indefinitely postponed.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates. 2-15 is identical to 2-5. Through an administrative error 2-15 and 2-5 got different numbers. They are identical. I would move, if it is in order, the action of the Education Committee be confirmed; this proposal be adopted and indefinitely postponed.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report on Delegate Proposal No. 2-15; that it be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the proposal is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Delegate Proposal No. 2-19 has had the same under consideration and recommends that the same be indefinitely postponed; such proposal having been incorporated into Committee Proposal No. 1-15.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-15 — 19; that it be indefinitely postponed.

Is there any discussion?

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates. Incidentally, I should call your attention to the fact that in our little Bible here on page 7 is a little more detailed

explanation. It isn't too detailed, but it will give you an indication of why these proposals were indefinitely postponed. It's on the left side of page No. 7.

2-19 has been incorporated in 1-15. This was a proposal that was submitted by Delegate Devine, who is a member of the Education Committee. He's concurred that it should be postponed. And once again, if it's in order, I'll move that the action of the Committee be confirmed.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report on Delegate Proposal No. 2-19; that it be indefinitely postponed.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Delegate Proposal No. 2-19 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Delegate Proposal No. 2-20 has had the same under consideration and recommends that the same be indefinitely postponed; such proposal having been incorporated into Committee Proposal No. 1-15.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Delegate Proposal — the report on Delegate Proposal No. 2-20; that the proposal be indefinitely postponed.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates. Same reason. Delegate Devine submitted this proposal, incorporated in 1-16, which will be discussed at a later date. With that in mind, we will once again suggest that the action of the committee be confirmed.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report on Delegate Proposal No. 2-20; that the proposal be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the Proposal No. 2-20 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Delegate Proposal No. 2-21 has had the same under consideration and recommends that the same be indefinitely postponed; such proposal having been incorporated into Committee Proposal No. 1-16.

Delegate Meidinger, Chairman.

Delegate Meidinger moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-21; that the proposal be indefinitely postponed. Is there any discussion?

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Same reason. It has been incorporated in 1-16. It is all right with the sponsor of the original proposal. I suggest one more time that we approve the action of the Committee.

PRESIDENT WENSTROM: Is there any further discussion?

The question is on the adoption of the Committee Report on Delegate Proposal No. 2-21; that it be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Proposal No. 2-21 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Education, Resources and Public Lands to whom was referred Delegate Proposal No. 2-36 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Meidinger, Chairman.

Delegate Meidinger moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-36; that the proposal be indefinitely postponed. Is there any discussion?

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates. You will see by your book that this was in a proposal that was submitted by Delegate Peterson having to do with some of the requirements of schools for the blind and the deaf. She happened to be a member of our committee; agreed that this particular proposal can be indefinitely postponed. Another proposal is on the agenda for the Committee at a later date. And with that thought in mind the Committee does move for indefinite postponement. And I submit to this body that we concur.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report on Delegate Proposal No. 2-36; that it be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted.

We'll be on the sixth order of business — Consideration of Amendments.

CHIEF CLERK GILBREATH: The amendments to Proposal 1-23 as recommended by the Committee on Finance and Taxation as printed on page 152 of the Journal, the amendments are:

On page 2, line 5 after the word "state" delete "or any county or other" and insert in lieu thereof ", political subdivision or public agency".

On line 6 delete "municipal corporation".

On line 14 after the word "by" delete "a" and insert in lieu thereof "the".

On line 15 after the word "board" delete "or commission" and insert in lieu thereof "of equalization or its successor".

Renumber the lines accordingly.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I move that the amendments to Proposal No. 1-23 be approved. And if we receive a second, I would like to ask Delegate McElroy to briefly explain the amendments.

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: Delegate Haugen moves that the amendments to Committee Proposal No. 1-23 be approved.

Any discussion?

DELEGATE McELROY: Mr. President.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: These amendments are pretty complicated, as you can see. They were made for the purpose of tidying up the language and making it somewhat all-inclusive. Thank you.

PRESIDENT WENSTROM: Any further discussion on the adoption of the amendments on Committee Proposal No. 1-23?

Hearing none, the question is on the adoption of the amendments; Committee Proposal No. 1-23.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the amendments are adopted.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: As a point of inquiry — I may be wrong in this — but as I understand it the committee report is the motion itself, it does not need a second, and is it necessary for further motion from the floor to adopt the committee report?

PRESIDENT WENSTROM: This is on the sixth order, Delegate Longmire. I presume that it is well for the Chairman of the Committee to express his thoughts on the amendment. Technically, I would have to agree with you that the reason that we — that the proposal is on sixth order of business is for that purpose, of adopting the amendments.

DELEGATE LONGMIRE: Well, I agree, Mr. President, that the amendments should be explained. But I just wanted to clear whether or not another motion was necessary since it is before us anyway and the committee has already recommended it and moved for the adoption of those amendments.

PRESIDENT WENSTROM: I would have to agree, Delegate Longmire, that a motion to adopt the amendments would technically not be necessary.

The amendments to Committee Proposal No. 1-23 have been adopted.

Then we will go to the tenth order of business — First Reading and First Passage of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-34, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 29 of Article II to the constitution of the state of North Dakota, which pertains to the matter of legislative ethics, be created.

“SECTION 1. Section 29, Article II to the constitution of the State of North Dakota is hereby created to read as follows:

“Article II. Section 29. A code of ethics for all state officials, employees and non-judicial officers prohibiting conflict between public duty and private interest shall be prescribed by law.”

PRESIDENT WENSTROM: The question.

Delegate Butler.

DELEGATE BUTLER: Mr. President and Fellow Delegates. Yesterday we amended this section to specifically include “legislators” on line 8. It’s a very necessary part of the articles that should be included in our Constitution. And it puts the responsibility of providing for such legislation as is necessary to control conflict of interest in the legislative body, and also the officers of the State into the hands of the Legislature. Granted, that in the past there have been several attempts to legislate conflict of interests legislation that have not passed. But I am very confident that at a date in the future not too far distant legislation that is definable can specifically set forth what “conflict” will mean will be passed by the legislative body. I recommend the approval of this proposal.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I would like to ask some member of the committee what the difference is between a “state official” and a “non-judicial officer”, or primarily what is to be included in the definition of “non-judicial officer.” My thought was that it might involve the same state official.

DELEGATE BUTLER: Delegate Pearce is in the Convention this morning; I’d like to have him answer that.

DELEGATE PEARCE: Mr. President, the answer is I don’t know.

PRESIDENT WENSTROM: Delegate Pearce, I’m sorry, I didn’t hear you.

DELEGATE PEARCE: The answer is I don’t know.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Since one of our leading barristers does not know, I’m going to attempt to answer that. So I move that the question is moot as far as this body is concerned since no one seems to know the answer.

I would like to move to amend to 1-34, which amendment is at the desk and can be read from the desk. I would like to advise the delegates that the amendment is exactly the language that is being proposed in Delegate Proposal No. 2-34.

PRESIDENT WENSTROM: The proposal — the amendment will be read from the desk.

CHIEF CLERK GILBREATH: After the period in line 10 insert the following: "No member of the legislative assembly shall accept remuneration in any form from any individual, organization or business for the purpose of proposing or influencing the passage of legislation or for influencing the governmental decisions of any state official or employee. The supreme court shall have sole jurisdiction in controversies arising from this section and, upon conviction of violation, members so convicted shall be removed and barred from legislative service."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Who made the second? Delegate Sanstead seconded.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I'm moving this amendment at this time rather than waiting for the proposal to come before the body because we are now addressing ourselves to the subject of legislative ethics. And I would like to say at the outset that this is not directed at any particular legislators that are now serving. And it's thought of more as a general principle that ought to be in the Constitution and regulate legislative activity. I think we need to keep in mind the power of the legislative assembly and the freedom of government. And that the state legislative branch is by far the most powerful branch. And the members of that body are very powerful people. And they exercise broad powers, and they are involved in every legislative session in laws that govern and regulate the affairs of the executive agencies. And, therefore, they are directly related and involved in the executive branch of the government. And in this Constitutional Convention I believe that we are proposing to leave a large number of legislative matters to the legislature rather than including them in the new Constitution. And so the powers of the legislative assembly are going to be broadened in the future. Some individual legislators then will have greater influence in the future than they have now.

I might say as a former member of the executive branch of the government that their very presence in an executive setting is a matter of great personal power, and they have tremendous influence on the affairs of the executive branch in the government. I don't believe that in office this important in the government, in office of public trust, should be in any way transplanted into personal income should that temptation arise.

Now at the present time our language in 1-34 provides that the legislature will watch the other branches of government. And I think from past experience we can say that this will be true in the future. The legislature being a very jealous branch of its powers are quick to oversee the operations of the judicial and the executive branches of government, which is as it ought to be. But we have a problem with who will regulate the legislators. And the present bill presumes — the present proposal, as it stands before us, presumes that the legislature will regulate itself. And I'm afraid that history does not support this contention.

This new language in 1-34, as before us, is supposed to replace old section 40 in our old Constitution, which is about 300 words, spelling out the evil of logrolling and how logrolling is to be an unconstitutional practice. And yet logrolling has become an unenforceable matter because the legislature has not set up machinery to prevent and prohibit logrolling. And in our committee we decided there was no way to outlaw logrolling because it was such a subtle operation.

In addition, we are deleting section 43 which says: "Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member . . ." and so forth, and he ". . . shall not vote thereon . . ." Well, we have seen in legislative assembly after legislative assembly where members will get up and say, "I have a personal interest and I choose not to vote." And what happens? Some member of the assembly always gets up and says, "I move that we permit so and so to vote." And so — nobody ever dares stand up and

say, "I resist the motion." I have never seen that happen in a legislative assembly, and I don't think anyone in this body has seen it either. And so we have seen that we have had two provisions in the Constitution in which the legislature is supposed to regulate itself, and they have been unable to do so.

For that reason, I think that it is necessary for the Constitution of the State to do something about legislative ethics and conflict of interest in addition to saying that the legislature shall police its own members.

This amendment — this amendment proposes — that I propose this morning — would prohibit a legislator from representing others for pay. And it would probably prohibit him from representing himself before a legislative agency. And so he cannot get economic gain.

Now some have said, "What is remuneration?" Well, I might reply, "What is equal protection? What is due process?" These are things — and just in 1961 I believe the Supreme Court of the State had to deal with the question of what is an emolument, and the Supreme Court dealt with the question. I say that when we say "remuneration" that we must depend on wise people in the future who are going to deal and decide with what "remuneration" is. Is it a cup of coffee? You know we are quite sure that it would be a hundred-dollar check. But we get into some gray areas without a doubt, but I say that it is important that we spell something specific out.

Now under my — my amendment the legislator would still represent constituents. And this, of course, is his real function, one of his important functions, that he represent his constituents before executive agencies and be their ombudsman, if you please, and this does not prohibit that. In fact — but he is not to represent them for pay, which means that he has personal gain. And it's going to be an inconvenience to some legislators when they have problems with executive agencies to find someone else in their business to represent their business instead of the person — the legislator himself. Or someone else in the law firm to represent — represent a client instead of the legislator himself. But I think it is a small price to pay to prevent the abuse of a public trust.

And so we might say is there much abuse? Is there much abuse of the legislative influence? Well, I might relate one particular instance when I was State Tax Commissioner. We had a member of the Senate that was trying to gain a concession from the Tax Department. And we resisted giving any concession. And one day I was walking — at noon hour I was on the fringe of the Senate, in a walkway, and this Senator spots me, he says, "Come on over here." And I went over to him. And he said — he said, "There's something that you're doing in the department that I'm going to have to expose on the floor of the Senate." And so I said, "Well, if we're doing something that we're not supposed to be doing you should expose it on the floor of your Senate. It's your duty." Now I am sophisticated enough in the game of power politics to know what he was telling me. He was trying to influence me on the matter that he had before the department. I know that. And I've talked to other executives in other agencies who have felt the awesome influence of legislators before them trying to influence the body.

Now, some say, "Well, if they become rascals — if the legislators become rascals, the people will throw them out." Well, now how are the people going to know who's getting money from whom to do what? Unless you publish their income tax returns also. And so I don't think — I don't think that public disclosure is going to be adequate to keep those few legislators honest who might want to betray the public trust. I say that the legislature has demonstrated in the past that it cannot maintain its own house; that it must be protected to a certain extent from itself.

The court — now the last line that I have here says that the Supreme Court shall have jurisdiction. This is important. Because up until the present time the legislature has been the judge of qualifications of their own members. And so the logrolling provisions and the conflicts of interest have been unenforceable. Because they are supposed to do it themselves. And this suggests that we need an outside body that is going to help police this operation. And so I suggest that the cases must go to the Supreme Court and let them decide the case.

In conclusion, I might point out in the excellent publication called "Sometime Governments" put out by the Citizens Legislative Conference, they make two recommendations; in recommendation 66 they say: "Practice before a regulatory agency. Legislators or their firms should be prohibited from practicing before state regulatory agencies or in matters concerning state agencies for a fee.

"67. Prohibit doing business with states. There should be a prohibition against legislators, or the firms in which they own a major interest, doing business with state agencies."

I am not proposing in this amendment that we go as far as 67. We used to have a prohibition like that, but it was set aside in a recent Supreme Court decision. I am saying that here is one particular evil that we might be able to deal with, and we should deal with in a constitution.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President, Fellow Delegates. I have no qualms or objection to the theory expounded upon by Delegate Omdahl. But being a former Senator, and being he pointed a finger a little at us on this, I've got one complaint in this amendment. The amendment says that on a conviction by the Supreme Court that the person is barred from legislative service, which means forever, of course. Now, I do feel that possibly a legislator in his younger days, coming into the legislative halls, might make a mistake, is probably convicted. But I don't think it should preclude this man thirty or forty years later, or this person thirty or forty years later — probably after paying his debt to society — to be allowed to come back in. And I would suggest that before this thing is passed that there should be a forgiveness feature in this regard in this section, if it is passed. Probably the Supreme Court could be the judge in that case.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: As to the amendment which provides in essence the conviction for the taking of a bribe, is what it appears to be, I would point out that if the Supreme Court has the original jurisdiction there is no jury in the Supreme Court. The penalty provided is severe. It would appear that it might require a jury trial under the rights guaranteed by the Federal Constitution.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NOTHING: Mr. President. Before I comment on the amendment, I'd like to announce myself as present.

Mr. President, Fellow Delegates. The amendment before us appears to me to restrict three areas of professional people from serving in the legislature. Now I guess maybe this is what you have to decide; whether or not you want to have people associated with our school systems and universities in the legislature because, of course, under this they certainly couldn't be, they're involved in their duties bargaining for pay and so on; whether you want to have people that provide the service of public accounting or certified public accounting serve in the legislature and, of course, under this they represent themselves before primarily the tax department and also other agencies such as the Public Service Commission, they would be prohibited; or whether or not you want to have lawyers in the legislature.

I stand before you, as I did before the people that elected me, as a lawyer. And I somewhat think that probably it would be of benefit to my partner and to my family if you passed this. However, there are other people that I represent that knew that I was a lawyer when they elected me. They knew that I represent people very little in state agencies; however I do in courts, things of this nature, But one of the things that has been touched on, for example, is the lawyer that represents parties, for example, before the Pardon Board, Parole Board. And, of course, that's included here. Oddly enough, there is no remuneration to the lawyer as the result of his success or non-success, I don't think. But there are times as a practical matter when the state even pays that lawyer to represent that person before that particular board. So I think each of you have to weigh it in your own mind as to whether or not the people that I have mentioned should serve in the legislature or should not serve in the legislature. The fact that there might

have been an abuse in the proponent's situation is a sorry situation. It shouldn't happen. But I don't think that you should exclude professional people from the legislature which, in effect, in my estimation, this amendment would do.

DELEGATE GEELAN: Mr. President.

PRESIDENT GEELAN: Delegate Geelan.

DELEGATE GEELAN: I support Delegate Omdahl's amendment. I can see this from two viewpoints, having served both in the legislature and as a public official. I would think that the legislators would consider this almost a favor. Because we know that once you get into the legislature your constituents beat a path to your door, not just to ask you to go up to an agency to ask a question, but they want you to exert pressure to get a favorable decision from an agency. So I would hope that we can support Delegate Omdahl's amendment.

I can see no danger particularly to a legislator who happens to be a professional man. Because it seems to me they always say when you are in the legislature you cannot accept remuneration for doing these things. So I feel that there is no danger and would be a positive favor to a legislator if we passed this amendment.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: As you know, I am in the legislature. I am not a practicing attorney. But it's my considered opinion that passage of this amendment would practically require a professional legislature. We have a citizen legislature now; the people that are willing to devote sixty days every two years, some occasional time in between, for a very small salary and expenses which just about match their outgo. I think this would be a fine amendment if we had a professional annual, well-paid legislature. But as long as we are going to have the arrangements that we have today, and I suspect that they will continue for the next hundred years, I think this is a severe restriction on the rights of citizens that serve in the legislature. And I urge its defeat.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. Chairman, President, and Fellow Delegates. We discussed this proposal at great length in our committee. And we decided that the majority vote on this, which was very strong, resisted and did not like certain proposals or areas in this because you need to read this amendment very carefully; "form from any individual, organization or business for the purpose of proposing or influencing the passage of legislation." And that's okay. I have no quarrel with that. But for "influencing the governmental decisions of any state official or employee."

Now you look at the original text of this proposal and you will find that it affects all public officials. We expect all public officials to have a code of ethics. Therefore, if a legislator, because he happens to be elected to that body, is not going to be able to go to other state officials, then I think we should turn the whole cockeyed thing around and say the state officials better stay away from the legislators, too. And that the code of ethics may go that far. And I wonder who's influencing the most in the legislature, the legislature and departments, or the departments and the legislature. And I think we need to take a good look at things at this time.

I am not the type of an individual that would propose that any decision of this type, or that the Supreme Court shall have sole jurisdiction in anything of this type. Because I have not visited with the Supreme Court or Justices on this. But I would think they would have some great misgivings about taking on this type of an awesome authority away from other courts. And as my good friend Delegate Pearce has stated, it might require something else under the Federal Constitution.

Now maybe I can close this whole thing off by saying that in the past I haven't found any need for this type of thing. And I doubt if any state official has. If he has, maybe he's been subject to questions, too. And I don't think we should put into the Constitution something that we cannot carry out year after year.

And the legislative body changing its personnel, changing its habit and changing its organization from year to year is certainly capable of doing this, and I think they've done an excellent job. But maybe if this body goes for a unicameral system we'd better restrict them.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I am strictly a novice in government, and I know that some of our other constitutional delegates are, also. But I am extremely concerned with this particular part. I am speaking in favor of Delegate Omdahl's proposal, although I do not understand every nuance and so forth of it. But my point is in my committee — and I'm sure in all the committees — we constantly bump up against the statement, "Don't worry about it, that's covered by the statute," or, "This can be found in statutory law." And in my mind at all times I say — and I also say it, not only think it — but I remind them that every year or every two years we have a practically new legislative body. And if they are not governed by the Constitution, where will they be governed? And if there is no indication in the Constitution as to the will of the people are we going to have to wait and bring it to the will of the people afterwards? So I think that right here is a place where we should stop and really give this serious consideration. If this proposal is not taken, perhaps something else. But certainly in throwing out or daily going along our way as we do sometimes realizing that in some places our Constitution is too long, we'd likely assume that the legislative body is going to pick up the strings and straighten things out for us. Here is the place where we must stop today and really give a serious consideration.

And I am not casting any aspersions on our legislators now or in the past. This is just common sense on our part. This is our responsibility as a Constitutional Convention. This is where we really have to get down and think to ourselves, "If it's covered by statute, who are the ones who prepare the statutes?"

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President. As most of you know, I worked ten years in the Attorney General's office. And I want to point out several things. I don't want to do anything which would discourage the lawyers in our state from serving in the legislature. There was a poll some years ago, which I think a newspaper took, that found the occupation of the legislators that was considered the best legislator was the legal profession. And I find no reason to disagree with that poll amongst legislators.

However, the first five years I was in the Attorney General's office I held several hundred administrative hearings regarding violations of the state law by bar owners. Invariably where there was a lawyer in the area of the bar owner that was in the legislature, he was chosen to represent the bar owner. Now, I don't know if the legislators feel anything is wrong with this, but I know the people that hire people to represent them before state agencies, if they have a choice they are going to pick a legislator. They are pretty shrewd about something like this. And I feel there is some sort of conflict.

I agree with the second sentence of the amendment. I don't think it is a violation of any guarantee of the U. S. Constitution. It doesn't involve the loss of liberty or anything of that nature, but merely a loss of office. But I think it may be a cumbersome, somewhat unworkable procedure. But I simply want to state that the rest of the lawyers in the state might not like the unfair competition that the legislative lawyers are able to give them when it involves representation before a state agency.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President. I have a question which I think relates to the amendment as well as to the main motion. I would like to ask the committee in light of how we've been operating here why there is not a repealer provision in connection with the action here. Reference has been made to sections 40 and 43 of the present — of the present Constitution. If we are not to — if we

are not to address ourselves at this point to the wisdom of the repeal of those sections in this adoption, when are we going to be doing that?

PRESIDENT WENSTROM: Will someone address themselves to Delegate Lander's question on the sections 43 and 40 of the present Constitution?

Delegate Sinner.

DELEGATE SINNER: Mr. President. Sections 40, 43 and 38 are all affected and are on another repealer section — another repealer proposal. I think — I suspect that the reason the Chairman submitted them this way is he probably felt we shouldn't repeal the other ones until we've acted on this one so he knew what exactly was going to happen. But they are in a separate proposal.

I would like to comment, Mr. President, on the committee's action in not adopting the language of Delegate Omdahl. It is the feeling of the committee, I think, that while it is true that there are occasionally legislators who like to use their influence and throw their weight around, they very often are found out quickest by their fellow legislators. And I have a couple memories of such things while I was in the legislature. But the committee felt that to put this kind of language in the Constitution opened us up for endless — almost endless and unforeseeable litigation. And that there really is no way that you can stop people who choose to be unethical from being unethical unless you do it with the exposure of a free press and with the exposure of fellow legislators who are simply repulsed by this sort of person in the legislature. And this is actually what's happened in the past. And I think that sooner or later these people that do this sort of thing on occasion are found out. And whether they are immediately exposed is not altogether to the point. I think the matter that is to the point is that you can't stop it, except by exposing them and getting them expelled from the body by the people.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Members of the Convention. This really puts me in a spot. Now I have had in the past, shall we say, some arguments with the judiciary and with the attorneys. And the last — no, two sessions ago in the House they presented me the last day of the session with a book. The lawyers — Delegate Kelsch handed it to me as rather a joke. It's a pretty good book and some others nicknamed me "The Judge" because I objected to too rapid rise of the judicial salaries, in my opinion at least. And I would say the legislature would be a sad place without any attorneys, and so would this — so would this Convention.

If you've noticed, we turn to all the attorneys for free advice and so on. And I also am in a spot because I'm on a committee with seven attorneys. And unless the other eight of us stick together, you can see it's tough. These attorneys have been very fair. And I — it's not true that I oppose all attorneys. There are good, crooked and honest farmers and there may be a few attorneys that are the same way. But by and large I find good people.

There is one thing — maybe this amendment goes too far, but there's one thing that should be corrected; and that is the taking of a retainer fee. And it has bothered me for years. If it just so happened that a certain organization would hire me, and I would vote as they dictated, I would be put in jail for about two years. But an attorney can come down here, there's nothing said — and he's taking no extra money for voting that way — but he never would have gotten the job if he hadn't been a Senator or Representative. And I'm in full agreement that something should be done. But I don't want to bar all attorneys if this would be the case. I certainly don't. Because they give a valuable service, and it's largely — well, it is for free. You know in your own committees they do probably more work than most, and so on.

So I'm going to vote for this amendment. I may not be able to go back to committee, but I'm going to vote for this amendment. I don't think — I would hope it wouldn't bar attorneys. But I do feel that if an attorney is there on the same salary as I am, same expense money, he shouldn't get extra money because he is both a legislator and an attorney. And I have never in eight years — eight — well, eight years in the House, I've never seen anyone take a nickel, I've never had anyone offer. You will occasionally get a meal, that's true. But I can't think

of any bribery, I don't know of any. Of course it may have been — there may have been some I didn't know about. But, anyway, I'm not accusing anyone of being crooked, but I do feel that there should be a stronger code of ethics than we have now. And it's impossible to get — or practically — to get it through the legislature. And I hope the attorneys will allow me to stay in the building, but I'm going to vote for this amendment tomorrow.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. I have served in the legislature many years ago, and I don't think conditions were any different then than now. I served as a state officer in this capitol for twelve years. In that twelve years I tried probably several thousand cases. And occasionally we had an attorney representing someone that had been a member of the legislature. And I never at any time saw any of these members of the legislature who were attorneys trying a matter before the Public Service Commission make any reference or try in any way to influence the Public Service Commission because they were a member of the legislature. And I think it would be very bad for this state to bar, in effect, the legislature — the lawyers from the legislature. They are very capable in this particular field.

Now I have some other misgivings with this whole affair here. The original Constitution, section 38, says: "No member of the legislative assembly, expelled for corruption, and no person convicted of bribery, perjury or other infamous crime shall be eligible to the legislative assembly, or to any office in either branch thereof."

Then we turn over to section 40. And that sets out quite at length the conduct in the legislature.

And also to section 43: "Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon without the consent of the house."

Now 1-34 and the proposed amendment here deal with all of that subject matter. And I'm very reluctant to vote, and I will not support either of them, until the other — the printed matter in the proposed amendment is available to me so I can have a chance to look it over and read it. Thank you.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Fellow Delegates. I still have the same objection to the amendment today as yesterday when it was before us as a part of the fifth order, I guess, or sixth order. The language pertaining to influencing is ambiguous. And I'll give an example.

Let's just say that in the case of legislation that it is suggested by one of your constituents and you are asked to introduce the legislation as a private bill and sponsor it. Who and how can anyone, including the Supreme Court, tell whether there was any money changed hands or any remuneration of any kind for introducing and sponsoring that bill or for helping process the bill through the legislature? It's almost impossible to accuse any one of the members of the legislature of receiving direct compensation for that purpose. But there is always going to be a citizens' legislature. And if it is in the legislation that it is proposed or suggested by your constituents that I cannot see how the terminology expressed in this amendment can be made workable.

Number two, the Supreme Court apparently has not been consulted about the paragraph that's been added to this proposed amendment now — which is the only addition above the amendment that was stricken yesterday — to the new language.

I agree with Delegate Pearce and others that should such an amendment that we are talking of now be enacted as part of this Constitution, that a more definite opportunity should be for a body of the peers, or it might be juries, as the case might be, to take the evidence from both sides of the accused individual, legislator or government official, and weigh the evidence to determine whether he is guilty or not guilty.

And for myself and for the people that I represent back in the 21st District, I'm going to vote "no" against this amendment and hope that the rest of you support the "no" vote.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President. Indication has been here that this will only apply to attorneys or affect attorneys. But I look upon myself — I am an ex-legislator — I look upon myself and I'm a salaried person. And every day I deal with numerous governmental agencies in various matters. I deal with the Welfare Agency, the Workmens Compensation Agency, numerous other school facilities. And many times the administrators of these agencies also ask me to intervene for them in assisting them in some matters. And if I were to again serve in the legislature I think I would be prohibited from carrying on my salaried duties in a lay matter that is not at all associated with being a lawyer. And I think that we should each of us reflect on can we serve as a legislator if we were to deal with any and all of the governmental agencies that are necessary to deal with if this bill were to pass. And I would seriously doubt if I, as a salaried person, could serve in the legislature under these conditions.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Answered my question. Thank you.

PRESIDENT WENSTROM: Taken care of your question.

Any other discussion?

DELEGATE SOLBERG: Question.

PRESIDENT WENSTROM: The question is on the amendment as proposed by Delegate Omdahl. I believe we should again read the amendment from the desk.

CHIEF CLERK GILBREATH: The amendment is after the period in line 10, insert the following:

"No member of the legislative assembly shall accept remuneration in any form from any individual, organization or business for the purpose of proposing or influencing the passage of legislation or for influencing the governmental decisions of any state official or employee. The supreme court shall have sole jurisdiction in controversies arising from this section and, upon conviction of violation, members so convicted shall be removed and barred from legislative service."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President: I move that Committee Proposal 1-34 and the proposed amendment both be laid over one day so we can get a chance to read them.

PRESIDENT WENSTROM: It's been moved by Delegate Cart that Committee Proposal No. 1-34 be laid over one Convention day. Now do we have a second?

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Rundle.

Delegate Paulson.

DELEGATE PAULSON: Mr. President: I oppose the motion to delay any action by this body. If we pile delay on top of delay we will simply never get the job done. We've had a good hour of debate. The language is in front of every member in Delegate Proposal 2-34. I think we have to come to the time when we make our decisions.

DELEGATE NICHOLAS: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: Yes, I'm in favor of Delegate Paulson's idea here. I think if we are going to keep laying things over we are going to have the same people saying the same things tomorrow. And I think it's time we start getting something accomplished at this Convention.

PRESIDENT WENSTROM: Any further comment?

The question is on Delegate Cart's motion — Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, Delegates: I have a question to ask. Now if we vote "no" on this amendment will the committee be apt to bring something similar? I mean is this final as far as the restrictions and the addition to the code of ethics? I'd like to ask one of the committees whether other amendments of this type would be considered if we voted "no" on this amendment.

PRESIDENT WENSTROM: Would any member —

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I would like to advise Delegate Fritzell that the committee considered many different areas of being able to put in more than what the present section of 1-34 calls for. And it came out of the committee —

PRESIDENT WENSTROM: Delegate Butler, press a little harder. Now it is working.

DELEGATE BUTLER: — came out with a 15-5 vote in the language that is now before us or before the amendment would apply in 1-34, that it was adequate to take care of the requirements, and that they could depend on the good judgment of the legislature to enact whatever other laws are necessary to govern the conflict of interest.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: The reason I seconded the motion to lay over wasn't to stall or anything of the sort. But in a matter of fairness, there are several attorneys in here whom I respect highly, and I would like to have about a ten-minute chat with a couple of them. This is the reason that I seconded the motion to lay over. And I insist it was a good motion.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question is on Delegate Cart's motion that Committee Proposal No. 1-34 be laid over one Convention day.

As many as are in favor of the motion say "aye;" opposed "no." The "noes" have it, and the motion lost.

We are back on the main motion upon the amendment.

Delegate Omdahl.

DELEGATE OMDAHL: Will there be a roll call on the amendment?

PRESIDENT WENSTROM: Not on the amendment.

DELEGATE OMDAHL: What will I need to get a roll call?

PRESIDENT WENSTROM: You can so move.

DELEGATE OMDAHL: I move that we have a recorded vote.

PRESIDENT WENSTROM: Now we have to have —

CHIEF CLERK GILBREATH: Fifteen for a recorded vote.

PRESIDENT WENSTROM: We have to have, I believe, fifteen people indicate their desire to have a recorded vote. If fifteen will rise. One, two, three, four, five — we have a sufficient number.

Then the question is on the amendment as offered by Delegate Omdahl and just a moment or two ago read from the Chair.

If there is no further discussion, I will open the key and you will record your vote. Those in favor of the amendment will vote "aye;" those opposing the amendment will vote "no." The key is open. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed. Roll call discloses 32 "ayes," 64 "nays," two absent and not voting. Roll call discloses that the amendment — proposed amendment failed.

We are back on the adoption of Committee Proposal No. 1-34 as amended.

DELEGATE SOLBERG: Question.

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Point of question. If we vote "no" on this particular proposal now in front of us, the main motion, what would happen to it? Would it be referred, would it die?

PRESIDENT WENSTROM: If you vote "no" on this amendment?

DELEGATE CHASE: Yes.

PRESIDENT WENSTROM: In my opinion it would go back to the committee of origination.

DELEGATE CHASE: Thank you.

DELEGATE OMDAHL: Mr. President.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE Hoffner: Mr. President. We are on final action of 1-34, are we not?

PRESIDENT WENSTROM: Yes, we are.

DELEGATE HOFFNER: And if the "no" vote prevails that proposal is dead, so I understand that. Of course the committee can introduce another proposal. Committees can introduce proposals up to within twenty days, I believe.

PRESIDENT WENSTROM: Delegate Hoffner, my only reason for answering Delegate Chase as I did, in my opinion we can't have a hole in the Constitution. We've got to have a complete body, a completed document. And apparently this will fill — will become part — it is the intention, I am sure, of the committee that this fill a definite niche in the new Constitution. And we can't operate without it. So for that reason I stated that the committee — that this report would go back to the committee. And if the Convention rules otherwise, of course it will be a dead proposal.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. Chairman: This is related to Delegate Chase's comments. It is my opinion that the legislature does have the authority to set up a code of ethics for all state officials, legislators —

PRESIDENT WENSTROM: Excuse me, Delegate Omdahl. Now you said the legislature. You were making reference to the legislature, weren't you?

DELEGATE OMDAHL: Right.

PRESIDENT WENSTROM: Okay. I just wanted to note in the discussion occasionally somebody says "legislature," somebody says "convention." I just wanted it clear that you were making reference to the legislature.

DELEGATE OMDAHL: Right. The legislature has the authority now without a constitutional provision to adopt a code of ethics. Therefore, since we have not spelled out anything specifically governing the code of ethics I really see no need for the adoption of 1-34 at all.

DELEGATE SANSTEAD: Mr. President.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: This morning on our desk we have a pamphlet from the staff, it says: "Summary of Possible Proposal Actions." I request that you turn to page 3, look at item 10. I will quote:

"First passing — I believe that is where we are now —

PRESIDENT WENSTROM: That is correct.

DELEGATE BUTLER: — vote yes and the proposal is passed and it is sent to Style and Drafting Committee. Vote no the proposal fails unless it is returned to the committee by the Convention."

PRESIDENT WENSTROM: Answer the question, Delegate Chase? Did you hear that? The proposal will be dead unless returned to the committee by the Convention. Delegate Cart.

DELEGATE CART: Well, I'd like to get an answer to this question, then: Assuming that this vote be — 1-34 fails, then will sections 38, 40 and 43 of the original Constitution remain in effect?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead, can you answer the question as asked by Delegate Cart?

DELEGATE SANSTEAD: My earlier comment, Mr. President, posed to Delegate Chase, now also Delegate Cart, would be that the existing three items in the present Constitution have not in effect been repealed; therefore, there's no hole in the Constitution.

We do at this time object to this committee proposal.

PRESIDENT WENSTROM: Thank you, Delegate Sanstead.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: I was going to answer Delegate Cart's question. We in the committee will have a proposal coming up on sections 38, 40 and 43, repealers. And so what happens to 1-34 — and I'll have a question — it's my impression that if 1-34 fails, is it not true that the committee cannot introduce another proposal dealing with the same subject matter?

PRESIDENT WENSTROM: Yes, it can. They have until the twentieth day.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I hate to belabor the point, but I would like to explain that I am going to vote against 1-34 simply because I think the committee has confused us by not connecting the repealers with the proposal. Maybe I'm unnecessarily stupid. But I think it has been harder for us to understand because that combination was not made.

PRESIDENT WENSTROM: The question is on the adoption of Committee Proposal No. 1-34.

Delegate Kessel.

DELEGATE KESSEL: I, too, am one of those that is somewhat uninformed in these types of procedures. I'm not satisfied with the 1-34 as it now stands. Somewhere between the two, the amendment if it is voted down and this, I think lies the answer. And until I would have more time to consider the ramifications of this, I would feel that I'd have to vote against it. Not that I don't think it has a lot of merit, but I think we are going through it a little quickly.

Yesterday we knocked out much of it without debate. Today now we debate on the matter as it stands. I feel like Delegate Lander does, that somehow or another we should have a little more time on this and it can go back to the committee with further study. I know some of the committee members themselves have this feeling. Thank you.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President, Fellow Delegates. I share some of the thoughts of Delegate Kessel and Delegate Lander, and I think many of the other delegates here. I also understand to draw up a code of ethics is an extremely difficult thing. But I think, Mr. President, that the motion is in order to re-refer to committee. And I so move that this be re-referred to the committee to try and make this amendment or this proposition more acceptable and more understandable to all the delegates.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Delegate Chase moves that Committee Proposal No. 1-34 be returned to the Committee on — which one?

CHIEF CLERK GILBREATH: Legislative Functions.

PRESIDENT WENSTROM: — on Legislative Functions.

And do we have a second?

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lander. Now is there any discussion?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: Possibly the committee would like a vote on the proposal and then the action requested here be taken. I resist the motion to send it back to the committee at this time.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Mr. President: A point I would like to get cleared up in my mind. We have a motion before us to either approve or reject 1-34?

PRESIDENT WENSTROM: That is true.

DELEGATE BUTLER: Is this a substitute motion to re-refer it to the committee now before us? What is before us?

PRESIDENT WENSTROM: No, that is not a substitute motion. That is a motion that takes preference. This is a time when we are here to amend. And the delegate — the prerogative of the delegates is whatever the wish of the Convention is to carry out at this point. And this particular motion is up. If we vote "aye" on it it is passed.

Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President. I'd just like to say one thing. I'm on this committee. And I agree with Chairman Hoffner. I think that we would like to see some direction. The committee proposal was quite one-sided, fifteen to five, chances are if we got it back again it would come out somewhat similar to what it is now. So I think that we should find out how this thing lays with the delegates right now.

PRESIDENT WENSTROM: Any further discussion?

Delegate Sinner?

The question then before the body is — Delegate Chase moved, right? — Delegate Chase moved that the Committee Proposal No. 1-34 be re-referred to the Committee on Legislative Functions. That is the question.

As many as are in favor of that motion will say "aye;" opposed "no." The "noes" have it, and the motion lost.

The question before the Convention is on the first passage of Committee Proposal No. 1-34.

DELEGATE HOFFNER: Question.

PRESIDENT WENSTROM: Question. Those in favor of the motion will vote "aye;" those opposed will vote "nay." The clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 51 "ayes," 46 "nays," one delegate absent and not voting. Committee Proposal 1-34 is passed.

I wonder, Fellow Delegates, if anyone would object to the Chair declaring a ten-minute recess at this point? Without objection, we'll be in recess. We will recess until eleven o'clock.

(The Session recessed at 10:45 A.M. until 11:00 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. The Convention will please come to order.

Next for consideration is Committee Proposal No. 1-18.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-18, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 215 and 216 of the constitution of the state of North Dakota be repealed; and that article VIII to the constitution of the state of North Dakota be created; all of which pertain to public institutions.

"SECTION 1. REPEAL.) Sections 215 and 216 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2. Article VIII to the constitution of the state of North Dakota is hereby created to read as follows:

"Article VIII. Public Institutions.

"Section 1. The public institutions which received lands by an Act of Congress of February 22, 1889, shall retain such lands subject to the limitations on trust (school and public) lands contained in this constitution."

PRESIDENT WENSTROM: You have heard the reading of the proposal.

DELEGATE POULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Your Committee on Education, Resources and Public Lands in considering the repeal of sections 215 and 216 of the Constitution proposes as follows:

An explanation of 215 and 216 and parts of the committee's action can be found on page 15 of our handbook.

Section 215 of the constitution permanently locates the seat of government, the School of Mines, the North Dakota State University of Agriculture and Applied Science, two state normal schools, the School for the Deaf and Dumb, the State Training School, a State Hospital for the Insane, and an institution for the feeble-minded, all of which have lands granted them by the Enabling Act of Congress of February 22, 1889, and now subject to the search and trust limitations.

Section 216 of the constitution further locates a soldiers home, a blind school, an industrial school, and school for manual training, school of forestry, a scientific school, and two normal schools, Dickinson and Minot as they now exist.

Your Committee on Education, Public Lands and Resources proposes that constitutional enumeration of the specific institutions by name and location is no longer necessary; and, further, that in both sections 215 and 216 the legislative assembly under Committee Proposal 1-18 be allowed to deal with various institutions in the future if emergency should arise.

I think it's to be noted that the lands subject to the trust limitations granted to public institutions to the Act of Congress continue to be used for the purposes for which they were granted and dedicated as long as the institution continues to exist. This is consistent with the Enabling Act. And this applies to both sections 215 and 216 as amended.

And I hereby move adoption of Committee Proposal 1-18.

PRESIDENT WENSTROM: Any further discussion on Committee Proposal No. 1-18?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I have a question. Perhaps one of the committee members can answer it. But on line 14 of the proposal the words "school and public" are set aside in parentheses. What's the reason for setting them aside in parentheses instead of moving the two words in front of the word "trust"?

PRESIDENT WENSTROM: Some committee member wish to answer Delegate Aubol's question?

Delegate Knudson.

DELEGATE KNUDSON: Mr. President, these two words are inserted here in parentheses as a suggestion to the Committee on Style and Drafting that they can be eliminated.

We have another proposal referring strictly to the "school and public" lands. In that proposal we suggest that the title be changed to "Trust Lands". If this proposal carries and the other one carries substantially in the form in which it now is, we'll urge the Committee on Style and Drafting just simply delete these two words.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I believe that it is highly proper in the Constitution to locate the seat of the government. Section 215 of the Constitution which is proposed to be repealed in toto, the first thing it does is to locate the seat of government in the City of Bismarck, County of Burleigh. My neighbor, Delegate Meidinger, assured my committee that he did not intend to renew the effort to remove it to Jamestown. Of course, that's only his personal assurance. But aside from that persidia, I do believe that in the Constitution the seat of government should be located. I do not think that is a proper legislative matter.

Referring to the explanation of the committee's actions on page 15 of this booklet I find no mention made of that subject, the seat of the government. Whether

it would be an appropriate time to turn over all of the other institutions to a legislative act considering the enormous investments that have been made in some of them, if not all of them mentioned in the article, is somewhat a separate matter. But I do believe that the seat of the government should be fixed. And perhaps — I'm not in a position to offer an amendment at this time because I haven't filed anything with the desk — but perhaps the matter should be re-considered as to whether section 215 should be repealed in toto. And at the moment I would feel content to vote against the present proposal on the floor for that reason.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. In view of Delegate Pearce's interest, I move that Proposal No. 1-18 be laid to the bottom of the calendar.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposal No. 1-18 be placed at the foot of the calendar. Do we have a second to the motion?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And Committee Proposal No. 1-18 will be placed at the foot of the calendar.

Next before the Convention is Committee Proposal No. 1-46.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-46, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 1 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to inalienable rights.

"SECTION 1. REPEAL.) Section 1 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2. A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"All people are endowed with certain inalienable rights, among these are life, liberty and the pursuit of health and happiness."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: As you can see, this section has been shortened considerably by the committee. But the committee believes that the substance of Section 1 has been retained. Also, as we have noted, an additional right has been added, that of pursuit to health. Now we had testimony on this before the sub-committee of the committee by Dr. Amos of the Public Health Department and considerable thought was given to this at the time.

The general feeling was that there is a growing recognition today of health as an important — that's important to the pursuit of other rights, and that people today are much better informed about factors that can make for better health for themselves. And the fact that things can be done today by themselves that will assure better health for each person. Considerable thought was given, too, to the area of prevention. Because so much can be done and is being done today to avoid many of the ailments of human life.

It was for these reasons that the committee felt it important at this time to add the "pursuit of health" as a basic right. It was a unanimous recommendation for do pass on this section.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I note that the committee in rewriting the section took out the word "reputation." And I would like to inquire if they

feel that we should not still have the right of "reputation" as one of the inalienable rights.

I would also like to inquire if they consider the word "privacy" as one of the inalienable rights as well as "life" and "liberty."

PRESIDENT WENSTROM: Some member of the committee — Delegate Urdahl.

DELEGATE URDAHL: Mr. President. I think that that was considered before the committee. And we felt that in other sections of the Constitution — which I can't point to now — but that this matter was contained in other areas of our Constitution.

Now there may be other members of the committee that would like to speak to this point.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Referring to Mr. Kelsch's question about the rights of "privacy" — I have forgotten what our proposal number is, and maybe it hasn't come up yet — but we are considering the right of "privacy" under the section on search and seizure. And that's —

DELEGATE TUDOR: 1-63.

DELEGATE THOMPSON: Thank you. 1-63.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I recognize that there is reference to "privacy" in the reasonable search and seizure. But this is a fundamental document that declares rights. And we have listed "life" and "liberty" and you've added the "pursuit of health" now. And I think in this day and age that "privacy" may be — you might say that that's a part of "liberty," but I don't think it would hurt us to say it and to try this out.

If we are on the tenth order, I would move that after the word "liberty" on line 11 you insert a "comma" and the word "privacy".

PRESIDENT WENSTROM: It's been moved, an amendment, by Delegate Kelsch.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: Then seconded by Delegate Sinner.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel. Just one moment, Delegate Scheel, until we have the amendment typed and before the Convention.

CHIEF CLERK GILBREATH: As I have the amendment, on line 11, following the word "liberty" insert " , privacy" and renumber the lines accordingly.

PRESIDENT WENSTROM: Now Delegate Scheel.

DELEGATE SCHEEL: Mr. President and Fellow Delegates: I think — I certainly respect all the time the Preamble, Bill of Rights and Suffrage Committee has put in on this. I think if any of you read biographies or autobiographies of men who lived two hundred years ago, such as Ben Franklin, who go back to when the Constitution was written of the United States, you realize that they are vitally concerned with "health" and I'm sure "privacy" then, too. And I think the minute you come off that word "happiness", which embodies the essence of all the other things that we're striving for, then you can open the whole Pandora's box and make a sentence a mile long.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: Mr. President. I would like to have someone on the committee tell me why they eliminated "acquiring, possessing and protecting property and reputation".

PRESIDENT WENSTROM: Any member of the committee wish to answer Delegate Cart?

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I would like to answer Delegate Cart and others.

Lord knows, we have had enough discussion on this in our committee. And much of it was in the press. We spent many hours in our subcommittee on this also.

As you will recognize, this sentence comes from the second paragraph of the Declaration of Independence. And this was, of course, lifted from the Declaration when it was originally put into our Constitution.

Some of the objections which have been raised here are taken care of by the Fifth Amendment to the U. S. Constitution, Due Process Amendment, and by Section 13 of the North Dakota Constitution, which is also in effect a Due Process Amendment.

Section 9 of our Constitution explains the right to free speech and the ability to protect yourself against libel.

Our Committee Proposal 1-63 states that: The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy . . ."

I believe that all of these suggestions have been worked over by our committee at length. And I would urge you to vote against amending this proposal and would vote for passing it.

PRESIDENT WENSTROM: Any further discussion?

The question is on the proposed amendment as offered by Delegate Kelsch.

Hearing no further discussion, as many as are in favor of the amendment will say "aye;" those opposed "no." The "noes" have it, and the amendment lost.

We are back on the question of the adoption of the first passage of Committee Proposal No. 1-46.

Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates: I don't know if there is another provision, and it's difficult for us reading 1-46 to determine this, and so I'm going to have to ask the question regarding the reason that the language "and obtaining safety" has been removed from this provision. It seems to me basically in looking at Section 1 that we — I don't find too much wrong with the language that was there, nor do I find any reason not to add "the pursuit of health" as one of our inalienable rights. But deleting some of these things bothers me. And I'd like to ask some committee member why "and obtain safety" has been removed.

PRESIDENT WENSTROM: Will a committee member answer Delegate Nething's question?

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: To answer Delegate Nething, I don't believe that we felt that this was easy to define. We felt that it was excess at this stage in the section. There are so many parts of our rights, which I've gone into before, which explain the methods of redress against injury, and which explain the fact that, for instance, the Constitution of the United States is the supreme law of the land. So that many of these things have already been assumed over many years and have also been taken — been reaffirmed in the Constitution of the United States. And we felt that at this time that this was excess, that it actually did not mean anything.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates: In my opinion the declaration of rights is one place in our Constitution where we can afford some excess language, if there is any place, and particularly the section relating to the personal rights. I know that the matter of individuals, for example, being guaranteed the opportunity to obtain safety has been relied on in the matters of permitting the police power of the state. And I'm sure there's other things that

are there, too, that have been the basis of some very thoughtful Supreme Court decisions and opinions. I like the idea of having language there to protect the individual's rights and to specifically spell them out; keeping in mind, however, that the Federal Constitution, of course, governs.

However, I guess, Mr. President, I have a question for you. If we were to defeat this proposal would we then retain Section 1 as it is or is this another one of these that might go back to the committee for reworking?

PRESIDENT WENSTROM: Delegate Nething, in the event that we defeat this proposal I was informed a few moments ago that according to the Rules that this proposal would be dead. However, it would remain in the possession of the Convention and if the Convention so chooses it can refer it back to the committee of original issue.

DELEGATE NETHING: I just wanted to have you reaffirm that, Mr. President. Sounds like a pretty good idea. I would urge — not with the idea that we are against the committee work, that we're against the things that are in this proposed language — but I honestly feel that the language that we have should have been kept and expanded upon instead of eliminated. That's the reason I'm going to vote "no" on this. And I would encourage others.

PRESIDENT WENSTROM: Delegate Meiginger.

DELEGATE MEIDINGER: Mr. President. I don't rise to defend the new wording, but I do object to the old wording in Section 1. And to me the last sentence tells me that I have the right to obtain happiness and safety. And I don't think any Constitution can guarantee you that right to have safety and happiness. I think you have the right to pursue it. But if it's guaranteed to all people, as the present wording says, some of them have been missing the boat.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. It seems to me it is an appropriate time to make the remarks that I am about to make. I have heard before the Convention started, and have heard since, that one of the things we are to do is to strengthen our Constitution, particularly in making the State stronger, and to resist the encroachment of the Federal Government. Therefore, I believe that taking things out of our Constitution because they seem to be guaranteed by the Federal Constitution is effecting the opposite approach. And I think we should not take anything out of our Constitution, particularly on this question of rights, merely because it may be guaranteed or protected by some federal action.

And as much as I admire the work that the committee has done, and as little as I object to the addition of the word "health", I will vote "no" because I like Section 1 out of the present Constitution.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor: I believe — excuse me, Delegate Tudor, but I believe Delegate Hubrig would like the floor. And I believe you have spoken before.

Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. I will pass to Dr. Tudor.

PRESIDENT WENSTROM: Dr. Tudor, Delegate Tudor.

DELEGATE TUDOR: Mr. President. I should like to point out to Delegate Nething and Delegate Pearce that this right to which — that they are worried about is secured to the people in Committee Proposal 1-63 which I have read in part before: "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or unreasonable interception of communications . . ." And I believe that this right is in the committee proposal already. It's in a committee proposal which our own committee has also proposed for the new draft. And for this reason I would again urge you to vote to go along with our committee.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE FIEDLER: Question.

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-46.

Hearing no further discussion, I will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 76 "ayes," 21 "nays," one delegate absent. The proposal passes.

Next for consideration is Committee Proposal No. 1-47.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-47, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 3 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the supreme law of the land.

"(SECTION 1. REPEAL.) Section 3 of the constitution of the state of North Dakota is hereby repealed.

"(SECTION 2. A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The constitution of the United States is the supreme law of the land."

DELEGATE HUCKLE: Mr. President.

PRESIDENT WENSTROM: Delegate Huckle.

DELEGATE HUCKLE: I will relate some of the —

PRESIDENT WENSTROM: Delegate Huckle, would you hold the mike just a little closer to your mouth?

DELEGATE HUCKLE: Okay. I will relate some committee comments on this particular proposal; Section 3 of the North Dakota Constitution suggested to be repealed and a new section created, both of which refer to the supreme law of the land. The new section omits the fact that the State of North Dakota is an inseparable part of the American Union. And the committee's opinion was that it is a well-known fact that we are. And indeed it was unnecessary wordage. We encourage a do pass on this proposal.

PRESIDENT WENSTROM: Are there any questions?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: After the vote on the code of ethics I would like to make this observation; that an idea shouldn't be blamed for its friend. So when I address myself on this subject I hope the delegates would keep that in mind.

I think the committee has improved on the language by recognizing that the State of North Dakota is an inseparable part of the American Union. That is an accepted fact. So is the fact that the Constitution of the United States is the supreme law of the land.

Now there is a Columbia constitutional attorney that wrote a book on drafting state constitutions, and he says one of the questions that you ought to ask yourself when you are considering putting something into the constitution is can this be achieved some other way? Well, the supreme law of the land is achieved in some other way. It is stated in Article VI of the U. S. Constitution. And, therefore, this language is really not necessary in our constitution any more than the fact that the state is an inseparable part of the American Union.

PRESIDENT WENSTROM: Any further comments? Any further discussion? The question is on the first passage of Committee Proposal No. 1-47.

DELEGATE SOLBERG: Question.

PRESIDENT WENSTROM: Hearing no further discussion, I shall open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 88 "ayes," 8 "nays," two absent and not voting. So the Committee Proposal No. 1-47 is passed.

Next for consideration by the Convention is Committee Proposal No. 1-48.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-48, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 10 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to right to assemble."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: In this section 10 the only thing that has been retained by the Committee is the first sentence. The second sentence of this section of the 1889 Constitution has been deleted because the Committee felt that it is extraneous material, and is not relevant to the present time. And we unanimously recommend a do pass on this section.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-48. Hearing no further discussion, I will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 94 "ayes," 2 "nays," two delegates absent and not voting. Committee Proposal No. 1-48 is passed.

Next for the Convention is Committee Proposal No. 1-49.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-49, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 12 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the military being subordinate to the civil power."

"SECTION 1. REPEAL.) Section 12 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The military shall be subordinate to the civil power."

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: What we have done in this case is to eliminate the second sentence of present Section 12 of our Constitution. We felt that it dealt with matters that were no longer pertinent to the modern day and age having to do with maintaining a standing army in the State and troops and other archaic practices that we thought were no longer matters of jeopardy to the people of the State of North Dakota.

PRESIDENT WENSTROM: Is there any further discussion?

Hearing none, the question is on the first passage of Committee Proposal No. 1-49. The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

DELEGATE HERNETT: Mr. President, I vote "aye."

PRESIDENT WENSTROM: It isn't locked yet, Delegate Hernet.

The vote is closed. Roll call discloses 97 "ayes," no "nays," one delegate absent and not voting. Committee Proposal 1-49 passed.

Next for consideration of the Convention is Committee Proposal No. 1-50.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-50, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 17 of the constitution of the state of North Dakota, which pertains to slavery, be repealed.

"SECTION 1. REPEAL.) Section 17 of the constitution of the state of North Dakota is hereby repealed."

DELEGATE MEIDINGER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. Does this mean white slavery, too?

PRESIDENT WENSTROM: Does anyone care to answer Delegate Meidinger's question?

Delegate Burbidge.

DELEGATE BURBIDGE: Section 17 of the Constitution reads as follows:

"Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state."

In view of the Thirteenth Amendment of the Federal Constitution, the committee unanimously felt this should be deleted.

PRESIDENT WENSTROM: Are there any questions? Is there any further discussion? The question before the Convention is on the passage of Committee Proposal 1-50.

Hearing no further discussion, the Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 94 "ayes," 2 "nays," two delegates absent and not voting. Committee Proposal 1-50 is passed.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wish to explain my "no" vote. My feeling is just because it is embodied in the Federal Constitution, that's not a reason not to speak to that subject in this Convention.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. I would echo the same sentiments as expressed by Delegate Kelsch. The wording — the extra expense of that small section would have been very light.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman, listening to my Fellow Delegate Kelsch explaining his reason for a "no" vote, I neglected to vote. But could I have the record show that I voted "aye"? Or am I out of order?

PRESIDENT WENSTROM: I believe according to our Rules that it's too late for you to record a vote.

DELEGATE KESSEL: Thank you.

PRESIDENT WENSTROM: As I understand it, and as I understand our Rules, while the machine is running and before the vote has been announced you may either change or you may record your vote. However, I believe that it is now too late.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: May I inquire as to why doesn't a delegate give his reasons before the vote instead of after the vote?

DELEGATE KELSCH: Pass.

PRESIDENT WENSTROM: Fellow Delegates, it is really nice to know that even some of the attorneys are human.

The next Committee Proposal for consideration is Committee Proposal No. 1-51.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-51, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 19 of the constitution of the state of North Dakota, which pertains to treason against the state, be repealed.

"SECTION 1. REPEAL.) Section 19 of the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: Do we have any discussion? The question —

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: The committee felt that Section 19 of the North Dakota Constitution, since we are an inseparable part of the United States, that any act of treason against this state would be an act of treason against the United States. And so we felt that this was just surplus wordage.

PRESIDENT WENSTROM: Any further discussion? Any comments?

DELEGATE MAXWELL: Question.

PRESIDENT WENSTROM: The question —

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Which proposal are we on?

PRESIDENT WENSTROM: We are on 1-51.

DELEGATE PEARCE: Thank you.

PRESIDENT WENSTROM: Mr. Clerk, it's lighted on the board, isn't it?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Well, Mr. President, I was hoping that the question would be raised here by someone else as to a little more of the reasoning of the repeal of our definition in the Constitution. While it is true that treason is treated in many sections of law and in the Federal Constitution and all over the place, this does — to undertake to define this in the Constitution, the act of treason, it probably might be subject to some criticism on the grounds that there's some legislation on it. But I think that that is such a serious subject that I for one would like to hear some additional explanation of the reasoning that the committee gave when they decided to delete this section.

PRESIDENT WENSTROM: Any comment?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: If you will notice, in Section 19 it refers to treason as an act of war against the state. I find it, and I'm sure the committee found it, very hard to visualize an act of war against the State of North Dakota unless it revolves around some other action from a person from another state or action within North Dakota. I don't think, and I'm sure the committee doesn't think, that it is necessary to have this in the Constitution. Because the Federal Constitution and the Federal Statutes, which are also the supreme law of the land or supreme to the Constitution of North Dakota, take care of this very well.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Again a question to the committee. Not only — I agree with Delegate Lamb that it is unlikely that you'd have treason as an act of war. But this is a definition of treason. Could the legislative repealers declare that to criticize the governor of the state be an act of treason? You note that this provision does limit very specifically what treason is. And if we do not speak of it, are the people free to read into it something other than an overt act?

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Treason is also defined in the statutes of North Dakota. And it is a crime. And I can see no reason for defining one particular crime in the Constitution, such as murder or rape or breaking and entering, as treason. We are particularly defining or attempting to define treason. Because of a statement that was made by Mr. Lamb and because it is taken care of by statute I believe that it's unnecessary.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I don't think that you could put this in the same class as murder or other crimes. Because this is a political crime. And in many countries of the world people are imprisoned for what they say. And I'm not sure that we should keep this section. I am also not satisfied that we should not address ourselves to the Constitution just what we think treason is. You notice it's a very narrow definition. It requires an overt act. And if we leave it up to some simple legislative act, they can say that a vocal challenge or conspiracy other than an overt act might be treason.

PRESIDENT WENSTROM: Delegate Aubol? Any further discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I'll move that further consideration of Committee Proposal No. 1-51 be laid over one Convention day.

PRESIDENT WENSTROM: Delegate Baker moves that further consideration of Committee Proposal 1-51 be laid over one Convention day. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Is there any further discussion? The question is on the motion of Delegate Baker.

As many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it and the motion lost.

We are back on the Committee Proposal No. 1-51.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: This seems to be becoming a battle of law partners here, but I rise to support Delegate Kelsch. Treason is one of the oldest weapons of power in any organized government. More people have been incarcerated and executed for treason than any other type of political crime. I can't feel that it belongs in any category similar to it. While we prosecute people for murder in the name of the state, and it's a crime against the public, it's a pretty personal crime as far as the individual murdered personally is concerned. The same with all of the other types of crime.

This is a crime against the State. It is without any individual being the victim. And the reason I think we have to maintain the definition of it is exactly as has been pointed out by Delegate Kelsch. Remember that we are not writing a constitution for the status of society as we see it today. Let us not be lulled into the peacefulness of the present times, if we can call them peaceful. We may be peaceful here, but a great deal of the world is not peaceful. And many people in this world would welcome some kind of a constitutional definition of what treason is and particularly what it is not. And it is the exclusion of other things that is the important thing here.

I have never known anyone in North Dakota indicted or proceeded against for treason. However, if we eliminate the definition of it I'm not sure that sometime before another Constitutional Convention we might not see that happen. I don't want that to happen. That's why I vote to retain what we have.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President. I, too, feel — speak in favor of Delegate Kelsch's motion. I feel that we should speak on this subject —

PRESIDENT WENSTROM: Delegate McIntyre, I do not believe we have a motion. I think that this is discussion on the final passage of — not the final passage, but on the first passage of Committee Proposal No. 1-51. We do not have an amendment or anything before the Convention.

DELEGATE MCINTYRE: You're correct, Mr. President. I'm sorry.

I would like to speak, however, against this particular proposal. I think we should speak to the subject of treason. I am not satisfied with the way the present section states it, but I do think we should speak to it in some way.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President. I also support the position of Delegate Kelsch. And I don't believe that the argument that treason is covered by statute is really legitimate and a reason why we should knock it out of the Constitution, any more than the sentiment that a lot of delegates feel that the right to work statute covers a constitutional provision.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I am in agreement with Delegate Pearce that never in the history of the state has there ever been any proceeding under this section, never has it been subject to construction by the courts. So far this definition has served no purpose in this basic document, and the committee could conceive of no case where it would ever be used. And we felt that the proper thing under those circumstances was to delete it.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-51.

Hearing no further discussion, the Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Pardon me. I think you have to announce the vote first. Am I out of order?

PRESIDENT WENSTROM: You are out of order.

Roll call discloses 46 "ayes," 50 "nays," two delegates absent and not voting. Committee Proposal No. 1-51 lost.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: We now have defeated the proposal which was a repealer. And of course we don't know whether we still have the definition before us or not. And I would just like to suggest from a procedural standpoint that in light of the expression of the assembly that the Committee on Preamble consider presenting a proposal relating to treason.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Now having the vote recorded, and the sentiment of the Convention known to the committee, I think what we would probably do in that case is to follow the procedure that we have in other instances where we are retaining in the new Constitution or the revised Constitution the exact language of a section of the old Constitution. So I think that the committee probably would present the old language again to this Convention as a committee proposal.

PRESIDENT WENSTROM: Delegate Kelsch, does that answer your question?

DELEGATE KELSCH: Yes.

PRESIDENT WENSTROM: The question was answered.

Committee Proposal No. 1-52 is before the Convention for consideration.

Delegate Sinner.

DELEGATE SINNER: Mr. President, I assume we are about to recess for lunch. If we may, I'd like to go on the twelfth order.

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business. No objection, we are on the twelfth order.

DELEGATE SINNER: Mr. President. I move that you extend to Delegate Darold Benz the wishes of all the delegates for a speedy recovery from his surgery, and an early return to this Convention to assist us in our work. And, further, that you send to Delegate Benz a floral remembrance from us to cheer his hospital room and ask you to let us know the cost and we will reimburse you.

PRESIDENT WENSTROM: Delegate Sinner —

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Sinner, might I inform the Convention this is an excellent idea. However, our Committee on Resolutions is in the process of drafting a resolution expressing the similar thoughts to Delegate Benz. And I am sure that we can at that time take care of the suggestion of the flowers.

DELEGATE SINNER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I would withdraw the motion in that case.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President. In light of the fact that we are about to recess, and maybe we'll do so until 1:30, if we do I would like to call a meeting of the Resolutions Committee for one o'clock in the West Balcony Room up here.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Could we be on the eighth order, please?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order of business.

DELEGATE TUDOR: I should like to announce that there will be no open forum discussion tonight at the Highway Department, but that our next meeting will be Tuesday, January 18th, at which time we will consider the problem of dedicated highway funds and possibly some other proposal.

PRESIDENT WENSTROM: Are there any further announcements while we are on the eighth order? I'm sorry, I should be on the sixth order. No. I'm right, strange as it may seem. We're on the eighth order of business for announcements. As long as there are none, we will go back on the twelfth order.

Next number — I should be on the tenth order. Now I'm right. We have before the Convention Committee Proposal No. 1-52.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-52, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 21 of the constitution of the state of North Dakota, which pertains to provisions of the constitution being mandatory and prohibitory, be repealed."

"SECTION 1. REPEAL.) Section 21 of the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. I again merely want to call the attention of the Convention to the language of Section 21, which I will read. It's very short.

"The provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise."

If we eliminate that we're in effect telling the people of North Dakota that the Constitution does not have specific meaning. I think this should be rejected.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: Mr. President. The committee in studying this section felt that the section was simply a statement which is inherent in constitutional law and it thus is unnecessary. And in a Supreme Court — North Dakota Supreme Court case it was stated: "It is an established general rule that constitutional provisions are to be construed as mandatory unless a different intention is manifested. In this state this rule has been embodied in the Constitution."

Now as the court says, it is an established rule that constitutional provisions are to be construed as mandatory. Then why is it necessary to have this section? I submit that it is not. And this is the feeling of the committee. Even if it had not been in the 1889 Constitution, the court decisions referring to it would be no different because it states that it is a basic constitutional philosophy which our court points out in this Supreme Court case and other cases that have taken place.

And I would like to further state that if this provision is so necessary in the State Constitution as has been contended, then why does not the 1970 Illinois Constitution, the 1959 Alaska Constitution, the 1959 Hawaii Constitution, the 1964 Michigan Constitution, or, for that matter, the constitutions of our two sister states, Minnesota and South Dakota contain it? I believe the reason such a section is not present in these constitutions is because the drafters recognized that there was no need for such language. Because, as the North Dakota Supreme Court has said, such a rule is implied in constitutional law construction.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates. I rise in opposition to repeal of Section 21 of the North Dakota Constitution. I believe that just previously we heard the statement on the previous proposition that there had been no cases referring to the issue before us; and, therefore, we probably should not have it in the Constitution. And that was the one relating to treason.

If you will look at the North Dakota courts, you will find that Section 21 has been referred to on numerous occasions. And it is referred to not only in the case which has been mentioned here by Delegate Daniels, but back in 1921 in **Wilson versus City of Fargo**, the Supreme Court of North Dakota said there are numerous other decisions which cite Section 21. And we have continually through our proceedings cited this section.

I agree that perhaps if we had never had it in our Constitution originally then we would be discussing a different matter. But since we have that in it, we have had numerous decisions based on Section 21, and it appears to me that we would be asking for numerous other litigations if we do not include Section 21 in the new Constitution.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I would remind the delegates that decisions of the Supreme Court are not immutable. There was a time when the Supreme Court of the United States said that facilities for persons of other colors separate but equal was constitutional. That's no longer the situation. The same court has said otherwise.

I would ask this: If the provisions of this Constitution are not mandatory and prohibitory, what are they?

PRESIDENT WENSTROM: Someone wish to answer Delegate Kelsch's — or Delegate Pearce's question?

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I do not wish to answer Delegate Pearce except to agree with him and reaffirm what he said. And I would particularly like to compliment Delegate Daniels on her presentation and the clear and concise manner in which she did present the committee's reasons for this repeal, the suggestion for repeal, and I would like to ask you all to concur with the committee's opinion.

PRESIDENT WENSTROM: Delegate Nething, did you have a question?

DELEGATE NETHING: Mr. President, Fellow Delegates: I thought that Delegate Pearce was speaking to retain the current language, but I guess maybe Delegate Tudor and I think different on that.

I think it should be pointed out if we take this section out of the Constitution, or the change that could be made in the Supreme Court, then we have no interpretation left of the section. And I can't honestly see anything wrong with leaving it.

Now, the fact that these other states do not have it does not particularly impress me, because they probably didn't have the benefit of the people in this

deliberative body to make their decisions. And I really think that in looking at the Constitution, as in the Volume XIII, I note ten particular cases, and as Delegate Aas says, there are many that refer to it. What would happen if we took it out, I do not know. But it would certainly leave open the question for the court to decide again. And I'm not so sure that's necessary. I think we should defeat this proposal.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I would just like to make mention of the fact that the constitutional revision study commission that existed in 1965 and '67 had this under consideration and concurred with the decision of our committee in recommending that it be repealed because the provisions are construed as mandatory without this statement.

DELEGATE SINNER: Question.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-52.

Hearing no further discussion, I will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 62 "ayes," 35 "nays," one delegate absent and not voting. Committee Proposal No. 1-52 has passed.

Next for consideration is Committee Proposal No. 1-54.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-54, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 209 of the constitution of the state of North Dakota, which pertains to child labor, be repealed."

"SECTION 1. REPEAL.) Section 209 of the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: The question before the Convention is Committee Proposal No. 1-54.

Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. The committee asked for repeal on page 107 of the blue book. We've got the reasons for repeal of Section 209, child labor. We are not trying in our committee to transfer the rights of North Dakota to the Federal Government. But it's a fact that the federal law is stronger than the present law — present Constitution of the State of North Dakota. And this is why we asked for the repeal. The committee felt that it was not necessary to be in the Constitution any longer. And it was a legislative matter, also.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-54.

Hearing no further discussion, the Clerk will open the key, and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 94 "ayes," 3 "nays," one delegate absent and not voting. Committee Proposal No. 1-54 is passed.

Next for your consideration is Committee Proposal No. 1-46 —

CHIEF CLERK GILBREATH: 18. 1-18.

PRESIDENT WENSTROM: — 1-18.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-18, introduced by the Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 215 and 216 of the constitution of the state of North Dakota be repealed; and that

article VIII to the constitution of the state of North Dakota be created; all of which pertain to public institutions.”

“SECTION 1. REPEAL.) Sections 215 and 216 of the constitution of the state of North Dakota are hereby repealed.

“SECTION 2.) Article VIII to the constitution of the state of North Dakota is hereby created to read as follows:

“Article VIII. Public Institutions. Section 1. The public institutions which received lands by an Act of Congress of February 22, 1889, shall retain such lands subject to the limitation on trust (school and public) lands contained in this Constitution.”

PRESIDENT WENSTROM: The question before the Convention is the first passage of Committee Proposal No. 1-18.

Delegate Jestrab.

DELEGATE JESTRAB: Mr. President. I should have objected to this being moved to the foot of the calendar, because we had public hearings on these two sections and no one appeared. I move that — I urge that the Convention approve the committee’s recommendation of 1-18.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, I merely wanted to inquire of some member of the committee what method will be used to dispose of the Ellendale land grant of 40,000 acres?

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President. Our Committee Proposal 1-17, which has not yet reached the Convention floor, contains a provision in Section 2 of that proposal to take care of the trust lands and trust funds of any of these institutions which may cease to exist.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I move to amend Committee Proposal 1-18. The Chief Clerk has my amendment. If he will read it from the desk, I will appreciate it.

PRESIDENT WENSTROM: The Clerk will read the proposed amendment as offered by Delegate Pearce.

CHIEF CLERK GILBREATH: Following line 15 of Proposal 1-18, add the following:

Section 2. The seat of government of the state of North Dakota shall be at the City of Bismarck in the County of Burleigh.

PRESIDENT WENSTROM: Now do we have a second to the amendment?

DELEGATE O’TOOLE: Second.

PRESIDENT WENSTROM: Delegate O’Toole seconded.

DELEGATE PEARCE: Mr. President. I believe that I made my point clear earlier when it was on the calendar. I do believe that the seat of government should be established by the Constitution. That’s the sole purpose of the amendment.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Pearce. Ready for the question?

DELEGATE MAXWELL: Question.

PRESIDENT WENSTROM: The question is on the amendment. As many as are in favor of the amendment will say “aye;” opposed “no.” The “ayes” have it, and the amendment is adopted.

Now we have Committee Proposal No. 1-18 before the Convention as amended.

Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I believe that Delegate Cart asked a sound question here. And I’m wondering if the committee considered what would happen to these tracts of land if some of these institutions are changed,

and no doubt some of them should. And what disposition would be made of them; whether or not they gave any consideration as to whether or not those would go to the State of North Dakota or back to the Federal Government? And I think that some inquiry should be made about it, and that some thinking should be given as to what would happen under those conditions.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. In response to Delegate Longmire's inquiry, as was brought out by Delegate Knudson, in the Committee Proposal 1-17, which is not before the Convention, we will propose that these lands be allocated or apportioned amongst the other trust funds. So if an institution ceases to operate, then that trust or those trust lands will be divided amongst the other trust funds or trust lands. So it's just a matter of reapportioning or reallocating the original trust as it was set up by the United States.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President and Fellow Delegates. In the Enabling Act which we referred to constantly in setting up this particular article there was no specific mention of institutions at any particular place. There are certain acres given to the School of Mines, Reform School, for State Normal Schools, and so forth. And, therefore, we thought it feasible to — and much more — and much better to the organization of the Constitution to omit this and then, as Delegate Devine has mentioned, we have not disturbed the income or the lands. They will be allocated to the remaining trust institutions that were set up in the Enabling Act.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Delegates. This — I have no objection whatsoever to leaving Bismarck as the seat of government. But I would like to point out what may happen in the future in the legislature. You people in Grand Forks and Fargo and bigger cities should maybe not feel so secure. If Fargo, Jamestown, Valley City, Bismarck, Minot and Williston got together, they could move the University to Fargo. The same pertains to the smaller ones. Now there will be a continual grab for the school at Mayville, school at Dickinson, in some of the larger cities there may be. And it might lead to continual bickering in the legislature. There has been lots of that about the institutions.

And in lieu of that fact rather than explain the vote later, I am going to explain my vote ahead of time. And I think that this hasn't had enough thought by the Convention as a whole, no doubt by the committee, but it will lead to a lot of — it might lead to a lot of politicking later on. And some of the bigger cities haven't been a bit averse to grabbing the institutions from the smaller communities.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President. In order that we may have this proposal before us properly, I would move that the Rules be suspended and that Proposal 1-18 be placed on First Reading and First Passage as amended.

PRESIDENT WENSTROM: Delegate Saugstad, I think I'm going to rule your motion out of order for the moment. There could be additional amendments offered to this from the floor. For that reason, I haven't asked for that motion.

DELEGATE SAUGSTAD: Well, Mr. President, would it not have to be on the tenth order of business in order to be amended?

PRESIDENT WENSTROM: We are on the tenth order of business.

DELEGATE SAUGSTAD: Thank you.

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: Delegate Knudson has asked for the floor.

DELEGATE KNUDSON: Mr. President. I was going to attempt to answer some of Delegate Rundle's objections. I think this is a matter which the legislatures in the future will have to face as our population in our state keeps changing; locations where there are dense populations become denser, and the population in the rest of the state becomes scarcer. We are going to face situations like the one that the legislature faced this past session in regard to the school at Ellendale.

I think this Convention would be neglecting its responsibility if it keeps the legislature's hands tied in this manner.

Delegate Pearce mentioned earlier that there is a large investment in every one of these institutions. And certainly the fact that there is that large investment is going to inhibit — inhibit any legislatures from likely making any changes such as Delegate Rundle has suggested.

Several of the delegates from our committee have mentioned that we had hearings posted on this. No one from this Convention or anywhere else appeared to be heard. So the committee passed the thing out to get it here and get it heard and hear what the objections are.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Mr. President. I just would like to question Delegate Pearce's amendment in this respect; that you are repealing all of Section 215. In other words, that first paragraph in Section 215 will all be deleted. In that paragraph as it is now it refers to: "The following public institutions of the state are permanently located at the places hereinafter named . . ." Well, that will all be deleted, so if Delegate Pearce amends this, as I see it it doesn't quite fit. Because there's no description before in which would provide for names and places of institutions. In other words, if you read Section 1 as it is now, then you add to it a Section 2, "The seat of government shall be in Bismarck," it doesn't necessarily make any sense, I don't think.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I'm a member of the Education Committee, and I have spoken against deletion or against the change because I feel that this is a protective for all of our schools to be named in the Constitution. And if there is such time where they are going to have to be changed or whatever, it gives the people a chance to consider this. If it's taken and changed in the way we have before us, all of a sudden these things will be changed and it will not be called to the attention of the people. As a representative of the people, I think they should remain in there as they are.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Further discussion?

Delegate Kelsch.

DELEGATE KELSCH: I agree with the committee's proposal. But I'm wondering if they accomplished what they intend. As I understand it, in the case of Ellendale they do not intend the Ellendale land should not be permanently affixed to Ellendale; right? But the wording is that public institutions which receive lands shall retain the land. Are we freezing them into every institution that had them? Doesn't this freeze it into them so there is no way of selling, disposing or transferring to others?

PRESIDENT WENSTROM: Any member of the committee wish to answer the question?

Delegate Lander.

DELEGATE LANDER: Mr. President. Following up on what our other people have said, it says here "shall retain such lands subject to the limitations on trust (school and public) lands contained in this constitution."

Now as our other two delegates have attempted to explain, and perhaps our order is not right, our Proposal 1-17 will speak in this Constitution, if adopted, to that question. And hopefully if our reasoning was correct, it would then allow such things to happen if all of it were passed in that form.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President. I would first suggest to Delegate Hernet that it can stand alone, I believe, because, as I recall, the motion which was made and passed, Section 2 said "the seat of government . . . shall be in the City of . . ." and I think the "shall be" does make it logical and sequential, and in a sense giving direction to the legislative session at least to the seat of government.

Next on the general question of overall passage of 1-18. I would submit that there are those who do not address the legislature, including one of my colleagues very close to me. And I would submit that the legislature to Delegate Peterson has had little difficulty so far in doing exactly what they felt was necessary in eliminating the institution. The delegate has brought that to our attention very frequently during the many hours that we spent in talking about sections of trust lands and of the location of these institutions. And for my money it's high time that we start thinking about the hours that some of these committees have put into these sections and the work that they have devoted to consideration of the rights of both individuals and in this case institutions. I don't think the legislature is about to do away with institutions that are named in the Constitution, but I don't think they are about to do away with any institutions as it is in terms of value to these institutions unless there aren't students or unless those institutions at some time in the future need to be consolidated or need to be coordinated with other institutions. And we ought to leave that availability there for the legislative assembly in its discretion to do that in the future. That basically was the position of our committee; that we rather doubt it will be done. But the possibility that it could be necessary in the future is there. And the legislature would find a way to get around it as has been proven already, if it were necessary to do it.

PRESIDENT WENSTROM: Delegate Kelsch, did you wish the floor?

DELEGATE KELSCH: Just one other point. I think you say "subject to limitations." You're further limiting. I think you used the wrong word. The word "limitation" shouldn't be in there. I think the way this says is you "shall retain subject to further limitations." And a "further limitation" couldn't be one that would allow the transfer of those lands to somebody else. I think you should say instead "subject to other provisions of the constitution," but not "limitations." I think you're boxing yourself in here with the word "limitation."

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BILLEY: Mr. President.

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: Fellow Delegates: I have mixed emotions regarding this committee proposal. On behalf of my community of Ellendale and its residents, I respectfully request that you approve this report. Repeal of the third paragraph of Section 216 represents the last step in authorizing the sale of the entire Ellendale campus to the Trinity Bible Institute of Jamestown. This special committee in charge of finding a buyer for this campus has made a tentative agreement with the Institute. As some of you probably know, if this Convention and the electorate do not approve this change, an amendment to remove paragraph 3 will appear on the primary election in September. I cannot emphasize too strongly Ellendale wants this matter resolved at the earliest possible time.

Now for the benefit of a couple of delegates who would like to know the reasons for voting before we vote, I would like to explain why I intend to vote "no."

First of all, Commissioner Raschke testified at the August meeting of our Education, Resources and Public Lands Committee, and he stated he has "No strong feelings on the institutions being placed by name in the Constitution, but would like to make it possible for the legislature and the Board of Higher Education to eliminate one if change of circumstances demanded it." That language is in the committee minutes on page 5 if anyone cares to check.

I believe that these two sections should be retained, and I agree with the Commissioner that language should be added to set forth a procedure for terminating any public institution.

Second, the interim report which you have on your desk under Section 215, we have a statement in there that says the committee appeared to feel the legislature should be allowed to deal with the various institutions if an emergency arose, such as the Ellendale situation, and should not be forced to maintain an institution if it were not in the best interests of the state to do so.

I do not believe that the best interests of the State of North Dakota are being served by selling the Ellendale campus, valued at over three million dollars, for one dollar until every use for the benefit of the people of North Dakota has been

investigated. The legislative study that was conducted after the fire in 1970 represents the last in-depth look at alternate uses for the Ellendale campus. And it did not recommend closure. In recent weeks one announced candidate for governor and another likely candidate for governor, as well as a daily newspaper in this state editorially, have advocated an expansion of vocational education. It is my contention that there has been no hearing on, or any feasibility study of, utilizing this campus for such vocational-technical education.

Third, the interim report under Section 216 states: "The committee appeared to feel that the legislature should be allowed to adjust the locations of the institutions if the necessity arose, but that the provisions of the grant shall continue until one or more specific institutions ceased to exist."

One could interpret that language to mean that the legislature could play checkers with our public institutions. I certainly hope this is not the case. The closure of Ellendale in my opinion is a first step in the direction of reducing the number of institutions of higher education in this state. I firmly believe that higher education needs some changes; however, I think it should be done with a master plan to realign programs of higher education. The changes should not come about by closing the institutions one at a time.

As a taxpayer, I oppose the disposal of three million dollars worth of buildings and property while several million dollars worth of new buildings are being constructed at other locations.

Fourth, and finally — since I know we're all anxious to get to lunch — I object to the repeal of the language at the end of Section 216, and I quote: ". . . provided, that no other institution of a character similar to any one of those located by this article shall be established or maintained without a restriction of this Constitution." Repeal of this language could open the door for the legislature to acquire by gift or purchase, I feel, without obtaining the approval of the people, of more educational institutions such as any one of the junior colleges now owned by local school districts or even possibly a private college. If we cannot afford to operate our existing institutions of higher education, how can we afford to take on a new responsibility? I believe the people of North Dakota should retain this right to say whether or not they want to accept any additional public institutions.

Now, I have spoken on both sides of the question. Really what I would like to see is that these two sections be retained, and that the repeal language regarding the Ellendale question be presented to the people as a separate question. I realize it's not an emotional issue and will not probably affect the outcome on the final vote on our basic package; however, by presenting it as a separate question it would get the Ellendale question solved at the time of the election on the Constitution. And I believe it would be effective regardless of whether the basic document fails to pass.

As I stated earlier, the thing that I want most — and the thing that the people in my community want most — is to have this question resolved as quickly as possible. I thank you for your patience.

PRESIDENT WENSTROM: Further discussion?

Delegate Daniels.

DELEGATE DANIELS: Mr. Chairman. I would like to commend Delegate Billey for his statement. And I would like to say that I agree fully with everything he said being his fellow delegate from the 28th District. And I think he also expressed the feelings of the entire 28th District.

PRESIDENT WENSTROM: Any further discussion?

Delegate Devine.

DELEGATE DEVINE: Mr. President. I believe that Delegate Kelsch raised a valid question there. I would like to offer an amendment to Committee Proposal 1-18.

PRESIDENT WENSTROM: Is the amendment at the desk?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: The amendment will be read.

CHIEF CLERK GILBREATH: Amendment to Committee Proposal 1-18.

On page 1, line 14, delete the word "limitations" and insert in lieu thereof the word "provisions."

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Now the question is before the assembly on the amendment as offered by Delegate Devine.

Is there any discussion?

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

Any further discussion? If we are going to move further with Proposal No. 1-18 at this time we need a motion that the Rules be suspended, that the proposal be deemed properly engrossed and it be placed on the calendar for first passage as amended. Will someone make that motion?

DELEGATE SAUGSTAD: I will repeat my motion.

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: The motion has been presented by Delegate Saugstad, it's been seconded by Delegate Longmire.

No further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And Committee Proposal No. 1-18 is before the Convention for first passage.

No further discussion, I will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 84 "ayes," 12 "nays," two delegates absent and not voting. Committee proposal No. 1-18 is passed.

Without objection, we will be on the eighth order of business — Announcements.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I would like to change the meeting of the Resolutions Committee from one to 1:20.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. The Committee on Finance and Taxation has had a meeting scheduled for 1:30 today on Committee Proposal 1-21, Section 8 of that proposal, dealing with government and business. And I think that we may have some witnesses on it. I would appreciate it if the committee members would make every effort possible to be there at 1:30 if they can.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. The Committee on Legislative Functions will meet at 2:15, Large Hearing Room.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Mr. President. I have just had the signal transferred over here. I'll announce that the Committee on Executive Functions will meet at two o'clock.

And while I'm on my feet I'd like to inquire, Mr. President, did I miss it or were there four committee proposals turned in this morning from our committee?

PRESIDENT WENSTROM: Delegate Hernet, they haven't been read. Possibly we should read them.

DELEGATE HERNETT: I would like to see them be read. That would be under the tenth order, wouldn't it?

PRESIDENT WENSTROM: Tenth order of business. And I believe that we should take them, on second thought. I thought that because of the hour that we would pass over those, but I believe that because of the schedule set up for tomorrow and the next day we should take them and they be adopted.

DELEGATE HERNETT: Mr. President. I think the members of my committee expected they will be. And so I would like to see that they will — it will only take a couple of minutes, won't it?

PRESIDENT WENSTROM: I'm sure the Convention will agree to your request. I'm glad, Delegate Hernet, that you did bring that to our attention.

DELEGATE HERNETT: Thank you.

PRESIDENT WENSTROM: Were there any further announcements on committee meetings?

CHIEF CLERK GILBREATH: I have one.

PRESIDENT WENSTROM: There are some announcements at the desk before we go to the fifth order of business.

CHIEF CLERK GILBREATH: Preamble, Bill of Rights and Suffrage Committee will hear Delegate Proposal 2-68 creating a new section to the constitution pertaining to the right to family farming at two P.M., Lewis and Clark Room, Monday, January 17th.

Preamble, Bill of Rights and Suffrage Committee will hear Delegate Proposal 2-53 creating a new section to the constitution pertaining to right to obtain employment or practice a profession and preclusion of corporations from engaging in farming, two P.M., Lewis and Clark Room, Monday, January 17th.

Preamble, Bill of Rights and Suffrage will hear Delegate Proposal 2-78 creating a new section to the constitution pertaining to non-discrimination in licensing, two P.M., Lewis and Clark Room, Monday, January 17th.

Executive Functions Committee will meet in Room G-5 and 6 Wednesday, January 12th, at 1:15 P.M. and hear Proposal 1-9.

I'd like to remind the delegates of the statewide telecast quiz on the constitution tonight at 6:30 P.M. on the KX stations. The local station is Channel 12, 11 on Cable TV.

PRESIDENT WENSTROM: We'll be on — we'll be on the twelfth order of business.

DELEGATE LONGMIRE: Mr. President. May we still be on the eighth a minute?

PRESIDENT WENSTROM: Without objection, we will be on the eighth.

DELEGATE LONGMIRE: The Judicial Committee will meet at the usual place, the Gold Room, at two o'clock. We will be considering again, as we have all week, Committee Proposals 1-11 and 1-12. If any of you delegates have put in delegate proposals that relate to either of those two and want to be heard this afternoon, we'd be glad to have you come.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: The announcement just read from the desk that the Executive Functions would be meeting at 1:15, well, that's kind of out of date. That's at a time that we didn't realize the lateness of the hour. So it is still two o'clock.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. The Committee on Education and Public Lands will meet at 1:45 instead of 1:30 as posted.

PRESIDENT WENSTROM: We'll be on the — is there no further business on the eighth order of business? We will go to the twelfth order of business — Motions.

And Delegate Saugstad moves that the following Committee Proposals 1-18, 1-34, 1-46, 1-47, 1-48, 1-49, 1-50, 1-52, 1-54 be referred to the Committee on Style and Drafting.

Now do we have a second?

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Longmire.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. This goes to the Committee on Style and Drafting.

Now we will go on the fifth order of business. We'll be on the fifth order of business, committee reports.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-13 has had the same under consideration and recommends that the same be amended and when so amended recommends the same do pass.

Delegate Longmire, Chairman.

Delegate Longmire moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-13, that the report be amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the report is adopted and placed on the sixth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-19 has had the same under consideration and recommends that the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal 1-19, that it do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is placed on the tenth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal 1-25 has had the same under consideration and recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal 1-25, that the proposal do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-25 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-26 has had the same under consideration; and recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal No. 1-26, that the proposal do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-27 has had the same under consideration and recommends that the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal No. 1-27, that it do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-27 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-28 has had the same under consideration and recommends that the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal No. 1-28, that it do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted. This will be on the tenth order of business tomorrow.

The Clerk will read the calendar as established at this point for tomorrow.

CHIEF CLERK GILBREATH: Through my hen scratching I hope we come out right here. On the sixth order we'd have Committee Proposals 1-20, 1-39, 1-43, and 1-13.

On the tenth order it would be Committee Proposals 1-56, 1-57, 1-58, 1-59, 1-60, 1-61, 1-62, 1-64, 1-65, 1-66, 1-68, 1-71, 1-73, 1-23, 1-19, 1-25, 1-26, 1-27 and 1-28.

I believe we'll be able to have the calendars up here sometime this afternoon so if any of you would like to stop at your desks and see whether your calendars are in. With the printing — the way it has been working we haven't been able to get the calendars in the afternoon. So if any of you would like to see the printed calendar as it will be tomorrow, I think they will be here before we quit this afternoon.

PRESIDENT WENSTROM: Delegate Chase, will you move that absent delegates be excused?

DELEGATE CHASE: Mr. President, I move that the absent delegates be excused.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been moved and it has been seconded that the absent delegates be excused.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it, and the motion is adopted.

Now anything further?

DELEGATE SAUGSTAD: Desk clear?

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Desk clear?

PRESIDENT WENSTROM: Desk is clear.

DELEGATE SAUGSTAD: I move that we adjourn until nine A.M., January 13th.

PRESIDENT WENSTROM: Delegate Saugstad moves that the Convention be now adjourned until nine o'clock, January 13th.

Second to the motion?

DELEGATE SIMONSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Simonson.

Those in favor of the motion say "aye;" those opposed "no." The "ayes" have it, and the Convention is adjourned.

(The Plenary Session adjourned at 12:49 o'clock P.M., Wednesday, January 12, 1972, until 9:00 A.M., Thursday, January 13, 1972.)

VOLUME IX

(January 13, 1972)

MORNING SESSION

"The ninth day of the Plenary Session commenced at 9:20 A.M., January 13, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is Captain Thomas Lewis with the Salvation Army in Bismarck.

CAPTAIN THOMAS LEWIS: Eternal Father, as we stand before Thee this day, we implore Thy wisdom and guidance for each one gathered here. May each of these Delegates be given the wisdom which will help make our state a great place in which to live.

This we request in the name of Thy Son.

In Jesus' Name, Amen.

PRESIDENT WENSTROM: We will be on the third order of business — Roll Call. The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence? The key is closed.

Roll call discloses 95 delegates present, 3 absent. A quorum is declared.

Fellow Delegates, I'm sorry to report that we have another delegate on the sick list this morning. Delegate Vance Hill is at home with a case of the flu.

We will be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 11th day of January, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Paulson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the — Revision and Correction of the Journal.

As many as are in favor of the motion will say "aye;" opposed "no."

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President. Mrs. Simonson has a vote that's recorded — not recorded. And I move that on page 160 of the Journal the listing of Mrs. Simonson as absent and not voting be amended to show that she voted "nay".

PRESIDENT WENSTROM: Delegate Sinner, I wonder — would you explain the situation?

CHIEF CLERK GILBREATH: The Journal we're talking about on this correction and revision is not yesterday's Journal, but the preceding day's Journal. So it will be tomorrow on the correction and revision.

DELEGATE SINNER: Withdraw the motion.

PRESIDENT WENSTROM: Then the question. The question is on the adoption of the Committee Report of the Committee on Revision and Correction of the Journal.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted.

Fellow Delegates, yesterday and the day before — maybe I should say the day before yesterday — two prepared statements or informative — or at least I term them to be informative — papers were left on your desk. One was pertaining to parliamentary procedures, the other was a definition of rules. Then yesterday a report was placed on your desks for the purpose of sort of forming an outline of how a proposal would work its way through the Convention and into the ultimate document.

Now at the request of the Rules Committee I am going to suggest this morning that we go through that paper that was delivered to your desks yesterday, that this paper be read by the Clerk from the desk, and then that we go back over it item by item in the hope that should there be sections or parts of our procedure or of our Rules that are not adequately explained that the Rules Committee on a meeting that they wish to have almost immediately could make those amendments to the Rules and then we could adopt Permanent Rules for the Convention.

Now without objection, I would like to proceed on this discussion at this time. And in order that the procedures and one thing and another do not have to be a part of the permanent record, I believe it would be well if we declared the Convention at ease and then went ahead and did this thing while we were sort of in a state of limbo. And anyone that wishes to comment on a rule or ask a question on the rule for the purpose of clarification, or so that the Rules Committee would know that a change should be made for the purpose of clarification or for a way of improving our procedures, then we would take care of that the next meeting of the committee.

Now Chairman Geelan of the Rules Committee, is that pretty much in line with what you suggest?

DELEGATE GEELAN: Mr. President. Thank you. That is exactly what we would like. And I hope that the Convention will sustain you in having this extra session.

PRESIDENT WENSTROM: Now without objection, we will follow that procedure for a few moments here this morning.

The Convention will be at ease until such time as we are through with this. (The Session was at ease from 9:29 A.M. until 10:25 A.M., the same day.)

PRESIDENT WENSTROM: Then we will call the Convention to order. The Convention will please come to order.

Then we will be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: We have grade 6 of the Wilton Elementary School with Rita Gervais the teacher and 31 students and their driver in the balcony today with us.

PRESIDENT WENSTROM: Will the students please rise and receive the recognition of the Convention? (Applause)

PRESIDENT WENSTROM: Thank you very much for being with us this morning. We hope that you have enjoyed our discussion on rules. Possibly out of this might come some parliamentarians for future years.

We will be on the sixth order of business — Amendments.

CHIEF CLERK GILBREATH: Delegate Longmire has moved that the amendments to Committee Proposal 1-13, as recommended by the Committee on Judicial Functions and Political Subdivisions and as printed on pages 167 and 168 of the Journal, be adopted.

Amendments are on page 1, delete lines 12 through 25 and insert in lieu thereof: "Section 1. Religious Sentiment."

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: May I ask the Chief Clerk if these have been read at the time of the committee report? I don't recall. They were?

Then I move that we dispense with the reading at this time, Mr. President. They are quite lengthy. And I'll try to explain what we are doing.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE HUBRIG: Second.

PRESIDENT WENSTROM: It has been moved and seconded that we dispense with the reading of the amendments to Committee Proposal No. 1-13.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and the motion is adopted.

DELEGATE LONGMIRE: By way of explanation of the amendments, you will note in effect what we have done is to adopt the first section of the original proposal, 1-13, and then to write in two new — rather three new sections to

substitute for the other three that we have had in. And we left in Section No. 1 on religious tolerance, even though, as it was called to our attention by Delegate Burke, there is another proposal on that, 1-73.

In discussing this matter with the Assistant Attorney General, we felt that we wanted to continue to emphasize, even though it was in somewhere else, religious freedom in this Constitution, and also for historical purpose to retain the exact wording as we had it in that particular section.

Now this proposal relates to the so-called Compact in the State of North Dakota or all states had to make with the Federal Government when we became a state. However, we considered in this committee that this proposal goes farther than that, it goes back to the Enabling Act which was passed which permitted us to become a state. And we feel that we have to assume in this proposal the obligations of the Enabling Act and other federal statutes that were passed prior to the time or at the time we became a state. And so then what we did in our second section is to recognize our obligations under all of those without expressly writing them in again verbatim.

We made one other change in that. Under the Compact that was amended, which is Section 203, a provision was put in there that the legislature of the State of North Dakota could accept these Indian lands which are discussed in the thing or in the section; however, the Attorney General or the Assistant Attorney General, felt that since that verbiage was not included in the Enabling Act we should use the very wording that the Enabling Act did, that they could be accepted by changes in Congress and by the people of North Dakota. And he said he didn't think in view of the Enabling Act in his opinion that the people could delegate to the legislature their responsibilities under the Enabling Act since it was not provided in there. So that's exactly what we did in this. We changed the wording of the old section which did permit the legislature to accept and put it back with the people.

Now there is a legal decision. There are some decisions on that. An Oklahoma decision which says that this — in spite of this not being in the Enabling Act that way that we could put that provision in a constitution, or rather the state could act on it through its legislature which involved moving the state capitol from the City of Guthrie to the City of Oklahoma City. However, the Attorney General still insisted that in order to be absolutely sure we had to put in an amendment and put it the way we have at the present time. This does involve three sections of the Constitution, 203, 204 and 205.

203 is generally considered as the one dealing — the main part of the Compact, although the whole article is entitled the Compact. We left 204 in again as it was in the previous proposal, although we did add in that section that the legislature could accept changes in the military reservations, because that part of the proposal was not covered in the Enabling Act. And then in 204 again we recognize our obligations by reference to these land grants. And of course the Attorney General took the position that under 204 those obligations had already been accepted, we had accepted these lands, we did not need to put the clause in that the legislature could do anything about it. Because that had already been handled.

So those were the reasons why we rewrote these sections and put them before you in the form of an amendment, because these were the recommendations that were made by the Attorney General's office.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates. I sat on the Committee of Judicial Functions, and we have thoroughly, I think, discussed this provision. I do have some objections to amendments by the committee.

First, in Section 2, reference is made to every provision of the Enabling Act being continued in full force and effect. I don't think this is the intent of our committee to have the complete Enabling Act reenacted by a new Constitution.

Second, reference is made to the Constitution of 1889. Now I don't — in Section 2 in reference to Section 203, and Section 4 in reference to Section 205, I think it's real important that if we're going to revise our Constitution we don't — do not make reference to a Constitution that we are just repealing. And that

if that subject matter is of such importance the same should be stated verbatim in a revised Constitution.

Third, by including every provision in the Enabling Act as continuing in full force and effect, passage yesterday of Committee Proposal 1-18, which is in reference to public institutions and lands granted by the Enabling Act, our passage of that provision would, in essence, be of no merit.

So I would oppose the adoption of the amendments at this time made by our committee.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Delegates. Delegate Engelter has been without a doubt one of the hardest working delegates in this Convention. He spent many, many hours yesterday or recently. We were going to have a minority report on this, a few of us. And I suggested to him that possibly it wouldn't carry. But he deserves a little backing up. And I agree with him on this one point, although it isn't the world's most important.

We are cutting the size of the Constitution down by deleting a lot of old language. But the historical provisions may or may not be important. But Delegate Engelter, I believe, has a good legal point when he says we cannot incorporate in our new Constitution all this matter by reference to a constitution which will no longer be in effect. That is hopefully. So he has a good legal point. But the legal minds, there were five other, six other legal beagles in our committee, and we were overruled. So it's not a big issue, but it might be well to consider that this Constitution can't be too short. And if this had a historical value enough to have it in the document seemed to be the big issue.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: If you will turn to Section 203 in your Constitution, you will note that about nine-tenths of that relates to the obligations that the States of North Dakota and South Dakota assumed under the bonds that were outstanding then for the state capitol, for the State Hospital at Jamestown, for the university and other institutions. Those things have already been completely met by the United States — or by the State of North Dakota. And certainly it would not be proper to write two or three long pages into a new Constitution on something that's already been completed and done a long time ago.

Now I think that Delegate Engelter's position may have had a little merit on the first part of it in spelling out certain things in regard to the Indian lands, that if they were changed and if the Indians accepted their going back to the state and so forth, we did have that in the original proposal. However, in about a whole afternoon's legal research by the Attorney General's office, by another two hours' discussion in our own committee, it was almost, we thought, the unanimous opinion of the committee, until after we'd adopted the proposal we learned that Delegate Engelter and Delegate Rundle were wanting to write more of the old Constitution back into it or the old Compact. And we felt that there is nothing we can do about changing the obligations under the Enabling Act or changing the obligations under the Compact, and that we had to assume them. And that's what we did in few words in amending this and putting it back in these sections.

Now I would suggest to these gentlemen that we go ahead and adopt these amendments today, and if you want to offer amendments when they get on the tenth order certainly you will have that privilege to do so.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President. I prefer what the committee has submitted in the first instance without amendments preferably to what their amendments are. And I think that approach, with a few additional amendments, I think the proper provision would be stated in our Constitution.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman, Fellow Delegates. I don't think that we should let our chairman stand alone and have two members of the committee talk against him. This item, as all of you committees have done with all of your

items, has received much consideration. It was brought up in our committee hearings during the summer and again gone into quite closely. There is a division of opinion in the minds of the attorneys in the committee as to whether or not this is completely proper. But we do feel that it is proper as requested in the amendments, and I want to speak with the chairman of our committee to have these amendments approved. Thank you.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: On this rare occasion I find that I'm in agreement with Delegate Rundle. I think that the committee has done a good job in trying to reduce excess verbiage, and I don't think they've gone quite far enough. So I agree for a different reason.

In the first place, the amendments proposed to include again our support for religious freedom. And we already state that in one other part of the Constitution. And if that other part isn't inclusive enough, let's alter that to make it inclusive instead of having to chew our cabbage twice.

Then we have the matter that Delegate Engelter brought up which says that all the provisions are in full force and effect. Well, supposing that the U. S. Congress, as they have on occasion, alters the requirements under enabling legislation. And here we sit with a constitution that has us tied up to the old 1889 provisions and it will be necessary for us to do some amending in order to get the flexibility in the year 2000 providing this new Constitution is adopted.

In addition, it seems to be excess verbiage to refer to military reservations because the Federal Government now has jurisdiction of those military reservations. And I'd like to see our National Guard go out and try to take them back. So I think that's excess verbiage.

Tomorrow I would like to forewarn the members of the committee that I'm going to propose under the tenth order tomorrow — and I would like to have them prepare a defense, because I am not convinced that there isn't any reason at all for having any reference to the Compact in the new Constitution. The Federal Government has demonstrated very well that it is able to take care of itself. And I think that the states are going to have to be concerned with taking care of themselves. — that I would suggest that we delete all of the language below — below "Compact with the United States" and insert in lieu thereof "the legislative assembly shall provide by law for compliance in the state with the effective provisions of the Enabling Act of Congress approved on February 22, 1889 . . ." et cetera, referring to the specific statute.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. President and Fellow Delegates. It gives me great pleasure to learn that Delegate Omdahl has ascertained case law with reference specifically to military reservations which indicates that they are currently still retained by the United States Government. Our research had determined that there is but a portion of the Fort Lincoln Military Reservation which remains yet under firm military control by the United States Government. Most of the other military reservations having been ceded by some federal grant or federal action to the State of North Dakota. Granted, there is a jurisdictional question and a jurisdictional dispute which we in legal minds and in course of law find a burr under our saddle and in a great number of cases on a daily basis. However, I do not think that this Convention is the place that we can resolve this fact. If the delegates will note, we have with reference to the military reservations, under the amendment, added a section which most of the lawyers and judicial individuals of the State of North Dakota have questioned. It still does not resolve our problem. But down four lines from the bottom, starting with the word "provided, however, that the Legislative Assembly of the state of North Dakota may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by act of Congress . . ." This puts the situation on the legislature to then take action where the government has ceded the reservation properties and jurisdiction to the states to establish some form which the court system can then interpret. So that we have adequate lines of jurisdiction

instead of lawyers and courts now attempting to, on a state level and again on a lower county level, to determine who has case jurisdiction.

Our research, as well as the research of the Attorney General's office, indicates that we cannot delete these sections. And referring specifically to the religious sentiment section, granted we could also delete this and refer to it by name only. But if you would refer again to Article XVI of the Compact, it states: "That the following article shall be irrevocable without consent of the United States and the people of this state." It was therefore determined that without the consent of the United States Government, which we could not determine we had at this time, we could not delete this section but would have to refer to it at least by the referenced position. Believing that the majority of the people in this state are still tolerant of religious sentiment and freedom, we felt that this was one section of the Constitution we could leave as we originally found it in the 1889 Constitution. And it was placed in our proposed draft for those reasons. Thank you.

PRESIDENT WENSTROM: Any further comment? The question before the Convention is on the adoption of the amendments, Committee Report No. 1-13.

Hearing no further comment, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-13 will be on the tenth order of business for tomorrow.

Next for consideration — Fellow Delegates, would you like to recess until eleven o'clock? Seriously. The Chair will declare a recess until eleven o'clock.

(The Session was recessed at 10:58 A.M. until 11:02 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. Will the Convention please come to order?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order of business.

DELEGATE SCHEEL: I move that the Rules be suspended and the Resolution B be read in its entirety, placing it in the Journal, and not be printed —

PRESIDENT WENSTROM: Delegate Scheel, I believe that we have to have the resolution introduced first.

DELEGATE SCHEEL: All right. May I move that the resolution then be introduced, Resolution B, and be read by the Clerk?

PRESIDENT WENSTROM: I believe that we will take — and, Delegate Scheel, if you will hold that resolution in abeyance — we will take Resolution A and then we will take your resolution. Resolution A has been introduced.

CHIEF CLERK GILBREATH: No.

PRESIDENT WENSTROM: Hasn't Resolution A been introduced?

CHIEF CLERK GILBREATH: It's been numbered.

PRESIDENT WENSTROM: It's been numbered. That is from the Committee on Finance and Taxation, I believe.

CHIEF CLERK GILBREATH: "Resolution No. A. Introduced by Committee on Finance and Taxation.

"A resolution recommending that the 43rd Legislative Assembly appropriate moneys for the costs of the special election on the Constitutional Convention's proposed constitution."

PRESIDENT WENSTROM: You've heard the reading of the title to the proposed resolution, Resolution A.

DELEGATE SAUGSTAD: Now what is the proper motion?

PRESIDENT WENSTROM: Just one moment here while we are getting more delegates on the floor.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: While we are waiting for that, I have an announcement that we have a number of Democratic Women Organizations today. And could they be recognized at this time?

PRESIDENT WENSTROM: We are on the twelfth order. When we're off this order then if you would move to go to the eighth order, please.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I would move that Resolution A be introduced.

CHIEF CLERK GILBREATH: Just was.

PRESIDENT WENSTROM: The motion before the Convention is that Resolution A be — do you have it — Delegate Saugstad, as the situation is, we did introduce the resolution and it has been read by title only. Now the motion would be in order.

DELEGATE SAUGSTAD: I would move then that it — now I'm not certain. Where is our committee chairman? Did he want this printed? Did he want it printed in the Journal?

CHIEF CLERK GILBREATH: He isn't here.

DELEGATE SAUGSTAD: Well, I would move, then, that the Rules be suspended and Resolution A be read in its entirety, placed in the Journal and not printed as a proposal on final passage.

PRESIDENT WENSTROM: It has not been assigned to a committee.

DELEGATE SAUGSTAD: Not assigned to a committee.

DELEGATE BAKER: Second the motion.

PRESIDENT WENSTROM: It has been moved and seconded that the Rules be suspended, that Resolution A be read in its entirety, placed in the Journal, not printed as a proposal, not assigned to a committee, but placed on final passage — be read in its entirety and be placed on final passage.

The Clerk will read the entire — the motion before the house is as just read, and the motion has been seconded.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the proposal will be read, or the resolution will be read by the Clerk.

CHIEF CLERK GILBREATH: "Resolution No. A. Introduced by Committee on Finance and Taxation.

"A resolution recommending that the 43rd Legislative Assembly appropriate moneys for the costs of the special election on the Constitutional Convention's proposed constitution.

"WHEREAS, the North Dakota Constitutional Convention is conducting a revision or rewriting of the constitution of the state of North Dakota; and

"WHEREAS, pursuant to the enabling legislation a special election on the acceptance or rejection of the proposed revision or rewriting must be conducted; and

"WHEREAS, the various counties of the state must bear the cost of such special election;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the 43rd Legislative Assembly be urged to appropriate moneys from the state general fund to compensate the counties of the state for the necessary costs incurred as a result of the special election held to approve or disapprove the document drafted by the 1972 Constitutional Convention.

"BE IT FURTHER RESOLVED, that the clerk of the convention forward a copy of this resolution to the Budget Committee of the Legislative Council and the president of the Senate, the speaker of the House and the majority and minority leaders of the Senate and House who served during the 42nd Legislative Assembly."

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the resolution as read by the Clerk.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: This is a result of the proposal introduced by Delegate Dobson. After having heard testimony on that proposal in the Finance and Taxation Committee, it was — the committee decided that this was a matter that would not be — that it could not be appropriately handled by a proposal. And that this body, of course, had no legislative powers, nor did it have the power to appropriate any money for such a purpose. But it was felt that this was certainly worthy of consideration by the 43rd, or the next legislative assembly, and that this body would like to recommend to that body that it consider the matter of finance — that is, reimbursing the counties in North Dakota for the expenses involved in holding a special election for the Constitutional Convention.

PRESIDENT WENSTROM: Any further discussion?

Delegate Dobson.

DELEGATE DOBSON: Mr. President. North Dakota is in an unusual situation currently because the state is facing four state-wide elections within the space of only thirteen and one-half months; starting with the referendum last September, going through the special election on ratification of our work this spring, then to the primary, and on to the general election. The only other time in state history there was so much election activity in such a short period was in 1932-33 when we had four state-wide elections in the space of sixteen months.

The cost of the special election on ratification of a new constitution probably will be high due to the fact that the legal printing may be more than normal. Secretary of State Ben Meier estimated before the Finance and Taxation Committee that the cost of this election may run \$325,000 to \$375,000, and this burden, of course, will fall on the property taxpayers of the state.

So I am hopeful that this resolution will be adopted, that the 43rd legislative assembly will reimburse the counties for the costs of this special election, and that the legislature as well would take a look at the entire question of financing elections and the question, too, of precinct formation consolidation. Thank you.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of passage of the resolution made.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I am in favor of the resolution. But I would like to make one clarification of Delegate Dobson. Not a clarification, but what he stated in regard to the total cost of what Ben Meier had said in regard to the total cost of this election may not be as great, because when the Secretary of State appeared before our committee there wasn't a clear delineation on exactly how we were going to propose this ballot, just what the printing cost might be. Since that time it looks like maybe we can add to the saving. But it still will be costly, and I still agree with the resolution.

PRESIDENT WENSTROM: Any further comment?

Hearing none, the question is on the adoption of Resolution A.

As many as are in favor of the adoption will say "aye;" opposed "no." The "ayes" have it, and the resolution is adopted.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Is it in order at this time to move for the introduction of Resolution B?

PRESIDENT WENSTROM: It is.

DELEGATE SCHEEL: I'll so move. The Clerk has a copy. And if someone would second that motion.

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Moved and seconded at this point that Resolution B be introduced to the Convention.

As many as are in favor of that motion will say "aye;" opposed "no." The "ayes" have it, and the resolution is before the Convention.

CHIEF CLERK GILBREATH: "Resolution No. B. Introduced by Committee on Resolutions.

"A resolution wishing for a speedy recovery of Delegate Darold Benz and return to his duties at the Constitutional Convention."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended and Resolution B be read in its entirety, placed in the Journal, not printed as a proposal, and placed on final passage.

PRESIDENT WENSTROM: You have heard the motion as offered by Delegate Scheel.

DELEGATE DANIELS: Second.

PRESIDENT WENSTROM: The motion was seconded by Delegate Daniels.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I wonder if Delegate Scheel would consent to adding two words in amendment, "and Delegate Vance Hill?" You've got them both taken care of then.

PRESIDENT WENSTROM: Delegate Longmire, I believe that would require another resolution, and that he is not incorporated in this resolution.

DELEGATE LONGMIRE: No, I know that, Mr. President, but we could take the proper action here to get him in there if he didn't object. But if he wants to submit a separate one, that's okay.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Perhaps I didn't hear, or may I amend that to read that a copy be sent to Delegate Benz, of the resolution?

PRESIDENT WENSTROM: I believe we will come to that point when we read the full text of the resolution.

DELEGATE JESTRAB: Thank you, Mr. President.

PRESIDENT WENSTROM: So I think we will wait until that point.

Now the question here is —

DELEGATE LONGMIRE: Mr. President.

DELEGATE LONGMIRE: Forget the amendment. The motion which I think is before us is to suspend the Rules, that it be not referred to a committee, that it not be written in the Journal, printed in the Journal, not as a bill. We can go ahead and pass that. And then if the delegate wants to amend it after the second reading, I suppose he could.

PRESIDENT WENSTROM: You have heard the question before the Convention.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

Now the resolution will be read from the desk.

CHIEF CLERK GILBREATH: "Resolution No. B. Introduced by Committee on Resolutions.

"A resolution wishing for a speedy recovery of Delegate Darold Benz and return to his duties at the Constitutional Convention.

"WHEREAS, Delegate Darold Benz has been absent since Monday, January 10, 1972, and is hospitalized and has undergone surgery; and

"WHEREAS, the delegates of the Constitutional Convention wish his early return to the Convention, that he may assist with its work; and

"WHEREAS, Delegate Benz has earned the high regard of colleagues grateful for his dedication, humor and imagination;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That we direct that our best wishes for his speedy recovery and that a floral arrangement expressive of those wishes be sent forthwith to bring cheer and encouragement to him in his hospital room."

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: In view of the fact that so much of this language is in detail that applies to Delegate Benz, I don't think it would be practical and I think you should offer a separate resolution.

PRESIDENT WENSTROM: The question that's before the Convention is on the adoption of the resolution as read.

As many as are in favor of the adoption of the resolution, will say "aye;" opposed "no." The "ayes" have it, and the resolution is adopted.

We will be on the eighth order of business without objection.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: A number of Democratic — officers of the North Dakota Democratic Women are in session today. A number of them are with us. May I ask at this time that they be recognized?

PRESIDENT WENSTROM: Will the members of the Democratic organization that are here today please rise and receive the recognition of the Convention?

(Applause)

PRESIDENT WENSTROM: We will continue with — Delegate Rude, do you have anything on the eighth order?

DELEGATE RUDE: Yes. Mr. President.

PRESIDENT WENSTROM: Delegate Rude.

DELEGATE RUDE: We have an honored guest in the balcony.

PRESIDENT WENSTROM: Delegate Rude, I don't believe you are pressing the — just one moment, please. Maybe if you will hold the mike just a little bit closer to you. Now you may proceed.

DELEGATE RUDE: Mr. President Wenstrom.

PRESIDENT WENSTROM: Delegate Rude.

DELEGATE RUDE: We have an honored guest, the Mayor of Watford City, Mayor Arne (Bob) Sanford. And I'd like to present him at this time.

(Applause)

PRESIDENT WENSTROM: I think we have one further announcement at the desk.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: Mr. President. I would like to announce, too, that we have the honor of the presence of the Mayor of Jamestown with several other people. I would like to have them stand. Also many of the County Commissioners. I'd like to have them stand and be recognized.

PRESIDENT WENSTROM: Would the delegation from Jamestown please stand and receive recognition by the Convention?

(Applause)

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order of business.

DELEGATE HAUGEN: After a proposal gets on the calendar it's a little embarrassing for a committee to have to request that it be returned to the committee, but I would wish to make that motion in regard to Committee Proposal 1-23.

PRESIDENT WENSTROM: Delegate Haugen moves that Committee Proposal No. 1-23 as amended be returned to the Committee on Finance and Taxation. Now do we have a second?

DELEGATE BURKE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Burke.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: In considering a section that has not yet been introduced, we find that there is some question of clarification needed in the Section 1-23 to conform with the other sections. And we would appreciate that it be returned.

PRESIDENT WENSTROM: The question is on the adoption of the motion that Committee Proposal No. 1-23 be returned to the Committee on Finance and Taxation. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the proposal will go back to the Committee on Finance and Taxation.

DELEGATE DANIELS: Mr. President.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: Are we still on twelfth order?

PRESIDENT WENSTROM: Yes, ma'am.

DELEGATE DANIELS: I would like to place a motion before the floor to place the remarks of Delegate James Billey on the Constitutional Proposal No. 1-18 that were made yesterday, I would like to see this placed in the Journal.

PRESIDENT WENSTROM: Delegate Daniels moves —

DELEGATE LARSEN: Second.

PRESIDENT WENSTROM: — that the remarks by Delegate Billey as presented on the Convention floor yesterday be placed in the Journal. The motion was seconded by Delegate Larsen. Is there any further discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the remarks of the delegate will be printed in the Journal.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Are we on the twelfth order?

PRESIDENT WENSTROM: We are on the twelfth order.

DELEGATE MAXWELL: I would like to move that Committee Proposal 1-81 be returned from the Preamble, Bill of Rights and Suffrage Committee to the floor of the Convention.

PRESIDENT WENSTROM: What was the number?

DELEGATE MAXWELL: 1-81.

PRESIDENT WENSTROM: 1-81. Delegate Maxwell moves that Committee Proposal No. 1-81 — Delegate Proposal? Delegate Proposal, isn't that right? No — Committee Proposal No. 1-81 be returned to the floor of the Convention. Do I have a second?

DELEGATE THOMPSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Thompson.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the proposal is before the Convention.

Now Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. I would now like to move that this Proposal 1-81 be re-referred to the Committee on Legislative Functions.

PRESIDENT WENSTROM: Delegate Maxwell moves that Committee Proposal No. 1-81 be referred to the Committee on Legislative Functions. Now do I have a second?

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate O'Toole.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-81 is referred to the Committee on Legislative Functions.

DELEGATE LARSEN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: Are we still on the twelfth order?

PRESIDENT WENSTROM: We are on the twelfth order of business.

DELEGATE LARSEN: At this time I'd like to have my friendly neighbor from Agate, North Dakota, recognized, Mr. Iver Solberg. I believe he's in the left balcony.

PRESIDENT WENSTROM: Would the gentleman please rise and receive the recognition of the Convention? (Applause)

PRESIDENT WENSTROM: Without objection, we will return to the sixth order of business.

The Committee Proposal No. 1-20 is before the Convention for amendment.

CHIEF CLERK GILBREATH: "Delegate Meidinger has moved that amendments to Committee Proposal 1-20, as recommended by the Committee on Education, Resources and Public Lands, and as printed on page 156 of the Journal, be adopted.

"Amendments are: On page 1, line 1, delete '135' and also delete '139.'

"On page 1, line 2, delete '142,' delete 'and 146,' delete the ',' immediately following '144' and insert the word 'and' before '145.'

"On page 1, line 7, delete '135.'

"On page 1, line 8, delete '139,' delete '142,' delete 'and 146,' delete the ',' immediately following '144,' insert the word 'and' before '145.'

"On page 1, delete lines 19, 20 and 21, and renumber the lines accordingly."

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Committee Proposal 1-20 provides for the repeal of a number of sections that pertain to corporations. This committee proposal was before the Convention prior to this time and was returned to the committee. At that time we decided to take out the sections upon which questions had been raised. And that is the sole and only purpose of the amendment. Those sections that have been deleted will be submitted to the Convention as separate committee proposals.

PRESIDENT WENSTROM: Any further comment? Further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-20.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-20 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: "Delegate Hoffner has moved that the amendments to Committee Proposal 1-39, as recommended by the Committee on Legislative Functions and as printed on page 156 of the Journal, be adopted."

The amendments are: "On line 12 before the word 'salary' delete the words 'an annual' and insert the word 'a.'

"On line 12 before the word 'expense' delete the word 'such' and also on line 12 delete the word 'allowances,' and insert the word 'allowance' and delete the word 'maybe.'"

PRESIDENT WENSTROM: Is there any discussion? Is there any discussion?

DELEGATE HOFFNER: Mr. President. I believe I assigned this bill to Delegate Hildebrand.

DELEGATE HILDEBRAND: Mr. President.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: It is felt that the amendment here was simply a clarification of grammar, and that it would not be to change the subject matter of the proposal as such. And, therefore, we move that the amendment be adopted.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment to Committee Proposal No. 1-39.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Committee Proposal No. 1-39 will be on the calendar, tenth order of business, for tomorrow.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President. This is just to alert the committee that handled this bill. Maybe there's no justification from our suggestion in this regard, but in the Proposal 1-39 you are stating that the salary and expense allowances of one legislative assembly are not to come into effect until the following legislative assembly. Now I suppose in all probability maybe we will never receive a decrease in salaries in this respect, but at the same time it's very possible when you are talking of the Constitution. So what I am worried about is that word "re-vision" should be changed to "increase." And if the committee has discussed this prior and my justification is wrong, why then leave it go. But, if not, I just alert you to this thing so tomorrow on the tenth order that word could be changed. In other words, what I'm saying is it would be very embarrassing for legislative members of one session to decrease the salaries of the following session without doing it at their own session. It would be an embarrassing situation.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. As a practical matter, it's very difficult to see how the legislature could reduce it. We only get five dollars a day compensation. We reduced it any more, we'd be paying the state.

PRESIDENT WENSTROM: We will be on Committee Proposal 1-43.

CHIEF CLERK GILBREATH: "Delegate Hoffner has moved that the amendments to Committee Proposal 1-43, as recommended by the Committee on Legislative Functions and as printed on page 156 of the Journal, be adopted."

Amendments are on line 13 before the word "members" delete "forty," insert in lieu thereof "forty-nine."

On line 14 before the word "members" delete the word "eighty" and insert in lieu thereof "ninety-eight."

And returns the same without recommendation.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I have an unusual request to make of this Convention. 1-43, as you know, is the proposal for the bicameral; 1-42 has been introduced into this chamber this morning, unicameral. And the committee is unanimous in this request. This is one of those we weren't divided on. That to avoid debate twice on this matter we are asking that tomorrow if it should happen that the proposals are going on the tenth order, that debate then be on both the bicameral and unicameral, that the committee reports be printed, and after that the debate be on both of them. Because they are sort of related. And that today we try to keep the debate on just the amendments. This is not very easy, because you can get into debate of the merits and demerits of both systems.

I have assigned the amendments to Delegate Butler.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: The delegates being very gracious, recommend to you, and it does change, the number of members of the Senate and House in this particular proposal to correspond with the existing numbers as the maximum number that can be delegated or put into the House or Senate. And that is the total content of the amendment and the debate on it. The proposal itself will be presented tomorrow.

PRESIDENT WENSTROM: The question is on the adoption of the amendments of Committee Proposal No. 1-43. Is there any further discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: May I direct a question to Delegate Butler, please?

Delegate Butler, what will the provision on unicameral call for as far as House membership?

DELEGATE BUTLER: As far as the unicameral is concerned, I think it's in there as a minimum of 98 or 99, if I'm not mistaken.

DELEGATE AUBOL: So that has not been changed or it is not intended to be changed?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: The Proposal 1-42, as it is, hasn't been amended. And the only amendment in 1-43 are the two numbers that you've just heard. And it's a minimum of 99 members for the unicameral.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hendrickson.

DELEGATE HENDRICKSON: I think there has been some request in citizens throughout the state to cut the size of our legislature. This is why our original amendment was 40 and 80. I cannot foresee that the legislature would ever do this by themselves. If we give them a maximum number, such as they now have, I think we might as well face the fact we'll always have that number.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen. Coming from a district which has five — four and a half counties in it, touches both Montana and South Dakota, some 160 miles, I believe, from one corner to the other — I would very, very much favor this amendment. Because we have that large a district — and there is one other district about the same size — it's impossible for anyone to get around it very often. The people will be represented very slightly in some cases. And I would hope this amendment would carry.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I would speak in favor of the amendment also. I think there are a lot of people in the State of North Dakota who are quite satisfied with the present numbers in our present House and Senate. I would hate to see us paint the people of North Dakota into a corner where they had no choice. And I think this gives them a choice that they would like to see.

PRESIDENT WENSTROM: The question is on the adoption of the amendment, Committee Proposal No. 1-43.

As many as are in favor of the adoption of the amendment will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-43 will be on the tenth order of business tomorrow.

We will move to the tenth order of business before the Convention — Committee Proposal 1-19.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-19, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 210 of the constitution of the state of North Dakota be repealed; and that article IX to the constitution of the state of North Dakota be created; both of which pertain to appropriation of waters.

"SECTION 1. REPEAL.) Section 210 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Article IX to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE IX

"WATERS

"Section 1. All surface and subsurface water shall forever remain the property of the people and subject to appropriation for beneficial uses as provided by law."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE SULLIVAN: Mr. President.

PRESIDENT WENSTROM: Delegate Sullivan.

DELEGATE SULLIVAN: I am not going to — Fellow Delegates — I am not going to lecture you this morning about the importance of water to the State of

North Dakota. I'm certain that everybody in this assembly realizes it's our most important, our most valuable single resource in the state.

This message could be boiled down to 43 words: "All we are doing is firming up the right of the legislature to manage the waters of the state for the public good."

Our committee claims no private authorship. These are the exact words the North Dakota Water Users Association gave us. The committee from the Water Users Association that drafted the same was made up of Richard Crockett, Alan Grindberg, Cliff Yochim, Herb Meschke, and Paul Sand. I don't know anybody in the state that's more qualified than this group to handle this water situation. In presenting same, they said: "That the present provision in the Constitution unduly restricts the purposes for which public waters may be used."

Now I have a request. In the conservation of time, let us not talk about access to public water. One of my lawyer friends tells me it is going to take one hundred years to clean this matter up. We are talking about water for the public good. We are leaving the matter of access to the legislature, where it properly belongs. I urge you to support the committee action and vote "yes" to include this important section in the Constitution.

PRESIDENT WENSTROM: Any further discussion?

The question — Delegate Saugstad.

DELEGATE SAUGSTAD: For the benefit of the members of this assembly, I should like to point out that at this point you are deciding whether or not the owner of the surface — that is the owner of surface — has any control over the subsurface waters. The legislature, of course, has already, back in 19____ I believe '61, enacted statutory law that defines the ownership that gives the state the ownership of the subsurface waters. And so maybe the use of that water may be prescribed by the State Water Commission.

I believe that you are aware of the fact that the landowner owns the minerals to the land, he owns the gas and oil. But we have in this state — and in many other states, I may add, and particularly in the western part of the United States — we have adopted or the theory has been adopted that the state has control and ownership of all the waters, both the subsurface and surface waters. Our old Constitution, of course, definitely defined the surface waters, control of the surface waters, belong to the state by virtue of the fact that nothing was — I do not recall the precise wording — but the inference was that the owners of the land owned and controlled the water beneath the surface.

At times this concept, of course, does under some circumstances, and may under some circumstances, work a hardship on the owner of the surface. And under these — the circumstances under which this may occur are as follows: We may have a landowner who owns a considerable amount of land under which is an aquifer. The first people or the first party that applies for a permit from that aquifer may have the request granted. It may prove subsequently that there is not sufficient water under that aquifer say to irrigate all of the lands above that aquifer. So you may find under some circumstances that a man who has land over an aquifer cannot get a permit to irrigate his land and others are irrigating out of that aquifer.

We have an interesting situation developing, and will develop near Minot, where this water commission has granted the City of Minot the right to take something like six million gallons per day from an aquifer just outside the City of Minot. I happen to be one of the landowners over that aquifer. I'm to — I may find that I will lose — or lose the benefit of some of the waters that I have used in the past. I am told by my legal-trained friends or attorneys that of course I would have action — I could take action in the court for damages. In other words, it is granted that domestic use has prior use. And that the domestic user for household use and for agricultural purposes, for watering of cattle, has the prior use. And that wherein a permit is granted so that that use had either been damaged or destroyed or lost, that the owner of the loss has recourse in the courts for damages.

Thank you.

PRESIDENT WENSTROM: Any further comment?

Delegate Pearce.

DELEGATE PEARCE: Mr. President. I only want to point out that there are complications in this that may not be at first fully appreciated. The section applies to surface and subsurface water. Now subsurface is from here to the middle of the earth, I presume, since we are getting into somebody else's domain after we get past the center of the earth.

There is an enormous volume of water underlying the State of North Dakota that is not pressure or potable water, it's salt water. We didn't have much to do with salt water until we began drilling oil wells. Most, if not every well in the State of North Dakota produces water. That water is salt water. We have one salt mine, if you want to call it that, that mined hydraulically.

A number of years ago when water first began to be produced in connection with the production of oil, I contacted the State Water Commission and various and sundry other commissions in the state that had to do with water. Since I was not a member of the legislature, I could do that. The question was did we have to have a permit for an oil company to do anything with the water, the millions of barrels, literally, of water that is produced. And the Water Commission said, "Well, how deep is it?" Well, of course, it was up to a mile or better. "No, we don't want to have anything to do with that." There has never been any court decision involved. However, if the Constitution reads as it does, then I question whether or not anyone can produce a barrel of salt water without technically appropriating property that belongs to the people, public property.

The State Industrial Commission administers the State Oil and Gas Conservation Act. And they don't purport to give an oil company the right to take water out of the ground; they do regulate what is done with this nonpotable or salt water after it is produced. Up until about two years ago a great deal of it was put in surface pits and allowed to evaporate. Problems arose from that. For the last about two years those pits have had to be lined with an impermeable membrane so that water still evaporates and leaves what salt there is on top of the membrane without getting into the ground. More and more there are salt water disposal systems where the waters produced with the oil, separated in the separators, are pumped back down into the ground.

And earlier this week there was a hearing, one of many, on salt water disposal plants. And in accordance with the state geologist's approval it goes into certain formations, primarily the Dakota sandstone formations. All of these are thousands of feet below ground.

I wonder — I have no axe to grind here, but I am just wondering if there might not be some restrictions placed on this that it relates to fresh or potable water and that we are not talking about the enormous and unknown quantity of water which is salt, salt saturated to one or more or less degree, under the ground if we are not going to get an enormous bureaucracy involved in dealing with water that is not fit for public use.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: At the time of our early Constitution we were under the theory — and I'm not going into that — for a long time we were under the riparian and appropriation mixup. And until 1961 until the law got clarified on prior appropriation it was set up so that — it was rather a mess, so to speak.

Now I can see at a point in the future that the state might have to own this salt water, because there certainly is even now talk of desalinization on the Coast. And it seems to me that possibly the people should own this salt water so that if we ever come to the point where we have to desalinate our water, that we have authority over it.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen. A very bitter fight developed in the legislature a few years ago. And it simply concerned a man who owned the land, hadn't been sharp enough, quick enough, to get a prior permit, others who were irrigating with water from under his land, and he couldn't get it. He was most unhappy. And this could happen in many cases. And I am not arguing with salt water, I do not like the entire proposition. I believe that the landowner should at least have something to say about it. And this way anyone

from a distance who would get a prior application in, get it approved, would have the water. And the man who owned the land, maybe he hadn't had as sharp an attorney as the other, or maybe no attorney, would have no use of the water under his land. You might imagine if you had a farm that everyone could hunt on, your own land, is about the same thing.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. I was just wondering now if we adopt this proposal here that if someone that is aggrieved would have redress under Section 1 of Article XIV of the amendments of the Federal Constitution which states: "Nor shall any state deprive any person of life, liberty or property without due process of law."

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President, I would just like to make a few statements in this regard. I am not going to get into all the legal aspects of the statutes governing the appropriation doctrine.

I only have this to say: Most of the states when they originally adopted the constitution to the states, the earlier states, the ones in the East, adopted the riparian doctrine. Then we got into this great era of irrigation, both above the surface and below the surface, primarily affecting all these states west of the Mississippi River. It wasn't long that those states that had the strict riparian doctrine integrated in their constitution and statutes found out they were in trouble. And this is why this had been a cloud over our constitution in this regard is because of the riparian doctrine. And when we receive the era we are coming into with regard to the irrigation, we thought we better get on the appropriation because this is, in effect, what all the states west of the Mississippi have adopted except California. California went into irrigation early. They had the riparian doctrine in the books. They got into trouble. So they have a combination thereof. And, in essence, it really is the appropriation doctrine because they couldn't back up after they got in so far. But outside of California, every state west of the Mississippi has adopted the appropriation doctrine.

Now, as Delegate Rundle has said, that in certain circumstances the riparian owner, landowner, may have been affected. But I would also state this: That the appropriation doctrine does respect and protect the original landowner to the extent in this regard; the original landowner may spend a lot of money for his irrigation setup. Along will come a neighboring landowner and start withdrawing from the same aquifer and rob the original landowner of his so-called riparian right. In this case the appropriation doctrine really protects him. So there is more advantages to the appropriation doctrine than to the riparian doctrine.

I am not here to say that we cannot make improvements in our statutes that would govern and help in the situation that Mr. Saugstad has referred to also. So I would urge this Convention to adopt this section in our Constitution simply because it's been explored thoroughly by all the irrigation organizations, the Bureau of Reclamation, the Water Users Association, Garrison Diversion District. They have given it a tremendous amount of thought and with all the legal minds available to put this in proper order.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I am going to vote "aye" on Proposal 1-19 because I do feel that it does the most good for the greatest number of people. But some individuals can suffer under this document.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: Mr. President. The wording of this section to me is quite bothersome. It doesn't say anything about domestic use of water. And I would guess that it's going to make a lot of farmers quite uneasy when they come to voting for this document. That they might have some future difficulty with their domestic usages.

Also it specifies that surface water shall belong to the state. My home is built on a creek. Does this mean that I have to open my swimming hole to the public?

What about the hunters? Are they going to — can they use this as a reason to hunt on posted land where a pothole or a slough extends across a section line and there is public access? It seems to me that the wording of this could be cleared up and made a lot more palatable to the private property owner.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I can answer that, although I don't want to be put in the position of speaking twice on the same subject.

Delegate McElroy, the old section of the Constitution said: "All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes." Okay. We are not changing the law in that respect. Court decisions have not changed that.

Now in regard to your worrying about your situation, our statutes provide priority of use. And number one is domestic and livestock. And then it goes on to irrigation, industry and lastly fish and wildlife. But nobody has a right to that water unless they put it to beneficial use, and there's a time period set up in the statutes that he has got to do this, otherwise he's got to turn it back to the state. As long as you are putting it to beneficial use, you're sitting pretty.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President. I wonder if Delegate Pearce would yield to a question?

DELEGATE PEARCE: Yes.

DELEGATE ROSENDAHL: In regards to this new language do you feel that there would be any repercussions in regard to salt water? As one county from a district that has quite a lot of oil production, I'm quite concerned about this.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: In answer to the question, I haven't consulted with very many oil people about this. No one has approached me about it. I made the statement I did solely because of my long association with the oil industry in North Dakota.

I neglected to mention one other large use of water that might be involved, and that is the increasing use of water flood operations for the unit operation of oil fields, which I'm sure most delegates know involves backing water down into the same formation in order to maintain or perhaps even increase the pressure so as to get more oil out of the oil wells that are declining in pressure.

I foresee that if this says that it all belongs to the state, I don't see how any oil company can appropriate it then without going through the requirements of whatever the statutes might be. As I say, they told me fifteen years ago that they were not concerned with this subsurface salt water. But if this is in the Constitution I think they have to be concerned with it. And what it would do, I really don't know. It would mean a great — it could mean a very great many obligations. And it might have quite a little to do with development of the oil industry, particularly the large quantity required for large flooding and unit operations.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: As I recall, this matter of discussion came up back in 1961 when we were amending our appropriation doctrine. And the wording here is no different than it is in the other states west of the Mississippi where they have oil and the salt water problem.

If this situation ever arises it can be handled by statute. If the salt water ever proves valuable to get the salt out of it, then it has to be put to beneficial use. And the landowner is protected in this regard. The water — your good water that remains reverts back to the state and then can be used for other circumstances. But never can they take away the landowner's right to have first use as far as human and livestock consumption is concerned regardless of whether it's an individual landowner or regardless of whether it's even a municipality.

And I think we all have to agree we should have a power above an oil industry or any other industry. Their priority comes number two.

PRESIDENT WENSTROM: Delegate Decker, did you wish the floor? Is there any further discussion?

The question is on the first passage of Committee Proposal No. 1-19.

Hearing no further discussion, the Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 83 "ayes," 12 "nays," three delegates absent and not voting. Committee Proposal 1-19 is passed.

We will go on the fifth order of business without objection. We are on the fifth order of business.

CHIEF CLERK GILBREATH: Mr President: Your Committee on Finance and Taxation to whom was referred Committee Proposal 1-24 has had the same under consideration and recommends that the same do pass.

Delegate Haugen, Chairman.

Delegate Haugen moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal 1-24, that it do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-24 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-40 has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report do pass.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal No. 1-40, that the proposal be amended. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-40 will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-42 has had the same under consideration and recommends that the same be returned without recommendation.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-42, that it be accepted without recommendation.

CHIEF CLERK GILBREATH: Mr. President:

PRESIDENT WENSTROM: Any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-63 has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-63, that it do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-63 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal 1-67 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-67, that it be given a do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted, and this will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal 1-78 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-78, that it do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-78 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-84 has had the same under consideration, and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal 1-84, that it do pass. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-84 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom has been referred Delegate Proposal 2-26 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Delegate Proposal No. 2-26, that it do pass. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and this proposal will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Delegate Proposal No. 2-69 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Delegate Proposal No. 2-69, that it be indefinitely postponed. Is there any discussion?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: 2-69 is a proposal that I put in. It is also affected by 1- — Committee Proposal 1-82. The feeling of the majority of the committee

is contained on page 106 of the Constitutional Convention Interim Report, and it affects Section 127 of the Constitution. I have a great deal of doubt about Committee Proposal 1-82, and I'm asking the indulgence of the Convention in returning this proposal to my committee. I hope that I do not generate or excite an impassioned plea by Dr. O'Toole relative to this. And I hope I'm not setting a precedent for all of the rest of the delegates who have proposals that are being recognized for indefinite postponement. I therefore ask the Convention to vote against this.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption —

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President. I'd like to hear the reason of the committee in regard to their action before I would vote the same as requested by our delegate.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President. The action of the committee in regard to this was that we felt that it was almost impossible to define incompetency in relation to voting. And another reason was that we felt that the technicality of restoring voting rights to a convicted felon was so cumbersome that it would prevent this particular individual from exercising the right of voting.

Now there is another reason, too, is that in many cases the felons, after they are released from confinement, are not aware of the problem of regaining their rights of voting. And so what we are doing in the proposal, the committee proposal, is automatically restoring voting rights to the individual upon his completion of his sentence.

PRESIDENT WENSTROM: Any further discussion?

Delegate Devine.

DELEGATE DEVINE: Mr. President. If Delegate Lamb will yield to a question. Do you address yourself as to the incompetent or those who are insane even if they have been found so by the court in your restrictions?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: No, we do not. And the reason is that there is a different definition of different types of incompetency. There may be, as I understand — as I understand it, there may be incompetency on financial matters and there may be other types of incompetency, and so we didn't know exactly how to define this thing.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson. Delegate Lamb, do you wish further comment?

DELEGATE LAMB: One of the ways that this could be corrected is that if we would define incompetency in voting. That is a possibility.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President. I know that our committee has adopted a procedure which I had understood would be discussed at the hearing, the other day that we all were going to do, and that is if there is an outstanding delegate proposal which speaks to but does not agree with a committee proposal and presents a subsequent alternative to the Convention, we had very good evidence of that yesterday with Delegate Omdahl's proposal which is still alive despite our action yesterday, that we would not be recommending for indefinite postponement prior to the Convention discussion of the committee proposal. Thus, since I like that procedure which is, I think, polite to all of us, I am going to vote against indefinite postponement at this time.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I would move that Delegate Proposal 2-69 be laid — be held over until the committee proposal dealing with the same subject be acted on.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Kelsch that Committee Proposal No. 2-69 be laid over — now what was your motion?

DELEGATE KELSCH: Laid over until this Convention has first considered the committee proposal dealing with the same subject.

PRESIDENT WENSTROM: — until such time as the Convention has considered the committee proposal dealing with the same subject. Now the motion was seconded by Delegate Lander.

Now is there any discussion on that question?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the motion will be — or the Delegate Proposal No. 2-69 will be held over until that time.

Without objection, we will go on the ninth order of business.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-91, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 74, 82 and 83 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to elections and terms, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-91 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-92, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 19 of the present constitution of the state of North Dakota, which pertains to treason against the state, be retained."

PRESIDENT WENSTROM: Committee Proposal No. 1-92 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-93, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 146 of the constitution of the state of North Dakota, which pertains to the controlling of prices, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-93 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-94, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 142 of the constitution of the state of North Dakota, which pertains to the regulation of common carrier corporations, be repealed."

PRESIDENT WENSTROM: The Committee Proposal No. 1-94 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-95, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 135 of the constitution of the state of North Dakota, which pertains to cumulative voting in corporations, be repealed."

PRESIDENT WENSTROM: Committee Proposal No. 1-95 is referred to the Committee on Education, Resources and Public Lands.

Delegate Saugstad moves that Committee Proposal No. 1-19 be referred to the Committee on Style and Drafting. Do we have a second?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: It has been seconded by Delegate Knudson.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Committee Proposal 1-19 is referred to the Committee on Style and Drafting.

We will be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Preamble, Bill of Rights and Suffrage Committee will hear Delegate Proposal 2-23 creating a new section to the constitution pertaining to a recognition of veterans' contributions to the state, two P.M., Lewis and Clark Room, Tuesday, January 18th.

Executive Functions Committee will meet Thursday, January 13th, one and one-half hours after recess of Plenary Session.

Committee on Education, Resources and Public Lands will meet Tuesday, January 18th, at 1:30 P.M. in G-1 to hear Delegate Proposal 2-65 dealing with education.

The forum on dedicated funds scheduled for January 18th has now been changed to be at 7:30 P.M., January 19th, in the auditorium at the Highway Building.

You have on your desks a new form, W-4, together with a certificate of residence, from the State Tax Commissioner. Would you please fill out and sign both of these forms and leave them on your desk to be picked up. These must be in by Monday, January 17th, to meet the payroll.

PRESIDENT WENSTROM: Any further announcements?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I am a member of a subcommittee of a subcommittee. And I would like Mr. Larsen and Mr. Peters to meet me in the office right after we close.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. On the forms which were referred to, W-4, and the other form of the Tax Commissioner, what name do we use as the employer, State of North Dakota or the Constitutional Convention?

CHIEF CLERK GILBREATH: State of North Dakota.

PRESIDENT WENSTROM: State of North Dakota, they tell me, is what has been used.

Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President. I just see that we have our State Senator from the Sixth District in the audience. And I would like him to be recognized. Senator Walter Erdman from Bottineau. (Applause)

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: On behalf of the Public Information Committee, I desire to announce that the North Dakota Chapter of Sigma Delta Chi, a professional journalistic society, will on January 21 host a luncheon for Constitutional Convention delegates. It will be held at noon in the Embassy Room of the Town House Motel. All editors of the state have been contacted and urged to invite their home district delegates to this luncheon. That will be Friday, January 21.

PRESIDENT WENSTROM: Any further announcements?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. Are we going to be adjourning for today? Are we going to go back in session this afternoon?

PRESIDENT WENSTROM: I presume we will be adjourning. I believe there are committee meetings scheduled.

DELEGATE HOFFNER: The Rules Committee is meeting tomorrow, not today. Is that right? That meeting was called for tomorrow, is that right?

PRESIDENT WENSTROM: As I recall, it was called for tomorrow.

DELEGATE HOFFNER: Legislative Functions Committee will meet at 1:30.

PRESIDENT WENSTROM: Any further announcements?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Judicial Committee meeting at 1:30.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Finance and Tax Committee meeting at 1:30 today.

PRESIDENT WENSTROM: Any further announcements?

The desk is clear.

DELEGATE SAUGSTAD: May we be momentarily on twelve?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order of business.

DELEGATE SAUGSTAD: I move that the absent members be excused.

PRESIDENT WENSTROM: It's been moved that the absent delegates be excused. Do we have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Everybody in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the absent delegates are excused.

I believe that we have had a policy here of reading the calendar in order that the delegates will know what is being placed on the calendar for tomorrow.

CHIEF CLERK GILBREATH: On the sixth order I have Delegate or Committee Proposal 1-40.

On the tenth order I have Committee Proposals 1-13, 1-20, 1-39, 1-43, 1-24, 1-42, 1-63, 1-67, 1-78, 1-84, and Delegate Proposal 2-26. Plus all our tenth order from 25 down through — we passed Committee Proposal 1-19, and we re-referred Committee Proposal 1-23. So the rest of them under tenth order will also be on our calendar tomorrow.

PRESIDENT WENSTROM: Delegate Lander, did you have a question?

DELEGATE LANDER: Mr. President. I think that Fellow Delegate Saugstad is going to move to adjourn until tomorrow morning, and I don't think we should. If we have to have hearings this afternoon which will be called because other people from out of the state are here, fine. Then we should come back and meet after that. But let's not act as if we have all the time in the world to do all this business.

PRESIDENT WENSTROM: What are the wishes of the Convention?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I agree with Delegate Lander. I think if we could come back in say at three o'clock. I don't know what time these chairmen set their meetings, but this calendar is going to get awful long. I'd rather spend my time here listening to what other committees have done with proposals that I'm not familiar with than to go back downstairs in my committee and rehash things that we have rehashed so many times I'm sick and tired hearing about them.

(Applause)

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Might I only comment that if you have committees scheduled for this afternoon and you have people that are here to be heard, why that is one of the matters that is real important also. I'm in full accord with working on the calendar whenever we have an opportunity. But I think that we do owe it to the public that when we schedule hearings that we should be there.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. The Legislative Functions Committee has scheduled no hearings, and I just called the committee in session because we weren't being in meeting.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. I don't think any of us on our committee can say that what we are going to do is going to meet with the approval of

the Convention. But we do have a hearing scheduled for this afternoon, and we have decisions to make on wording of language still to be introduced. And I feel that we would be meeting until five o'clock on our committee business unless the committee — unless the Convention orders us to do otherwise.

DELEGATE SAUGSTAD: Mr. Chairman — I mean Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: In discussing this this morning, this was discussed by the Calendar Committee. And it appears that there is not a great deal or not very many proposals to be heard, that is where public hearings have been posted. One or two committees have additional proposals to be heard on which they have posted hearings that run into the forepart of next week. But the committee work is rapidly grinding to not a halt, but where it will be far less burdensome, which will release more time for us to be in general session. And even though there are quite a number of items on the tenth order, I don't think the situation is alarming. And in view of the fact that some of the committees this afternoon have a rather full schedule, I personally think it's kind of questionable that we could call this group back together again to consider work by the complete delegation. But that's up to the body.

Unless somebody wants to move now that we reconvene or recess to a time certain this afternoon, I am going to make the motion, I'm going to offer the motion, that we stand adjourned until tomorrow morning. But I will wait if anybody wants to make that motion. If not, I now move that we adjourn until nine A.M., January 14th.

PRESIDENT WENSTROM: It's been moved. Do we have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: It's been seconded that we do now adjourn until nine A.M. on January 14th.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and we will be adjourned until nine tomorrow morning.

(The Plenary Session adjourned at 12:30 P.M., Thursday, January 13, 1972, until 9:00 A.M., Friday, January 14, 1972.)

VOLUME X
(January 14, 1972)

MORNING SESSION

(The tenth day of the Plenary Session commenced at 9:30 A.M., January 14, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order. May we have order in the chambers?

Our Chaplain for this morning is James C. Rogers with the Zion Lutheran Church.

REV. JAMES C. ROGERS: Heavenly Father, You who have created all things and have so abundantly provided for our needs, we come before You this morning with praise and thanksgiving for all the many blessings which You have showered upon our nation, and especially upon our state of North Dakota over the past years. We thank You for stable government, for prosperity, for farmlands, for industry. Help us to realize that all these things are gifts from Your mercy.

And now as we move forward, as we look toward the future, as we prepare for the years ahead, we ask for Your help and guidance. Give us all wisdom and understanding as we write this constitution which, if accepted by the voters of this state, will govern not only us, but also our children and our children's children. Give us clear minds so that we may keep what is good, so that we may write what will be beneficial to all. Help us to put the interests of our state and its people above our own personal interests. Above all, help us to speak and to act so that all things will be done to Your glory and to the glory of Your Son, our Savior, Jesus Christ, in whose name we ask all this. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — taking the roll call. The Clerk will open the key, you will record your presence.

Has every delegate recorded his presence? The key will be closed.

DELEGATE HILDEBRAND: Mr. President.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: One of my colleagues informs me that my name was not lit.

PRESIDENT WENSTROM: Fellow Delegates, let's reopen the key so that — we'll run the roll call over.

Does the key work now, Delegate Hildebrand?

DELEGATE HILDEBRAND: Yes, it works now. It's snapped back now, too, but when I hold it it does.

CHIEF CLERK GILBREATH: When you hold it? What's the desk number, please?

DELEGATE HILDEBRAND: 49.

PRESIDENT WENSTROM: Here's more delegates. Has every delegate recorded his presence? The key will be closed. Peterson, Daniels.

CHIEF CLERK GILBREATH: Benz, Dawson, Gipp, Kelsch, Tudor, Hill.

PRESIDENT WENSTROM: Roll call discloses 92 present, six absent. Quorum is declared.

We'll be on the fourth order of business — Revision and Correction of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 12th day of January, 1972, and recommends that the same be corrected as follows:

On page 159, lines 44 and 45, delete the words "first passage of the proposal, as amended" and insert in lieu thereof the words "adoption of the amendment".

When so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report of the Committee on Revision and Correction of the Journal.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted.

We'll be on the sixth order of business — Amendments.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. Delegate Kelsch reporting present.

PRESIDENT WENSTROM: Delegate Kelsch reporting present.

DELEGATE GIPP. Mr. President. Delegate Gipp reporting.

PRESIDENT WENSTROM: Delegate Gipp reporting.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Delegate Hill present.

DELEGATE DANIELS: Mr. President.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: Delegate Daniels reporting present.

PRESIDENT WENSTROM: Record Delegate Daniels as here.

We will be on the sixth order of business — Amendments.

CHIEF CLERK GILBREATH: Delegate Hoffner has moved that the amendments to Proposal 1-40 as recommended by the Committee on Legislative Functions and as printed on page 174 of the Journal be adopted.

The amendments are: On line 2 delete the word "legislative."

On line 3 after the word "auditor" insert the word "general."

Delete all of lines 8, 9 and 10 and insert in lieu thereof the following:

"Section 28. The legislative assembly shall provide for the appointment of an auditor general. He shall audit the receipt, expenditure and use of public funds as provided by law and shall be responsible to the legislative assembly in the performance of those duties."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Is there any comment?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The amendment to the original language really is more of a form or style amendment than it is a merit. So I think we probably could have the discussion, unless anybody has any question, tomorrow on tenth order on this proposal. But this is the one that calls for the legislative auditor.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments, Committee Proposal 1-40.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the amendments are adopted and Committee Proposal No. 1-40 will be on the tenth order of business on Monday.

We will be on the ninth order of business.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-96, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 185 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to public business."

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report —

CHIEF CLERK GILBREATH: Introduction.

PRESIDENT WENSTROM: — on the introduction of Proposal No. 1-96. It is referred to the Committee on Finance and Taxation.

We will be on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-23 has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegate Haugen, Chairman.

Delegate Haugen moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-23, that the proposal be amended.

Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. This will be on the sixth order of business on Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-95 has had the same under consideration and recommends that the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-95, that the proposal be given a do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-95 will be on the tenth order of business on Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-94, has had the same under consideration and recommends the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-94, that it be given a do pass. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-94 will be on the tenth order of business on Monday.

We will be on the tenth order of business.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I missed roll call, and I would like to announce that I'm present.

PRESIDENT WENSTROM: Thank you, Delegate Dawson. Delegate Dawson is present.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-13, introduced by Committee on Judicial Functions and Political Subdivisions:

"Be it resolved by the North Dakota Constitutional Convention that sections 203, 204, and 205 of the constitution of the state of North Dakota be repealed; and that Article XIII of the constitution of the state of North Dakota be created; all of which pertain to the compact with the United States.

"SECTION 1. REPEAL.) Sections 203, 204, and 205 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Article XIII to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XIII

"COMPACT WITH THE UNITED STATES

"Section 1. Religious Sentiment.

"Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

"Section 2. Compact.

"All other provisions of the Enabling Act of Congress approved on February 22, 1889, 25 United States Statutes at Large 676, Chapter 180, and Section 203 of Article XVI of the North Dakota constitution of 1889, as amended is hereby continued in full force and effect the same as if they were fully herein recited and shall continue to be irrevocable without the consent of the United States and the people of this state.

"Section 3. Military Reservations.

"Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the President of the United States; provided, legal process, civil and criminal, of this state, shall extend over such reservation in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations; provided, however, that the Legislative Assembly of the state of North Dakota may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by Act of Congress.

"Section 4. Land Grants.

"Section 205 of Article XVI of the North Dakota constitution of 1889 relating to land grants is hereby continued in full force and effect as if the same were fully herein recited."

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-13. Is there any discussion?

Delegate Omdahl.

DELEGATE OMDAHL: Mr. Chairman. I have an amendment at the desk that I would like to move at this time.

CHIEF CLERK GILBREATH: "On page 1, of the engrossed bill, delete lines 12 through 25.

"On page 2, of the engrossed bill, delete lines 1 through 30, insert in lieu thereof the following — on page 2 of the engrossed bill, delete lines 1 through 14, and insert in lieu thereof the following:

"The Legislative Assembly shall provide by law for compliance of the state with the effective provisions of the organic law provided in an Act of March 2, 1861, Chapter 86, 12 United States Statutes at Large 239, and the Enabling Act of Congress approved on February 22, 1889, 25 United States Statutes at Large 676, Chapter 180."

PRESIDENT WENSTROM: May I have a second to the motion for the amendment?

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: Delegate Engelter seconds.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: The effect of this motion is to remove all references to the Compact — well, most of the references to the Compact from the constitution and will give the legislative assembly the administrative responsibility for meeting the state's obligations in the Compact with the Federal Government.

I think that inclusion of any more language than this is merely being done at the convenience of the Federal Government. And I don't think that it is necessary that we write a constitution just for the convenience of the Federal Government.

I would not have reoffered this motion this morning except I had the encouragement of several attorneys who share this opinion with me, and they feel that this would be a very efficient and good way to handle this problem.

Now there seems to be a question in some people's minds about the ability of the people of North Dakota to vest this power in the hands of the legislature. I believe it's in Section 2 of the declaration of rights which we had the other day that states: "All political power is inherent in the people." And the people are sovereign. We have had a court case saying all power rests in the people. And

if the people want to adopt a constitution of the state in which they delegate to the legislative assembly the supervisory responsibility for the Compact with the Federal Government, they have this power to do it, and I don't think there is any question about it.

I would like to hear from those who are concerned or afraid to take this Compact. I would like to know what adverse things could happen to North Dakota if we used this approach for the legislative assembly to be responsible for the Compact.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: The Judicial and Political Subdivisions Committee oppose this amendment. And why do we oppose it? We would like very much to have a more simplified statement of these three particular sections of the constitution if we felt that we were on sound legal grounds to do so. We did not bring the report of the committee to you in its original form without many, many hours of legal research on the part of the First Assistant Attorney General of the State and on the part of our Staff members. We again yesterday went back to the First Assistant Attorney General, Mr. Sand, again, and asked him to review the research which he had done before and the opinion which he had given the committee before. He again told us after doing so that he was still of the opinion that the people of North Dakota could not delegate something that they did not know what they were delegating until after a decision had been made by Congress to turn these lands back over, the Indian lands and public lands, back to the State of North Dakota. He said he felt only that they could delegate that responsibility back after Congress had done it, because at this time they would not know what they were delegating.

So it was for this reason that we felt we should adopt by reference the provisions of the Enabling Act, the statute that's mentioned in the amended bill or proposal that we brought before you, and also in these three sections of the Constitution.

So the committee, the overwhelming majority of our committee, felt that it was our duty to bring this to you in the best legal light that we could. And certainly these corridor opinions that you get from attorneys without checking and researching are worth about as much sometimes as you pay for them. And we felt that we were obligated to stick with the official of the state who was the chief legal officer who had done hours of research in connection with this situation.

So in writing a constitution, we felt that we should bring to the floor of this Convention something that we could feel and that our best legal advice would help us that would stand up later on, and not something that we had to guess about it.

Our assistant to our committee, our constitutional staff member, he agrees that the version that we're bringing before you is valid and will stand up. He disagrees somewhat with the Assistant Attorney General. He feels the other one probably would, too, or will stand up. But we felt that we should bring the one where they both agree that it will stand up and that we will not get into difficulties later on.

Now Delegate Omdahl asked a question, and he should be answered on that question. He said how could we get in trouble by doing something of this kind? That we're just doing this for the convenience of the Federal Government.

Well, here is how we felt you could get into trouble: Let's assume these Indian lands are released later on to the State of North Dakota. And it has to be done, of course, by the consent of the Indian people, too. Then at that time the state starts selling this land off to individuals who want to get good and clear title to this land. At that time some person questions their title, they have a dispute over whether the title is good. And then he gets an attorney and they come in and they question his title on the basis of constitutional law, that the State of North Dakota through its legislature had not power at that time to turn this land over or to sell it to the buyer. And at that time you get the question of marketability title involved to anyone who might purchase any such land. You raise the constitutional question. And then you want to determine who pays for

it from the State of North Dakota. He ought to be assured that he is going to get a proper merchantable title for it. So that's why we oppose this amendment.

We did not bring this on to you on the floor with a small amount of study or with a corridor legal opinion. We brought it to you after hours of research. And we feel that our version will stand up. And we hope that you will vote down this amendment for the reasons indicated.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE ENGELTER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: I second Omdahl's proposal or proposed amendment, because I feel that every committee or the majority of the committees have been dealing with some provision of the Compact or the Enabling Act and trying to solve the problem with regard to handling the situation.

Our committee, in reference to Section 205 — and if the delegates will indulge and look at that section — it makes reference to land grants granted by the United States to the State of North Dakota by Act of Congress entitled "An act to provide for the division of Dakota into two states . . ." The title of that act is, in essence, an enabling act. What our committee has done in regard to Section 205 is refer to the present Constitution of 1889, which in essence refers to the Enabling Act itself. And I don't think this would be a very proper approach to have in our present Constitution that we are going to be submitting to the people.

I think that Omdahl's approach to the problem solves, in essence, the problem that the Education Committee had gone through the other day, or in their committee work, in their reference to Proposal 1-18. They, in essence, used the same terminology in reference that Delegate Omdahl has used in his proposal.

Delegate Omdahl's proposal would take care of every effective provision that the State of North Dakota is responsible for and at the same time give the legislature the power to adjust or modify any changes that may be where Congress has acted. And I am in full agreement with this approach to solve this problem.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: Delegate Gipp speaking.

I support the committee recommendation as amended. And I fully support Delegate Longmire's, Chairman Longmire's, statement with respect to the proposal as submitted by the committee.

I feel that we have given this particular — these particular sections thorough review. We have listened to the Solicitor General — the solicitor from the Department of the Interior regarding Indian affairs. We have listened to Mr. Sand, we have listened to counsel. And I think after due consideration of all of the aspects of these particular sections that we have come up with, I think, the most thorough and sound statement that could be provided and I hope shall be adopted by the Convention itself.

I think that certain sections — section — paragraph 3 of Section 203 as it stands now are in many cases accomplished facts, that indeed the state has assumed the necessary jurisdiction, the necessary controls of powers over that particular part of Section 203. However, not all of the things in Section 203 are accomplished; such as jurisdiction and taxation of Indian Americans in the State of North Dakota. I believe that Public Law 280 sufficiently states that jurisdictional matters, taxation, et cetera, shall not be consummated without consent of Indian citizens of the State of North Dakota. And I believe that this is one of the primary things that must be pointed out at this point and time. Surely we can provide for — for the state's assumption of these powers. I believe that they are there, and that they will be enabled through federal legislation, and certainly in time possibly consent of Indian Americans in this state.

But I believe that we cannot tamper with paragraph second of Section 203 without referring to the primary relationship that certain people have with respect to the second paragraph of Section 203. I believe that it is sufficiently important to remember this.

We have provided in Section 3 of our — of our Proposal 1-13 for the assumption of jurisdiction for military reservations. And that is what that particular paragraph points out, the assumption by the state and the delegation to the state legislature specifically there. We have not tampered with paragraph second of 203 because I think that this is an extremely complex problem, one that I think has to bear out in its own time with respect to the separate and distinct relationships there.

I fully support the committee's proposal. Thank you.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment to Committee Proposal No. 1-13, the amendment as offered by Delegate Omdahl.

Hearing no further discussion, as many as are in favor of the adoption of the amendment will say "aye;" those opposed "no." The "noes" have it, and the amendment lost.

Now we are back on the first passage of Committee Proposal No. 1-13 as previously amended.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. I am not going to belabor the point further, except one, the further section of the amendment which I failed to call to your attention, our first section of the proposal as amended. We left that intact. And why did we do that? We know that Proposal 1-73, I believe it is, or 2-73, whichever it is, does cover religious freedom in our Constitution. We feel that that clause in our Constitution provides for religious freedom among our people.

However, this particular clause relates to religious sentiment. And we felt it did have great historical value to reemphasize once again the importance we put on this particular freedom of our people. We are not providing here in this clause the religious freedom again as some mentioned here before; but we are reemphasizing the importance of religious sentiment. And the committee, I believe, almost without exception, felt that that should be retained in the proposal to reemphasize the importance we put on religious sentiment. For that reason it's in there.

PRESIDENT WENSTROM: Thank you, Delegate Longmire.

Any further discussion?

Delegate Engelter.

DELEGATE ENGELTER: Mr. Chairman. I would like to ask with regard to Section 2 of 203 why the same hasn't been included as an important part of the Compact with the United States? After hearing the discussion of Delegate Gipp, I feel that this provision, as related by Delegate Gipp, is important. It should be stated in our present Constitution. And I would like to hear reasons why it isn't.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. I think the delegate knows why it wasn't there, because he has been present at all of our committee meetings and has been present when the Assistant Attorney General has appeared before us.

We felt that we could safely, by reference, incorporate all of the provisions of 203, because we, too, felt they were important. And as you all notice in the proposal before it was presented, or rather the way it was originally presented or introduced before the Convention, we did spell out the first part which had to do with the Indian lands. But the last three-fourths or four-fifths of that section relate to obligations that the new State of North Dakota had to assume in order to come into the Union. And, of course, all of those financial obligations have now been met, and they are — we felt it would be extremely unnecessary to write all of them back in again. But we did incorporate by reference every provision of this section that still had some relation to the Indian lands and to the relationship we had with the Federal Government in connection with those lands. We felt it was not necessary to state them verbatim again in this section.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President. Would Chairman Longmire yield for a question? I think in our committee meeting yesterday, Chairman Longmire, we talked about amending this section by putting a "comma" after — in Section 2.

DELEGATE LONGMIRE: Yes, we did. We agreed to do that. However, I thought rather than have to suspend the Rules and everything again, that probably the Style and Drafting Committee can take care of that. And I will call it to their attention at the spot where it needs to be put in.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-13. I will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 87 "ayes," 8 "nays," three delegates absent and not voting. Committee Proposal No. 1-13 is passed.

Delegate Sinner, did you have an announcement?

DELEGATE SINNER: Mr. President. Yesterday I almost got up on the floor and asked that fellow delegates did not spend too much time introducing friends because we all have them here. Today I find myself in the happy circumstances of introducing Senator Burdick, who has just walked in. And I would like the consent of the body to invite Senator Burdick to the front desk with the Chair's permission to be introduced and say a few words.

PRESIDENT WENSTROM: The Chair will appoint a committee of two to escort the Honorable Quentin Burdick to the rostrum that he may address the convention. I will name Delegate Simonson and Delegate Stanton to escort the Senator to the rostrum.

SERGEANT-AT-ARMS CECIL CRANDELL: Mr. President.

PRESIDENT WENSTROM: Sergeant-at-Arms.

SERGEANT-AT-ARMS CECIL CRANDELL: Your committee with the Honorable Quentin Burdick, United States Senator from the District of North Dakota.
(Applause)

PRESIDENT WENSTROM: Fellow Delegates, the Honorable Quentin Burdick, United States Senator from North Dakota.

SENATOR QUENTIN N. BURDICK: Mr. President and Delegates. I am just passing through, returning to the Congress on Sunday. I just want to say that I welcome this opportunity to say just a word of hello. Because we are in Phase II, this is an historic moment, I presume the first since 1889. And so for that reason I am very pleased to be here.

I don't have any advice or suggestions, and I believe if I did it would be improper to voice them. I simply say that you are engaged upon a very important part of North Dakota history. I know it's going to take the collective judgment and the collective wisdom to work out a great document.

So, in brief, best of luck. I know you will do what is best for the great State of North Dakota. Thank you.
(Applause)

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE HOFFNER: I move that the Rules be suspended. And before I continue this motion, it's a long one, I'd ask for a second. I would like to explain the motion.

DELEGATE CHASE: Second.

DELEGATE HOFFNER: I move that the Rules be suspended and Proposal 1-43 be placed at the head of the calendar, and that Proposal 1-42 be placed immediately below it.

That both proposals shall be open for discussion as follows:

Three designated Legislative Functions Committee members shall speak no more than fifteen minutes on Proposal 1-43.

Three shall speak no more than one fifteen minutes' total on 1-42.

That thereafter both proposals shall be open for discussion.

That at the conclusion of the discussion the delegates shall be polled individually by the Clerk, at which time they shall state their preference — either bicameral or unicameral.

That prior to the vote, no amendment or other motion shall be in order.

That the proposal that carries the majority of the votes of those voting shall thereupon be deemed placed at the top of the calendar on the tenth order for first passage.

I move that long motion.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Kwako.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Our committee spent a lot of time trying to find a method to save the Convention a lot of time. And I think we have come up with a method, and I certainly hope the Convention goes along with this. What we are really doing is asking you as a Convention to make a decision that we as a committee were unable to do. And if you will note there, we had a rule that the committee report cannot be amended. So we're asking that you abide by the rule in this unusual situation.

We're asking that fifteen minutes be allowed for each, bicameral and unicameral, and after that that it be open for discussion.

We're asking that the poll be taken, and by this poll it will be a positive vote for either the unicameral or the bicameral. It won't be a yes or no for one or the other. And I think that that is important.

And that once the poll is taken, then the one that gets the most votes will be put at the top of the calendar, and from there on it's treated as any other proposal on the tenth order.

And, as I said, we feel this will save the Convention an awful lot of time and it's something that is very precious with the twenty days or twenty-five that we have left. Thank you very much.

PRESIDENT WENSTROM: Delegate Hoffner, the Chair is in doubt on two of the questions possibly — if I can term them as questions — that you raised in my mind. You talk about a delegate shall be polled. Now do you mean that they will be polled on what we used to term roll call by saying one or the other of the two by the Clerk polling the delegation?

DELEGATE HOFFNER: Right. We're asking that the Clerk call the name of the delegate, and that delegate indicate whether he is for the bicameral or unicameral.

PRESIDENT WENSTROM: That's understood then by the Convention.

The next question then that your motion raises in my mind — and I'm only asking these so we don't find ourselves hung up on the interpretation of your motion — and that is you are delegating or you are allocating speaking time to three proponents of the bicameral and three proponents of the unicameral. Now you are not, by that motion, preventing another delegate from talking on the same issue, are you? That's not your intention?

DELEGATE HOFFNER: No. I have asked the six people that have been assigned to, in their order, yield to the next individual. And even like Delegate Stanton is for the unicameral — or the bicameral, she will be yielding to Delegate Simonson, who is for the unicameral.

PRESIDENT WENSTROM: This is fine. But by this motion you are not applying that so-called "gag rule" on the other delegates if they wish to speak? That is not the intent of your motion, is it?

DELEGATE HOFFNER: Here is the motion: We're asking that three designated members speak for fifteen minutes on each side, and that thereafter discussion be open. So we're asking that — it's like a committee report. The courtesy of the Convention gives the committee a chance to report their action.

PRESIDENT WENSTROM: Are there any questions?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. We've barred the committee as a whole proposal earlier in the deal. And this is strictly a committee of the whole proposition. You'll probably argue about it for an hour. Just as well go ahead under the regular procedure. Get the same results, I think.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President. There are two things that the committee felt were important here; number one, our committee voted unanimously to recommend to the Convention that both of these proposals be put on the ballot. But we were very reluctant to get the Convention in a position of trying to amend these proposals and improve them and get them to a place that the Convention liked and worked in the atmosphere of not knowing whether the proponents of the bicameral were really trying to hurt the unicameral proposal and vice versa.

This is an attempt, an honest attempt by the committee, both sides, to get some — find some way to get one of the proposals before us as probably the primary one to work on. And at that point I am hoping, as a proponent of the one-house system, that everybody will work positively towards making that proposal — whichever one it is — the best possible proposal that this Convention can produce.

I am hoping that the Convention then will go along with the committee recommendation to adopt a motion to put them both on the ballot for the people, and then work on the other proposal to get that in the best possible position to place on the ballot. And that's the reason the committee decided to do what they are recommending.

DELEGATE MAXWELL: Question.

PRESIDENT WENSTROM: Mr. Clerk. Roy. I think an amendment or a motion that has so many parts and is of such concern to the Convention, I think we should re-read the motion from the desk.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I would like to support Delegate Hoffner's motion for this reason; that we have got to determine this question before we can really put the language into the Constitution for our legislative procedure. And I assume that there will be opportunity after that is once determined to offer amendments to either proposal, whichever one may carry.

PRESIDENT WENSTROM: I would presume that.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: On that point, I think the delegates should understand it is our committee's idea that we want you to designate a preference. We don't want you to be too concerned with the language in either 1-42 or 1-43 as they now stand. You will be free to amend the one, if you pick the bicameral as your preference, then we'll start amending it. Go on the tenth order and get it in the shape the majority of us like. Pick unicameral; do the same. But before we started to work on one we wanted to know which one to work on. We didn't want to get into the amending process, the substitution. I could move, for example, on the bicameral to delete all the words, it's up to the unicameral. To save all this time, we came out with this approach. And I would urge your support of Chairman Hoffner's motion.

PRESIDENT WENSTROM: The Clerk will read the amendment or the motion.

CHIEF CLERK GILBREATH: That at 10:00 o'clock the Rules be suspended.

That at 10:00 o'clock Proposal 1-43 and 1-42 shall be placed at the head of the calendar.

That both proposals shall thereupon be open for discussion as follows:

a. Three designated Legislative Functions Committee members shall speak no more than fifteen minutes on Proposal 1-43.

b. Three designated members shall speak for no more than fifteen minutes on 1-42.

c. That thereafter both proposals shall be open for discussion.

4. That at the conclusion of the discussion the delegates shall be polled individually by the Clerk at which time they shall state their preference — either bicameral or unicameral.

5. That prior to said vote, no amendment or other motion shall be in order.

6. That the proposal that carries the majority of votes of those voting shall thereupon be deemed placed at the top of the calendar on tenth order for first passage.

PRESIDENT WENSTROM: You've heard a reading of the motion.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President. I have no objection to the motion. But I would like at this time to point out for future reference that I would object if it was an issue in which I had a predetermined position and was going to stick to it. I'm not going to sit and let the chairman or any member of a committee delegate and yield for a half an hour to the one side. Because this is strictly not fair and is not according to any parliamentary procedure.

But this time I have no objection. But I would just like to make the point that we are not, with my consent at least, we're not going to vote on the other issues with this same kind of a deal. This motion I'll support. But I'm not going to support it for use for very many times. Thank you.

PRESIDENT WENSTROM: Any further discussion? The question is on the motion as offered by Delegate Hoffner.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and I believe Committee Proposal 1-43 is before the Convention.

DELEGATE HILDEBRAND: Mr. President.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: Mr. President, Fellow Delegates to this great Convention. I rise to speak in favor of the bicameral system of legislature because I believe it is still a very sound —

PRESIDENT WENSTROM: Delegate Hildebrand, I believe that the proposal should be read before we — 1-43 should be read.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would inquire, if it might be in order, we were on the twelfth order of business, and I think the motion said ten o'clock. And we are not quite there. I would inquire if it would be in order that I be allowed to move that the previous remarks of Senator Burdick be presented in the Journal at the proper place?

PRESIDENT WENSTROM: Delegate Haugen has moved that the remarks of United States Senator Burdick be placed in the Journal at the proper place.

Now did we have a second to the motion?

DELEGATE DANIELS: Second.

PRESIDENT WENSTROM: Been seconded by Delegate Daniels.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

Technically I presume we should be at ease for two minutes.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I crossed out the times on my copy. And I thought I'd crossed out the times on the copy I sent to the desk. Because I wasn't going to yield to the time.

PRESIDENT WENSTROM: Strange as it might seem, Delegate Hoffner, the one that I have had the time on it that was read there at the desk.

DELEGATE HOFFNER: The copy I read didn't indicate any time.

PRESIDENT WENSTROM: We will then proceed with the reading of Delegate Proposal or Committee Proposal No. 1-43.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-43, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the state of North Dakota be repealed; and that section 1 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the legislative system.

"SECTION 1. REPEAL) Section 25 of Article II of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Section 1 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 1. The legislative power of this state shall be vested in a legislature consisting of a senate, composed of not more than forty members, and a house of representatives, composed of not more than eighty members, which jointly shall be designated as the Legislative Assembly of the State of North Dakota."

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: Mr. President and Delegates to the Convention. I rise to speak in favor of Proposal 1-43 for the simple reason that I believe it is still a very sound and basic form of representative government. It provides for the necessary check and balance that only a two-house system can offer. Since it is a citizen type it offers the opportunity for more people to participate.

Because we are going to debate the difference between the bicameral and the unicameral systems, I would like to make a few comparisons here for your consideration. And since there is only one state in the Union that has a unicameral legislature, we will look at their record as a comparison.

According to a book by the Citizens Conference on Legislatures which was published only in August of '71, they rate the members of the legislature of the State of Nebraska sixteenth in order. Let me state further, in explaining these remarks before I make them, they have analyzed the legislatures of all fifty states and they have given them ratings in certain areas. And since this takes a lot of time, I won't go into all of that. But these people do rate the legislature in the State of Nebraska sixteenth in order for being well informed. And they rate the members of the North Dakota Legislature seventeenth among the same states in that order. And yet they rate the Nebraska Legislature thirty-fifth in order for being functional, and they rate the North Dakota Legislature twenty-second in order for being functional. So it will seem that the two-house system is not cumbersome as we are being led to believe.

I would like to make just a few comparisons here on some statistics, with your indulgence. The cost, for example, of the two-house system in the State of North Dakota — and I have broken these down into the lowest possible denominations here because of time and other things, but I have used only last year's, one year, for the basis of these figures so they will be half of the biennial terms — the members of the North Dakota Legislature have cost the State of North Dakota Legislature have cost the State of North Dakota \$3,129 each for 147 members or a total of \$459,760 for the last session of the Legislature. In the State of Nebraska the members per year in their 49-member legislature cost them \$15,164 each or a total of \$743,036.

In comparing this further, the Legislature in the State of North Dakota had introduced and processed 1,060 bills, and they had 63 days to process those. And in the State of Nebraska, the last session of the Legislature processed 1,042 bills, or 18 bills less than did the Legislature of North Dakota. And for this they sat

in session for 141 days. So it seems that the cost comparison certainly doesn't seem to indicate that we are too expensive or too elaborate or too extravagant in our deliberations here.

Then we hear these comparisons of why have a two-house legislature when all other businesses, corporations, and other people have one board of directors? Why don't they have two if they need this check and balance badly? Well, it's a difference. Because in the case of corporations and other businesses they are mostly interested in how much money they can get out of the services they offer, whereas the legislature in the State of North Dakota has to try to get as much service out of the money they spend. Because the corporation type board of directors deals mostly with their own funds and in their own affairs. They are not responsible to anyone else than just their own group. So we have really no need for feeling that they should have a check and balance for the sake of administering funds and whatever. And then, of course, their deliberations are mostly in the area of administrative affairs. And they also are a constant body and can change or adjust their plans from month to month or day to day, if this is what they so desire.

I believe I have used up my allotted time. I thank you for your attention. And I will now yield the floor to Delegate Butler.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Fellow Delegates. I think we all as citizens of North Dakota are very interested in a responsive legislative body. The bicameral is a responsive legislative body. In our proposal we have not changed the size of the delegation to the legislature. We are leaving it at 49 and 98 people. There is some consideration as to the cost of our citizens coming before the committees from time to time to testify; once before the House if the bill is introduced there first, and then to appear for a hearing of that bill in the opposite house at a later date.

The unicameral proposal and the discussion that's been had in our committee on that is not going to change that condition very much because it is going to provide — and I'm sure everyone would agree it's necessary — to have at least two hearings on any bill that's in unicameral also. So those that missed something the first time around will have a chance to make corrections in it at the second hearing. So they would be faced with the same cost of coming to Bismarck on two different trips or staying over until the bill is heard the second time.

The legislative procedure as it now exists in North Dakota is something that we find our average citizen is not too concerned about. In the unicameral legislature, most of the legislation that is put in there covers corrective wording of some of the laws that exist that are found to be unworkable. They are appropriations or they are departmental in nature. And a limited number of bills are of general interest.

Our citizens have the opportunity of appearing before any committee and expressing their opinion. But as an active member of the Finance and Tax Committee in the Senate for the last three sessions, I have found that most of our testimony comes from people that are professional in nature related to some of the organizations that are indirectly interested in the legislative work that is being conducted there. And I am sure that it's so in the other committees.

I mean by that statement to indicate that our citizens do have the opportunity but not too many of them avail themselves of that opportunity of presenting testimony, because in most cases they belong to an REA group, to a Farmers Union group, or to a contractors group, and they have their representatives here to look after the legislation that is introduced and watch out for their interests in it.

The unicameral system attracts a professional lobbyist. I'm not necessarily indicating that that is bad, but a professional lobbyist — I will use the word that way — could really have a heyday. Because in the unicameral he could single out a few people in each committee, maybe one, powerful enough that as far as his interests in that committee is concerned to control legislation that is introduced and handled there. In the bicameral system that's not so easy, because he might

have an influencing individual on the committee in the House and I question if he'll have that same influence in the committee in the Senate.

There is another thing that goes along with it, and of course it may or may not be a partisan body as far as unicameral is concerned. Nebraska does not have. The evidence in the testimony we received from Nebraska Senators in our committee meeting indicated that the leadership is sometimes lacking there because of the lack of partisanship. We may continue, if we have unicameral, to have a partisanship and I believe the continuity would be better. However, I fear that that may not be done.

Sometimes the claim is made that the present type of bicameral legislature takes the occasion to pass the buck. If they don't like a bill that's in the House, or let's say in the House of Representatives, and it's a hot potato, they will kick it out of there, send it to the Senate, let the Senate stew on it for awhile. I have not seen that happen except in extraordinary cases. I don't think that the quality of our legislative body is such that they would intentionally make that a means of dodging an issue on which we are in doubt. More likely, if there is a difference of opinion on those things, it will go into a conference committee and the solution will be found between the best minds of the conference committee appointed by the respective houses to iron out the problem.

In deliberation, I think that legislation introduced in the bicameral legislature has an opportunity of being presented before a group of people in committee in the House, and they see that bill and the laws that are proposed by that or changes that are proposed by that through their eyes. And when the bill is passed out of the House, and if it is sent over to the Senate, there is a new set of eyes, a new set of ears listening to the testimony. And I can assure you that in most cases the testimony that's presented before a committee in the House will not be contradictory when it comes into the committee in the Senate. The people that testify for these bills professionally know that the cross-check is taking place between the chairmen or members of the committee from one house to the other to be sure that the story is the same. But, believe me, there are many things right here in our meeting in this Convention that we are in now where a different view, a different picture shows up between my eyes and Delegate Cart's eyes when a particular proposal is before us. And I think it's good.

I have worked in bicameral and I have sat in on the unicameral in Nebraska. I know three Senators in Nebraska very well. I've talked to them many times. And they tell me that if you want to have a professional group of men and women running the legislature, go unicameral. If you want to keep it as a citizen legislature, stay bicameral.

I now yield to Delegate Stanton.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: And Fellow Delegates. I would like to add some comments of concern to those already made by Delegates Hildebrand and Butler.

One system for another, and especially if it is as important as your legislative system, I think you better be pretty thoroughly convinced that what you are going to get is far superior to what you are going to give up. And there is no way that the proponent of the unicameral system can prove to you or to me that their system is superior.

Nebraska has the only unicameral system out of the fifty. And they've had it since 1937. If this system has been so good, why has not one state since that time adopted a unicameral system? There have been thirteen constitutional conventions since 1961. Not one of them has even been wise to adopt a unicameral system.

I think that the proponents of the unicameral system should be challenged to tell us in what manner Nebraska is superior to North Dakota; our highway system is superior, our welfare system is superior; our mental health and retardation service system is superior to theirs. They were the last state in the union to adopt school legislation reorganization. Now not being responsive about what I've just mentioned means that they are not responsive to the people.

Now on to representation. The bicameral proposal proposes a House and a Senate as it is now constituted; that is 49 in the Senate and 98 in the House. Those are maximum figures. The unicameral proposal is 99. And this is a minimum. And if they get much beyond that point they might just as well stay with the bicameral system.

Now what this really does, comparing the figures for bicameral and unicameral, is to cut by one-third the number of legislators for every district in the State of North Dakota. Now in a state with a diminishing population, which, as we all know, will result in November of 1972 in our having only one representative in the House of Representatives, I think representation is of vital concern to the people of North Dakota. We have all received letters from the Farmers Union and from the Farm Bureau, both of which endorse the bicameral system. It means they have deliberated this, they are concerned about it, and they want us to be concerned about it. We can't do anything about representation in the United States House, but we can do something about our representation in the State of North Dakota.

I think that the people of North Dakota by approving the Constitutional Convention and by electing us delegates have placed in us a very special trust. I cannot honor that trust by taking away from them one-third of the members of their state legislature. Can you?

I now yield to Delegate Hendrickson.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Thank you, Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson, now are you to talk for the unicameral or for the bicameral?

DELEGATE HENDRICKSON: I am to talk for the unicameral.

PRESIDENT WENSTROM: Then may I interrupt your comments long enough that the desk can read the proposal for the unicameral legislature.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-42, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the constitution of the state of North Dakota be repealed; and that section 1 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the legislative system.

"SECTION 1. REPEAL.) Section 25 of Article II of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Section 1 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 1. The legislative power of this state shall be vested in a single chamber, composed of a minimum of ninety-nine members, and designated as the Legislative Assembly of the State of North Dakota."

PRESIDENT WENSTROM: Now Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. President and Fellow Delegates. I want to speak to all of you on the merits of a one-house legislature from the viewpoint of the ordinary citizen. I guess I'm that same citizen that Governor Guy referred to in his opening address to this Convention. I remember a number of years ago I received a pamphlet entitled "How a Bill Becomes a Law." As I looked over this pamphlet I realized it would be pretty difficult for an average citizen, who lives very far from Bismarck particularly, to follow a law and offer any influence for its passage if it were a good law or to defeat it if it were a poor one. It would mean many trips or at least two, probably more, to Bismarck. It would mean the expense of board and room as you followed it from one committee in the House, watched it on the House floor, to the committee in the Senate, on the Senate floor, and perhaps then to a conference committee. This you couldn't watch, but you could sit and worry what was happening in that conference room.

I would like to see good legislation passed. It's particularly the good legislation that I worry about. I know that poor legislation — or I have faith in the

present legislature that for the most part they can kill the poor and the unimportant legislation. But it's the good legislation that concerns me. And it's in this area that I feel that competition of this average citizen is particularly tough with the professional lobbyist. And I agree with Delegate Butler, I am not using lobbyist as a dirty word, they are professionals, they are hired and they are good at it. But they do have the opportunity, which the average citizen doesn't have, to be here at all times to watch where that bill is. They have the opportunity to know the legislators, to learn their personalities, and to sort of size up in which committee they can best offer their influence. And believe you me, the committee in the Senate is a smaller committee than you'll ever see in a one-house legislature, an easier place to wield a little bit of influence as you appear before that committee, if you're interested particularly in killing the bill.

Change is good. Change not for the sake of change, but change when it will bring improvements. One house could bring more interest on the part of the citizens of North Dakota. The process could be more easily followed. The public would be able to watch what their representatives are doing. And this way they could award or punish them accordingly.

People are willing to try something new, especially when they see the merits of change. Politicians have much to lose, and they fear change. Legislatures — legislators understand their system, and they do not want to give it up. Citizens are not hung up on this system. They want results, and they want a system they can understand. I, too, want to understand what is happening in the legislature. I want to know the status of the bills. I want to know what's being considered. With one house I can more easily follow this process. With one house I would be able to pinpoint the responsibility, and I'd know what my representatives were thinking. I know what the bicamerals will say: "It's in the record." But how many times do we see situations of buck-passing by our legislators? Just to give an example, I know of a young girl who wrote to the Senators of one of the recent sessions asking about their opinion on abortion. The Senators were very nice. They replied they were glad she was interested. But for the most part, the answers she received were: "I think they will take care of that in the other house." When I ask a representative what he's thinking, I want to know what he's thinking. I don't want to know what he thinks somebody else is going to think. This is what I mean when I say I want a responsible group of people whom I know what they are going to do and what they are going to say.

I want a government I can understand, I want a government I can follow. And I feel the one-house legislature is a responsible one or would be a responsible one for North Dakota. I feel that this is a kind of government that a citizen can more easily participate in.

And I yield to John Paulson.

DELEGATE PAULSON: Thank you, Delegate Hendrickson. Mr. President.

And I want to thank all of you delegates for this excellent chance to discuss this vital subject.

I think that we all realize that a bicameral system represents the status quo, that the unicameral system represents change. Now the citizens of North Dakota, when they approved this Constitutional Convention, weren't simply asking that we come here to Bismarck and clean the deadwood out of the old Constitution, but they asked us to take a fresh look at all phases of our government, at all phases of our basic law. And I think that the unicameral system does provide this fresh look, and I think the way that we are discussing it here this morning shows that we are — we ourselves are willing to look at new ways of doing things.

We are not going to transplant a Nebraska system to North Dakota. We are trying to devise a North Dakota legislative system for North Dakotans.

I have become a supporter of the unicameral system because it does give the citizen a better access to the legislative process. I have covered the legislature as a reporter, I have come out here on behalf of my own city, and as my newspaper organization. And it has become quite a trial at times when you have to take a new idea into the originating chamber, either House or Senate, and spend two or three weeks trying to educate and convince the legislators in that one chamber about the merits of your proposal. Finally you get it through, probably

on the deadline for exchanging bills, wherein it goes over to the other place. And in twenty days or less you have to convince a brand new set of representatives exactly what you are trying to accomplish. And the time is too short. So you make one brief presentation, and if you are fortunate enough you may be able to do a lot of convincing in the halls and elsewhere, but not in the legislative process. So your proposal might get through with this kind of action or it might be put aside because there isn't enough time and say, "We'll take it up in two years." Nobody in this kind of case is trying to pass the buck. But the second look is a delayed look, it isn't a helpful look.

Now in the normal process the so-called second look that everybody is bragging about on the bicameral system is oftentimes temptation to be irresponsible to pass through a meaningless or even an unwise piece of legislation as a favor to a compatriot in your own house with the idea that the other chamber would kill it. And quite oftentimes this does happen. Sometimes the unwise piece of legislation goes all the way through undetected. It also gives this two-house system the so-called second — the so-called second look also gives the legislator politician a chance to look good with his constituents. He can appear before the originating house as a sponsor and supporter of legislation as supported by his neighbor or home business firm, get it passed by the first house, and then send a note over to the chamber to kill it. And the constituent at home is told, "Well, it's just too bad, but that Senate didn't know what was going on and I just didn't have time to get over there."

I think that your one-house system will give your North Dakota organizations a chance to come here, make their presentations at either one or two hearings and know what's going on and then the legislators have nowhere to hide. They must act in the open and either kill or pass the measures in which the citizens of this state are interested. Thank you.

And I yield to Delegate Sinner.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President. I should point out before beginning some substantive remarks about my belief in the unicameral system that the proposal does not in any way preclude the fact that it anticipates the two-party system. Secondly, it sets out a time limit, the same time limit that is proposed for the two-house system. I mention this because we think in studying the Nebraska system that these are two areas of the Nebraska system that are efficient. I want that understood, that we feel rather strongly about that.

In August a sophisticated business magazine from Florida carried this editorial. It reads: "Toward the end of the twice-extended special session, which in itself was an extension of the regular session, signs began popping up on the dresses and coats of secretaries, aides and on a few legislators. They read simply 'unicameral'. For this has been a year of bicameral rather than biparty scrapping. It has been more often than not the House against the Senate, not Democrats against Republicans. Senate President Jerry Thomas once chided the House Republicans by saying the Senate, not they, had become the loyal opposition. And his House counterpart, Speaker Richard Pettigrew, when House members grounded, as he readied another message of disagreement on a tax bill, noted testily this was 'another product of the bicameral system'."

Four states this year have gone into agonizing extended and re-extended special sessions over controversies not between parties but between houses. Minnesota is the nearest example, Michigan has gone to it, so has Alabama and Florida. Admittedly, these were exaggerated evidences of the inability of a two-house system to achieve consensus on gut issues. But to say that it is not typical is simply not true. Anyone that has been here knows that more often than not two separate approaches to problems develop in the two houses, and these two separate approaches very often end up at loggerheads, tragically more often than not end up in no action, or action so watered down, so innocuous, that progress on important issues is put off and put off.

This is precisely why, I think, to those who say that this is a new idea, I point out that practically all of the governments of the world, older governments, have gone gradually but steadily to the one-house system. Denmark has just recently adopted the one-house system for their national parliament.

Look at the governments in our own country, cities the size of Los Angeles and New York, Chicago. They wouldn't think of adopting a two-house system. No legislature in this entire country has proposed or passed by law a two-house governing body for any of its political subdivisions. The North Dakota Legislature set up a one-house Constitutional Convention. What business that you know — and I plead with you to believe that the business of government needs the same kind of organizational structure that any other business or any other organization needs. We need the ability to get a consensus to get on toward the solution of a problem. No one is discussing, I think, that the one-house system is a perfect system. God knows and you and I know that it's not. But when problems are before us we must find a way and a system to start in the direction of solving those problems. Motion in the direction of solution is better than inaction. If we start out and can get a consensus on a course of action to solve a problem, that's better than standing here without moving toward a solution.

Probably one of the best evidences of the inability of the bicameral system to solve problems that are extremely difficult, and everyone admits it, is a look at the organizational chart of state government in North Dakota. Anyone that's ever seen it knows that it's a hopeless maze of, in very many cases, unconnected and irresponsible boards and commissions. Every legislator that I know has for years bemoaned the tragedy of this situation and yet in attempts to solve and to reorganize state government constantly run into loggerheads of special interests, loggerheads simply of difference of opinion.

We are coming into the last generation of the twentieth century. We have seen most of all in the last twenty years a rapid transition of the solution of problems from state government to federal government. The question before us, it seems to me, is are we going to allow this trend to continue or are we going to give state government and state legislators — which I hasten to point out we have some of the best in the nation, and I say that not patronizingly but because it's true and any study will recognize that — we must give these people the machinery to make decisive actions — take decisive actions and solve the problems of the last generation of this twentieth century.

PRESIDENT WENSTROM: Thank you, Delegate Sinner.

We now come to Section 3 of the motion, and that reads: "That thereafter both proposals shall be open for discussion." I presume that's from the floor.

Now if any delegate wishes to comment on the two proposals at this point, feel free to do so.

Delegate Kwako.

DELEGATE KWAKO: Mr. President. I also would like to speak in behalf of the bicameral system of government. I feel at ease speaking for this system because our founding fathers had the experience being governed by governments which were not responsive to the needs of the people. Therefore, when they established our national Constitution for the citizens of the original states it was a bicameral system of government. This bicameral system is responsive, because our founding fathers had the ability to foresee the advantages of a representative republic.

This form of government means responsibility, and responsibility means ability to respond. And that is what a bicameral system does. And because it creates checks and balances. Thank you.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I am in support of the bicameral system. I don't know whether creatures of this nature are going to have any effect at all. When a court selects a jury it is very careful to try to select people who know nothing about the case. The judge is careful and the attorneys are careful to try to find people, if it's possible, who have never heard of it, who have no convictions on either side. And in a case like that you have some chance after the case is over in arguing to the jury.

In a situation like this I can't count everybody. I can count a few people already on one side or the other. And it may well be hopeless for me to persuade any of those who are for unicameral. But I would like to remind the body that with possibly one or two other exceptions I think this is one of the most important

things that this Convention can deliberate. Because it goes fundamentally, in my opinion, to the nature of our government. And that is the prime purpose of our constitution.

It is true that for most of the history of the world — and that goes back quite a few thousand years — we didn't have a bicameral system, we didn't even have a unicameral system, we didn't even have democracy. Now we are not a true democracy in the manner in which we operate, that's impossible. We can't have North Dakota meetings in which every citizen attends. We are a representative democracy. Subsequently it becomes even more important how, whom and how many representatives we select to speak for us, the people. Too few, obviously, isn't good; too many produces chaos. I leave it for you to determine whether 98 is a good number for a Constitutional Convention; whether it was too few, whether it was too many.

The committee which considered these bills, these proposals, is the largest committee of this Convention. We were a unicameral body as we sat there. We were unable to come to a decision. We were ten to ten. Since last summer, I may say.

Now this Convention is not, in my opinion, a true unicameral body because we are not empowered to take final action. The other house are the 650-odd thousand people out in the State of North Dakota who sometime later in 1972 will have the final vote. That's the second house. Whatever the legislative assembly may do, that house can refer it to themselves. And we are considering how many people it's going to take to do that. But they can refer it to themselves and approve or undo the work of any legislative assembly. That's the second shot at things.

There are many, many old adages, of course, that apply to these things that are cliches precisely because they are so true. If they were not true, they wouldn't have lasted, they wouldn't have become cliches. And I suppose one of them is "Two heads are better than one." And I think that's why we have more people than one on committees. I think that is why we have numbers of people. I think that's why frequently we want to take second looks. I think that is why there are moves even in this splendid body to reconsider the action that we just did. All of our committees, I have found, that actions that were taken, and supposedly after great discussion, the next time the committee meets it changes its mind. It does something differently. It may not completely back away. And all of the bills that are passed by a house of representatives that don't make it through a senate are not killed completely, they may be amended and come back. And there's a constant back-and-forth process in a bicameral legislative system. Because another group sees things in a different light, has a different viewpoint, new arguments come about. In my opinion that's one of the advantages of having, for example, to practice law in a firm instead of one man. I've done both. Because I have other heads, other ideas, other discussions, and it's the back and forth. And I'm sure you've all seen that in the committees that you've served on in this convention process. And I'm sure that many people have changed their minds after they came here, after they have given it to committees.

I can't address myself to the arguments of whether a unicameral legislator is more responsive or not. I think every legislator is responsible in this state to his constituents. Fortunately, we are still a state where people know each other. All of us are well known in our communities. And many of us are known and know many other people in our communities. We're small enough to still be neighbors; we know people. To me it's fundamentally a question how do you want the representative democracy to be taken care of? How should it operate? Should we give it to one smaller group of people? Bear in mind that a hundred legislators is still something like a thousand to one percent, even in our small state. It's a very small group. I don't know what we came here with as a mandate from the people. I know that forty thousand people didn't even want to have this convention. They voted against it. Fifty-six thousand said, "Yes, have a convention." I have received no directions from my constituency, particularly about changing any of the fundamental forms of the government. It may well be that fewer people are more efficient in one sense of the word. The most efficient things in the country today are computers. They are the most impersonal.

Democracy has been said to be the worst kind of government that can be conceived, but better than any of the rest of them. True enough, the rest of the world has gone on unicameral bodies; parliaments, diets, whatever they may be called. I don't think I want to live in another country, I'd rather live in America. I'd rather live here in North Dakota. I'd rather put up with a little less efficiency and a little more humanity. Because that's what we are here for. That's why I'm for bicameral.

DELEGATE HOUGEN: Mr. Speaker:

PRESIDENT WENSTROM: Delegate McIntyre has next requested the floor. Delegate Hougen will be next.

DELEGATE McINTYRE: Mr. President. I'd like to touch on another area perhaps that hasn't been talked on, but I think is very important. And I think it's shared by both those that support unicameral and those that support bicameral. I think that there is a definite feeling of urgency among many of us that this particular issue be one of those that is considered an alternate issue on the ballot. It's an issue that I think can do much in the final passage and approval of what we do here in this Convention by the people of our state; the very fact that the unicameral approach has gained in publicity, gained in interest from the citizens of this state. The very fact that the people in this state now, I believe, have the opinion that they would like to vote on these issues when some support the unicameral.

I can think of no better way to assure the interest by the people of this Convention now and in the final results of this Constitution that would vote for unicameral. Both the unicameral and bicameral supporters I believe could agree on this. I ask you to support the unicameral proposal now to insure the success of this Convention. I feel that the people, although they may not be ready to vote on this thing today, are looking forward to it with interest. They want to find out more about it. Thank you.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: Mr. President and Fellow Delegates. This is a question that I found I had quite a bit of response on before we went into our Constitutional Convention session. One of the questions that was asked me quite often was, "Why does it seem, Jim, that many of the present legislatures — legislators are very much in favor of the bicameral system?" The comment was made that these people, men and women, are perhaps trying to protect their job. I'd like to say right off the bat that I don't believe this to be true. I am convinced that the present legislators are very much anxious to come up with a system that will best serve the State of North Dakota. If you will allow me to jest just a moment, though, I would like to say that I did comment to these people that I think that perhaps the present legislators that are in favor of the bicameral system are so close to the forest that they can't see the trees. They say, "What about the present legislators that are for the unicameral?" I can only comment, "How wise they are."

But I'd like to make one comment. We have already found out that we have a great difficulty in sometimes making a decision here. And I think we should have difficulty in some of the decisions we make, because they are going to be something that will, I hope, be with us for a long time. But think for a moment, if you will, how hard we have worked on some of our proposals and how much importance they have. What would happen if we had to go across the hall and have the same proposals worked on over there? And that would happen if at the last we find out that on these or this important proposal we have two ideas that are somewhat different so we have to go to the conference committee? And we know that in the conference committee we are going to have to do a lot of giving and a lot of taking. It's going to have to be done in just a very short while. And I think this sometimes winds up in unwise legislation.

I would also like to say that I do not agree with the talk that has been put forth that a professional lobbyist would have so much more effect in a unicameral system. I say this because I look at many members of this Constitutional Convention that are now in our legislature and I would say that I know that these men and women are not so weak-willed that if they served in a house or in a

legislature with one house they are going to be ruled by the lobbyists. I don't agree with this at all.

I also feel that with the unicameral system we can much better pinpoint responsibility. I did serve in the legislature for just one year, and I certainly can't speak with a great deal of background when I compare myself with the many here that have served for many years. But I do want to say that in a one-house system we could much better pinpoint responsibility. I know that there is not a present Senator or Representative that at one time or another has not told his constituents, "Yes, I really do favor what you are talking about, but I have to be realistic and even honest, too, in saying that I just can't get this through because the other house does not agree with me, the other house does not agree with you." I think in the one-house system that we could much better pinpoint the responsibilities of our legislators, and that the people back home would be much more satisfied with our results. Thank you.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, Fellow Delegates. I don't know if experience counts on issues like this. I have had some experience in a bicameral legislature; served two terms in the House of Representatives. We've had no unicameral body except this body. And I may say at least to this stage my experience has been good as I view it. But as I look back into the legislative time and after I had learned the process, a rather difficult process, I do recall thinking to myself, "Thank God for the other house." Because I'm sure that the House of Representatives has had passed bills and I was happy that the Senate was there to kill them. Because I thought we had made a mistake. But I assure you other times I had other emotions. When the House, after careful and hard debate and serious discussion of consideration, had a proposal killed in the Senate with a recommendation out of committee.

I was a bicameralist. And when I began hearing the arguments of considering this matter in the Legislative Functions Committee I began to wonder. I began to wonder about the checks and balances that we say are so important to the unicameral — to the bicameral system. As you look at the unicameral process, look at the checks and balances that we would have, first of all we have the check of each delegate or each representative to the other. In other words, their argument and open debate. We have the check of the two parties watching what they are doing. Of course we have the press, which is an important check on the power of any legislative body. Following that we have given the governor, the executive branch of government, the power to veto actions of the legislative body. Beyond that we have our court system who will strike down any law passed by one-house legislature that conflicts with the basic constitutional document. And, finally, of course, we have the people themselves with the right of referendum.

Now I began to wonder, "Do we need another check, another house?" I began to wonder about the necessity of hearing things twice in two different bodies. Now we will all agree, as Delegate Pearce pointed out, it's good to take a second look. But stop and think how that second look is being taken. It's being taken by a separate house, across a chamber, by different people. Now certainly we as committees in this Convention have taken second looks. I think our committee has redone almost everything we did this summer. But we haven't had to start anew. What if we gave our work to your committee, to another committee? You would have to go all through the same process again. And I assure you the second looks we're taking now are substantial improvements over what we did before. And we can incorporate a second look in a one-house legislature. The two hearings are fine, but in the bicameral system I as a representative would add here the point made by citizens in one house. I am not a member of the committee in the other house. I am not going to hear the later arguments or the second look. So I don't really know what happened to the bill in the other house. And I can't afford to — this goes to the point I have been wondering about, the time — would we say the one-house legislature cannot act, will not have the time. How much time is spent by legislators worrying about what happened to their bills in the other house? How much time is spent by the leadership in the two houses worrying about the policy in the other house? How many hours are spent trying to resolve differences and finally important pieces

of legislation end up in conference committees? Conference committees yield only on a very small percentage of legislation. I think if you will look at the record these are many times the most important pieces of legislation that are passed out in the eleventh hour. I think the houses of the legislature just hate the conference committee report because that's the best that there is. There is no time.

Now some say that chairmen in a one-house system would be too powerful. I don't think this is true. From the negative side, there is no difference between the unicameral - bicameral. Because you must remember under our bicameral system our Constitution presently requires that both houses pass the bill before it becomes law.

So the committee and the Senate, the seven-member committee, the chairman of that committee can kill legislation. And the other house has no say, they have no say on that. This is true in unicameral, too, of course. The one committee will be able to kill. But remember that as far as turning down legislation in the unicameral, the committee will be just as powerful in either instance.

As far as positive action, there will be a difference. Because as far as getting something passed you will not have to go through two different bodies. If you can convince one chamber of the wisdom or the need of legislation, it will carry. It will not have to be second-guessed.

Some say we will lose representation. It's true now most districts in this state have one senator and two representatives. If we go to a one-chamber house with a 99-membership, or thereabouts, you will lose say one senator, you may end up with — whatever you call them — two senators, two representatives. You will lose one. But remember, have you really lost anything? Under the bicameral system if you want a bill passed you have to convince your senator, because his vote alone can destroy the bill in that house. You really don't have three representatives, you have one representative in one house and two representatives in another house. And all we're doing is removing the one under the unicameral single chamber. I think this probably may give you better representation, because you will know — you can talk to your representative, you will know his action. He won't be able to say to you, "Well, this is over in the other chamber. I'm sorry I can't be of any help to you."

I want to assure you that I have high praise for our legislature. I was extremely impressed when I was in the legislature. And I think these are fine men. But I believe they are working under serious handicaps. And I would urge all of you to seriously consider the single chamber house and how much more these men could do for the State of North Dakota with a single chamber house.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. President. In 1889 Reuben Stevens of Ransom County made one of the most dramatic and eloquent speeches of the convention. It was a speech that was worthy of Daniel Webster. I wish I had it before me so I could quote directly from it. But one of the most telling arguments that he made was — remember now this is Reuben Stevens speaking in 1889 — "The great Constitution of the United States was the product of a single legislative body." He said, "This Constitution of 1889 will be the product of a single legislative body."

Now here we are 83 years later. And I must disagree with my illustrious colleague, Delegate Pearce, I believe this is a fine example of the effectiveness of a single legislative body. We've seen in the progress we've made so far how effectively we can work. We can change our minds just as they do in the present legislature. But the very fact that we have several issues that we have held hearings as a single legislative body on and will come out of here as the product of a single legislative body to me proves the value of a unicameral system. I haven't the eloquence of Reuben Stevens, but following in his footsteps, as my counterpart from Ransom County, I hope we will support a unicameral system.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, Assembly. I really wonder what are the weaknesses in the two-house system? And I have wondered that for some time. In fact, prior to coming to the Convention I've been regularly stated in the Minot press and elsewhere as being in favor of the two-house system as a present legislator. Yet when I got down here I started reading some of the articles of Mr. Unruh, I began to take a look at some of the recommendations of the legal institutes on politics and indeed the Citizens Conference. And I noticed they were striking at one concept, the concept of democracy. And then I began to reflect back on my experience in the legislative assembly and said, "Yes, I wonder if they aren't right?"

Let's take a look at the facts. In the 1971 legislature 1,072 pieces of legislation were introduced in these two houses. Of that number 611 passed, thirteen of which were later vetoed. But more significantly of that number — and I think it's a significant number, Delegate Kelsch — 58 went into conference committee. Fifty-eight went into conference committee. And Delegate Pearce said we ought to be concerned about whether there are too few or too many making decisions. And I concur with him in that remark. I would say this: Six people — six people is too few. Three from this body and three from the body across the aisle are too few to make the decisions on those 58 bills and resolutions.

I know in my years of legislative experience I've served on one conference committee. That happened to be a very innocuous bill on auctioneers. I talked to my colleague to the right here, and he tells me he served on one, too, which he considered innocuous, but that's all. But I can go back and reflect on the names of powerful persons in both of these assemblies who have served on conference committee after conference committee after conference committee. And I ask you is that representative government? Now what's the decision once that conference committee reports back to either one of these houses? That decision is either you approve the conference committee report or you don't approve it. And you're up against time, and you're up against the pressures of the moment, and you want to go home, and all too often I think the results, the logjamming, the logrolling that takes place, takes place within that conference committee session.

My colleague to the right tells me as a chairman of a committee he recommended two people to sit on a conference committee, but they were never appointed to that conference committee. The leadership has selection and choice opportunities at that stage of the legislative process, that the committee reflects an undemocratic status in our present two-house system. And I think of the last session when across the aisle the minority party did not even have a member on the three-member committee, did not even have a member on four of the most important pieces of legislation that went to conference committee status. And at that time I was appalled at the members of that body. And I said to myself, "These are the kind of rules that are going to help destroy the bicameral system. These are the kind of rules internally within the legislative assembly that make it less than democratic." So I submit that I have, in effect, changed my mind since arriving at this Convention just because of the reflection of that one evil inherent in our present system, the conference committee.

And then the other decision I had to make, well, do you think the legislature is going to change the conference committee system? If they are, I could still viably be for the two-house system. But I doubt — I doubt that the legislature, because it has to have a way to resolve the differences between those two houses, I doubt that better rules are going to be drawn and enforced to make a difference on the conference committee. So, therefore, I urge, if you are truly concerned about the democracy, if you are truly concerned about the opportunity of each of those elective representatives and senators, or in the case of the bicameral system, the senator, to effect decision-making, I think he has to effect that decision-making when he votes on the issue, not on the report of a select six people who have been sent out to make remuneration in the differences and come back with a recommendation. In that sense I find myself now, after great study, and certainly much reflection, in favor of a unicameral system.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NOTHING: Mr. President, Fellow Delegates. There have been comments made in this debate that I would, as a supporter of the bicameral

system, like to bring to your attention. And since the last was the one regarding the conference committee, I'll make that my first.

For those of you who have not been involved with a conference committee as a legislator, keep in mind that there is a final vote by the House or the Senate, by each, I should say, on the recommendation of the conference committee. So it's up to each individual legislator to decide in his own mind whether or not he wants to accept or reject that report.

And keep in mind that the legislature functions on a committee basis whereby a committee, as we have done, hears the testimony regarding an issue and makes a report to the body. And again you vote on that report as to whether or not you accept or reject it.

Conference committees have never been an area that I have been particularly involved in, because of one reason or another. However, I think if those that feel they are so bad, they want to change them, they should impress upon their legislators to change legislative rules instead of a Constitution Convention to change the Constitution.

It has been said that politicians will have much to gain by keeping the bicameral system. And I think really who are politicians? As I look, I see all of us as politicians or we wouldn't be here. I think there is a distinction as to who will have the most to gain with the unicameral system, and that is the non-elected politician who is not responsible, by virtue of election, to the people.

It's been said that political subdivisions in North Dakota operate on a unicameral basis. And I submit that is not a fair comparison unless the proponents of that position will state that the legislature will then become full-time as your school boards are and as your city councils are and as your township boards are, ready to meet the problem as it arises instead of as the legislature must meet the problem, which is every two years.

You've heard the number of bills that were determined — discussed at the last legislative session. I do not know the number of repetitious bills that were involved, that is the same bill being introduced into each house. But I have an idea there were not too many of them in the fact that each house weeds out the bills before they go to the other, permits the work to be done in the time limitation that has been set by the current Constitution.

I understand that the time limitation will be a matter for discussion before this body as to how long the legislature will meet. But it's my feeling that if we were to have a unicameral legislature and to have a thousand some-odd bills introduced before it that you would be in session closer to 160 days instead of the 60 days.

Now I'm sure there could be some rules put on the number of bills that would be introduced, but then in effect you are stifling your citizens. And I don't think I can support a position like that. So I think that the premise that we would have longer sessions would become a reality, and with that reality eventually would come a non-citizen legislature but a professional legislature made up of individuals who by reason of occupation or financial security may be able to serve. And this is one of the questions that's most important in my mind as to the decision as to whether or not we want to keep a citizen legislature. And having made that decision, then you must decide will it be bicameral or unicameral?

And then there are a couple of facts that I think were brought out in the opening debate that are very important for your consideration, much more important than the theories that have been advanced. Fact: In a comparison between the bicameral legislature and the unicameral of Nebraska the cost per legislature — per legislator in North Dakota is much less. Fact: By basis — on the basis of the survey as to services provided by our legislature over a unicameral legislature are much more impressive. And it's not a fact, it's an opinion, — and each of you must form your own opinion — in your experience is it easier to influence a smaller group or a larger group? You're going to have to decide that.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Delegates to the second Convention of the Great State of North Dakota.

My seat mate to the left referred to me several times, so I thought I'd better explain my position.

Now if you know of a person who agrees with you, will stay with you on an issue, he's a man with character. If you don't agree with him, he's a stubborn old fool. That's just the difference.

Now I came here — and I'll admit that I have been accused by some of the delegates and my good friends of making up my mind and staying with it. A very good friend of mine, I hope, Delegate Pearce, once told me that I wasn't subject to pressure very much, something to that effect. But I came here with an open mind on the subject of the legislature. And I assure you the fact that I'm in it doesn't make much difference, especially if you put an age limit on the legislators. Now I used to think you should shoot anyone over 40. Now I've changed. I think that figure should be about 90.

But I agree wholeheartedly with Delegate Sanstead that the conference committee is a great evil. In four sessions I served on one conference committee. I think a semicolon was the issue. And I have gone home and found out that words were slipped in by the conference committee that I didn't know about. I'll give you one good example: I was on the committee that okayed this Constitutional Convention. And when I left the committee it didn't have the word "unanimous" in it. The governor or lieutenant governor and the Attorney General were to make the nominations. Somewhere along the line the word "unanimous" crept in. And when I got home after the rush of the session I got the big argument here it was unanimous. This made me so mad I decided I'd run on my own.

Now I've taken a different attitude, though, than Delegate Sanstead. I think we should improve the system we have, do away — the fact that you couldn't have a conference committee without a printed bill in front of you, a day's recess in there, something like that. And I've done this for several reasons; (1) I feel that I have a good grasp of what the people in my district want. I've had pretty good luck guessing how elections would come out and so on. I have one letter, a very bitter letter, from a constituent of mine who just didn't like legislators very well. And he wanted a one-house system. I don't think it made much difference, he just doesn't like legislators because of some various aspects. Also he belonged to a different party than I. But I have about nine or ten letters — I will say seven or eight, not to fib — saying, "We do not want this change." I consider that quite a compliment, because I am in the House, and unless they use the new retirement — the old retirement system on me, I expect to be back.

Now what I am doing with the old system, I'm serving notice now before we're out of here that they'd better do something for the conference committees. Because it's just an open fact if you don't have the minority — I'm the majority of the party — but the minority of the majority party is in far worse shape than the real minority. I had a chairman tell me, "I wouldn't appoint you on a committee because you're tough. You might stay with the point and we might never get home." This I don't think is a good attitude. If you think you're right, you maybe should stay with it.

Anyway, after coming here I'm a little bit scared of a one-house system. I'm a little startled when we start right now with an action — of course I didn't approve. There we come to that stubborn old man again, you see — but there is no further body — except the people, of course, this is true — there is no further body to check on us.

Now I know during these sessions why "Senator" is a bad name sometimes. Again I would echo Delegate Kelsch's remarks: "Thank God for the Senate." And I'm going to stay with our old system. And not because I'm afraid of losing a job, it really doesn't make that much difference. And I'd like to tell you here and now I love elections. I don't want a four-year term. I've had two different chances to run for the Senate. And I don't like a four-year term. Election is half the fun. And I think it's more representative — represents the people a little more because you may not be around in two years if you don't. So I'm going to support the system as we have it. It's not perfect. I think the people, majority of the people in my district, want it. But I think it needs a lot of improvement. And I would agree — I don't know if I can still sit by my good friend, Delegate Sanstead. I thank you.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I presume before we get done talking about this issue a good many delegates are going to be tired of the rhetoric. This is the first time that I have spoken in the Plenary Session. I think the time for most of the rhetoric is in committee. But this is a matter that has come up without any recommendation, and I think we need to explore it fully.

I come from a rural area. I don't share in the view that we're reducing representation because Proposal 43 calls for a maximum of 147 people in the legislature, Proposal 42 calls for a minimum of 99. So I don't think this is really an issue.

I think there are a couple of matters that have arisen around this particular matter. And I'd like to read a short paragraph from the North Dakota Law Review, winter 1972 issue:

"The principle of bicameralism was adopted for the Constitution of the United States out of necessity. The first constitution of the United States, the Articles of Confederation, established a unicameral congress. The search for compromise by the writers of the Constitution led them to the acceptance of the principles of bicameralism wherein each state would be represented equally in the Senate, but according to population in the House of Representatives."

I think this is one of the matters that because the U. S. Constitution calls for this that we need to perpetuate it. And I think we will recognize that history — that this was a compromise, and perhaps not necessarily the most efficient way of operating government.

The other one is this matter of checks and balances. And as I view constitutional law, checks and balances are matters between executive, judicial and legislative and not within a branch. And I submit that in North Dakota we have too much of checks and balances in both the executive and legislative branches. And I think this Convention needs to correct both areas. And for that reason I would support the unicameral legislature as being a much more efficient, modern method of government.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates. I, too, come from a small community and one of those that has been shot to pieces and we became — our county became the tail of two separate dogs. So I was very concerned about representation. And I recognize that we have some other delegates in the same classification. So the matter of representation was my primary concern. And I carry that on.

And, further, as a novice in matters of this kind, I have probably spent more of my time following the matters that have been going on than maybe many of you. And I would hesitate to think of the additional amount of time I would have to spend if I were attempting to follow the bills and the proposals of another house. And so I have changed my mind on the matter of representation to this: That if I were a legislator I could do more for my community in a body such as this where I would be able to follow everything than I could if I had another individual on the other side of the floor confusing me even more. Thank you.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President, Fellow Delegates. I will take just one second.

I look at this question before us as all of you have here. And you certainly have to look at it very seriously. You attempt to view this issue from every conceivable angle and every approach. And you weigh one argument against the other. Now the merits of both systems most certainly have been commented upon here today. But there is still one fact that has to be convincing in my decision, and that's the characteristic and the make-up of our state. It is predominantly agricultural; 75 or 80 percent. If the proponents of the unicameral system could guarantee that we would have 99 members in the one assembly, I think I could go along with them. But as long as that guarantee does not remain there, I cannot go along with the unicameral system with 40 or 50 members and dilute the representation that's so necessary in this agricultural state.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: I'm sorry, Delegate Dobson, Delegate Hubrig asked for the floor quite awhile ago and I passed over him. I'm sorry.

Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. I rise to speak as a delegate to this Convention not speaking for any special group or lobbyist group. I want to speak my own convictions and what I think that probably many of my friends back home would ask me to say in reference to the unicameral system. I believe that we could operate under a unicameral system. There has been much criticism about the bicameral system. We could try the unicameral system, and probably some of the people back home that have been cussing out the Senators and Representatives unduly, unjustifiably, would have an opportunity to take a look at the other side of the coin. I am sure that we will not wait as long with another Constitutional Convention as we did this one. I would at least hope that before I start pushing daisies that we will see another Constitutional Convention. I'm not campaigning to come back to the next one, I want that on the record. But at the same time, I think we change Presidents of the United States, we should change constitutions. I don't say every two years or four years we rewrite the Constitution, but the machinery I'm sure will be in effect that another Constitutional Convention could be held without waiting as many years as we waited for this one. I am sure when we are done here that the people will be satisfied with the great changes that will have come out of this Convention. They will want to make sure in the future years the Constitution will be updated again as time goes by.

I am in favor myself of the unicameral system. I believe it can work, like this Convention can work. I want to be here with an open mind. I am here with an open mind. I only say God grant me the serenity to accept the things I cannot change, and the courage to change the things I can, and the wisdom to know the difference. And I think if we stay at this Convention with this kind of an attitude that we can come out of here with something the people will accept if they will only listen to understand. I want to thank you. I don't want to belabor our time any later.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, distinguished Delegates. This issue of unicameral or bicameral also was debated at the 1889 Constitutional Convention. On that occasion Mrs. Geelan's predecessor, Delegate Reuben Stevens of Lisbon, spoke in favor of unicameralism and said in part as follows:

"Let North Dakota set an example by the adoption of this resolution, and he who shall turn his eyes to the northern boundary of our Union will see not only a united, prosperous people whose flocks and herds graze on a thousand hills and whose millions of acres of golden grain wave in the breezes of heaven, but he will also see on the pages of this day's history a reform that will stand out in bold relief as if the Angel Gabriel had dipped his fingers in the sunbeams and painted in letters of living light across the vaulted arch of heaven."

Mr. President, I'm at a loss to understand how the 1889 convention rejected unicameralism after so eloquent a plea as that made by Delegate Stevens.

But the case in 1972 is much stronger for unicameralism. Originally the upper house of a two-house legislative body was constituted of property owners, and the lower house of so-called commoners. Our two-house congress was born of compromise in the 1787 Constitutional Convention with a Senate designed to represent the then sovereign state and the House population. And, incidentally, no state can be deprived of Senators without its consent. Most state governments subsequently adopted the model by basing their upper houses on area and their lower houses on population. But the U. S. Supreme Court knocked out the last remaining reason for a bicameral body for state legislatures with its one man vote decision in 1964. For all practical purposes, the concept of bicameralism was rendered inequalistic when a court ruled that apportioned seats in both houses of state legislatures must be based on population and only on population.

It's been pointed out, Mr. President, that the unicameral proposal would cut the number of legislators by one-third. I have heard no demand from the people of North Dakota, the forty-fourth most populous state, that we maintain the twenty-

fourth most numerous legislature. Under the unicameral proposal every rural district would be cut in half in geographical size. The legislators would be closer to the people. This would be a great boon for the rural areas of our state.

We are not proposing a Nebraska type system. We are not proposing unlimited sessions. We are not proposing professional legislators. We are proposing a unicameral system which would be distinctly unique to the State of North Dakota. The minimum number of members to serve would be 99. Presumably the maximum would be 117, the number of available seats in this chamber.

It's been pointed out that one-house legislative bodies are common throughout this country and, indeed, the world. If one house is sufficient to serve as a Constitutional Convention and redraft a document as important as the North Dakota Constitution, subject to voter approval, a one-house legislature should be adequate to propose simple statutes subject also perhaps to voter approval.

I don't think it can be said that the bicameral system has worked well in North Dakota or that it has been responsive to the people. The last several sessions have been marked by unnecessary and shameful wrangling and bickering, pitting not Republican against Democrat, but Senate against House.

Following recent sessions, polls have been taken by various newspapers to get the people's opinions of the legislature. In every case the people thought their own home district legislators were doing a good job, but that the legislature did a poor job. I submit this indicates that we're electing good legislators but that the system is defective.

Unicameralism is designed to enact legislation, bicameralism to kill legislation. If two houses are good, then three would be better, because then we could accomplish absolutely nothing. I feel that unicameralism would result in a significant qualitative improvement in our legislative branch of government. It would give North Dakota a lot more good legislating at a lot less cost.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: I rise not as an open partisan to this question, although I am on the Legislative Functions Committee, and I obviously have had to take a stand, at least with it ten to ten. I enjoyed the debate and the degree of construction. What I have to offer is this: This Constitution which we are going to draw in this session will have to be approved by the people. That is, of course, of the essence. I think we are getting a full and free debate here this morning. That I think is excellent. I know that — or I feel today that I am sitting in a body that is extremely reasonable. I think you have proved that this morning when you accepted the recommendations of the Legislative Functions Committee to handle this very difficult question the way you have. I think we are on the right road.

I do think, though, now that we should not become too locked in in our position as to whether or not we are bicameralistic or unicameralistic, if those are the correct terms. I feel that in order to have this Constitution adopted this is one issue that the people are going to be very desirous to have as an alternate. And I propose and suggest to this Convention that we keep this in mind. That as we debate these two alternates, that we very likely will wind up with these alternates on the ballot. And after they go on the ballot then we can go out again as partisans and argue their merits. But let's keep this in mind, that it might be very desirable to have this placed as an alternate on the adoption of this Constitution. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Peters.

DELEGATE PETERS: Mr. Chairman. I am from a large, rural district. And I am convinced that we have nothing to gain and everything to lose by changing to a unicameral system. I am convinced that we will lose considerable representation if the legislature is cut by one-half of its membership. The people of our district now have three members in the legislature, under the unicameral the district will no doubt be cut in two, then the citizens of each district will have only one member.

I am convinced that we do need the second house as a check for the other. Just one example: I would like to remind you of a bill passed by one house

recently to create regional school reorganization districts. Certainly no one in the rural area would want their school district in their county reorganized by a committee composed of people from seven or eight other counties. As you know, this bill was wisely killed by the second house.

As far as lobbyists are concerned, with the legislators that I have talked of — to, there are — they agree that there are many more lobbyists who are in favor of bad or selfish legislation. Certainly they would have much more influence in a one-house legislature than they would in a bicameral house. So I urge that for the sake of the rural areas that we vote for a bicameral system.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I have a few concluding points I would like to bring out.

Number one, difficult legislation is usually a result of compromise. Bicameral, unicameral is not going to make any difference on that. And I think it's good to compromise between the picture at that time.

I want to take issue with three of the delegates that spoke about the conference committee. They speak of it derogatorily. And I tie it in with this compromise; that at some time it's necessary to have a limited number of people working over a program that has been submitted to the House and Senate or to the unicameral, as the case might be, for approval of the body. Because oftentimes it is difficult to get a majority in agreement without refining some of the legislation that's there.

The third point, I'd like to advise this body, is we would not be in session today or any time this year were it not for conference committees. House Bill 485 of the 1969 legislative session, talking about a Constitutional Convention, was completed with a conference committee comprised of Kelsch, Strinden and Hoffner from the House; Van Horn, Litten and Meschke from the Senate. They worked out the final details that were acceptable to both houses so we could have a Constitutional Convention.

Last year in House Bill 1484, or in this session, 1971 session, added merely a few changes in there in order to have the understanding between the people that were putting this together. There was a conference committee comprised of Link, Hentges and Erickson out of the House; Longmire, Jacobson and Christensen out of the Senate. Now both parties of the political arena are involved in both of those conference committees, and to my knowledge this generally is the practice.

I do recommend that you approve the bicameral as the choice of this group.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: Mr. Chairman. Until last year — until last year I had given very little thought to the thought of unicameralism versus bicameralism. Working now? It was the situation in our sister state across the river, Minnesota, which brought the matter very vividly to my mind because it was reported at great length in our local paper. It set me to thinking and reading about unicameralism.

I think you all know that the two houses of the Minnesota Legislature were unable to resolve their differences by the end of the regular session in Minnesota. Again and again they came back into special session, and weeks stretched into weeks and month into month, and all that happened was that each house burned up its own position until many months later, exhausted, they found some sort of a solution. This simply could not happen in a unicameral body, at least in the unicameral body that has an uneven number of members. Or course, this has not happened in North Dakota. But, as we know, and as we have been told, it has happened in a number of other states and is happening in an increasing number of states. It can happen here.

To me the single or all-convincing argument is this one: That decisions have to be made. And it appears that it is the unicameral body and not the bicameral body which can make the decisions which must be made.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I rise in support of that evil, untried, confusing system of legislation known as the bicameral system.

I agree with Delegate Pearce that no souls will be saved by the speeches or the debate that's made on this floor. But I do have some convictions with sixteen years of experience with working in a bicameral legislature that I think I should at least relate some of them to the body that's assembled here today.

In many, many instances, in those years of service in the Senate, I have seen legislation that could have cost the State of North Dakota millions of dollars for years to come that would pass almost unanimously in one house and then come to the other house and with a new approach and a new hearing on that legislation it would be killed almost unanimously. Now I must hastily add that I think most of those bad things did start in the House and we had to take care of them in the Senate. But there were a few that started in the Senate that the House wisely took care of.

I have been under the impression here that those who have favored the — who are favoring the unicameral system have heard some mysterious voice in their ears crying from the people back in their district that they are to come down here and set up a new system of legislation. Well, I may be losing my hearing because not one single person in my district since we started debating these matters over a year ago, or at least a year ago, has come to me to try to influence me to vote for changing the system that has withstood the tests of time in their state — in our state legislature, to have a two-house legislature. So I have failed to hear this mysterious voice that some delegates here at least seem to be hearing from the people, "Go down there and give us a one-house legislature or a unicameral legislature."

I do want to say just one thing about some of the procedures that we do have now in the two-house legislature. Sure, we have conference committees. And it's a rule that we set up at the beginning of each session of our legislature. We have found in the years gone by that this is a technique which you have to use, as Senator Butler — as Delegate Butler said, to bring about a compromise. And certainly legislation is compromise. What's evil about that? Because it's better to compromise some things that are either good or bad than to let it go through all the way if it's bad without making those changes. These conference committees are just tools of the two houses. They have to go out and discuss the matter and then each has to come back to his respective house and there again sell the members individually on the agreement that was made. And time and time again they do not — the body does not agree with these reports. Because they feel they are bad. And they have to — they fail to accept it, and they have to go back and confer and confer some more.

I do not feel that we have anything to be ashamed of or to apologize to our people for for the manner in which we have operated in a two-house system since 1889. We in North Dakota are much better than most of the states on most of the troublesome issues that are facing them today. I certainly would be one of the last to want to get rid of the system that has made us — has put us in the condition that we are today to try some new history — new professor ideas and some new book ideas that the savior of the State of North Dakota is in a one-house legislature. I think the tests of time and the results and the conditions that we have today in our state are far more convincing to me than all of the books and all of the literature that have been circulated with trying to get us to change a system when only one state of our Union of fifty has seen fit to go to a one-house legislature. I hope that we keep the bicameral system in our legislature.

PRESIDENT WENSTROM: The Chair will recognize Delegate Solberg.

DELEGATE SOLBERG: Mr. Chairman. I doubt that within this last couple of hours anyone has changed his mind, but it has been good to have many things said.

Like an architect who designs, we are the architects for the State of North Dakota at the present time. The architect creates a basement structure and foundation so that onto it may be built one floor or two floors, depending upon the design. This is our privilege at this particular time; shall we have two floors or

shall we have one? We then must place the proper foundation. So we're building a temple. And being philosophic a bit, I would like to not speak directly to the subject that we are on, but may I wax poetic, if you please, Mr. President, and give to you a bit of poetry written by the Poet Laureate of Texas. And I apologize for using that state's name in North Dakota. But she has written a poem called "The Two Temples." And I'd like to draw this comparison, because we're looking at people. And people in the future. And so this is the way she put it:

"A builder builded a temple,
He forged it with grace and skill;
Its pillars and groins and arches,
He fitted to his will.
Men said as they saw its beauty,
Great is thy skill — O'builder,
Thy fame shall endure for age.

A mother builded a temple,
She forged it with ardent care;
The pillars and groins and arches,
She fitted with wonderful prayer.
None knew of her arduous task,
None knew of her wondrous plan;
The temple the mother builded,
Was unseen by the eyes of man.

Gone is the temple the builder builded,
Fallen into the dust;
Its pillars and groins and arches,
Consumed by eating rust.

But the temple the mother builded,
Lives on as the ages roll;
Because this wonderful human temple,
Was a child's immortal soul."

PRESIDENT WENSTROM: The Chair will recognize Delegate Peterson.

DELEGATE PETERSON: I'm almost afraid to speak because all I have is a mundane statement. There was mention made here that no doubt the arguments haven't swayed those whose minds are made up, but I would point out to you that there are some of us probably whose minds are not made up. I confess I lean very definitely, but I do not — my mind is not made up.

And in listening to the arguments I've been taking down notes. And I would like to say to Delegate Nething that his statement in his reminder that a conference committee always brings the final — that there is always a final vote brought back on the floor frightens me to death. Because in this august assembly we tend to lean quite a bit on what a committee does. And if we haven't had the time to pursue something, and quite often we don't, we are quite apt to take the committee's decision. Hopefully it's the right decision. But that final vote doesn't necessarily mean that the final vote on a subject is correct. Because we do tend to take a committee's opinion or their decision.

And I have a question. The statement made by Grant Trenbeath about the representation is a question in my mind, and I hope that that one will be resolved.

And again, I want to say to Esky that was a wonderful poem. And I apologize for getting up with just business.

PRESIDENT WENSTROM: The Chair will recognize Delegate Simonson.

DELEGATE SIMONSON: I rise to support the unicameral system.

I, too, am grateful to Esky for bringing the child into the picture.

I hope that my remarks, while they may appear light, will appeal to you with the common sense I use as the basis for my argument.

As the mother of five children — and I should perhaps have prefaced that remark by qualifying I'm also a wife — these two facts are the basis on which I should like to support my argument; I view the bicameral system in the light

of a family wherein one of the children goes to Dad and makes a request and Dad says, "Go ask your mother." The child departs and returns shortly and says to Dad, "She says what did Dad say?" Now if this kid is smart he has a bicameral house going for him. And the parents usually wind up hanging the cloth over the clock. I'm for the unicameral decisions between Art Simonson and Ailsa Simonson, and I'd like to see North Dakota stop the buck in the same way. Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Stanton.

DELEGATE STANTON: Mr. President. I think we should get back to the basic issue again, which is simply this: I have challenged the unicameral people to tell me how the government of the State of Nebraska, which is the only unicameral experience we have, is better than that of the State of North Dakota. I haven't had that answered yet. I would really like to hear it. Because really when you get down to the nitty-gritty this is the whole thing. The only state of the fifty that has a unicameral system is Nebraska. Now if that system is that good, somebody here should be able to tell us how it's that good. We have a good working state as we have it now. We know that there are weaknesses in the system, and we know that we can correct the weaknesses. Now I've heard a great deal of sniping at legislators here for what a few legislators may or may not have done, I don't know. But if the unicameral people have any proposal for keeping rascals out of government, I wish they'd give them to the bicameral people. We'd be glad to include it in our proposal.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. I did not expect to take part in this debate this morning. But since the question about Nebraska has been bandied around quite a lot, I would like to say my sister has lived in Nebraska since 1920. Her and her husband moved there from North Dakota. They are from the town of Lakota where he finished up his working years with Northwestern Bell as Division Superintendent. They were well acquainted with Mr. and Mrs. George Norris, who was the sponsor and founder of the unicameral system in Nebraska. They very much dislike the legislative system in Nebraska. It was started out, no doubt, with too small a body. It was less than 40 initially. And it concentrated power in the Omaha-Lincoln area and in a few of the larger cities of that area. And all of western Nebraska has felt they were treated like stepchildren since that time.

In recent years an attempt was made to go back to the bicameral system, but it didn't carry. They still operate under the unicameral system.

Also mention has been made about the one man - one vote. I'd like to remind this Convention that for a hundred twenty years the Supreme Court of the United States declined to take jurisdiction, said they had none in this particular field. Starting way back in 1941 and '42 with its so-called door rebellion when they come the next thing to violence when that state adopted a new constitution from the old English Charter, the Supreme Court sent it back and said they had no jurisdiction in this field. That can be found, if you want to look it up, in U. S. or in **Luther v. Borden**, how one Supreme Court refused to take jurisdiction of a state political issue. And following clear on down I have eight other cases listed here. Seven of them the Supreme Court consistently held, as late as 1955, that they had no jurisdiction.

Then in 1964 four of those judges reversed themselves and were torn by two recent appointees and said, "We have." And at that time Justice Hart accused the majority of amending the Constitution of the United States to take jurisdiction in their lust for power. So just to review a little more history, courts change their minds the same as other people. Within my memory the Supreme Court of the United States adhered to the doctrine of equal but different in the case of the freed slaves. That's equal facilities but segregated, I should have said. Now that has been reversed, and not only by statute but by court decision.

I'd like to cite a recent case, though, when this issue was boiling, Colorado had two proposals before its people in the form of constitutional amendment. And one of them was for the area to be considered in the Senate on a strict population basis for the House in determining membership. There was another one right in

the same election that wanted both bodies based on population only. The one for partly area and partly population carried about two to one, the other one was defeated by about the same margin. Then when this was over the Colorado legislature redistricted the state in 1963. And the dissatisfied parties took that appeal to the federal courts. And a three-judge federal court upheld the redistricting of Colorado. It was appealed from there to the United States Supreme Court, and they slapped it down and said it made no difference what the people of Colorado did, it had to follow their recent decision.

So we're moving along to where we are centralizing power. And if we keep on with this — we've got a situation right over in Minnesota right now where they are determining the size of the legislature by the federal court. And if we keep on with this it won't be too long till we may be living under a judicial oligarchy.

I would like to see the bicameral system continued here in North Dakota. I've served in it many years ago; it has its defects. But the more representation you can have of your population in your legislative body, the better it is.

I would just cite one more thing going back into the formation of our country. The same issue was thoroughly debated at that time. And it was a compromise; the big states between the little states. The big states wanted population only in a one-house body, but they couldn't agree. And finally Ben Franklin expressed himself on it this way: That the reason for a two-house Congress is the same reason that you have a saucer and a very hot cup of tea; to cool off hot legislation.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I have been impressed with the arguments on both sides of the question, and just have a couple of points that I would like to mention.

There's been a lot of talk about conference committees. I cannot foresee a political body, whether it be unicameral or bicameral or Constitutional Convention, that would not have to set up committees of some sort to evaluate and investigate specific issues. Now it may not be called "conference committee," but certainly there would have to be a committee of that type.

The state legislature, as its name implies, is legislative. It sets the laws under which our judicial branch, our executive branch and our subdivisions, political subdivisions, are to function and administrate. When we compare state government with city government, we just are not comparing apples with apples. They are two entirely different systems.

I am going to vote for the bicameral system at this time. However, as has been mentioned before, if the situation raises and there is a vote to put unicameral on the ballot as a separate issue, I will support that motion.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President. I don't wish to reiterate the claims that already have been made. But I want to point out an issue from my vantage point. I suppose I've testified well over a hundred times before various committees of the legislature the last ten years. And I have maintained that the present two-house system really does not provide for the second hearing, it simply provides for a first hearing in the second house, which is substantially different.

I really believe there is a need to cool off hot legislation, there is really a need to look at the other side of the issue. I know a number of times the state agencies have had bills introduced that have passed by a substantial margin in one house and then in the other house the people who could present the other side of the case showed up, they weren't really aware of it when it showed up the first time in the first house, but the second hearing can easily be had in the first house by being sent back to the committee again after it's been heard the first time. And this is truly a second hearing. Then the people that heard the arguments of one side get to hear the arguments on the other side. But my big objection is how can a bill that passes say the House 98 to 0 or 80 to 10, or something like this, go over to the Senate and get killed in Senate committee unanimously without any discussion other than one Senator says, "That bill is no good. I vote that it be indefinitely postponed." The committee report comes

to the floor of the Senate, and the committee report is simply adopted 99 times out of 100. There is such a thing as beating a committee report on the floor, but it's very rare. And I maintain that this is a defect of the bicameral system which would not happen in the unicameral system.

And I think when you're talking about lobbyists with influence, for example, it depends on whether you want to get something passed or killed. All you need on a small committee is one person in favor of your side if you want to kill the legislation. I have heard cases personally, heard it with my ears, in conversations between Representatives and Senators where one Senator agreed to kill a piece of legislation only by number. After he found out the number, then he asked, "What's this bill all about anyway?" But he'd already agreed to kill it at this point. And I have watched it through committee and he did kill it in committee as promised.

The other night in the Highway Department Building we heard a comment that in a unicameral system a strong committee chairman could work his will on the one body. And he pointed out that this was the case in the House several times. Committee chairman would get his proposal through, get it through his house, and this fellow would have to contact his counterpart in the Senate to kill it over in the Senate. Now I ask you to decide for yourselves whether 100 members in one body in discussion on the floor can make a better decision on an issue of that nature than can a seven-member committee? And I really think that there is a danger in a small committee, besides a small House, for example. But the press, for example, gives all the coverage to the hearing in the first house. When a bill — it gets a big coverage on the front page of all the state newspapers when it's heard in the first house if it's a controversial issue. When it gets to the house on the other side all you'll usually find is what happened to the proposal in small print.

And I really think if we want the people to see what we are doing the unicameral is the way to go. Thank you.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President. In response to Delegate Peterson's question, I failed in my comments to say when I alluded to the guarantee of the 99 members, what I meant was that this body cannot guarantee it. What I was referring to was inherent — the inherent danger in this thing was that we would soon have a Constitution amendment before us reducing those numbers, probably down to 40 or 50, and then being sold on the basis of economy very easily. So that is — this is what I was alluding to. This really weighs on my mind. I do not fear the reduction so much in numbers between two bodies where you still have the checks and balances, but if you get one body and get those numbers reduced, which can easily happen by constitutional amendment and which I feel will happen, then this is the inherent danger I was referring to.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President. We've heard discussion about the effects of the Minnesota legislative situation. I think we should just talk a little bit about that. There we have had extreme conflict between not necessarily the legislative body itself, but between the executive and legislative body. And this is what I fear for our state if we adopt the unicameral system. I'm not a prophet of gloom, but merely I'm rather an optimistic fellow by nature. But I foresee a very large number of vetoes and a very large number of referrals if hot legislation, as it is so-called, passes a one-house legislature and does not meet with the approval of the governor and if it does, the people don't like it. If you want to talk about an expensive legislative process, you just see a number of referrals one after the other that's going to be made on this unicameral system. You'll be sorry you made the change.

DELEGATE URDAHL: Mr. President:

PRESIDENT WENSTROM: Delegate — I believe Delegate Urdahl is first. You have spoken once. Delegate Urdahl.

DELEGATE URDAHL: Mr. President, Fellow Delegates. I find myself with a rather uncomfortable feeling of being almost persuaded to support the uni-

cameral type of government. However, there are several — several fears that I have that I think is probably common to quite a number of people, and particularly because I have rather followed Nebraska for a number of years and have several friends living there who constantly refer to their representatives as being professional politicians. Now this is a word that rather scares me, because I don't think we've had anything like that in North Dakota. And I think that we have had rather a progressive, forward-looking type of government by ordinary citizens that have been elected to represent us.

The second fear that I have is that of lobbyists. And I am not one to criticize and discourage lobbyists; I know they serve a very important part in our government. But I wonder in the type of government they have in Nebraska if it hasn't been rather much easier to influence 49 representatives than it would be to influence the kind of government we've had here in North Dakota.

The third fear I have, too, that's already been mentioned many times, and that is of representation. I think that it is relatively easy for the people in North Dakota to know rather intimately their representatives. In our county we have six; and I doubt if there is hardly a citizen in our county that does not know one of these six rather well. And I think that brings government real close to home.

I've followed Nebraska, too, in such vital areas as welfare. Over the years also in the vital area of education. And I cannot see that Nebraska has been a model for us to follow in progressive legislation. However, I still want to repeat that I find myself in the awkward feeling of being almost persuaded. And I want to commend the delegates for having done a tremendous job of presenting the merits and demerits of both types of government here today. Thank you very much.

PRESIDENT WENSTROM: The Chair will recognize Diehl.

DELEGATE DIEHL: Mr. President, members of this Convention. Much has been said and many statistics have been thrown around here in comparing the unicameral system of Nebraska with the bicameral system of North Dakota. I'm not going to further burden you with this kind of a thing.

I have served ten years in the North Dakota Legislature, and many times we have been appraised of the efficient type of legislature that we have in our great state. And I don't think we can overlook this.

All of a sudden we find ourselves wondering whether we should change, change for a system that has been adopted only by one state and though adopted over twenty years ago, has been copied by no other. I am convinced the one-house system leads to professionalism, that it destroys the part-time citizen legislator concept. I believe it limits the opportunity for the development of leadership. I'm convinced the one-house system lends itself to excessive outside pressure and influence. It has a tendency to eliminate the two-party concept which has long been traditional in our land. Most of all, I oppose the one-house system because it removes our checks and balances and sooner or later is sure to take away our rural representation.

Fellow Delegates, I urge you to support our bicameral system of government.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hildebrand.

DELEGATE HILDEBRAND: Mr. Chairman. We have heard of some of the bicameral systems that get hung up on issues, and we are being referred to in Minnesota as an example as that situation there may be. But may I read just a few lines of a report made by State Senator Richard Goldberg? And he refers to the recent experience the unicameral system of Nebraska had when they were hung up for several months on one tax bill in this last session of their legislature. And he goes on to say that:

"If Nebraska with 49 in one house can't get done in five months, what happens to one house with a minimum of 99 in a time limit of 80 days?"

I think what better example of that, even right here at home, when we only look at the Committee on Legislative Functions right here in the Convention? Since last August we have been deadlocked, and for that reason you are now in this unique situation where we are asking you to help us make this decision. I have observed that many of you delegates have very actively participated, and it seems to me you have enjoyed it. And I can support the feelings that have

been expressed here by several delegates that they feel this may be a good question to place on the ballot, because I do believe the people of North Dakota also would like to help participate.

DELEGATE KNUDSON: Question.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: The hour is late and there are just a couple of comments that I think might be worth considering. And I agree with Delegate Diehl that we can sit around and make figures lie for us all we want. And though I have figures that tell my side of the story, I am not going to burden you with those. And the length of session and the effect of lobbyists and all this sort of thing has been told to us.

I even took a poll of the Senators down in Nebraska to ask them what they think. And they think just like the legislators in North Dakota; they have the best system in the world and they wouldn't change it for anything.

So I think the real crux of the thing, though, that we have sort of overlooked in talking about structure is the importance of the people that are going to make this system work. And I think that we have people that could do a better job in a unicameral system than a bicameral system. And I'm not afraid of the lobbyists catching George Longmire in a unicameral system. Because George Longmire is going to be the same honorable George Longmire, the same Senator Unruh, the same Senator Butler or any of the rest of them. And I think that a unicameral system is going to make it much more possible for them to operate and do a better job with more knowledge.

And it doesn't have to be a professional legislature. We have limits on the number of days to serve, and it can be as representative as any other assembly there is. And so I think that the caliber of the people is going to be very, very important. And I think you can attract good caliber people to a unicameral system, and they will be as immune to lobbyists as our present people in the bicameral system.

DELEGATE SOLBERG: Question.

PRESIDENT WENSTROM: Further discussion?

Hearing none, we will proceed to Section 4 of the motion as adopted, and that reads as follows:

"That at the conclusion of the discussion the delegates shall be polled individually by the Clerk, at which time they shall state their preference — either bicameral or unicameral."

Delegate Devine.

DELEGATE DEVINE: Mr. President. Can that be done by the board?

PRESIDENT WENSTROM: I asked the question at the time the motion was on the floor, and it was stated at that time that it was to be done by roll call.

DELEGATE DEVINE: I would move that the board be used in this matter and the Chair determine how the "ayes" and "nays" should read.

PRESIDENT WENSTROM: Delegate Devine, I have to rule your motion out of order in that the Rules were suspended to follow the procedure that we are following.

And the next section of No. 5 reads as follows:

"That prior to said vote, no amendment or other motion shall be in order."

The Chair or the Clerk will proceed with a roll call.

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: Mr. President and Fellow Delegates —

PRESIDENT WENSTROM: Delegate Aas — go ahead.

DELEGATE AAS: — I support the bicameral position.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: Mr. President, in order to keep the race even I support the unicameral system.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: Bicameral.
CHIEF CLERK GILBREATH: Bassingthwaite.
DELEGATE BASSINGTHWAITE: Bicameral.
CHIEF CLERK GILBREATH: Bender.
DELEGATE BENDER: Bicameral.
CHIEF CLERK GILBREATH: Benson.
PRESIDENT WENSTROM: Benson is in the House.
CHIEF CLERK GILBREATH: Benson.
DELEGATE BENSON: Excuse me. Unicameral.
CHIEF CLERK GILBREATH: Benz.
DELEGATE BENZ: (Absent).
CHIEF CLERK GILBREATH: Berg.
DELEGATE BERG: Bicameral.
CHIEF CLERK GILBREATH: Billey.
DELEGATE BILLEY: Bicameral.
CHIEF CLERK GILBREATH: Binek.
DELEGATE BINEK: Bicameral.
CHIEF CLERK GILBREATH: Birkeland.
DELEGATE BIRKELAND: Unicameral.
CHIEF CLERK GILBREATH: Brakke.
DELEGATE BRAKKE: Bicameral.
CHIEF CLERK GILBREATH: Burbidge.
DELEGATE BURBIDGE: Bicameral.
CHIEF CLERK GILBREATH: Burke.
DELEGATE BURKE: Bicameral.
CHIEF CLERK GILBREATH: Butler.
DELEGATE BUTLER: Bicameral.
CHIEF CLERK GILBREATH: Byrne.
DELEGATE BYRNE: Bicameral.
CHIEF CLERK GILBREATH: Cart.
DELEGATE CART: Bicameral.
CHIEF CLERK GILBREATH: Chase.
DELEGATE CHASE: Bicameral.
CHIEF CLERK GILBREATH: Christensen.
DELEGATE CHRISTENSEN: Bicameral.
CHIEF CLERK GILBREATH: Daniels.
DELEGATE DANIELS: Bicameral.
CHIEF CLERK GILBREATH: Dawson.
DELEGATE DAWSON: Bicameral.
CHIEF CLERK GILBREATH: Decker.
DELEGATE DECKER: Bicameral.
CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Bicameral.
CHIEF CLERK GILBREATH: Diehl.
DELEGATE DIEHL: Bicameral.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Unicameral.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Unicameral.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Bicameral.

CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Bicameral.
CHIEF CLERK GILBREATH: Fallgatter.
DELEGATE FALLGATTER: Bicameral.
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Bicameral.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Unicameral.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Unicameral.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Bicameral.
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Bicameral.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Unicameral.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Bicameral.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Two-house.
CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: One-house.
CHIEF CLERK GILBREATH: Hernett.
DELEGATE HERNETT: Bicameral.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Bicameral.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Unicameral.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Bicameral.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Unicameral.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Unicameral.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: Unicameral.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: Bicameral.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Unicameral.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Unicameral.
CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Unicameral.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Bicameral.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Bicameral.
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Bicameral.
CHIEF CLERK GILBREATH: Kwako.

DELEGATE KWAKO: Bicameral.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Unicameral.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Bicameral.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Unicameral.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Unicameral.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Bicameral.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Bicameral.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Bicameral.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Unicameral.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: Unicameral.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Bicameral.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Unicameral.
CHIEF CLERK GILBREATH: Nething.
DELEGATE NETHING: Bicameral.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Bicameral.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: Unicameral.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: Unicameral.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Unicameral.
CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: Bicameral.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Bicameral.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Unicameral.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Bicameral.
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: Unicameral.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Bicameral.
CHIEF CLERK GILBREATH: Rosendahl.
DELEGATE ROSENDAHL: Unicameral.
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Bicameral.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: Bicameral.

CHIEF CLERK GILBREATH: Sanstead.
 DELEGATE SANSTEAD: Unicameral.
 CHIEF CLERK GILBREATH: Saugstad.
 DELEGATE SAUGSTAD: Bicameral.
 CHIEF CLERK GILBREATH: Scheel.
 DELEGATE SCHEEL: Bicameral.
 CHIEF CLERK GILBREATH: Schmit.
 DELEGATE SCHMIT: Bicameral.
 CHIEF CLERK GILBREATH: Simonson.
 DELEGATE SIMONSON: Unicameral.
 CHIEF CLERK GILBREATH: Sinner.
 DELEGATE SINNER: Unicameral.
 CHIEF CLERK GILBREATH: Solberg.
 DELEGATE SOLBERG: Bicameral.
 CHIEF CLERK GILBREATH: Sondreal.
 DELEGATE SONDREAL: Bicameral.
 CHIEF CLERK GILBREATH: Stanton.
 DELEGATE STANTON: Bicameral.
 CHIEF CLERK GILBREATH: Sullivan.
 DELEGATE SULLIVAN: Unicameral.
 CHIEF CLERK GILBREATH: Thompson.
 DELEGATE THOMPSON: Bicameral.
 CHIEF CLERK GILBREATH: Trenbeath.
 DELEGATE TRENBEATH: Bi.
 CHIEF CLERK GILBREATH: Tudor.
 DELEGATE TUDOR: (Absent.)
 CHIEF CLERK GILBREATH: Unruh.
 DELEGATE UNRUH: Bicameral.
 CHIEF CLERK GILBREATH: Urdahl.
 DELEGATE URDAHL: Bicameral.
 CHIEF CLERK GILBREATH: Vogel.
 DELEGATE VOGEL: Unicameral.
 CHIEF CLERK GILBREATH: Wallin.
 DELEGATE WALLIN: Unicameral.
 CHIEF CLERK GILBREATH: Warner.
 DELEGATE WARNER: Bicameral.
 CHIEF CLERK GILBREATH: Wicks.
 DELEGATE WICKS: Unicameral.
 CHIEF CLERK GILBREATH: Wenstrom.
 PRESIDENT WENSTROM: Bicameral.

May we have order in the Convention? Roll call discloses 61 for bicameral; 35 for unicameral, with two delegates absent and not voting. So the bicameral won the contest.

We will next be on the sixth section of the amendment — or of the motion as adopted this morning:

“That the proposal that carries the majority votes of those voting shall thereupon be deemed placed at the top of the calendar on tenth order for first passage.”

We, therefore, now have before the Convention Committee Proposal 1-43 for first passage. Do we have any discussion?

The question — the question is on the first passage of Committee Proposal No. 1-43.

Those in favor will vote "aye," those opposed will vote "nay." The key will be open, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 68 "ayes," 27 "nays," three delegates absent and not voting. Committee Proposal No. 1-43 has been passed.

What are the wishes of the Convention?

DELEGATE SAUGSTAD: Mr. Chairman, I believe that because of the hour and the meetings scheduled at one o'clock for the Rules Committee that we should perhaps conclude — that is cease work on the calendar and make whatever announcements are necessary from the desk prior to recessing.

I believe that Representative Hoffner — it was Delegate Hoffner, I believe, moved to have Delegate Proposal 1-42 returned to the committee.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I was going to wait until you had it on the calendar. I now move that Delegate — or Committee Proposal 1-42 be returned to the Committee on Legislative Functions.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposal No. 1-42 be returned to the Committee on Legislative Functions. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Stanton.

Any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-42 is returned to the Committee on Legislative Functions.

Delegate Geelan, wasn't your Committee on Rules scheduled for two o'clock?

DELEGATE GEELAN: No, Mr. President, it was set for one o'clock.

PRESIDENT WENSTROM: One o'clock. Fine.

DELEGATE GEELAN: In the Large Hearing Room.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: What's the schedule for this afternoon? Will the Plenary Session be back in session this afternoon?

PRESIDENT WENSTROM: Delegate Aubol, I was in hopes that it would be. However, it's so difficult to say how long the Rules Committee will be in session that I would question recessing to a time certain. I just don't know.

DELEGATE AUBOL: Was it the Chair's intention to convene after the Rules Committee? Or perhaps the Rules Committee's schedule could be changed.

DELEGATE SCHEEL: Mr. Chairman, Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Are you clear? Okay. May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order of business.

DELEGATE SCHEEL: I would like to move the introduction of Resolution C which is at the desk.

PRESIDENT WENSTROM: We have a motion for the introduction of Resolution C. May we have a second?

DELEGATE LARSEN: Second.

PRESIDENT WENSTROM: Motion has been seconded by Delegate Larsen.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the resolution is before us.

CHIEF CLERK GILBREATH: "Resolution No. C. Introduced by Committee on Resolutions.

"A resolution expressing the best wishes of the North Dakota Constitutional Convention to the Constitutional Convention of the State of Montana."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended and Resolution C be read in its entirety, placed in the Journal not to be printed as a proposal, and placed on final passage.

PRESIDENT WENSTROM: You heard the motion. Do we have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Cart.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the resolution is before us.

CHIEF CLERK GILBREATH: "Resolution No. C. Introduced by Committee on Resolutions.

"A resolution expressing the best wishes of the North Dakota Constitutional Convention to the Constitutional Convention of the State of Montana.

"WHEREAS, along the length and breadth of this land there is a concerned effort to revise and reform many state constitutions in order that these basic documents reflect the changes and advancements that have occurred in this century affecting our society and way of life; and

"WHEREAS, the citizens of the states of North Dakota and Montana, having recognized that there may be a need for such revision and reform have authorized Constitutional Conventions to undertake this effort; and

"WHEREAS, the delegates to the North Dakota Constitutional Convention have now been in plenary session for 10 days and recognize the monumental problems confronting them as they attempt to revise and rewrite the North Dakota constitution of 1889; and

"WHEREAS, the delegates to the Montana Constitutional Convention are now assembled in Helena for the same basic purposes, having determined that a proposed revision of their own constitution was advisable;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That this Convention express its sincere wishes for a most successful organizational meeting and that the delegates to the Montana Constitutional Convention may produce a revised constitution so nearly perfect that it may be second only to that created by the state of North Dakota.

"BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the President of the Montana Constitutional Convention."

PRESIDENT WENSTROM: You've heard the reading of the resolution. Any comment?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Resolution No. C is adopted.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I wonder, just to get the sentiments of the people here, if we could recess until 1:15 and then come back here in Plenary Session until three and maybe the Committee — Rules Committee could meet after that.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I have hurriedly polled the members of the Rules Committee. And if it would be better for us to come back in Plenary Session and then meet hopefully not any later than three, if the session then could be adjourned, then the Rules Committee will postpone its meeting until three o'clock.

PRESIDENT WENSTROM: Thank you very much, Delegate Geelan. I think that is much in line with the sentiments of the Convention.

And if someone would move that we stand in recess until — how long? One o'clock? The Chair will declare a recess until one o'clock, at which time we will go right back into a Plenary Session.

(The Session recessed at 12:29 P.M. until 1:00 P.M., the same day.)

AFTERNOON SESSION

(The afternoon session commenced at 1:02 o'clock P.M. as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

We will be on the ninth order of business — Introduction and Referral of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-97, introduced by Committee on Finance and Taxation:

“Be it resolved by the North Dakota Constitutional Convention that section 176 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to tax uniformity and exemptions.”

PRESIDENT WENSTROM: Committee Proposal 1-97 is referred to the Committee on Finance and Taxation.

We will be on the tenth order of business. Next for consideration is Committee Proposal No. 1-20 as amended.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-20, introduced by Committee on Education, Resources and Public Lands:

“Be it resolved by the North Dakota Constitutional Convention that sections 131, 132, 133, 134, 136, 137, 138, 140, 141, 143, 144 and 145 of the constitution of the state of North Dakota be repealed; and that Article X to the constitution of the state of North Dakota be created; all of which pertain to corporations.

“SECTION 1. REPEAL.) Sections 131, 132, 133, 134, 136, 137, 138, 140, 141, 143, 144 and 145 of the constitution of the state of North Dakota are hereby repealed.

“SECTION 2.) Article X to the constitution of the state of North Dakota is hereby created to read as follows:

“ARTICLE X

CORPORATIONS

“Section 1. No charter of incorporation shall be granted, modified or amended by special law, except in the case of municipal corporations or such other corporations as may be under the control of the state. The legislature shall provide by general laws for the organization of all corporations.”

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates. Committee Proposal No. 1-20 is a section on corporations and contains quite a large number of sections to be repealed. It was brought to the floor a few days ago and referred back to committee. And because of the referral we have made certain amendments which were referred to yesterday. Basically what we have done in the way of amendments is to take out those sections upon which any question whatsoever was raised. There have been no questions raised to the committee as to the other sections.

Section 131 of the present Constitution is basically incorporated in Section 1 of Article X as proposed.

Section 132 of the old Constitution was one that pertained to existing charters and grants of special privileges at the time the original Constitution was adopted. It was a transitory section and became obsolete shortly after the original Constitution was adopted.

Section 133 referred to corporations of grants of powers that were existing at the time of the adoption of the original Constitution, and were not used. And that provision made them subject to the Constitution of 1889. Again, this is a transitory provision and is now obsolete.

Section 134 of the Constitution pertained to the making the corporation subject to right of eminent domain. We met with the subcommittee of the Preamble,

Bill of Rights and Suffrage Committee which has Section 14 which also pertains to eminent domain. And it was our opinion that this section could be incorporated in that committee's proposal.

I believe at the time the original Constitution was adopted there was some concern about making the corporation subject to laws the same as individuals.

We omitted Section 135 at this time. It will come before us on a separate measure.

Section 136 provides that no foreign corporations shall do business in the state without having one or more places of business in the state without having one or more places of business and an authorized agent within the state. The committee felt that this is a matter to properly be handled by the legislature. It's a detail of corporations and should be included in the general laws of the state.

Section 137 is a similar provision providing that no corporations shall engage in a business other than expressly authorized in its charter. Again, the committee felt that this was a matter that could properly be handled by the legislature.

Section 138 was a section directed at — it provided that corporations shall not issue stocks and bonds except for money — excuse me — labor or property actually received. Again, we felt that this is a matter for general laws and should be before the legislature.

We omitted Section 139 at this time because there was a question raised. Delegate Christensen will speak to the other sections.

PRESIDENT WENSTROM: The Chair will recognize Delegate Christensen.

DELEGATE CHRISTENSEN: Mr. President. I wish to make reference to Sections 140, 141, 143, 144 and 145 — 145. Now each of these the committee is recommending for repeal in connection with Proposal No. 1-20.

Section 140 deals with railroad corporations organized under the laws of the state and relating to its stocks, its stock records, its place of business and so forth. Now to our knowledge, there are no such corporations in the state and if any should be organized the laws of our state would adequately cover them. And this would include railroad corporations.

Section 141 relates to consolidation of railroads. Railroads are regulated primarily by the Federal Government, and consequently North Dakota has little jurisdiction over them, so making this section completely ineffective.

Section 143 states that any corporation organized for the purpose of constructing and operating a railroad within the state and to connect with points outside the state can do so. This section is superfluous. Under the Interstate Commerce Clause of the Federal Constitution, Congress has preempted the states' control of interstate railroads. They are extensively controlled at the federal level.

Section 144 defines the term "corporation" as used in this part of the Constitution. Again, this is a superfluous section. There is no need to provide a definition of the term "corporation." It's adequately done by statute.

Section 145 relates to the issuance of legal tender by banks. This section is obsolete because the United States Treasury and the Federal Reserve Banks are the only agencies authorized to issue legal tender today.

So we encourage repeal of these several sections.

You will find that actually there's no substantial change in new Article X on corporations.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: Mr. President. I'd like to inquire of Delegate Christensen about Committee Proposal No. 1-94, that seems to be on the calendar, too, will be shortly, and that repeals Section 142 of our Constitution.

DELEGATE CHRISTENSEN: I'll delegate that question to Mr. Devine.

DELEGATE DEVINE: To answer that question, yes, we are going to deal with that as a separate matter as there has been a question raised on that bill by many delegates.

DELEGATE CART: I'd like to make this statement to the Convention. That the Public Service Commission does have jurisdiction and authority in this field.

And it should be — if it's rewritten, it should include highway carriers and other carriers, pipelines as well. They do exercise jurisdiction over intrastate operations, even the pipelines bringing in natural gas in this state. And I think — don't think this should be repealed without a pretty careful review. It's true that the Interstate Commerce Commission can step on the toes, so to speak, of any state commission through Section 13. But that can only be invoked where they can show that the intrastate rates are a burden on interstate commerce.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. In response to that, precisely because there has been a question raised, we have separated that issue from what is before the floor at this time. That will come to the floor at another time.

DELEGATE CART: All right.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-20.

Hearing no more discussion, we will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 87 "ayes," one "nay," ten delegates absent and not voting. So Committee Proposal No. 1-20 has passed.

Next for consideration in the Convention is Committee Proposal No. 1-24.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-24, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that sections 177, pertaining to rail tax; 180, pertaining to poll tax; 181, pertaining to passage of laws to carry out provision of finance and taxation article; and 187, pertaining to certificate of indebtedness to be signed by auditor and secretary of state; of the constitution of the state of North Dakota, be repealed.

"SECTION 1. REPEAL.) Sections 177, 180, 181 and 187 of the constitution of the state of North Dakota are hereby repealed."

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: As a member of the Finance and Taxation Committee, I have been asked to explain these proposals, why the committee repealed them.

First of all, Section 177 provided for the correction of an acreage tax for owners growing crops which were damaged by hail. This has not been used for some time, and the committee felt that this section could better be able — be better able handled as a legislative function.

Section 180 provided for the collection, levy and disposition of a poll tax. And, as you are all aware, the courts have looked quite unfavorably on poll tax. So the committee felt that could also be deleted.

Section 181 provided that the legislative assembly shall pass the laws necessary to carry out the provisions of this article on revenue and taxation. The committee felt it was unnecessary language, and that the assembly cannot be forced to produce anything they do not want to put forward. And so we felt that section could also be deleted.

Section 187 states that no bond or evidence of indebtedness of the state shall be valid unless the auditor and the secretary sign the certificate. This also holds true for the local subdivisions of government. And in the case of bonds they have to be signed regardless and is the only reason this would be in here, in case this was overlooked. And this has never happened. So it was felt that this section could also be deleted.

If there are any questions, I think I or one of the members would be glad to answer them.

PRESIDENT WENSTROM: Any further discussion? Any questions on Committee Proposal No. 1-24?

Hearing none, the question is on the first passage of Committee Proposal No. 1-24.

The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 86 "ayes," no "nays," twelve delegates absent and not voting. So Proposal No. 1-24 has passed.

Next for consideration is Committee Proposal No. 1-25.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-25, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 79 and 80 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to the veto power of the governor, be created.

"(SECTION 1. REPEAL.) Sections 79 and 80 of the constitution of the state of North Dakota are hereby repealed.

"(SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Governor — Veto Power.

"a) Every bill passed by the legislative assembly shall be presented to the governor for his signature. If the governor signs the bill it shall become law.

"b) The governor may veto a bill passed by the legislative assembly. He may, by veto, strike or reduce items in appropriation bills, except in any bill making appropriations of money or property for the operation of the legislative assembly or its permanent or interim agencies. Portions of the bill not reduced or vetoed shall become law.

"c) The governor shall return any vetoed bill or item with a statement of his objections to the house in which it originated for reconsideration. That house shall immediately enter the governor's objections upon its journal. If that house by a record vote of two-thirds of its elected members passes the bill, it shall immediately be delivered to the other house. If it is then approved by a record vote of two-thirds of the elected members of the second house, it shall become law.

"d) While the legislature is in session, a bill becomes law if the governor neither signs nor vetoes it within five days, Sundays excepted, after its delivery to him. If the legislature is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him."

PRESIDENT WENSTROM: The question is on Committee Proposal No. 1-25.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: This proposal repeals present Sections to the present Constitution which have to do with the subject of governor's veto powers. These two sections have been reworded in the interests of brevity, and we hope clarity and simplicity.

Some changes have been made. The first change is in line 15 which says that the governor ". . . may, by veto, strike or reduce items in appropriation bills . . ." At the present time the governor has the right to veto a single item in an appropriation bill, but he does not have authority to reduce an item. He must take it as is or veto it completely. We felt that he should have the right, also, to reduce an item in an appropriations bill.

The language in line 16, beginning with the words "except" and going down through 17 and the first two words of 18, ". . . except in any bill making appropriations of money or property for the operation of the legislative assembly or its permanent or interim agencies" is also new language. We felt that under the system of checks and balances the governor should not have the right to veto the legislature's appropriations for its own operations.

The next two changes are in Section (d) on page 2. "While the legislature is in session, a bill becomes law if the governor neither signs nor vetoes it within

five days . . ." The present language is "three days". But we felt that in this day when a governor is frequently called out of state, to Washington to testify or to another state for one of the many governors conferences or meetings, 72 hours was a very short time to allow him.

You will note that apparently the governor is still working a six-day week, Saturdays are not excepted. So we decided he should have five days while the legislature is in session to determine — to decide whether he wants to veto or sign the bill before it becomes law without his signature.

The next change is in line 7: "If the legislature is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him."

Pardon me, it's in line 8. At the present time the governor has fifteen days after the end of the session to sign a bill before it becomes law without his signature. But under the present system many bills pile up toward the end of the session and it may be several days before they are actually delivered to the governor for his signature; the time that is taken for enrolling and engrossing them. And also it can happen inadvertently, as I believe it did recently, that through an oversight the bills were actually not delivered to the governor for a period of a week so that this fifteen-day period which was intended in our present Constitution can be cut down to a week or less. So we have decided that he should have fifteen days, Sundays excepted, after the bill has been delivered to make his decision on these bills.

Furthermore, if the legislature is in continuous session the wording actually would be a little different. So these are the changes then that have been changed: From three to five days, and fifteen days after delivery, plus the two changes under Section (b).

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I have an amendment at the desk.

CHIEF CLERK GILBREATH: On page 1, line 15, after the word "strike" delete the words "or reduce".

On page 1, line 18, after the word "not" delete the words "reduced or".

PRESIDENT WENSTROM: Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Delegate Dobson.

DELEGATE DOBSON: I think the Executive Functions Committee has done a good job of rewriting these two sections with one exception, and that is giving the governor the power to reduce items in appropriation bills. The presumption is that the governor will use this power responsibly. But I want to recall to you an instance which occurred in this state in 1937 when Willie Langer was governor. He undertook to reduce items in appropriations bills. There was a rather common pattern in his reductions; the departments which were headed by his political enemies got the cuts and the departments friendly to him did not. Well, someone went to the Attorney General, who was P. O. Sathre at the time, and asked him for an opinion. P. O. Sathre ruled that the governor had no power to reduce items in appropriation bills. Now Langer was a very practical politician so he thought he'd better get himself a new Attorney General. Therefore, he appointed P. O. Sathre to the Supreme Court. But by the time the next legislature rolled around Langer had been retired from public life temporarily, so the issue has not been raised since then. But I think you can see the danger inherent here.

After all, if the legislature has debated and studied their appropriations matters for weeks and weeks, why really should the governor be able to second guess them in this matter and reduce an appropriation? I think by putting this language into the new Constitution we are going to be inviting some real political donnybrooks in the future.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President. I would like to support the amendment; not only for that reason, but if the reduction were allowed to be sent back to the body from which it originated it wouldn't be so bad. But as I read that, an item that is removed or an item that is vetoed will be sent back, but not a reduction. And for that reason I think we should support the amendment.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Fellow Delegates. In answer to the question that Delegate Decker has raised, on line 20 the language is that "The governor shall return any vetoed bill or item . . ." and it was the committee's interpretation of the language on line 15 that this related back to line 15 where we gave him the authority to reduce — to strike or reduce items. And as such any reduced item would be referred back to the legislature for their consideration, as would any item that was stricken, and that would be a line item as opposed to reduction or any bill that was vetoed. So it was our belief that this covered all three areas.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Just for the information of the Convention, the present Accounts and Purchases Law provides the governor with the authority to set up an allocation system so that he now has the power to decide how much of the money that has been appropriated will be spent by the various departments. And I don't recall that any act since 1959 has been passed by the legislature that would retract that authority from the governor. And so the impact of this particular statement in this Constitution is not that overpowering. You could use that argument on both sides.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, I'd like to raise this question: Where does the limitation of the veto power extend, only to the time the legislature's in session? Seems to me if bills were delivered after the adjournment that he could still exercise that same power.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Delegate Cart. That's correct. The responsibility would then be for the legislature to get all of their appropriations bills to the governor while they are in session to make sure that possibility doesn't happen. It puts the responsibility on him. But you're right; he has the veto power after they are gone. It's covered, as Mrs. Vogel explained.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would like to speak in favor of Delegate Dobson's amendment. I think it's one thing to give the governor the outside power to accept or reject something by veto, it's another thing to give him the power to second guess the amount that the legislature may want to appropriate. And in allowing him to reduce you're just putting another deliberative — he is in a deliberative position in being able to reduce. It will take a two-thirds vote to override if Delegate Nething's interpretation is sound. And I don't know if that's a good idea. I think we are mixing the executive with the legislative too much. I think he should be required to reject either the whole item, the whole bill, and send it back, or to accept it.

PRESIDENT WENSTROM: Further discussion?

The question is on the amendment, Committee Proposal No. 1-25, as offered by Delegate Dobson.

Hearing no further discussion, as many as are in favor of the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

Now we are on the Proposal 1-25 as amended. I wonder if there are any further amendments?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I would then move that the Rules be suspended and that Proposal No. 1-25 be deemed properly engrossed before us, and that we proceed on the first vote — first passage.

DELEGATE SAUGSTAD: Mr. President. Before that motion is put, I'd like to make an inquiry.

PRESIDENT WENSTROM: You may have the floor, Delegate Saugstad.

DELEGATE SAUGSTAD: I would like to inquire from someone that served on the committee that considered 1-25, and in lines 23 and 25, the word "record" appears, if that helps "by a record vote?" And then in line 25 again, "If it is then approved by a record vote . . ." I'm wondering if that is the proper usage or if it were intended to use the word "recorded vote"?

DELEGATE VOGEL: I think the meaning intended by the committee was the same.

PRESIDENT WENSTROM: Now we have Delegate Nething's motion — if that answers your question, then, Delegate Saugstad, then we are back on Delegate Nething's motion that the Rules be suspended, that Delegate — or Committee Proposal No. 1-25 be deemed properly engrossed, that it be placed on the calendar for first passage as amended.

No further discussion —

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: There was some discussion this morning about checks and balances. I questioned what check anyone has on the legislature if the governor cannot veto an appropriations bill containing money for the operation of the legislative assembly or even item veto things in there, where are our checks and balances under this proposal?

DELEGATE VOGEL: This is language taken from the LRC report of 1963, I think, if you would like to know where it came from.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: One very interesting check might be that they would refuse to appropriate money for the governor's appropriations.

PRESIDENT WENSTROM: Any further comment?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I think what Delegate Unruh was saying is that the legislature has a check on the governor, but the governor not on the legislature.

PRESIDENT WENSTROM: Any further discussion?

The question then is on the first passage of Committee Proposal No. 1-25 as amended.

Hearing no further discussion, the Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll discloses 87 "ayes," five "nays," six delegates absent and not voting. Committee Proposal No. 1-25 has passed.

Next for consideration is Committee Proposal No. 1-26.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-26, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 77 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to gubernatorial succession, be created.

"SECTION 1. REPEAL.) Section 77 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Gubernatorial Succession.

"a) In the event of a vacancy, the order of succession to the office of governor shall be the elected lieutenant governor and thereafter as prescribed by law.

"b) In case of the death, impeachment, resignation, failure to qualify, removal from office, or disability of the governor, the powers and duties of the governor shall devolve upon the officer next in line of succession for the remainder of the term, or until the governor is acquitted or his disability removed.

"c) If the governor-elect dies, resigns, or is disqualified, the lieutenant governor-elect shall succeed to the office of governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect shall serve as acting governor, and he shall succeed to the office of governor if the governor-elect does not assume his office within six months of the beginning of the term.

"d) The legislative assembly shall by law specify by whom and by what procedures the ability of the governor, or anyone acting as governor, to serve or to resume office may be questioned and determined. The supreme court shall have original, exclusive, and final jurisdiction in all cases concerning the existence of a vacancy in the office of governor and in all questions concerning succession to office."

PRESIDENT WENSTROM: Is there any discussion?

Delegate Nothing.

DELEGATE NOTHING: Mr. President, Fellow Delegates. On the surface of this proposal I don't think you will find too many things that are new. But I would like to explain the changes that are made.

First of all, the repealer involved here is only Section 77. However, there are other sections that are involved, and I will point out to you. But there are other matters that will be coming up from the Executive Functions Committee, and the repealer will be included there even though there is some change in the language now

Referring to the paragraph (a): "In the event of a vacancy, the order of succession to the office of governor shall be the elected lieutenant governor and thereafter as prescribed by law." Now this is currently covered in Section 77 with the two following exceptions: Section 77 also prescribes that: "The lieutenant governor shall be president of the senate . . ." The matter of duties of the lieutenant governor will be brought to you in another proposal from our committee. However, the matter covered in Section 77 wherein the provision for the Secretary of State to act should the lieutenant governor be unable to act has not been removed. An adoption of the language in paragraph (a) will remove the Secretary of State in succession in accordance insofar as our Constitution is concerned; however, it will permit the legislature to prescribe by law what the order of succession will be after the lieutenant governor.

Paragraph (b) is covered in Section 72 of the Constitution. And the reason we didn't set forth a repealer on that is because Section 72 also provides that the lieutenant governor shall be elected at the same time and same term as governor. And that there will be another proposal coming to you regarding the matter of election of the lieutenant governor.

Now the basic change in 72 is that (b) as proposed here eliminates absence from the state as a reason that the duties of the governor would devolve upon the next in line for succession. That would be removed then from our Constitution. I think the committee felt that in this day and age absence from the state, the necessity of the governor conferring in Washington, things of this nature, probably should not be a grounds for devolving the duties to the lieutenant governor.

Now there are also some provisions in case law which are involved, and I believe the matter of succession was covered in the **State v. Moody** case. And the language that we have retained certainly will not interfere with the case law that is involved.

Also in the matter of the case of **State v. Langer**, which related to disability to disqualify the governor. The court said that Section 72 that we're involved with means any case, whether mental or physical, disqualifies the governor. That interpretation, of course, would still be valid in adopting this particular provision.

Section (c) relates to the matter of a hold-over governor and is — excuse me, the matter of holding over; whether or not the new lieutenant governor would take office if the newly-elected governor were not able to or should the present governor hold over. Now Section 71 of the current Constitution is also involved in this because in that section it says the governor shall hold office — gives the time — and until his successor is elected and duly qualified. And there has also been some court interpretation on that. And that again is **State v. Moody**, wherein they found that holdover provisions apply only where there is no qualified successor, and so on. So this language will provide that if the governor-elect fails to assume office for any other reason, the lieutenant governor shall serve as acting governor and succeed to the office of governor if the governor-elect does not assume his duties — excuse me — his office within six months after he was disabled. Now there is also some case law that permits the provision of acting governor and giving him the same authority as he would have if he were the official governor.

And the new language on page 2 provides that the legislative assembly will set forth the procedure — by what procedures the ability of the governor or anyone acting as governor to serve or to resume office may be questioned and determined. You can see that there certainly could be a question as people challenging whether or not the governor is qualified to hold office or if he should be removed and so on; whether then to leave — put that in the Constitution or leave it strictly to the courts. We have provided the legislature shall provide that.

Then the final paragraph is that the Supreme Court will have the jurisdiction. And this is to remove any doubt that it might be a District Court matter. It does place it in the Supreme Court. All cases concerning existence of vacancy in the office of governor and all questions concerning succession to office.

I hope I have covered 1-26 to your satisfaction. If you have any questions, I will attempt to answer them.

PRESIDENT WENSTROM: Are there any questions?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, Delegate Nothing. I was under the impression — there is some case law possibly to the contrary — that the only way you could remove an elected state official was through impeachment. I don't know if anybody has been removed under disability. And I'm wondering whether in your proposal you're indicating that there are other ways by referring to other disability or things like that? I'm wondering if you might care to address to that? How do you determine it? Are we going to give a legislature power to set up procedures to remove the governor independent or impeachment procedures? Should impeachment be the proceedings we use? We have covered that in a legislative session, and have included all state officials in that character and included the ability to perform their duties.

DELEGATE NOTHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NOTHING: I thought I understood the question that was being asked. And I'm not so sure that — the case law that I refer to I believe was the matter of when the election took place. And the question was as to who should be entitled to hold office, not who should be removed from office. Now I don't —

DELEGATE KELSCH: If I may direct your attention to line 14 — 15 where you say: "In case of the death, — that's understandable — impeachment, resignation, failure to qualify — all of those are understandable. But it goes on to say: ". . . removal from office, or disability of the governor. . ." Now how will he be removed from office other than by either impeachment or recall? I think recall might take him out of office. But how would you determine disability and who

would be the judges of his disability? Are we going to let the legislature set up a separate procedure for determining his qualifications, say through a commission other than the route of impeachment? That's my question.

DELEGATE VOGEL: May I attempt to answer Delegate Kelsch?

I think that our purpose was to prevent a situation arising such as that that arose I believe in Illinois when a governor was confined to his bed and completely disabled for two years and there was no machinery for determining that he was unable to carry on his duties. I think the same question has arisen at the federal level when we adopted an amendment whereby a determination could be made if the President of the United States were disabled. At present there is no machinery for doing this. At the time that we wrote this there was no indication that the Constitution would allow them to be impeached for reasons of physical or mental impairment, which our present Constitution does not have. It's possible they do cover the same purpose. But the object of this was to provide a means for determining the ability of the governor to serve. And because it was felt that this would wind up in the Supreme Court, it might as well start there.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I agree that we should have that means of removing a governor who is unable to perform his duties. But my question is where do you start? Now it appears to me that you are suggesting a legislature set up a procedure for determining that. We've already, I think, acted on — I can't recall the number, it relates to impeachment — and we've already said that one of the grounds for impeachment would be the chronic inability to perform the duties of office. I think we should agree there should be a ground to remove a governor for that cause. My question is where — what you are suggesting you are leaving it up to the legislature to set up a procedure which I assume contemplates something other than the impeachment procedure. I'm wondering if we want to let that important office of the state subject to the governor being removed other than by that procedure. That's a very complicated and expensive procedure. Of course both houses of the legislature must act in that procedure. Could the legislature, for example, institute a commission who would have the power to review the ability of the governor to continue on his duties and the vote of the commission decide he is unable or able?

DELEGATE WARNER: Mr. President.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: I presume that Delegate Kelsch is aware that our Supreme Court removed Governor Langer subsequent to a conviction and removed Governor Moody on a residence qualification. You are aware of that and that is not in your question, is it? Our Supreme Court already has removed these two governors.

DELEGATE NETHING: Mr. President. I think I can answer his question.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President, Delegate Kelsch. This is another procedure other than impeachment. And the purpose is to have the legislature determine by the procedures that the ability or inability to act would be determined. And then the matter goes to the Supreme Court to determine whether or not the ability or inability to act is such that there should be a determination made by them. That's the intent of the last paragraph. But it's for that subject, not for the impeachment subject.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Relating to page 2, paragraph (d) you are assuming there that the legislative assembly would set up a procedure that would apply over a long period of time. That's just one instance. Let's presume the condition arises that the legislature is not in session. Has the committee given any thought to hiring a legislature, to call it to session by say a two-thirds vote of their members so they could deal with a situation like this?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: In response to the question I would have to say I don't believe we have. We felt it's not really part of the executive article as to whether or not the legislature would be called in for this purpose or other purposes. I don't know whether the Legislative Functions has.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Delegate Nothing, with your language a legislature could not set up rules like this for a current problem because it says "shall by law". And no legislature could come in, I think, and by law establish the rules for removal of a governor who was in office. Because he wouldn't sign it. Well, they could do it by two-thirds vote, couldn't they? That would be the only way.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: I think in response to that we threw out our entire Constitution, at least in our Executive Functions, are stating things the legislature must prescribe by law. And of course it's always subject, I guess, to the veto, it's always subject to override, and it's always subject to referral to the people. Those are things that we just can't control.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. Because the Legislative Functions Committee might get embroiled in this in some way or other, in looking at the last section, page 2 of 1-26, as I would understand it this would empower the legislature to provide by law for something that you might call a removal commission; some standing commission that if anybody claimed that a public official from the governor on down was — ought to be removed, for example, because of chronic inability to perform, so say the governor has a cerebral hemorrhage and is paralyzed, the problem in line 4 "The supreme court shall have original, exclusive, and final jurisdiction in all cases concerning the existence of a vacancy . . ." now that to me isn't quite the way it ought to be. That implies that there already is a vacancy of governor. Doesn't have anything to do with removal.

Now if you were to change that so that the removal commission, as I have chosen to call it, set up by the first sentence, could bring action to the Supreme Court to determine the existence of the grounds for inability to serve, and let's assume that the governor had a cerebral hemorrhage or a stroke, and it's called, they would plead that and plead that the governor was then chronically unable to fulfill the duties of his office and that the Supreme Court agreed that the proof so indicated, that they would then declare the office vacant. I really am not quite sure under the present language what the last three and a half lines would mean because it assumes that there already will be a vacancy before it comes to the Supreme Court.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: At the risk of taking a position of advocacy and the rest of you sitting as jurors, I would — it was our intention as we read it — and sometimes you stay with these things so long you don't — you're not as clear as you would like — in all cases concerning the existence of a vacancy and whether or not there is a vacancy that exists, it would be concerning the existence of a vacancy, it was our thought that if the subject of a vacancy came up, whether it existed because the governor was disabled, would be covered by this provision. But apparently it isn't that clear. And I suppose we could say, "to the existence or non-existence of a vacancy." But that was the committee's interpretation of it. The fact that there's a question, I guess, indicates it's not that clear.

DELEGATE PEARCE: Well, if I may treat that as a question. My point is an office is not vacant because the man occupying it has given rise to grounds for vacating it. For example, suppose a governor got so sick and tired of being governor that he left, moved to some confines like New York, and refused to reside in the seat of the government as another section of the Constitution requires

him to do. I presume that would be a ground for vacancy. But until he was removed he would be the governor. So it's just which comes first, I guess, is the problem.

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I'm from the Executive Functions Committee, and I thought I understood this before we got into it. But let me ask a question of both parties, Nething and Pearce here, and let me set up a supposition for you. Let's assume that your commission, Delegate Pearce, passes on the judgment of whether or not a governor is disabled and therefore cannot serve and say that that particular office is vacant. Then couldn't any voter or anyone or the governor himself plead this case to the Supreme Court? So what I'm saying is they would — this commission or whatever machinery the legislature sets up, could declare the office vacant but it could be appealed and would not go to a lower court, only to the Supreme Court for final jurisdiction. Is that wrong?

DELEGATE PEARCE: No, Delegate Chase. But that implies, of course, that this commission someplace is given power to declare it vacant instead of just alleging that it's vacant by reason of some cause. And that's the key problem as I see it.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If we vote on this I think we should understand that we are setting up another procedure for removal of at least the governor, other than through impeachment and possibly through court action as has happened in the past. And I am not so sure that we shouldn't do that. But I would like to suggest to the committee that rather than tying that removal to new removal procedure that they are now creating into the succession section of the Constitution that we consider a separate section that would apply to all elected state officials. We certainly don't want to repeat this to the Auditor, the Secretary of State, the Attorney General. If we feel that the rules should apply to the governor, it certainly should apply to lesser officials. I wonder if the committee might not consider that? All you'd have to do in this section is refer to "The office of the governor is vacant by reason of removal," and then set up in another section removal provisions that would apply to all of the executive state officials.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President. I also see one possible conflict in the report on page 2, Section 4 or line 4. And that is what Delegate Pearce was referring to. It says: "The supreme court shall have original, exclusive and final jurisdiction . . ." and in line 6, ". . . in all questions concerning succession to office." But on page 1 succession to office is established by law. I'm not sure who determines the succession to office.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I don't know which question to answer first. I was going to answer Mr. Kelsch until the other one came up.

What you say about creating a new section is right. And if the delegates would like to vote on it as a divided question, we certainly would have no objection to it. To remove it from this particular provision or this particular proposal on gubernatorial succession, we feel it's closely tied in because of the language relating to when there would be a succession. And this was how it comes all in one package. I certainly have no objection at all to voting on these things separately.

In regard to Delegate Aubol's question, it's true that we have provided for succession by law. However, there may be some questions that come up at any given time. And it's our intention to vest the authority to resolve any particular question regarding succession with the Supreme Court.

DELEGATE PEARCE: Mr. President. May I make one more observation?

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Delegate Kelsch didn't recall at the moment the number, but I will refer the delegates to 1-33 which we've already passed the first time which is the section that provides: "All officers not liable to impeachment shall be subject to removal as may be provided by law for . . ." and then gives the grounds. So if we put that in the Constitution there is a Constitution section that the law can provide a manner of removal for these alleged grounds. The trouble is that some place or other you've got to prove that these grounds exist.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE PEARCE: 1-31 is impeachment.

PRESIDENT WENSTROM: Delegate Sinner has asked for the floor.

DELEGATE VOGEL: Mr. Chairman, I was just going to point out the same thing that Delegate Pearce was going to point out.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I think that the intention of the committee was to provide some avenue other than impeachment, less cumbersome, and perhaps without some of the implications. Also in addition to the vacancy in the office this would cover the event that the governor was temporarily unable to serve and could at the end of a certain period of time resume office. I wonder if wording such as this — I don't intend to offer this as an amendment at the moment — but I wonder if wording such as this would solve the difficulty: "The supreme court shall have original, exclusive and final jurisdiction to determine absence and disability of the governor, and to determine the existence of a vacancy in the office of governor, and all questions concerning succession to the office or its powers and duties." Would some wording such as this convey the idea intended by the committee in a better fashion? If so, perhaps we could recall it and amend it. I mean recall it to the committee for rewording. Would anyone like to comment on that?

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. I do not have the — I'm not responding to Delegate Vogel's question or comment. I wonder if there isn't a little misapprehension here about the determination of the vacancy. It seems to me that the language in the first sentence of Section (d) says that the procedure, the commission or whatever means is used, ". . . to serve or to resume office may be questioned and determined." In other words, this process determines. Then the Supreme Court's only entry into the matter is if that question of termination by the original process is legal and meets the constitutional grounds. So I think your determination has been made by the original process set up by the legislature.

PRESIDENT WENSTROM: Would someone care to comment to answer Delegate Vogel's request for information?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Due to the silence of everybody else, I would still urge — I think that would help — but I would still urge rather than we still leave the question open, what about state officials? I'd be inclined to go along with a method of removal other than through impeachment. But I think this should be taken back and rewritten to apply to all state officials as well as the governor. I would hope the committee would do that.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I think Delegate Kelsch has raised a couple of very good points. I'd like to see the committee spend a little bit more time on this and see what they come up with. I'm not going to make any motions, but I think the committee should address themselves to the questions that have been raised.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I move that Committee Proposal 1-26 be re-referred to the Executive Functions Committee —

DELEGATE LANDER: Second.

DELEGATE PAULSON: — for such amendments as are indicated and for a conference with the Legislative Functions Committee on aligning this proposal and the impeachment proposal so that there will be no conflict between the two.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Paulson that Committee Proposal 1-26 be re-referred to the Committee on Executive Functions. The motion has been seconded by Delegate Stanton.

Now is there any discussion?

Delegate Nothing.

DELEGATE NOTHING: Mr. President. I certainly have no objection to taking it back on the basis of possible amendment. But I do think that we have a committee that is going to make recommendations to this Convention regarding all matters of conflict. And I'm wondering how deeply we want to go into these things until that committee functions as far as the exchange between the two committees. My point is that at this particular time — I don't know what their time schedule is in Legislative Functions now that unicameral-bicameral is out of the way — but we might just sit there and not be able to get the two committees together because of time. Like I say, I have no objection for it going back for possible amendment. I would like to see other provisions voted on and just take this one separately and possibly do it that way. But I don't think that we should start resolving conflicts until the committee that's appointed to resolve conflicts has a chance to study it and make recommendations.

PRESIDENT WENSTROM: The question is on Delegate Paulson's amendment or proposal — motion that Committee Proposal No. 1-26 be re-referred to the Committee on Executive Functions. Is there any further discussion?

Hearing none, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and the motion will be — the proposal will be re-referred to the Committee on Executive Functions.

Next for consideration is Committee Proposal No. 1-27.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-27, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 75 and 76 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to powers and duties of the governor, be created.

"SECTION 1. REPEAL.) Sections 75 and 76 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Powers and Duties of the Governor.

"The governor shall be the chief executive officer of the state and have the following powers and duties:

"a) He shall have the responsibility to see that the state's business is well administered. To this end he may require information in writing from all executive officers concerning their respective duties.

"b) He may supervise all necessary business with the government of the United States and other states.

"c) He shall be commander-in-chief of the military forces of the state, except when they are called into the service of the United States, and he may call them out to execute the laws and maintain order.

"d) He shall present the state comprehensive plan, and his own recommendations, to the legislative assembly at the beginning of each session and at any other time he chooses.

"e) He may call special sessions of the legislative assembly.

"f) He may fill a vacancy in any office by appointment if no other method is provided by statute or this constitution.

"g) He shall have power to grant reprieves, commutations, and pardons, after conviction, for all offenses. He may delegate such powers, subject to procedures prescribed by law."

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: At this time I'd like to propose an amendment to Committee Proposal No. 1-27. And the amendment is at the desk.

CHIEF CLERK GILBREATH: On page 1, in line 1, following "75" delete the word "and" and insert in lieu thereof ",", and following "76" insert ",", and 78."

On page 1, in line 6, following "75" delete the word "and" and insert in lieu thereof ",", and following "76" insert ",", and 78".

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I would like to explain that what we are doing with this amendment is to simply add another repealer of Section 78.

PRESIDENT WENSTROM: Delegate Hernet, excuse me just a moment.

Did I get a second? I don't believe I did.

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: Second by Delegate Chase.

Now you may proceed. Delegate Hernet.

DELEGATE HERNETT: And if the motion carries why it will be explained on the floor when we discuss the bill, which will be just a minute or two.

The purpose of the amendment is to delete — repeal another section which we failed to note at the committee hearing.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Hernet.

Delegate Cart.

DELEGATE CART: Mr. President. I would like to ask this question: Why has the power been placed in the governor's hands solely with the granting of pardons and so forth instead of the pardon board as it used to exist with other officers?

DELEGATE HERNETT: Mr. President. Right now what we are talking about is this amendment which is of a repealer, which as I understand I think has nothing to do with pardons.

PRESIDENT WENSTROM: Delegate Cart, I believe that your question is pertaining to the —

DELEGATE CART: Section 76. I am in error.

PRESIDENT WENSTROM: — to the proposal itself, while the question before the Convention is on the adoption of the amendment as offered by Delegate Hernet.

Is there any further questions? Are there any further questions?

If not, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Now, Mr. President, I move that the Rules be suspended and that Committee Proposal No. 1-27 be deemed properly engrossed and placed on the calendar for first reading and passage as amended.

PRESIDENT WENSTROM: It's been moved by Delegate Hernet that the Rules be suspended, that Committee Proposal No. 1-27 be deemed properly engrossed and placed on the calendar for final passage — for first passage as amended.

Do we have a second to the motion?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Second by Delegate Litten.

The question is before you. Any discussion? Is there further discussion?

As many — I think I'm in error. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the Committee Proposal is now before the Convention as amended.

Now further discussion?

DELEGATE CART: Again I would like information on that one question where you've placed the sole responsibility in the office of the governor granting pardons.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: If Delegate Cart will be patient for just a moment here, for a minute, we'll get down to that part of it and then you can raise your question.

The Committee on Executive Functions on this Proposal 1-27 has done some combining. However, we speak to every part that has been repealed, and that is 75, 76 and 78. And the majority of the Executive Functions Committee believes the intent still remains the same.

There has, however, been some new language and some new provisions. And I now call the delegates' attention to these particular lines in Section (a) — in part (a) under Section 2, line 13: "He — speaking of the governor — shall have the responsibility to see that the state's business is well administered. To this end he may require information in writing from all executive officers concerning their respective duties." This appears to us to be a sound governmental practice and good business procedure to allow the governor to inquire into the respective duties of the executive offices. This had been a debatable issue in our 1889 Constitution, so we included this particular language.

And then Section or Part (b) is also referred to in 75, the same with Part (c).

And then down on Part (d) of Section 2 where it says: "He shall present the state comprehensive plan . . ." This is new language, and this provision ties into a proposal that is still in committee and is explained in your Convention interim booklet on page 29 under "Executive Reorganization" where we will be proposing that the governor, lieutenant governor and the heads of the executive departments from a state planning council.

In this particular section here, (d), we have provided that the governor shall present these plans to the legislators and to the people of our state so that we may understand what particular direction we are going and what priorities are being established in state government.

Then if you'd turn the page, on page 2, item (e), the top item, is also referred to in the 1889 75 section: "He may call special sessions of the legislative assembly."

(f) is 78 that was moved on amendment to be repealed. I think the language is almost verbatim about filling vacancies in the office not covered by statute or this Constitution.

And then (g) — and this is where Mr. Cart has a question — where: "He shall have power to grant reprieves . . ." As you can see, this particular section, if you refer back to Section 76, has been considerably reduced. We believe that these four lines establish the same general policy on pardons and so forth.

The Committee on Executive Functions respectfully asks the delegates to consider and adopt this proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wonder if line 15 after the word — the way it reads is that the governor ". . . may require information in writing from all executive officers concerning their respective duties." Well, I can see an officer sending back a statute and telling the governor what he was supposed to do. And I think the committee is concerned about the performance of those duties. I wonder if we shouldn't amend by adding the "performance of" the respective

duties. He knows what their duties are, what he is wondering about is how they are performing them.

To get the matter before the Convention, I move on line 15, after the word "concerning" insert the words "the performance of".

PRESIDENT WENSTROM: It has been moved, an amendment by Delegate Kelsch.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Do we have a second? Seconded by Delegate Stanton.

CHIEF CLERK GILBREATH: Line 15, page 1, after the word "concerning" insert the words "performance of" and renumber the lines accordingly.

PRESIDENT WENSTROM: The question before the Convention is on Delegate Kelsch's amendment as read from the desk. Is there any further discussion? Any questions on the amendment?

You're voting on the amendment. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

Are there further amendments to Committee Proposal No. 1-27? Hearing none — Delegate Nething.

DELEGATE NETHING: Mr. President. If there are no further amendments, I would move that it be properly reengrossed and placed on the first passage as amended.

PRESIDENT WENSTROM: Delegate Nething moves Committee Proposal No. 1-27 be deemed properly reengrossed, and to be placed on the calendar for first passage as amended.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: We have a second by Delegate Litten.

The question then. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-27 is then before the Convention.

Is there any further discussion? Any comments? Hearing none, the question is on — did you have a question, Delegate Chase?

DELEGATE CHASE: No.

PRESIDENT WENSTROM: The question then is on the first passage of the Committee Proposal 1-27 as amended.

Hearing no further comments, I will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call disclosed 87 "ayes", one "nay," ten delegates absent and not voting. Committee Proposal No. 1-27 has passed.

Next for consideration is Committee Proposal No. 1-28.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-28, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 73 and 84 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to qualifications and compensation of elected officials, be created.

"SECTION 1. REPEAL.) Sections 73 and 84 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Qualifications and Compensation.

"To be eligible to hold an elective office established by this article, a person must be a qualified elector of the state, at least twenty-five years old, and a resident of this state for the five years preceding his election. The attorney general shall be licensed to practice law in this state. Their compensation shall be prescribed by law, but shall not be diminished during the term for which they were elected."

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: There is a proposed amendment to 1-28, and we have copies at the desk.

CHIEF CLERK GILBREATH: In line 15, after the period, delete the word "Their" and insert in lieu thereof "The" and after the word "compensation" insert the words "of elected officials" and renumber the lines accordingly.

PRESIDENT WENSTROM: We have a second to the proposed amendment?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten. Any discussion?

The question is on the amendment as offered by Delegate Dawson.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

Committee Proposal No. 1-28 is before the Convention.

CHIEF CLERK GILBREATH: You're right. That's correct.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Is it necessary to bring it back before the Convention?

PRESIDENT WENSTROM: It's necessary now that you suspend the Rules.

DELEGATE DAWSON: I move that the Rules be suspended, and the proposal be properly engrossed and placed on tenth order for first passage.

PRESIDENT WENSTROM: It has been moved by Delegate Dawson that the Rules be suspended, Committee Proposal 1-28 be properly reengrossed and placed on the calendar for tenth order for first passage as amended.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Litten seconded the motion.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-28 is again before the Convention.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: This proposal repeals Section 73. And Section 73 of the present Constitution refers to eligibility of the office of governor and lieutenant governor and establishes a minimum age for those offices at 30.

Section 82 is not listed in the repealer because this section includes some subjects on which the Executive Functions Committee had not yet made a decision.

However, Section 82 does refer to the eligibility of elected officials other than the governor and lieutenant governor and establishes a minimum age for those officials at 25.

Section 84 of the repealer states that the "salaries of public officers shall be as prescribed by law . . ." The Executive Functions Committee has combined parts or all of these sections into this new Proposal 1-28, and establishes the minimum age for all elected state executive officials at 25.

If I may, let me emphasize this proposal does not include legislators but is limited to officials of the executive department.

This motion and the amendment has the unanimous approval of the committee, and I would move its adoption.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'm just wondering if we could get some reaction from the committee what their feeling was as far as this age limit. I know you dropped it. But I have a tendency to believe that that age should not be in at all. And I'm just wondering how the committee felt. Was there some discussion at all on taking that completely out of the section?

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Yes, there was discussion on that. Some of the committee originally felt that maybe as far as the governor and lieutenant governor were concerned it should not even be lowered from the age of 30. But we felt that age 25 would be a good spot for the elected officials. A person could still run for the legislature at the age of 18 apparently, and we felt that it was necessary to have an amount of background before they were elected to one of the state executive positions.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Question is on the first passage of Committee Proposal No. 1-28 as amended.

No further discussion, no questions, I will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 87 "ayes," two "nays," nine delegates absent and not voting. Committee Proposal No. 1-28 has passed.

Next for consideration is Committee Proposal No. 1-39.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-39, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 45 of Article II of the constitution of the state of North Dakota be repealed; and that section 10 of Article II to the constitution of the state of North Dakota be created; both of which pertain to legislative compensation.

"SECTION 1. REPEAL.) Section 45 of Article II of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Section 10 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 10. The members of the legislative assembly shall receive an annual salary and such expense allowances as may be prescribed by law, but no revision in the amounts thereof shall apply to the legislative assembly which makes the revision."

DELEGATE HILDEBRAND: Mr. President.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: As you have heard, the Section 45 we relate as having dealt with the compensation and it still reads legislators shall be paid the sum of five dollars a day. Now, I think we all know that this is a little bit unrealistic, and that a revision there is necessary. And since the voters in a very recent election have refused the special committee on compensation to be formed, there is no other machinery that would adjust or realign the compensation of the legislators' needs and for — in existence while they work for the state. So it is now proposed that the legislators do this themselves, thus the inference as prescribed by law. And in order to take the bad feeling out of these things, if and when it happens, we have done this because the legislature has need to adjust the expense allowance at least from time to time as the time went on. And so we have included in the proposal here that "... the amounts thereof shall apply to the legislative assembly — pardon me — in the amounts thereof shall apply to the legislative assembly which makes the revision." Therefore, they cannot take advantage of the revision in the same session in which it takes place. It is felt that this would make it more acceptable.

PRESIDENT WENSTROM: Any further discussion?

Delegate Sinner.

DELEGATE SINNER: Mr. Chairman. I move that in line 13 the word "revision" be replaced — stricken and the word "increase" be inserted in lieu thereof, and in line 14 the word "revision" be stricken and the word "increase" be inserted in lieu thereof. If I have a second, I will explain it.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Kwako seconded.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Delegate Hildebrand pointed out the other day that a legislator might be reluctant to pass a decrease for a subsequent legislature that didn't affect the one that was passing it. And I have checked this over with my committee and I think they all concur that this is a good revision.

DELEGATE HILDEBRAND: Mr. President.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: I would like to resist the motion to amend because we talked about this in committee and it was felt that since the members of the Senate now hold a four-year term so half of them would know they are coming back for the next session, which would be taking advantage of the revision and since it is also being proposed later in the session that the House members also shall go on a four-year term. It was therefore assumed that since half of them were expected to come back to the next session, it is not likely that they would have an unfavorable revision for the next session coming.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I'm wondering there what is meant by "legislative assembly." It seems to me that the legislative assembly is the House and the Senate, and that it's a continuing body. I'm wondering if the committee may not be thinking of a session, because you would never have any increase under this because the legislative assembly will go on forever unless we change it sometime.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The other provisions in the legislative article will specify that a legislative assembly exists during the biennium. And so it starts new every two years, you go from the 43rd to the 44th.

PRESIDENT WENSTROM: We will have the amendment again read from the desk.

CHIEF CLERK GILBREATH: In line 13 delete the word "revision" and insert in lieu thereof the word "increase".

In line 14 delete the word "revision" and insert in lieu thereof the word "increase".

PRESIDENT WENSTROM: Any further questions? Any further comments?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: May I ask one question of the committee or at least Delegate Hildebrand? Aren't there other portions or other sections of the Constitution which prohibits us in the situation you spoke of, a Senator, serving in the next session if he was a part of the session that lowered or raised the salary?

DELEGATE HILDEBRAND: No, to my knowledge there is not. Because we take into consideration that there will be members of the legislature always holding over.

DELEGATE TRENBEATH: Okay. Then, Mr. President, I think the word "increase" is better than "revision" simply because — I don't know, we can't look down the road in the crystal ball too far — but a situation certainly can arise where a legislative assembly should decide that their expenses should be increased and that being so, they would certainly be in an embarrassing situation if they decreased the salary or expense allowance for the subsequent session and not apply to their own. That is the only reason I wish to change the "revision" to "increase".

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Sinner.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I regret that I'm opposed to opening this wide open without some guidelines or limitations in the Constitution.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President. I would go along with the committee's wording of "revision". If we accept this word "increase" then we are accepting the philosophy that we are always going to have inflation. And I would be hopeful that we can stop it sometime. And I can foresee where maybe a decrease would be in order. So I would move that we uphold the committee.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President. It was precisely because Delegate Trenbeath thought that there should be a time when a decrease should be voted by the legislature, and he wanted to make it more possible for the legislature to vote itself a decrease, and I agree with that feeling. And that's why I moved the amendment. There may be a different interpretation here, but that was my interpretation of what the amendment would do.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. I would speak in favor of the amendment. I can see a situation existing sometime in the future where the legislature may have to reduce appropriations across the board and not be able to take corresponding action with their own expenses.

PRESIDENT WENSTROM: Any further discussion? The question is on the amendment as offered by Delegate Sinner and read from the desk.

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it, and the motion and the amendment is adopted.

DELEGATE SINNER: Mr. President. I'll move that the proposal be deemed properly engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Sinner moves that the Rules be suspended, that the Proposal No. 1-39 be properly reengrossed and placed on the calendar on the tenth order for final passage as amended.

DELEGATE McINTYRE: Second.

PRESIDENT WENSTROM: Delegate McIntyre. Motion is seconded.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-39 is again before the Convention.

Any further discussion? The question is on the first passage of Committee Proposal No. 1-39 as amended.

Hearing no further discussion, the key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 85 "ayes," three "nays," ten delegates absent and not voting. Committee Proposal 1-39 has been passed.

Without objection, we'll be on the eighth order of business — Announcements.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I just have a request to see if it's possible something be looked into. When there are amendments with just word changes wouldn't it be possible for the employees to put those word changes into the proposal? I think it would be a lot easier for the delegates. Slips would be still tacked in. I can see where, if it would be a long amendment, it would probably be difficult. But where there as just word changes I wonder if it wouldn't be possible for the pages to put the words into the proposal.

PRESIDENT WENSTROM: Any comment from the desk? An attempt will be made at complying with your wishes, Delegate Hoffner.

Any further announcements?

DELEGATE SAUGSTAD: The Calendar Committee will meet at 8:30 — 8:30 A.M. Monday, January 17th.

DELEGATE MEIDINGER: Mr. President. The Committee on Education, Resources and Public Lands will meet at two o'clock.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. President. The Rules Committee will meet at three o'clock. And the first thing we will consider, without objections to the committee, will be the matter of alternate proposals. So if any delegate wishes to appear and then wants to leave, we will try to take up the matter as quickly as possible.

PRESIDENT WENSTROM: Further announcements? We have announcements at the desk.

CHIEF CLERK GILBREATH: Legislative Functions Committee will meet at two P.M. Monday, January 17th.

Preamble, Bill of Rights and Suffrage Committee will hear Committee Proposal 1-85 pertaining to the elective franchise at two P.M. in the Lewis and Clark Room Tuesday, January 18th.

Preamble, Bill of Rights and Suffrage Committee will hear Section 7 of the Constitution regarding trial by jury at two P.M. in the Lewis and Clark Room, Wednesday, January 19th.

Finance and Taxation Committee will meet at two P.M., Monday, January 17th, in the Blue Room.

Committee on Education, Resources and Public Lands will meet Monday, January 17th, at two P.M. in Room G-1 to hear Committee Proposal No. 1-20, corporations, which is old Section 139.

The delegates are reminded to be keeping receipts for lodging. If they are staying in a hotel or motel a receipt must show the single rate if husband or wife is with the delegate. This will speed the processing of the travel vouchers. Travel vouchers will be turned in on January 31st.

Pictures are in the staff office which were ordered by delegates last fall of the organizational session. Upon receipt of payment, the pictures will be distributed. Pictures for the opening day are in the President's office.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. A point of inquiry on these voucher expenses. As I understand it, that's just for the lodging, not for the meals; is that right?

PRESIDENT WENSTROM: I have an announcement. I guess I just as well have the Clerk read it. But I guess he's getting tired. This one is addressed to me. And it says: "Will you please announce that the Senate locker room has been turned into a ladies' lounge and rest room. The appropriate signs have been installed for identification.

"Also we have received keys for the locker room which may be used by the ladies if they so desire. They may check with me and receive a key for one of the lockers."

And it is signed "Dean", our Executive Director for the Convention, Dean Bard.

I have one further announcement that I received from Walt Hjelle a little while ago. And that is to the effect that if we would inform him of the time that we were about to break up here at the Convention and travel our many ways during this cold spell, that the Highway Department would have one of their service trucks here available to help start automobiles that might be just a little bit balky.

We will be on the twelfth order of business. Delegate Saugstad moves that the following proposals be referred to the Committee on Style and Drafting: Proposal No. 1-13, 1-43, 1-20, 1-24, and 1-25, 1-27, 1-28, 1-39. May I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. These proposals will go to the committee on Style and Drafting.

Delegate Saugstad.

DELEGATE SAUGSTAD: I move that the absent members be excused.

PRESIDENT WENSTROM: Delegate Saugstad moved that the absent delegates be excused.

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: It's been seconded. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the absent delegates are excused.

I think that it would be well to read the calendar.

CHIEF CLERK GILBREATH: On the sixth order I have Committee Proposal 1-23. And on the tenth order it would be all proposals, 1-56 on, that remain on your calendar, through 2-26, plus Committee Proposals 1-40, 1-95, 1-94.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: The desk is clear.

DELEGATE SAUGSTAD: I now move that we adjourn until nine A.M. January 17th.

PRESIDENT WENSTROM: It's been moved that the Convention be now adjourned until nine A.M. on January 17th. May I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. We will now be adjourned.

(The Plenary Session adjourned at 3:03 P.M., Friday, January 14, 1972, until 9:00 A.M., Monday, January 17, 1972.)

VOLUME XI

(January 17, 1972)

MORNING SESSION

(The eleventh day of the Plenary Session commenced at 9:07 A.M., Monday, January 17, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is The Reverend Carl E. Perry, Evangel Temple of Bismarck.

REV. CARL E. PERRY: O Lord God, Creator of the universe and Maker of man, it is with humble hearts and bowed heads that we stand before Thee this day. We acknowledge Thy greatness, and confess to Thee our inadequacies. Help us to remember the words of Solomon, king of your people Israel: "In all thy ways acknowledge the Lord, and He shall direct thy paths."

And from James, the moderator over the affairs of the Church at Jerusalem, who said, "If any of you lack wisdom, let him ask of God, that giveth to all men liberally, and upbraideth not; and it shall be given him." For truly we know there is no rhetoric like that of the heart.

Again, it was the man after your own heart, David, who declared, "Except the Lord build the house, they labour in vain that build it; except the Lord keep the city, the watchman waketh but in vain." Grant to us the understanding to see that without your assistance our efforts become nil.

For these reasons we come to Thee today, and implore your divine blessing and direction upon these to whom great responsibility has been intrusted. For what these delegates decide today and the remaining days of this Constitutional Convention, will visibly and dramatically affect us for years and generations to come.

We pray Thee, O Holy Spirit, give to each delegate wisdom and freedom to express his conviction and bring this body to a unity of purpose and decision which will give the citizens of the sovereign State of North Dakota fair and equal opportunities.

For this we ask, in the name of God, Our Father, Jesus Christ, Our Savior, and the Holy Spirit, Our Baptizer. Amen.

PRESIDENT WENSTROM: We will be on the third order of business — Roll Call.

The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence?

The key is closed.

The roll call discloses 95 present, three absent. A quorum is declared.

We'll be on the fourth order of business, which is the Report of the Committee on Revision and Correction of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 13th day of January, 1972, and recommends that the same be corrected as follows:

On page 171, in line 50, preceding the word "moved" insert the name "Daniels."

And when so corrected recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Paulson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report of the Committee on Revision and Correction of the Journal.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report is adopted.

We'll be on the sixth order of business — Consideration of Amendments.

CHIEF CLERK GILBREATH: Delegate Haugen moves that the amendments to Proposal 1-23 as recommended by the Committee on Finance and Taxation and as printed on page 178 of the Journal be adopted.

The amendments are: On page 1 of the engrossed Committee proposal delete lines 10 through 15 and insert in lieu thereof the following:

“RAISING OF REVENUES. The legislative assembly shall provide for the raising of revenues sufficient to defray the expenses of the state for each year. A two-thirds vote of the members-elect in each house of the legislative assembly may provide an annual property tax, based on value, for state purposes for not in excess of two years unless re-enacted.”

And renumber the lines accordingly.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: This section will be explained when it gets on the calendar tomorrow. We rewrote this section simply to make it real clear just exactly what we mean. We've only changed, from the original bill — we've taken out the words “to pay the interest on state debt.” And the reason we did this is to make it absolutely clear this section would not interfere with the bonding section in this proposal, which is Section 5; and, secondly, we have defined property tax by saying “based on value,” so it isn't confused with in-lieu taxes.

PRESIDENT WENSTROM: Any further comment or further discussion?

Hearing none, the question is on the adoption of the amendments to the Committee Report on Committee Proposal No. 1-23.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. The amendments are adopted and Committee Proposal No. 1-23 will be on the tenth order of business for tomorrow.

We will be on the tenth order of business — the work on today's calendar.

The first for consideration is Committee Proposal No. 1-40 as amended.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-40, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that section 28 of Article II to the constitution of the state of North Dakota, which pertains to the office of auditor general, be created.”

“SECTION 1.) Section 28 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

“ARTICLE II

“Section 28. The legislative assembly shall provide for the appointment of an auditor general. He shall audit the receipt, expenditure and use of public funds as provided by law and shall be responsible to the legislative assembly in the performance of those duties.”

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Fellow Delegates.

During the interim study, the Legislative Functions Committee and the Finance and Tax Committee had the opportunity of looking at this area of legislative auditor. We heard the Auditor General from the State of Colorado speak to us. The idea was well received in the Legislative Functions Committee.

What this proposal would do would be to create the office of Auditor General, who would be under the jurisdiction of the Legislature. We felt that we didn't want to pin the Legislature down as to any particular term or time; so it's a broad grant of authority to the Legislature. The grant is broad enough to allow the Auditor — so-called Auditor General — to audit not only funds appropriated by the Legislature, but also other political subdivisions as the Legislature shall so require.

We recognize that the Executive Functions Committee will be reporting to you at a later date on the position of Auditor, and it was our feeling that we

should present this to you in a broad form, so that we could — I believe the Executive Functions Committee will be recommending that the Auditor no longer be an elected state official, but this Auditor General would have the broad authority to do everything the present State Auditor does, plus the important thing beyond that would be the auditing of funds appropriated by the Legislature.

I'd like to, with your patience, yield to Delegate Aas, who is much more knowledgeable in this field, and I know that the Finance and Taxation Committee also worked on this proposal initially.

PRESIDENT WENSTROM: The Chair will recognize Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

We realize that this is somewhat of a radical change in the auditing procedure for the State of North Dakota, but I think, since the original Constitution was adopted in 1889, the whole concept of auditing has changed rather substantially. The office of the Auditor, which initially established a pre-audit type of function, and it grew from there into a position where it was finally used to more or less develop the financial statements of the various departments or functions of agencies of the State, and it gradually expanded to the point where they did go into some post-auditing performances of various kinds, but mostly the audits that have been done in the past throughout the entire time have been as to the fidelity and the honesty of the audit. There has been nothing done as to determine the quality of the work of the various departments, and this is kind of important in this day and age that we do examine the quality of the work that is being done by the various agencies or functions of the State.

We all know that the Executive has become stronger, both nationally and statewide. We know that there are more demands made. But we should all — and we are appropriating more money for these purposes. But we should also be concerned with the proper expenditure of funds.

This idea of a legislative auditor or Auditor General, as it's being called here, is not new. It was first developed by the State of Michigan in 1953 and is a part of their Constitution. It is a part of the constitution of quite a number of states. At the present time, according to the Book of States — the most recent one that I have — there are 19 elected auditors in the United States, and 24 are appointed by the Legislature, and 9 are gubernatorial appointees. The trend has been rather rapid in the last few years.

Tying this back into what North Dakota has done, I might say that in 1953 North Dakota took steps — the North Dakota Legislature took steps to develop the Audit and Fiscal Review Committee of the Legislature, and the initial proposal was, and still is, that the Lieutenant Governor serve as Chairman of this, and our distinguished President, Frank Wenstrom, chaired the first Audit and Fiscal Review Committee. At that time, and prior to that time, when an audit was made by the auditor's office, virtually nothing was done with that audit; it was just filed. Nobody looked at it. Nobody took any concern about what was going on, and if the audited office or the function did find that they should make some corrections, and if they chose to do so, they probably did. If they didn't — if they chose to ignore that audit, nothing was done about it.

With the development of the Audit and Fiscal Review Committee, I think that we can say that a lot has changed, because then somebody in the Legislature did examine all of the audits that were done in the State of North Dakota; some of them which were of lesser importance not in too great detail. But over the years since 1953, substantial progress has been made in determining what quality there has been in audits and what is being done with the final audit after it has developed. And with this, I can say that we have had much improvement in the quality of the auditing in the State of North Dakota, and I can say that in 1953 there were very few of the agencies that actually didn't make their own financial statements. It was being done by the Auditor's office, and this, of course is wrong.

We now come to the stage and we have realized this for a number of years in the Legislature, and particularly the Audit and Fiscal Review Committee — we have reached the point where we realize that we need performance and quality auditing along with the fidelity and honesty auditing and what can we say when

we say that? We mean that when the Legislature passes a bill appropriating certain funds for State operations, that the Legislature has the responsibility, the duty and the right to know how well that money was spent. We need to know just what was done with that money in the way of quality. If we want to take the Highway Department as an example, and not for any specific purpose, but just as an illustration, we should know what their costs are per mile of highway production on interstate highway and what their overruns are and why they are having overruns. This is important. This needs to be done in auditing functions. The Auditor, himself, will have no control over what the overrun is or what the results are; but he should report that. This is being done in many states at the present time and it is effecting a good economy in government, and we think that the audit report should contain performance, quality, and it is important. The Finance and Taxation Committee is impressed with the fact that we need this. I know that the budgeting committee of the Legislature knows we need it. The Legislative Committee of this — of this group would like to see this happen, and I am sure that it would be good for the State of North Dakota, and I would support this bill.

PRESIDENT WENSTROM: Any further discussion? Delegate Geelan,

DELEGATE GEELAN: Mr. President. I could certainly support this bill, from the standpoint of the various agencies and departments of the government. I think anyone who has anything to do with the administration of an agency has long felt that those audits that only audit receipts and expenditures are not important; the important thing is how well is that agency performing its services. Is it giving service for the money that's spent? And this is one of the things, certainly, an Auditor General could bring out.

We have on our desk this morning, I think, one of the very finest arguments for an Auditor General. I'm holding in my hand — and I suppose many of you are — a refund for expenses incurred on December 3rd. Now this isn't the fault of the Staff; this is the efficiency of the computer.

I don't suppose it makes any difference to us, except we should realize that we're not going to get our expenses until about February 3rd. But the people I'm concerned about are the people who have traveled for the State of North Dakota, who are out on the road all the time and who are reimbursed for expenses only once a month, and then they have to wait all the way from ten days to two weeks to be reimbursed for their expenses.

Now, this is something that I think an Auditor General could look into — is this marvelous and horribly expensive machine called the computer. Is it giving service? Isn't there some way that we could combine both efficiency and service from a computer?

So I would certainly support this. I think it's something we have needed all along, and it would do a fine thing for the departments if they were looked at that critically, and I speak from one who has had something to do with departments, and we would certainly welcome it, because I think we would come out looking better than most people think.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: A point of inquiry to someone on the Committee.

Do we continue to have a State Auditor, in addition to this position of Auditor General? I believe you're coming in on another committee and recommending that official be appointed. But is it the idea to consolidate these two, or still have two general auditors of the State; one, the State Auditor; two, the Auditor General?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The Committee discussed this, of course. We don't have — the Legislative Functions Committee does not have the Auditor before us — the present State — elected Auditor. I think, if we would have, we would have voted that we not have an elected State Auditor. We purposely made the language broad enough so that the Auditor General, under this authority, would

have authority to not only audit appropriations to state agencies, but also could be given the authority by the Legislature to audit political subdivisions.

It is our hope that this body would — we really don't — I think the majority of this Committee felt, or it was unanimous, that we should not have two auditors and that the Auditor appointed and responsible directly to the Legislature was far more important than having a separate official. But, of course, that matter still has to come before the Convention at a later time, at which time we would consider whether we would have two auditors.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. It's early in the morning and we are not as efficient. I question my authority in requesting that anything be laid, because I haven't had very good luck at that. I'll just vote "no" on that, unless you bring in the other figures, first. I would like to just quote a couple of figures from the Census Bureau. On page 58 from the book of a couple years ago. The Tax Commissioner has the book. North Dakota has 83 people working for government at all levels. The national average is 57. So we have got about 25-30 percent higher governmental employees in North Dakota than the national average.

Another statistic that might interest you, from a book just this week — last week — from the Tax Commissioner, has North Dakota in second place for tax purposes. "Tax effort" is the word they use. What it simply means is we're second high in the United States per thousand dollars of personal income, and a few years ago we were number one in governmental spending, which meant back in North Dakota and back to North Dakota went all of our money. So we were number one a few years ago. And this shows us as number two in the nation. And I hesitate very much to set up another office unless we're eliminating one. I think the idea is good. But what would happen? We have a Legislative Council now that's costing a small fortune. This would be another arm of it. And I would also like to mention that, if you're going to have another expert working for his lifetime in his job, you better not limit the time the legislators may serve. Pretty soon you'll have about two men running the Legislature, because the freshmen won't know anything about it.

Now, I'm going to vote "no," unless I'm very sure some other office is going to be eliminated, because we can't keep piling office upon office, with our state population decreasing as it has been. Thank you.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I understand that the Executive Functions Committee is recommending that there be seven elected officials and that the Legislature set up departments and that the Governor then appoint department heads and that they be confirmed by the Senate.

Now, there's a question here, and maybe I should move that this be held at the desk until that proposal is before us. Would that be possible?

PRESIDENT WENSTROM: You can lay it over — over to the foot of the calendar — if you wish.

DELEGATE SCHEEL: Mr. President, I think I could answer his question.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I haven't been delegated by the Executive Functions Committee to do this, but I see everybody else sitting here without saying anything; so —

In our Legislative Functions Committee, our proposal that will come before this group is that the Legislature decide upon the Auditor. That will be one of the things that they will decide upon. I would assume they wouldn't decide we're going to have two auditors.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. I would like to direct a question to one of the proponents of this idea.

Now, you say the Auditor General is going to audit the performance. Now, I served in state office here twelve years, and we had duties imposed on us where we represented the State at the federal level, before all the federal com-

missions, like the Interstate Commerce Commission and Federal Power and Federal Communications Commission. Now, then, in addition to the intrastate, we held hearings, took evidence under oath, and then rendered judgment. Now that was appealable to the court.

Now, just how is the Auditor General going to audit the performance of that Commission?

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Well, Mr. Chairman, of course the Auditor General is not going to be the total panacea for all of the problems of the State; but the Auditor General is going to audit performance where it is justified to audit performance.

I might take the example of the colleges, and I have before me an audit of the Michigan State University, and in this Michigan State University audit, which is a performance audit, they have examined a number of engineering instructors which they had in a particular section of the Engineering Department, and the performance audit people were able to show that they had just about twice as much staff in this one particular area as they needed.

Now I think that this illustrates that a performance audit can reveal some things, if it's used properly, and certainly in the example which Delegate Cart used, I have no idea at this time what could be done or what should be done, and perhaps nothing should be done. But there are areas — and I can point to you — that there are areas in highway, in colleges, in universities, in schools and in political subdivision areas, where there is need for a performance review by someone that is concerned with the way the dollar is spent, and I can cite you numerous examples where this could be used. But if anybody would like to review this little audit report which Michigan State University has, they can find numerous areas where recommendations are made where economies could be justified.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President. As also a member of the Executive Functions Committee, I agree with Delegate Scheel that we feel this is the proper approach to the auditor situation and that there would not be duplication of staff and duplication of position here, and I believe we should encourage passage of this bill at this time so that it will give us direction on the Executive Functions Committee to properly take care of our proposal at that time.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. Just briefly, Mr. Proctor, the Auditor General of the State of Colorado, mentioned in that state he was the state elected auditor, and when they went to a legislative auditor, he was appointed the legislative auditor and they did, through performance audit, find some irregularities in travel, for example, and he mentioned, also, that it doesn't necessarily mean that each department is going to be thoroughly audited for performance. They look for areas where there are some problems.

Montana just found some problems in their state liquor set-up, and I think that was publicized not too long ago. South Dakota has had a legislative auditor for years — I think 20-some years. Most states are going to the legislative auditor. I certainly hope this bill passes, and if the Executive Functions Committee — maybe it isn't necessary that this pass first.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'm wondering if Delegate Proposal 2-26, which is on the tenth order of business today, with reference to the ombudsman — if the two of these offices could be joined together and one person given enough authority or enough power to handle both.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, I'd like to address this question, I believe, to Delegate Aas.

Now, the original adoption of the Board of Higher Education directed that body to eliminate duplication; but we're still running two engineering schools in

the State — one at Fargo and one at Grand Forks. Would this auditor be empowered to do anything like that?

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. Speaker and Fellow Delegates.

Delegate Cart, the Auditor General would not be empowered to do anything. The Auditor General would merely make recommendations as to what the obvious results of his findings are. He will tell them what is not justified, if the case may be, or if — if he can so justify it from his figures. He is not going to be out there to say that they must eliminate one. He makes recommendations, and based on the recommendations which he makes, the Legislature should take action.

I think, in response, then to Delegate Thompson's question, I don't believe that these are the same by any means. The legislative auditor would be responsive to the Legislature and would advise the Legislature of performance quality of the audits which they have made. He would advise them how the money has been spent, where the ombudsman — ombudsman, at whatever you say — would have the duty of carrying the responsibility of the citizen himself, and I think these are totally different and I could not see where they could be incorporated in one, because one would respond to the Legislature and the other one, I would think, should respond to the executive branch of government.

PRESIDENT WENSTROM: Is there any further discussion?

The question is on the first passage of Committee Proposal No. 1-40.

Those in favor will vote "aye;" those opposed will vote "nay."

The key will be opened and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

The vote is closed.

The roll call discloses 94 "ayes," one "nay," three delegates absent and not voting. Committee Proposal No. 1-40 has passed.

Next for consideration is Committee Proposal No. 1-56.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-56, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 213 of the constitution of the state of North Dakota, which pertains to property rights of women, be repealed.

"Section 213 of the constitution of North Dakota is hereby repealed."

DELEGATE BURBIDGE: Mr. President.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: The Bill of Rights and Suffrage Committee dealt with this, and it is a rather interesting proposal to start the week, on the by-play between the changing legal and social relationships between the sexes.

Section 213 reads as follows:

"The real and personal property of any woman in this state, acquired before marriage, and all property to which she may, after marriage, become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband."

In spite of the interesting implications on this, we in the Committee had trouble generating testimony on it, and we laid it over for a month, hoping that the League of Women Voters, or someone else, would speak on the subject. But none came forward to do this, and so the Committee looked at existing laws and decided to take what was pretty well-covered in existing laws.

I'll read it to you, on Statute 14-07-08. It says, in part, as follows:

"The separate property of the husband is not liable for the debts of the wife; and

"5. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage."

The Committee felt that this was adequately covered in the statute and, therefore, recommends repeal of the constitutional section involved.

PRESIDENT WENSTROM: Is there any further discussion? Delegate Cart.

DELEGATE CART: Well, Mr. President, reviewing the long period of history when women were granted full suffrage, and so forth, there was a remark made that "Here's to the ladies — once our superiors, now our equals." I believe we've accomplished that. (Laughter)

PRESIDENT WENSTROM: Any further discussion?

The question is on the passage of Committee Proposal No. 1-56.

Those in favor of adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

The key is closed.

The roll call discloses 94 "ayes," one "nay," three delegates absent and not voting.

Committee Proposal No. 1-56 has passed.

Next for consideration will be Committee Proposal No. 1-57.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-57, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to equal enjoyment of public accommodations, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any public accommodation, without discrimination or segregation on the ground of race, sex, color, religion or national origin."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE BENDER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Bender.

DELEGATE BENDER: The Committee on Preamble, Bill of Rights and Suffrage is presenting a new section to our Bill of Rights dealing basically with equal enjoyment of accommodations and public facilities without discrimination on the basis of race, creed, color or religion or national origin. This section is similar to the 1964 Civil Rights Act. Our Committee urges the adoption of this section by the Convention.

PRESIDENT WENSTROM: Is there any further discussion? Delegate Sinner.

DELEGATE SINNER: Mr. Chairman. A question of the Committee. Does this language prohibit state agencies from renting services and facilities from organizations that discriminate in their membership on the basis of race or national origin?

PRESIDENT WENSTROM: Can some member of the Committee answer Delegate Sinner's question? Delegate Lamb.

DELEGATE LAMB: To answer Mr. Sinner: I don't think it does.

DELEGATE SINNER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I'd like to move that this be re-referred to the Committee to see if that cannot be included, and if I can get a second, I'll explain a little of the background.

DELEGATE AUBOL: Mr. Chairman, I'll second that.

PRESIDENT WENSTROM: Do we have a second? Seconded by Delegate Aubol.

DELEGATE SINNER: Mr. President. Sometime ago a meeting was held by a group of public employees in a facility that was owned by an organization that discriminates against minority groups and all non-whites in one of our major cities. There was a challenge filed through the NAACP on the grounds that it was a discriminatory function. I saw the correspondence and had a copy of the corre-

spondence from the NAACP, in which they said that, in this particular case, they could not see that there was any grounds for legal suit because there were no public moneys involved. However, they said — the attorney said in the letter, were there public moneys involved, there would be definitely a case for a suit, and it was alarming to me from the point of view of what might happen to federal funds; but it was also brought home to me by the person that filed the complaint and showed me the correspondence that minority groups do feel put upon when they're asked to go to public functions that are held in places where they're not welcome, and I think this Convention and the entire State is doing everything it possibly can to help bring minority groups — particularly the Indians — into full citizenship, and I think that it is a de facto way of discriminating, to hold public functions in places that discriminate against minority groups, and I think we should make it clear that we want full citizenship for all of our people, and I — I think that a good case can be made to put in the Constitution a prohibition against state agencies using federal funds to in any way be supportive to organizations that discriminate on the basis of race or national origin, and I think the Committee — while I haven't really had a chance to work on language, I think the Committee should have another chance to.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: This is Delegate Gipp speaking.

I cannot help, I think, but concur with Delegate Sinner's comments with respect to this section. I do think the section is quite well written. I have no objections, really, to it other than I think perhaps the delegate comments with respect to the coverage and the intent of this article might be reconsidered by the Committee. I certainly don't oppose it in any other sense. I think that Delegate Sinner's remark with respect to the use of public funds and facilities was an excellent remark. I think that there are organizations in the State of North Dakota that have and do carry certain discriminatory clauses. It was only two-and-one-half years ago — a year-and-a-half ago, I guess, that one of these national organizations voted nearly unanimously at their national organizational — their national convention — I think by a vote of 1,500 — to retain a rule of race — or race — a race rule that allows for entrance into that organization. I think it should be clearly spelled out on how state public funds should be used or how they shouldn't be used — let us put it that way. I certainly think there are federal laws and there are federal rights that will certainly compel the use of state funds properly, or any kinds of funds, without discrimination, if we cannot do it this way. Thank you.

PRESIDENT WENSTROM: The question is on Delegate Sinner's motion that Committee Proposal No. 1-57 be re-referred to the Committee on Preamble, Bill of Rights and Suffrage. If there's no further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the bill will be re-referred to the Committee.

Next for discussion is Committee Proposal No. 1-58.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-58, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 5 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to release from unlawful detention or imprisonment.

"SECTION 1. REPEAL.) Section 5 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"HABEAS CORPUS. The privilege of release from unlawful detention or unlawful imprisonment shall not be suspended unless, when in case of rebellion or invasion, the public policy may require."

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: It is obvious here what we are trying to accomplish is to substitute for a Latin "writ of habeas corpus" — substitute the English for it.

Now, the question then that we had to decide is: What English should be used? I'm quoting from a letter from an attorney who assisted in research on this matter, and part of what he said is this:

"The primary purpose or function of the writ of habeas corpus is to obtain the release of an individual from unlawful imprisonment." He referred to a number of court cases, and one is from the State of New York, where the court goes so far as to say, "The sole function of the writ of habeas corpus is release from unlawful imprisonment."

However, our legal counsel recommended to us that we should also state "release from unlawful detention." So our recommendation is that you substitute the English "release from unlawful detention or unlawful imprisonment shall not be suspended unless," as the rule goes on, "when in case of rebellion or invasion, the public policy may require."

Now, we realize there may be other rights involved in this term "habeas corpus." The recommendation of the Committee is that this section now refer to those two basic and primary rights. We realize we're asking to drop a very traditional and long-standing handy legal term; but this is a declaration of rights for people, and so we think that the rights should be stated in simple and understandable English.

Then there's one other point. You'll notice we have the words "habeas corpus" as the first words of this section. However, it was the intent of the Committee that that should only be used as an identifying title and not a part of the section or the Constitution. In this particular case, we felt that, to put it into the section, might lead to some legal questions, and I'm going to say here and now this came out of our Committee with unanimous approval, and we have both an attorney and a judge on our Committee; but if we get involved in any legal questions, I'm going to hope that our delegate and attorney, Neil Thompson, will take over. But we felt the use of a title here was rather important, because if these people who look at the revised Article — they may not have the slightest notion of what "habeas corpus" means; but if they saw it was left out, they might think they had taken away their precious right.

So at this time, Mr. President, I'm going to offer an amendment, and the Clerk has it at the desk. Maybe the Clerk should read it.

CHIEF CLERK GILBREATH: In line 10, delete the underlining under the words "HABEAS CORPUS".

DELEGATE GEELAN: So I move, then, that this amendment be adopted.

PRESIDENT WENSTROM: It's been moved by Delegate Geelan that the amendment as read at the desk be adopted.

Now, do I have a second?

DELEGATE SONDRAL: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Sondreal. Is there any discussion?

Hearing none, the question is on the amendment.

As many as are in favor of the proposed amendment will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

DELEGATE GEELAN: Then, Mr. President, I move that the Rules be suspended, that the Proposal No. 1-58 be properly engrossed, and be placed on the calendar for first passage.

PRESIDENT WENSTROM: It's been moved by Delegate Geelan that the Rules be suspended, that Committee Proposal No. 1-58 be deemed properly engrossed, that it be placed on the calendar for first passage as amended.

Do I have a second?

DELEGATE LONGMIRE: I'll second it, Mr. President.

PRESIDENT WENSTROM: Delegate Longmire seconded the motion. Now, do we have any discussion?

DELEGATE LONGMIRE: I was hoping that'd be held up. I was going to put a title on it for you, under Habeas Corpus; but I guess I'm too late.

By way of discussing the motion that is before us, we did take that out of all the judicial references, too — all of these Latin remedial writs, and I was glad to see that the Committee has taken out habeas corpus here. But I think a good title would be "Unlawful Detention," instead of "Habeas Corpus," and you've got a title for it which would alert people that we do still have in the Constitution this unlawful detention procedure. However, you have already cut me off, and I'll let it go at that. But I was going to offer that amendment before this motion.

PRESIDENT WENSTROM: Delegate O'Toole, did you have a question?

(Delegate O'Toole shook his head.)

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I think the reason that we felt the term "habeas corpus" should be left in as the title would be for the convenience of attorneys, so they could find the section.

DELEGATE PEARCE: Mr. President.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I would like to register what will no doubt be considered a feeble protest, and to save the time of the Convention, my remarks apply, also, to Proposals 1-60 and 1-61, which purport to remove non-English words from the Constitution. If we do that — remove all non-English words — I assume that we must throw out about half or as much as two-thirds of the so-called English language, which are, if not Latin, Greek, and we'll be left only with those Anglo-Saxon words. I'm sure you realize that a great many of those are four-letter words and the kind that should not be used in polite society, although they are coming into play more lately.

My principal reason, other than being facetious, is that, to me "habeas corpus" is a legal term with precise meaning. It has been construed by the courts for several hundred years. I see no reason for substituting different phraseology for something which has such a concrete meaning, and that's the reason why I'm opposing it. I can conceive of instances where "unlawful imprisonment or unlawful detention" are not present, but the reason and the right for a petition for a writ of habeas corpus is, and I really can see no reason why we should worry about that.

There are a number of other things that we ought to change, because "television" is certainly not an English word. "Automobile" is certainly not an English word. And I don't know where this might stop!

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Fellow Delegates: There seems to be a difference of opinion here on just what is being done, and as I read the proposed amendment, it says that in line 10, delete the underlining under the words "HABEAS CORPUS". It says nothing about taking out the words "HABEAS CORPUS."

DELEGATE PEARCE: Did you have a question, Mr. President?

PRESIDENT WENSTROM: Only —

DELEGATE PEARCE: As I understand, taking out the underlining, it's treating it as you do in the Legislature. Now it means that you haven't substituted a new word and that "HABEAS CORPUS" would remain. Of course "HABEAS CORPUS" as a base naked title stays there; but the language is not the writ of habeas corpus shall survive; it is that the privilege of release. It's a rather strange dichotomy that they didn't like the words "habeas corpus" but they had to put it in so that people would know that this was the section.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President. Fellow Delegates, there's a second part of this that bothers me, and it has to do with six-letter words, and that is where the word "safety" is deleted and the word "policy" is inserted.

Now, as I understand "public policy," this is something that changes from time to time and changes somewhat rapidly. "Public policy" regarding the rights of an individual may change from day to day, depending upon who the majority is. I think "public safety" — I think the word "safety" has a much more concrete effect to it, in that when you talk about the safety of the — the public safety — I think we can relate much more permanency to it. I certainly do not understand why we would insert "public policy" in lieu of "public safety," and I'm going to vote against it on that basis.

PRESIDENT WENSTROM: Delegate — Fellow Delegates:

Now the question before the body is on the motion that the Rules be suspended, that this be deemed properly engrossed, and that it be placed on the calendar for first passage. And I think we could have some more debate after we get to that point; but I think the question now is on this motion to get the proposal as amended before the assembly. We're really not debating the motion.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the proposal as amended is before the Convention.

Delegate Geelan.

DELEGATE GEELAN: I'm sure that no member of the Committee would have any objection to Delegate Nething's objection to the word "policy" instead of "safety." The original did say "safety," and I think it was an error in the proposal, and the person who is responsible for that error is Agnes Geelan. Even I should have put in the word "safety." And I would move at this time another amendment, if I may do so — that in line — I haven't this at the desk, however — that in line 12, we substitute "safety" for the word "policy," and with a provision in getting that up to the desk, I would move such an amendment.

PRESIDENT WENSTROM: It's been moved by Delegate Geelan that Committee Proposal No. 1-58 be further amended; that the word "safety" — that the word in line 12 — that the word "policy" be deleted and the word "safety" be inserted in lieu thereof.

Now, do we have a second to that motion?

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nething.

Now, is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the proposal is further amended.

Now do you want to repeat your motion?

DELEGATE GEELAN: Mr. President. Then I again move the Rules be suspended, that 1-58 be deemed properly re-engrossed, and placed on the calendar for first passage.

PRESIDENT WENSTROM: It's been moved by Delegate Geelan that the Rules be suspended, that Committee Proposal No. 1-58 be deemed properly re-engrossed, and that it be placed on the calendar for first passage.

Do we have a second to that motion? Seconded by Delegate Daniels. No further discussion? As many as —

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-58 as amended is again before the Convention.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I'm going to vote for the proposal in its present form, but I think it is important to retain the words "habeas corpus" at least as a title to this section when it goes to the Style and Drafting Committee, for the reason that these words are of very precise legal meaning. They are non-foreign words. If you go to a dictionary, you don't have to look under foreign words and phrases to find "habeas corpus." For example, "habeas corpus" is listed right ahead of "haberdasher."

So I think it is important to retain that phraseology — at least in the title to this section.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President. I realize that the committees have worked hard and long on their proposals; but we have voted in many cases on the rewritten section of the present Constitution without being able to show that we approve the retention of the section as it is. Here, again, I regret this. I feel strongly that, unless there is improvement on what is there, it should be retained in its present state. I think these legal terms have been used so commonly that they really aren't that difficult, and I would like to be able to vote for the old section. So I'm going to vote against this proposal.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: The Committee has incorporated what it believes to be an improvement in the language of this section. It was not the aim of the Committee to necessarily remove non-English terms, but to substitute for certain unfamiliar and obscure and vague non-English terms, language that all could understand — even lawyers and judges.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-58 as amended.

Those in favor will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 73 ayes, 18 nays, seven delegates absent and not voting.

Committee Proposal No. 1-58 has passed.

Next for consideration is Committee Proposal No. 1-59.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-59, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 9 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom of press.

"SECTION 1. REPEAL.) Section 9 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Freedom of the press and freedom of all individuals to write, speak and publish their opinions on all subjects are hereby guaranteed, and each must be responsible for the abuse of these freedoms."

DELEGATE HUCKLE: Mr. President.

PRESIDENT WENSTROM: Delegate Huckle.

DELEGATE HUCKLE: I think it's time for us to discuss a five-letter word, so I will be on that now.

The Committee on the Bill of Rights wishes to have the meaning of the word "press" read as it applies to the new section. In defining the word "press," this is what it includes: "All the media and agencies that print, broadcast or gather and transmit news, including newspapers, news magazines, radio and television news bureaus, wire service, and so forth." And the source of this definition was from the Random House Dictionary of the English Language, copyrighted in 1967.

PRESIDENT WENSTROM: Is there any further discussion on Committee Proposal No. 1-59? Hearing none, the question is on the first passage of Committee Proposal No. 1-59.

Those in favor will vote "aye;" those opposed vote "nay."

The key will be open. You will record your vote. Has every delegate voted?

DELEGATE HERNETT: No.

PRESIDENT WENSTROM: Does any delegate wish to change his vote? The key is closed.

The roll call discloses 92 ayes, there were no nays, six delegates absent and not voting. Committee Proposal No. 1-59 has passed.

Next for consideration, Committee Proposal No. 1-60.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-60, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 8 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to indictment and information.

"SECTION 1. REPEAL.) Section 8 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Indictment or Information. No person shall be proceeded against criminally otherwise than by indictment by the grand jury or by accusation, except in cases arising in the military forces, when in actual service in time of war or public danger."

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: If you look at the original one, you will see that there's been some substantial change made in this section. I'm sure, again, in this instance it was our intention that the words "INDICTMENT OR INFORMATION" would be the title, and I'm wondering if Style and Drafting can't take care of that, rather than going through another motion.

We've provided substantially in here that the State could proceed without the requirement of obtaining an indictment from a grand jury, and could proceed by accusation, which we felt was synonymous with "information" but would be more clear for the ordinary person. We changed the words so that now it reads "military forces," which, I think, conforms to the suggestions that have been made by the Military and which are being incorporated into all of the rest of the sections that are being considered by other committees.

By doing this, as far as the "information" is concerned, it allows the State to proceed with information, when a grand jury has been called, without going through the formality of having an actual hearing, and makes it easier to proceed.

You should also notice, of course, that we have now locked into the Constitution the grand jury and taken away from the Legislature the right to make other provisions.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President and Fellow Delegates.

I can't see any good reason to lock the grand jury into our Constitution. This would be something like locking a Model A into the Ford production line. The grand jury hasn't been used very much at all, and where it has been used, there's been fiascoes because of a lack of casebook law on the subject. The reason the grand jury isn't used much is that it simply adds another level of cost to county government.

I want to quote from **The National Observer** of November 20, 1971: "You are summoned before a secret tribunal and denied the right to bring your attorney. It's just you, the prosecutors and more than a score of inquisitors. They don't have to tell you who they're after. They don't have to reveal the purpose of their questions. But you must answer them all or risk being jailed. That tableau isn't set in a criminal basement. It's an American grand jury exercising its historic powers in our system of criminal justice."

Now, the grand jury started out as a buffer between the prosecutor and potential accuseds. It's developed into something quite different over the years and, as I mentioned, it isn't used hardly at all any more in North Dakota. I am going to vote and hope that this proposal is defeated, and hope the Committee will come up with something closer to the present Section 8.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I'd like to inquire of the Committee: Under the old Constitution, the requirement to proceed by indictment or information was qualified by a case of felony. Does the Committee contemplate that every charge that is a traffic offense, we'll have to have indictment by a grand jury or an accusation, which — which is the other point that I have. I wonder if the Committee merely intends that the word "accusation" substitute now for the word "information." I don't know that the word "accusation" appears in the law at any place, whereas the word "information" does.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: We talked about that quite a while. I'm referring to "information" and "accusation" now — mainly because in my office I have a lot of forms using the term "information," and it was felt that, by leaving it in as a part of the heading, that I could retain those forms and not spend any more of my time and money having new ones printed.

The reason for changing the word from "information" to "accusation" was that the Committee — or the majority of the Committee, at least, felt that it was more readable to people other than judges or lawyers — using the term "accusation" — and felt that they were synonymous.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

I think Delegate Kelsch has raised a good question, particularly regarding the matter of traffic cases, because I believe we function there under a little different system, whereby we use a summons as opposed to an accusation, and of course currently we can do that, because the words "unless otherwise provided by law" are included. And under our traffic regulations, we can use that. I'm thinking along the lines of enforcement, as having all of the traffic arrests proceeded by an accusation, which would be basically a complaint, as such, and I — a complaint, of course, has to be brought before a committing magistrate in order to have it properly served, and if we do away with the traffic summons and substitute in lieu thereof the matter of having to take each offender before — or the person that makes the complaint, which would be the local traffic officer, be it Highway Patrol or City Police or Sheriff; then we're going to find ourselves in a real mess. I don't think we could hire enough magistrates to be on duty so that these people can function. I think that's why the traffic summons is used. I think this should be returned to committee, probably, and, firstly, it would just leave that; otherwise, it would be covered by law, and I think we could cover that particular aspect of it.

I would like to have some Committee member explain to me why the grand jury system has now been locked in under the Constitution under this proposal, as opposed to leaving the regulation changing or abolishing it to the Legislature.

PRESIDENT WENSTROM: Will a member of the Committee answer Delegate Nething's question?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Mr. Chairman, in view of the resistance, I'd like one question to you, Mr. Nething.

Are you indicating that after the word "accusation" we would add the words "unless otherwise provided by law"?

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President.

Delegate Thompson, I would do just like they did in Section 8. I'd head the section, "Unless otherwise provided by law."

DELEGATE THOMPSON: I don't think the Committee would resist having it sent back for that purpose, and I would so move that it be sent back.

PRESIDENT WENSTROM: You move to return it to committee?

DELEGATE THOMPSON: Yes.

PRESIDENT WENSTROM: Delegate Thompson moves that Committee Proposal No. 1-60 be re-referred to the Committee on Preamble, Bill of Rights and Suffrage.

Now, is there a second to the motion?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton. Any comment? Delegate Chase.

DELEGATE CHASE: One other question. I'm not sure that Delegate Dobson's point was talked about too much. Will the Committee also at that time reconsider locking in the grand jury to the Constitution, or is that a foregone conclusion.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I wonder if the Committee ever considered just repealing the section. We have the guarantee of due process, to life, liberty, and I wonder, if we say that a criminal may be proceeded against in a manner provided by law, if we're really saying anything, as long as we have the other constitutional guarantees.

PRESIDENT WENSTROM: The question — Delegate Unruh.

DELEGATE UNRUH: I guess I have a further question to complicate the matter. But it seems to me, unless we preserve the right of grand jury, we have a little difficulty investigating public officials who are doing wrong.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. If this is re-referred to our Committee, we will give consideration to all of the points that have been raised on this debate.

PRESIDENT WENSTROM: The question before the Convention is on Delegate Thompson's motion that Committee Proposal No. 1-60 be re-referred to the Committee on Bill of Rights — on Preamble, Bill of Rights and Suffrage.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-60 will be re-referred to the Committee.

Next for consideration is Delayed Proposal No. 1-61.

CHIEF CLERK GILBREATH: Delayed Proposal No. 1-61, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 16 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bills of attainder and ex post facto laws and non-impairment of obligations of contracts."

PRESIDENT WENSTROM: Is there any discussion? Delegate Daniels.

DELEGATE DANIELS: The Committee on Preamble, Bill of Rights and Suffrage has changed this proposal — or this section to the Constitution; but, if you'll read it carefully, both the old section and the new, you will find that the only substitute that we have made is the definitions of "bills of attainder" and "ex post facto law" in place of those words, and yet we have left them in the title, so that they are easily identifiable. We, again, wanted to make the Constitution as readable to the average citizen as we could, and so that we might do this, we did substitute these definitions, and these definitions were taken from **Black's Law Dictionary**, and the only change, of course, is in just the definition.

I would like to remind the delegates that it is not only adults who will read our Constitution, but young people will also study it, and I think anything that

we can do to make it more understandable to them for their use in later years as citizens would be very helpful.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage. Delegate Pearce.

DELEGATE PEARCE: Mr. President. I have stated that my previous remarks would apply to 1-61; but now a careful reading raises another doubt in my mind, and I'm looking at the sentence which starts at line 14, which reads, "No law shall be passed which renders an act punishable in a manner in which it was not punishable when it was committed . . ."

Now, let's suppose the prohibition against ex post facto laws has not so much to do with punishment as to whether a thing was a crime, and I presume that what the Committee intended to get at was that no law shall be passed which makes an act a crime which was not a crime when it was committed; in other words, if you did something today, the Legislature next month couldn't make that a crime and then proceed against you on that. I'm not sure in my mind as to whether the reference to punishment accomplishes the same thing and, again, I must state that I — I know what ex post facto laws are. I'm not sure that I know what 1-61 does. In this connection, my fellow delegate to my left — Delegate Poulson — questioned "Should we still be using that ancient 'Yea' and 'Nay' when we vote?"

DELEGATE BENSON: Mr. President.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: It seems to me that one of our purposes in making this new Constitution was to get away from a lot of extra language. Now, if we're going to start writing a dictionary, instead of a constitution, I can see some substance in this proposal. But, as I look at the old Section 8 — or 16, I can't help but feel that is far preferable to the one which is proposed. For that reason, I am going to vote "no."

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-61.

Those in favor will vote "yea;" those opposed will vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

DELEGATE DIEHL: Mr. President.

PRESIDENT WENSTROM: Delegate Diehl.

DELEGATE DIEHL: Diehl votes "no."

PRESIDENT WENSTROM: Did your key not work?

DELEGATE DIEHL: No, it didn't.

PRESIDENT WENSTROM: His key did not register.

DELEGATE DIEHL: Perhaps my fault.

PRESIDENT WENSTROM: The roll call discloses 22 "ayes," 69 "nays," seven delegates absent and not voting.

Committee Proposal No. 1-61 has lost.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I think that is some kind of a mandate from the Convention to come back with Section 16 in its original language.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Shouldn't we move to reconsider our action on 1-61 and have it re-referred to committee?

PRESIDENT WENSTROM: You can refer it to the Committee, Delegate Omdahl, without reconsidering your action.

DELEGATE OMDAHL: I move that 1-61 be re-referred to the Committee on Preamble, Bill of Rights and Suffrage.

PRESIDENT WENSTROM: It's been moved that Committee Proposal No. 1-61 be re-referred to the Committee on Preamble, Bill of Rights and Suffrage. Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Kwako.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the proposal will be re-referred.

Without objection, we will be on the eighth order of business.

CHIEF CLERK GILBREATH: We have some balcony visitors today. Hebron High School, with Mr. Darrell Anderson as the Principal and Ray Frank as the Superintendent of Schools, are now present with 70-to-75 in the group.

PRESIDENT WENSTROM: Will the visitors please rise and receive the recognition of the Convention?
(Applause)

PRESIDENT WENSTROM: Fellow Delegates, I have been requested to have a show of hands of the delegate who has a wife with him here at Bismarck. The purpose behind it is that a group has asked me to find out how many of the wives are here, with the thought of having a dinner or luncheon, or something, for them; and for that reason, I have to ask you. Mrs. Jestrab, I won't ask about the husbands. You may have the floor, though. Did you have a question?

DELEGATE JESTRAB: You have answered my question, although perhaps in a luncheon, perhaps men are interested.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I would like this Committee to take into account the fact that there's a possibility that Delegate Knudson may have one by that time.
(Laughter)

PRESIDENT WENSTROM: Fellow Delegates, you have been here on time this morning and you have been laboring industriously, and at this time I'm going to declare a 15-minute recess.

(The Session recessed at 10:32 A.M. until 10:52 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

We will be on the seventh order of business — Reports of Select Committees.

Fellow Delegates, your Committee on Rules has a number of amendments they would like for you to consider. These have been distributed and are on the desks of the delegates, and in order that we can proceed and have our Rules finally determined and have them printed, it is quite necessary that we do adopt these or reject them, so that the Committee can proceed with establishing permanent Rules for the Convention. So, at this time, if there are no objections, I'm going to call on Delegate Geelan, and if she wishes, she can name the members of her Committee who will carry the individual proposals on the floor.

Delegate Geelan.

DELEGATE GEELAN: Mr. President. I think the Clerk has now the changes, and as I understand it, we will proceed as we did before. Each change will be read and then explained by a member of the Committee, and then discussed, and adopt those changes.

PRESIDENT WENSTROM: The Clerk will read the proposal — proposed change in the Rules.

CHIEF CLEAK GILBREATH: Mr. President: Your procedural committee appointed to review and recommend changes in the temporary rules has had the same under consideration and recommends that the temporary rules of the Convention be amended as follows:

"Rule 18.2. ALTERNATE PROPOSALS

"An alternate proposal covering the same subject for incorporation in the final constitutional draft may not be introduced until three Convention days after first passage of a proposal covering the same subject, except that the three-day limitation shall not apply after the twenty-second Convention day.

"At least twenty delegates shall be required to introduce an alternate proposal which shall be filed with the clerk.

"The limitation on the time for introduction of proposals as provided by Rule 18 shall not apply to alternate proposals.

"Before floor consideration of an alternate proposal, it shall be first referred to a Committee on Constitutional Ballot, which committee shall be comprised of 15 delegates to be selected as follows:

"1. Two delegates shall be elected from each of the six substantive committees.

"2. Three delegates shall be appointed at large by the President.

"The Constitutional Ballot Committee members shall select their chairman and vice chairman.

"The committee shall prepare and submit to the Convention for its approval a ballot form which shall set forth a method by which alternate proposals may be submitted to the electorate.

"The committee shall consider each alternate proposal referred to it and shall report its recommendation to the Convention as follows:

"1. That the proposal should not be submitted as an alternate, or

"2. That the proposal should be submitted as an alternate.

"If the committee report is to submit the proposal as an alternate, it shall also specify the form of the question to be submitted to the electorate.

"If the committee report is that the proposal not be submitted as an alternate, and the report is accepted, the proposal shall be deemed to be indefinitely postponed.

"If the committee report is for submitting the alternate proposal to the electorate and the report is accepted, the alternate proposal along with the form in which it shall be submitted shall thereafter follow the same procedure as a proposal placed on first reading and passage."

PRESIDENT WENSTROM: You have heard the reading of Rule 18.2.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President. If I may briefly run through the Rule, and particularly the important parts of it. The Committee on Rules — we contemplate the method to introduce alternates, and our plan would be that, if you had an alternate proposal that you wanted introduced, this would be left with the Clerk. At least 20 delegates must sign that proposal. We would use a numbering system, probably, that would — with the prefix number of "3" to indicate that it's an alternate, and then key it into the same proposal number — the last two digits that would apply to the other proposal that's already been acted on.

Now, we have a five-day waiting period before you could introduce this at the Clerk's desk. The reason for that is that once we pass something on first passage there, it would, in effect, have the day you vote on it and two succeeding days on which you could reconsider, and we felt there should be no alternates offered at the desk until the time for reconsideration has passed that — that is, reconsideration on a 50-vote majority. After the three days, of course, it takes two-thirds to reconsider a proposal. So any time after those three days go by, any 20 delegates who would sign a proposal could tender it as an alternate. Immediately upon its being received by the Clerk, the President will refer it to the Committee on the Ballot and, as you can see, the Committee is made up of two members from each of the six substantive committees. It's our feeling that, although this committee is quite large, we felt that it is important that somebody from each of the six substantive committees act on this Committee on the Ballot, because they would have a feel of the various committees, as to what might be extremely important and what should be submitted to the electorate as an alternate. Their first duty would be to come back to the Convention with a suggestion as to how this might be handled on a ballot. There are a number of ways it could be handled, and the Rules Committee did not feel it was our function to spell out how these might be handled; rather, that this Committee should have that job.

Then, as these alternate proposals are referred to them, they would come back to us with recommendations that either we put them on the ballot for the

people's choice or we do not. This Convention, of course, has the final say. We could leave it to the Committee on Ballot, and then, at the end of the — with the alternate proposal idea. If we do not — we could, of course, arrive at that. If it goes on as an alternate, we indicate they must specify how it would go on; in other words, how would the question be stated as an alternate? And we felt this was quite important to you, if you make an intelligent vote, that you want this submitted separately as to how this is done. Then, if we accept the report that it go on as an alternate, then it would be before us for first passage; so we could amend it and get it in the proper shape so all of us agree. They won't be so much concerned with the form of the alternate proposal or its content, as to whether it should be submitted as an alternate. And then, of course, we on the floor then can decide how it should be submitted.

We also felt that the Committee could poll the delegates in advance, if they would like to, as to what you feel individually are the issues that you might want to see submitted as separate items, and we were concerned with the problem of time. We recognize that this Committee may have a number of alternate suggestions to the delegates, and they're going to have to make a choice. We couldn't see how we could write a time limit in this. We recognize that this kind of work is going to be eleventh-hour work, and we'd only hope that the Committee would, as soon as they get these proposals, they would recommend to the floor as quickly as they could as to their recommendations.

If there's any questions along this route or method of handling all this, we'd be glad to try to answer them.

PRESIDENT WENSTROM: Are there any questions? Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: I wonder, Delegate Kelsch, if the Committee considered the possibilities of a committee by two-thirds vote submitting a proposal. I'm thinking that the 20-delegate — it seems like quite a few delegates for submitting an alternate proposal, and possibly if the Committee was permitted to do that by, say, a two-thirds vote, that the Committee is probably in a better position as a group than a number of delegates collecting supporters around the — through the whole chamber of determining which proposal should be.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Delegate Hoffner, frankly, that idea had not occurred to us. I don't think that we had considered it. We did have some debate on the number of delegates that should be required. Some of the delegates felt — some of the members of the Committee felt that 20 was too many, and some felt that 20 was enough. We didn't want to be deluged with alternates every time there was disagreement. We felt there should be some substantial reaction on the part of the delegates that this should be given to the electorate, and the number 20, which would be, probably, one-fifth of the total body, should be required. But I don't see any objection with your idea that the Committee itself might initiate alternates, and if the body feels that they'd like that, we could do that, I'm sure — draw another paragraph that would allow that.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I would like to inquire of Delegate Kelsch whether the procedure set up doesn't open the Convention to a whole string of new alternate proposals, inasmuch as if sponsors who have got some pet ideas defeated on the floor can get 20 supporters, then they will go to the new committee; but the new committee must report each and every one back to the floor for inclusion or exclusion, at which time a debate on the merits of the proposal can start all over again.

Is there any way to head that off?

DELEGATE KELSCH: Delegate Paulson, we recognize that that is a very definite possibility. That's the reason for the 20 signers. We felt that, if you couldn't at least enlist 20 other delegates on your cause, you shouldn't have it submitted. We don't know how else to eliminate these. If we are going to consider any alternates, we felt, I suppose, that any delegate here should have the right at least to try it, and if he can muster 20 to go along with him, then he's at least going to get it to this committee.

Now, we would expect that the committee recommendation would be considered very carefully. They'd have a number of factors they could consider — the vote on the matter of the first passage. Some delegates wanted us to go by vote, and then have them eliminated or put in that way. But we felt that might not be a fair basis. There are some cases where this body might feel quite strongly on the matter, but we would recognize at the same time that people should be heard on it. So we didn't know that the vote itself would be the whole criteria. But, really, we don't know how much you screen it, except everybody will have the opportunity to try to muster support to get an alternate presented. If it is presented, of course, we will be debating that as a separate item. You will still be working on that draft positively if the majority should decide that it should be put on as an alternate.

If anybody else has any better ideas as to how we could avoid the deluge of alternate proposals, we are certainly open to suggestions. The three-day limit would also help, because after you lost one, you have three days to contemplate whether or not it should be put in as an alternate.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I think Delegate Hoffner has an excellent idea, and I think it would probably end up being the normal channel, and I wonder if the Rules Committee would consider inserting after the words in paragraph 2, "At least twenty delegates, or a substantive committee by a two-thirds vote."

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wasn't sure when Delegate Hoffner mentioned this idea, if he was talking about a two-thirds vote on the substantive committee or a two-thirds vote on the Ballot Committee.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I was talking about the substantive committee — the six substantive committees. Each should have the — if this two-thirds was required, then each substantive committee, by a two-thirds vote, could submit an alternate proposal to the Committee, as has been pointed out here, with 15 members.

DELEGATE KELSCH: I'd have no objection to that. I think, if you — we were not — at least I wasn't in favor of having any substantive committee by majority vote do that, because every substantive committee views its particular problems as the most important ones, and I think, maybe, if you had the two-thirds, that would avoid every tough problem they'd have being offered as an alternate. But I'd have no objection to that kind of amendment, if one of you delegates care to make it.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. Not at the Friday meeting, but at the previous meeting of the Rules Committee, which I'm a member of, I was in opposition of coming out with an alternate proposal plan at an early date, and for the benefit of the delegates as to why I was opposed to it, was I fearful that we would wind up with many, many substantive — alternate proposals; and, actually, the word "alternate" isn't a fair word to be using, probably. I don't know. Probably I'm wrong. But, actually, what it amounts to is giving the electorate a right to vote on the majority reports and the minority reports, and I believe that, if we held off at this time in making the rules permanent today and give some more thought on this alternate proposal, that probably some of the sections of the Constitution, if we had erred on the floor here, probably wouldn't wind up before a committee to burden the committee of deciding which ones should be alternate proposals or not. I am aware that there's possibly going to be some alternate proposals, but I believe that we would have less to discuss if we left the Convention go on for a few more days, at least, to see if we couldn't iron out some of the changes in the Constitution, because we certainly wouldn't want to go back to the electorate with ten or fifteen proposals, because they might have felt that we did err during the 30 days that we were here. So I don't think that that would be a healthy situation, to go back to too many proposals, either —

alternate proposals or minority or majority reports. So I'm opposed to adopting today a rule on alternate proposals, because I believe there will be, probably, on some delegates' part — I hope not — I hope that once this thing is on the floor and is approved, that we can make it an alternate proposal.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I have a question for Delegate Kelsch.

Do I understand that the last paragraph on this proposed rule change sets forth — or at least it's within the power of this committee to indicate which of two alternates might be in the Constitution proper, and then the other retained at the bottom, or are we operating on the assumption that the passage here of a proposal goes into the Constitution and the opposite one goes on the alternate?

DELEGATE KELSCH: Mr. President. We discussed the various mechanics and felt that, if we're going to constitute a committee to consider this, that they should actually make that type of decision. There are several ways you could do it, as you just mentioned, Delegate Butler, and I'm just not sure. We did not attempt to try to decide that, and I think that when the committee makes its recommendation to us on an alternate, they'll have to tell us how they propose it to be handled, and if we didn't like the method or the manner which they were suggesting, we would then decide at that time.

DELEGATE BENSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: Well, it seems to me, in reply to Delegate Butler, that if these proposals are going to be alternates, that say, for instance, unicameral and bicameral — we can't put one into the Constitution and then have the other one as an alternate. If I want to vote for the Constitution, I would be, in effect, voting for the bicameral one, and yet, on the other hand, if I was a unicameral person, I would thereby lose my vote. I think we'd have to have these two listed separately, to give the people a choice on, say, this specific question.

PRESIDENT WENSTROM: Any further comment? Delegate Kelsch.

DELEGATE KELSCH: Mr. President. To — have you got an amendment?

DELEGATE HOFFNER: Yes.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I just sent a messenger up to the desk with the amendment, and the amendment would be:

After the word "delegates" insert the word — the language "or two-thirds vote of a substantive committee" shall be required to introduce an alternate proposal. I move that amendment.

PRESIDENT WENSTROM: Delegate Hoffner moves an amendment to Rule 18.2.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Sinner. Do we have the amendment at the desk?

The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Rule 18.2. "Alternate Proposals" be amended: Line 1 of paragraph 2, following the word "delegates" insert the following: "or two-thirds vote of a substantive committee".

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Is there any discussion?

As many as are in favor of the proposed amendment will say "aye;" opposed "no." The "ayes" have it. The amendment is adopted.

Any further comment on Rule 18.2?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I have just one more question. I think it's the intent of the Rules Committee that the two delegates from each committee be elected by the committee and not by the body of the entire Convention. That isn't clearly spelled out.

DELEGATE KELSCH: Mr. President, that is the intent.

PRESIDENT WENSTROM: Any further comments?

Delegate Geelan, did you wish to move the amendment of 18.2 now, or proceed with the next one? Shall we proceed on the report?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: What was the question, Mr. President?

We would move the adoption of 18.2, yeah, of the temporary rules.

PRESIDENT WENSTROM: As a single one, or do you want to take all of them? As a single one?

DELEGATE KELSCH: We move the adoption of 18.2 as amended as a part of the temporary rules.

PRESIDENT WENSTROM: It's been moved that Rule No. 18.2 be adopted as amended and be adopted as a part of the temporary rules.

Now, do we have a second?

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Jestrab. Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the 18.2 rule is adopted.

Next for consideration is Rule 19.

CHIEF CLERK GILBREATH: Rule 19. ORDER OF CONSIDERATION OF PROPOSALS AND FINAL DRAFT

The regular order to be taken by proposals introduced in the Convention shall be as follows:

1. Introduction and reference to a committee or committees by the President, and reproduction and distribution in a manner and amount as ordered by the President unless otherwise ordered by a majority of the delegates voting.
2. Report of committee and action of the Convention on the committee report.
3. Placing proposal on calendar, first reading and action of Convention on first passage.
4. Reference to the Committee on Style and Drafting **which shall not require Convention action.**
5. Report of Committee on Style and Drafting and action of the Convention on the report.
6. If the adopted committee report calls for any revision, second reading and vote on second passage.
7. Re-reference to Committee on Style and Drafting for incorporation in final draft **which shall not require Convention action.**
8. Final report by Committee on Style and Drafting and acceptance of report.
9. Consideration by the Convention on final reading.
10. Signing the final draft by delegates.

PRESIDENT WENSTROM: You have heard the reading of Rule 19 with the proposed amendments.

Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. Chairman — President.

Under item 4, new language has been added "which shall not require Convention action."

Under article 7 — or item 7 under Rule 19, again the new language "which shall not require Convention action."

The reason for offering these amendments is that it will not be necessary to make motions from the floor to route these bills or proposals on to the proper committee after action has been taken on the floor. It's just a means of speeding up our floor action.

Under item No. 9, "and final vote on passage." It is proposed that this language be deleted. In view of the fact that we have Roberts' Rules of Order as part of our temporary rules, the Roberts' Rules of Order contain a provision that where a document such as we are working on is adopted piecemeal or part-by-part, it is not necessary to vote on the entire document. So, in other words, the final decision will be made by this body whether or not it wants to vote on the entire document upon its completion.

PRESIDENT WENSTROM: Are there any questions?

The question before the Convention is the adoption of the proposed amendments to Rule No. 19.

DELEGATE SAUGSTAD: I would move that the proposed amendments to Rule 19 be adopted.

PRESIDENT WENSTROM: Is there a second?

DELEGATE ENGSTROM: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Engstrom.

Delegate Aubol.

DELEGATE AUBOL: Mr. President. I was at a Rules Committee meeting as an observer one day and they were talking about this point 9. I see the Committee has recommended that the language "and final vote on passage" be dropped. I think I would like to hear some further explanation on the part of the Committee on why they are not asking a vote. I understand that Roberts' Rules say you don't have to vote, but I think, in this case, we should vote on a final document and it should be part of the consideration that we have in all of our deliberations.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: The feeling of the Committee was that this is an item that can be decided by a simple majority vote of this body, so that when the final draft is completed by a motion of any delegate and a bare majority would then place this up for a vote by all of the delegates for final passage.

PRESIDENT WENSTROM: Any further discussion?

The question is on Delegate Saugstad's motion to adopt Rule 19 as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Rule No. 19 has been adopted.

Next for consideration is Rule 19.1.

CHIEF CLERK GILBREATH: Rue 19.1. PROPOSALS IN PROCEDURAL COMMITTEES

Proposals in the possession of procedural committees shall be deemed in the possession of the Convention.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: The new rule, 19.1, is, again, designed to speed up action on the floor. Under normal circumstances, if a bill — or I should say a proposal — is reconsidered and should be in a procedural committee, and in this body it would most likely be in Style and Drafting, it should not be necessary to first make a motion that the bill be brought back from that Committee, and all this does is to say that it is deemed to be in possession of this body at any time it is in the possession of a procedural committee. It's just another means of trying to speed up action.

I move that Proposal No. 19.1 be adopted.

PRESIDENT WENSTROM: It's been moved by Delegate Saugstad that Rule No. 19.1 be adopted. It's been seconded by Delegate Christensen.

Is there any further discussion? Are there any questions?

Hearing none, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. Rule No. 19.1 is adopted.

Rule 25 is next for consideration.

CHIEF CLERK GILBREATH: Rule 25. MOTIONS AND RESOLUTIONS.

STATING MOTION AND RESOLUTIONS. When a motion is made, it shall be stated by the President, or if in writing, it shall be handed to the clerk of the Convention and read aloud before being debated.

Every resolution shall be properly numbered, read by title, and shall be referred by the President to the appropriate committee. If the rules are suspended to permit immediate consideration of a resolution, the resolution shall be read in full before it is considered.

REDUCED TO WRITING: Every motion shall be reduced to writing if the President or a majority of those voting shall request it, and all motions, oral or written, shall be entered upon the journal, together with the name of the delegates making it.

WITHDRAWAL OF MOTIONS. After a motion has been stated by the President or read by the clerk of the Convention, it shall be deemed to be in possession of the Convention but may be withdrawn by the maker at any time before being amended or put to a vote.

Printing of Resolutions. Resolutions shall be read and printed in the journal. They shall not be printed as a proposal and only one enrolled copy shall be prepared unless otherwise specified in said resolution or ordered by majority vote of the Convention.

PRESIDENT WENSTROM: You have heard the reading of Rule No. 25.

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: The last paragraph in there is the part that has been amended. The purpose of this is for clarification of procedures and, also, for speed. With the first part of it, "Resolutions shall be read and printed in the journal," no motion is necessary to have it printed in the Journal. They will automatically be done so. The part about "enrolled" — "only one enrolled copy shall be prepared unless otherwise specified," is to save clerical time and to save some money, because the Committee shall specify the number of enrolled copies that it wants, and only this number then will have to be handled by the clerical staff.

I move the adoption of this amendment.

PRESIDENT WENSTROM: Delegate Wicks moves the adoption of the amendment — proposed amendments to Rule No. 25.

Do we have a second?

DELEGATE POULSON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Poulson. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the committee amendments are adopted.

Next for consideration is Rule 29.

CHIEF CLERK GILBREATH: Rule 29. MOTION FOR RECONSIDERATION.

Any delegate may move for a reconsideration of any question at the same or next two succeeding Convention days. ((or the)) The Committee on Style and Drafting may move for reconsideration on any subsequent day if notice of the intention to do so is given in writing to the clerk of the Convention who shall enter this notice in the journal.

The same majority shall be required to adopt a motion to reconsider as was required to take the original action.

After the same day and next two succeeding Convention days, it shall take a two-thirds vote for a motion to reconsider.

The motion for reconsideration cannot be made on the same question more than once in each Convention day.

PRESIDENT WENSTROM: The question is on the proposed amendments to Rule No. 29.

DELEGATE FALLGATTER: Mr. President.

PRESIDENT WENSTROM: Delegate Fallgatter.

DELEGATE FALLGATTER: The changes made by the Rules Committee in Rule 29 was for the purpose of clarification and language improvement, and did not alter the original intent of the Rule.

Specifically, the changes made in the first paragraph, line 2, is just a deletion; and then, in the third paragraph, the additional words there — word change.

I move the adoption of Rule 29 as amended.

PRESIDENT WENSTROM: Delegate Fallgatter moved the adoption of Rule 29 as amended.

Do we have a second?

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Trenbeath. Is there any question?

Delegate Lander.

DELEGATE LANDER: Mr. President. I have a question for the Committee, please, and it really is on the whole procedure, rather than on the amendment.

Do I understand correctly that after the same day or the next two days, only the Committee on Style and Drafting will move for a reconsideration? Is any delegate precluded? If not, do we not have some confusing wording here?

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: No. The only change in that first paragraph was to make it clear that the Committee on Style and Drafting, if they wanted to move for reconsideration at a specified time — notice where it said “move for reconsideration on any subsequent day.” They must give a notice of their intention to do so, in writing. That only refers to the Style and Drafting. It does not refer to any delegate who wishes to make a motion to reconsider.

Was that your question?

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I think you clarified part of my question. But now, to go back to the very start here: It says, “Any delegate may move for a reconsideration of any question at the same or next two succeeding Convention days.” And after that point, it never speaks again as to when I or you, as a delegate, could make a motion after that date.

DELEGATE GEELAN: Mr. Chairman.

Up to that point, the only question: Any person — let’s just take a specified case as we understand it in the Rules Committee:

A delegate may move for a reconsideration at any time; but if you want to get it out of the two-thirds vote, you must vote that day on which you considered the proposal, or the next two succeeding days.

Now, after those three days, you still may move for a reconsideration at any time that is recognized by the Chair; but you must have the two-thirds vote.

Now, if we can make that any clearer in the Rule, we’ll be glad to do so.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. Chairman. With apologies to the Rules Committee for not having appeared at their meeting, I think that it would be better, since you have, in the third paragraph, the statement which relates to the vote on reconsideration, to — and I shall move then, if I may, and I do not have a copy at the desk — in the first paragraph, second line, to delete the words beginning “at the same or next two succeeding Convention days”.

PRESIDENT WENSTROM: Do you wish to delete that part?

DELEGATE LANDER: Yes, sir.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I can see some merit to Delegate Lander’s proposal there, because I can see the point that it’s become a little confused there, and I think that, since we put it down in the next paragraph, “After the next two

succeeding days it will take two-thirds vote," I'm inclined to think his amendment has merit.

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Lander and seconded by Delegate Engelter. If you'll read the proposed amendment.

CHIEF CLERK GILBREATH: Rule 29 of the Rules Committee Report be amended as follows:

In paragraph 1 of Rule 29, line 2, delete the words "at the same or next two succeeding Convention days".

PRESIDENT WENSTROM: Is that correct, Delegate Lander?

DELEGATE LANDER: Yes.

PRESIDENT WENSTROM: You have heard the amendment — proposed amendment, and the motion has been seconded.

Now, is there any discussion?

DELEGATE BUTLER: Mr. President. Delegate Butler.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: The present language as the Rule 29 is presented before us duplicates the method in which a rule can be brought for reconsideration, and I think it clarifies, even though it is repetitious. In the first paragraph, we're talking about anyone can move for reconsideration of the question during the day that they are debating the issue or for the following two days. Then, in the third paragraph, they just clarify it some more. After that period of time it shall take a two-thirds vote for a motion to reconsider. And I move that we oppose the amendment.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: I'm sorry, Delegate Butler. Did you make a motion? I didn't hear.

DELEGATE BUTLER: I request that the motion to amend be defeated.

PRESIDENT WENSTROM: That it be defeated. Delegate Haugen.

DELEGATE HAUGEN: If this amendment is approved, it seems to me that it raises a question considering a majority required for approval of the motion to reconsideration — motion to reconsider by the Style and Drafting Committee, and it is my understanding that the motion to reconsider by Style and Drafting should always be approved by a majority vote — yes. Then I think, when you set up that — when you delete that first language, you require that the Style and Drafting Committee proposals — the motion to reconsider after those three days will take a two-thirds vote.

DELEGATE GEELAN: Mr. President. That point maybe should be clarified.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I think maybe that point should be clarified, because certainly, in the first paragraph, "The Committee on Style and Drafting may move for reconsideration on any subsequent day." That — we should make it clear — by a majority vote at any time. Isn't that your philosophy? So maybe we should put it in, if we have to put in an extra section. You know, the Committee on Rules has no objection at all to being asked to clarify things. That's what we are set as a committee for. So, Delegate Haugen, if you'd like to move an amendment, I'm sure it will be entertained by the Committee.

DELEGATE HAUGEN: Without a little thought, I wouldn't exactly know how to word the amendment. It would simply be my opinion to say that "The Committee on Style and Drafting may move for reconsideration."

PRESIDENT WENSTROM: Delegate Haugen, I believe we're in two fields of thought here. You do not have an amendment to Delegate Lander's amendment; so I think we better proceed with adopting or rejecting his amendment.

The question before the Convention is on the amendment as offered by Delegate Lander and read from the desk.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I'd like to make a suggestion that might solve our problem.

I think our intent is that the delegate may move for a reconsideration the same or the next two succeeding days, with only the same vote by which the thing carried. In other words, 50 — generally it would be 50 votes. The Committee on Style and Drafting can move at any time for 50 votes. The same or the next two succeeding days, then a delegate may move, but it will take two-thirds vote, and I'm wondering if maybe we would leave the language in that Delegate Lander attempts to delete, and then go down to the third paragraph and strike the second line, so that that will — and insert this language, and I'll make an amendment, if this is defeated. "After the same and next two succeeding Convention days, a delegate may move for reconsideration, which shall take a two-thirds vote."

If that wouldn't clearly indicate what we're trying to do — if the Convention agrees with that, I would urge you to defeat the proposed amendment, and then I would make that new amendment.

PRESIDENT WENSTROM: The question is on the adoption of the proposed amendment as offered by Delegate Lander to Rule 29.

Is there any further discussion?

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: A point of information.

If this amendment passes and we delete "at the same or next two succeeding Convention days" down in the third paragraph, then, after "the same day and next two succeeding Convention days", to which days do those refer then? It seems to me we've lost some continuity. I've lost it, anyway. What "same day and next two succeeding Convention days" are we then referring to in the third paragraph, if we delete the "the same or next two succeeding Convention days" in that second line?

Will someone clarify that, please?

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: The real meat of the first sentence now: If we accept Delegate Lander's amendment, and I don't see why we need such a sentence. "Any delegate may move for reconsideration of any question." That section is very important because, in most parliamentary rules, you have to vote on the prevailing side; and so, for that reason, I would feel that the first sentence as amended by Delegate Lander would be a sentence that is very necessary. Any delegate may move for a reconsideration of the question.

Then, going down to the next-to-the-last paragraph, the same — now that's the day that you consider the proposal, and the next two succeeding days, a delegate must have a two-thirds vote to be able to get a favorable vote on the reconsideration. We have assumed that it takes a majority vote in the first two instances.

Now, if we can clarify when it takes a two-thirds vote and when it doesn't, both for the Style and Drafting and for the — any delegate who should produce it. I think we must have that first sentence either stated by itself, without amendment, or with amendment.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. President, I plead with the Convention to not disturb, or to accept this amendment as given. The interrelationship between the two paragraphs is most important. I recognize, having known Mrs. Geelan for a long time, her kindness and her wanting to let people have their say; but, in this instance, I think she's been too kind in giving up too easily, and that we should retain "any delegate may move for reconsideration the same or next two succeeding days." Then "After the same or next two succeeding Convention days, it shall take a two-thirds vote for a motion to reconsider." These are so inter-related that we must retain them; otherwise, we lose the content, context and intent of the Rules Committee in this respect.

Therefore, I ask that you defeat this amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Would it be workable if that sentence relating to the Style and Drafting Committee were moved to the end? Does that make it — make the sense you're trying to get out of it?

DELEGATE GEELAN: Mr. President, one thing more.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I wonder at this time — I think we're taking too much time of the Convention. I think we better do our homework. I would re-refer the report of the Committee as it relates to Rule 29 to the Rules Committee.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved that we re-refer Rule 29 to the Rules Committee. Is there any further discussion?

Hearing none, those in favor of the motion say "aye;" opposed "no." The "ayes" have it and Rule 29 will be re-referred to the Procedural Committee on Rules.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business.

DELEGATE MAXWELL: Mr. President, I would like to offer a motion at this time as follows:

That at 9:30 A.M., Wednesday, January 19th, the Convention go on the fifth order of business for the purpose of hearing the Committee Report on Committee Proposal 1-53.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE SAUGSTAD: Second.

PRESIDENT WENSTROM: Seconded by Delegate Saugstad.

Now —

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Committee Proposal 1-53 is the proposal which would delete Section 23, denominated as the Right-to-Work section, to which Committee Report is attached a minority report incorporating the language of the Burbridge proposal, 2-78. This motion would bring before the Convention the critical right-to-work issue for full debate.

The Calendar Committee is the sponsor of the motion which I have just offered, it being the opinion of the Calendar Committee that, as with the one house - two house issue, a time certain for debate on the right-to-work issue would facilitate scheduling by the news media, as well as by the delegates who will be participating in the debate.

PRESIDENT WENSTROM: Is there any discussion?

The proposed motion will be read — or the motion will be read by the Clerk.

CHIEF CLERK GILBREATH: It has been moved that at 9:30 A.M., Wednesday, January 19, the Convention go on the fifth order of business for the purpose of hearing the Committee Report on Committee Proposal 1-53.

PRESIDENT WENSTROM: You have heard the reading of the motion; the question moving for a time certain on the Committee Report on No. 1-53.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and then Wednesday, at a time certain we will hear the Committee Report on Committee Proposal No. 1-53.

Without objection, we will move to the tenth order of business.

Next for consideration is Committee Proposal No. 1-62.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-62, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 15 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to not being imprisoned for debt.

"SECTION 1. REPEAL.) Section 15 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"No person shall be imprisoned for debt."

PRESIDENT WENSTROM: Do we have any discussion? Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. 1-62, we decided to — in Committee — to eliminate some of the wording of the present section because of the length of the present section. We left the first seven words of the present section, but we actually took out "unless upon the refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud."

We didn't feel that additional language was necessary in the Constitution and, therefore, recommend that we only use the words which are in 1-62.

We recommend the passage.

PRESIDENT WENSTROM: The question — any further discussion?

The question is on the first passage of Committee Proposal No. 1-62.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President and Fellow Delegates. I'm, I guess I might say, mildly opposed to deleting this language, and my reasons are because of the statutes found in Section — or Chapter 32-36 of the Century Code, which relate to a father's obligation for an illegitimate child. The provisions provide that if custody payment is not made, that they could jail this father, and it has been appealed — this particular provision — and has been upheld in the Supreme Court. However, at the time — and it's rather an old case — at the time the Supreme Court said that because of the peculiar nature of a father's responsibility for his children, that Section 15 did not apply and that the limitation on imprisoning for debt then would not be valid.

Now, my concern rested around the fact that in that particular argument the defense counsel said that — or argued the subject of whether or not there is a contract responsibility between father and child and — well, I don't remember the exact date of the case — it runs in my mind it's back in 1918 or 1919 — at that time the Court said that there was not any contract relationship.

Now, the thing that kind of bothers me about it is, if the courts were to determine that this might be a particular relationship as such, then a provision in a paternity action, if we eliminate the language which calls for "unless upon refusal to deliver up his estate for the benefit of his creditors," then I think it might be found to be an unconstitutional provision, and I know of no other way, other than the honor of the father, to support his illegitimate children, because you have taken away the penalty part of it.

My objection is, I guess, probably based on an assumption that some court might, along the line, think that there is a contractual relationship or third-party beneficiary contractual relationship, or something like this, and I haven't had an opportunity to check and determine this, and I don't know how far the Committee has gone in their consideration.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: We did consider this possibility, not only as it would provide for illegitimate children, but as it would provide to failure to support as a result of a divorce judgment, and it is the Committee's feeling that in any event, the Court, after having rendered judgment — and, incidentally, that's

the only way that you can force a father to support an illegitimate child, is to have a finding that he is the child's father and that he should support — that the Court then would have the right to put the father in jail for contempt, and which would be much better than just any kind of a misdemeanor or a penalty clause.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-62.

Hearing no further discussion, those in favor of the adoption of the proposal will vote "aye;" those opposed "no."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 78 "ayes," 15 "nays," five delegates absent and not voting.

Committee Proposal No. 1-62 has passed.

Next for consideration is Committee Proposal No. 1-63.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-63, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 18 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to search and seizure.

"SECTION 1. REPEAL.) Section 18 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or unreasonable interception of communications by any artificial sensory device. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: As you can see, the Committee has gone quite a bit further than the 1889 Constitution and has amended it. In addition to search seizures, it has given guarantee against unreasonable invasions of privacy and interception of communications.

Further, we have gone this way — "by any artificial sensory device" — and this is aimed at such devices as wire tapping, sound devices, electronic devices, and all sorts of devices. We have left it open in "sensory" for unseen devices that may be developed in the future that may invade privacy or interrupt communications.

The Committee struggled very greatly, as did the committees in Alaska and New York and Illinois, as to the use of which word in describing the curtailment of this unreasonable interruption of privacy and communication.

Now, we used the word "sensory," and I suppose I may have had something to do with that use of that word, because being a physician and a psychiatrist, I know that the only way that any sense or any communication coming from one person to another has to come by way of our five senses; and that is, for any person to detect or understand what another person does or says, it has to go through the eyes, ears, nose and touch, and so forth.

We feel that this would encompass wire tapping, sound devices, telescopic devices, cameras, and even radio communication devices, because it has to come through the other individual's sense organs to be understood. We used the "artificial," of course, to delete it from the normal sense organs.

Now, the last paragraph was left there for our law enforcement officials to use and make use of: "No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Thank you.

PRESIDENT WENSTROM: Any further discussion?

The question is on —

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Delegate Pearce, you're crowding me.

(Laughter)

Mr. President, I would like to ask a member of the Committee. The only place in this section that warrants are mentioned — it says "No warrants shall issue, but upon probable cause . . ." Does this imply that a warrant must be issued for a — a search warrant must be issued or not?

PRESIDENT WENSTROM: Will a member of the Committee answer Delegate Rundle's question?

DELEGATE O'TOOLE: Yes, that is the way we understand it.

DELEGATE RUNDLE: Well, Mr. President, wouldn't it be better if it's stated then — you must have a search warrant? All it is is by implication — "No warrants shall issue, but upon probable cause." I don't see anything about any search warrant or otherwise.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: This, I might say, is the same wording as the last sentence in the old Section 18, and it reads — may I read it again, because I think it's misunderstood or I'm confused. "No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President, I'd like to ask Delegate O'Toole a question — or some Committee member.

The word "artificial" there just doesn't seem to be the right word in that position. I would think it would be "mechanical" or "electronic." The word "artificial" — is this taken from case law, either in our State, other states or the U. S. Court decisions? The word "artificial" just doesn't seem to be proper in that position.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Along the same line, I would like the Committee to answer further description of the word "artificial," and I question whether this might apply to the binoculars that the game warden uses to identify the line of communication between the hunter and the overhead duck out in the middle of the slough that he can't probably shoot. Are we taking in too broad a scope? Are we trying to write a constitution for today, when 20 years from now, these present aids to interception will be outmoded by the laser beam, or have you — are you trying to cover too much ground?

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. President. Mr. Paulson, I don't think we're covering too much ground. There's a lot of these devices that are already in use very frequently. We, in the Bill of Rights Committee, we went under the assumption that we are protecting the rights of the individual. We try to leave some leeway for the law enforcement officials. But it is very important, I think, in this day and age, that the rights of the individual are protected.

And then on to the second part of it, this is the word "artificial," which, of course, may mean anything other than what is normally used, and I — we struggled with many other words and many other phrases. We felt that wire — you know,

“use of wire tapping” and “electronic devices” were too narrow, because we do now have these very subtle sound devices. So we felt that we’re protecting the rights of the individual, but giving the law enforcement officials the leeway that they generally need.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. May I point out that the word “artificial” is composed of two Latin roots, meaning manufactured or made by art and not natural.

The question here of the Committee is whether or not the human ear listens to something and whether it’s amplified in any way and whether that would be barred, which is the same question, I take it, that Delegate Paulson raises as to whether the magnification of the binoculars would be an artificial device enhancing the powers of vision.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: Mr. President, I would like to point out that we have the word “unreasonable” searches, seizures, et cetera, and this, we thought, would take care of things like this, even allowing your game wardens’ binoculars.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I might ask who is going to determine whether it’s reasonable or unreasonable? I really don’t care for some of the wording of this section. I don’t know whether it should go back to Committee or not; but I don’t like it.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. The theory is that if law enforcement officers have a suspect or have a house where they feel that there is unlawful activity being conducted, then it would be their duty under this provision to go before a magistrate — a judge, a judicial officer — and to convince that judge under oath that there is reasonable grounds to believe that there is unlawful activity going on; and if he can convince the judge, then he would be entitled to a warrant permitting the use of wire tapping or any of these sophisticated eavesdropping devices that modern science has introduced into our society. However, the Committee felt that the right to privacy is an important one that should be carefully circumscribed and that without some showing — some reasonable showing before a judicial officer, that everyone should be protected from invasion of their privacy, and we have set that out quite clearly in this provision. “. . . invasions of privacy or unreasonable interception of communications by any artificial sensory device.”

Let me address myself momentarily to the proposition of the game warden and the binoculars. I don’t believe that this involves an interception of a communication, and that is the point that the Committee is concerned with in this proposal.

PRESIDENT WENSTROM: Any further discussion? Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. I’m sure the Committee considered this, but I wish some of the attorneys or the Judge would clarify it a little bit.

It’s always been, in a federal court, and the state courts, too, a rule of law that you could search under three different means — if you had a search warrant or after arrest or by written consent. Where does the written consent and the after-arrest part — where is that considered in here or would that be considered under the part “unreasonable search”? It would be reasonably assumed if you arrested the man, then searched or got his written consent.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. Yes. As to the matters of consent and a search in connection with a lawful arrest, I think that the initial — the original provisions of the Constitution would still control that type of a situation, and we have made no alteration in that portion of it.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, I would like to speak in opposition to the proposal as it is before the group.

Not only do I have these same objections that Delegates Paulson and Pearce have expressed, but I also wonder if the second sentence, where "No warrants shall issue" — does that contemplate issuing a warrant for wire tapping? Surely that was not part of the original Constitution.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, may I read Article IV of the United States Constitution?

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U. S. Constitution, Article IV.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. President. Fellow Delegates:

While I recognize the statement is in the United States Constitution, I am going to vote "no" due simply to the inclusion of the phrase "by any article" — excuse me — "by any artificial sensory device," as the same appears on line 13. I think perhaps we are going too far at this point of time anticipating current problems and future unknown problems. I think by including that, we are possibly limiting ourselves to something we will not be able to put up with so far as criminal law is concerned and rights and safety of people in the future; and for that reason, I would urge a "no" vote on reconsideration.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 63.

Hearing no further discussion, those favoring the adoption of the proposal will vote "aye," those opposed vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

The key is closed.

The roll call discloses 51 "ayes," 5 — oh, no! This can't be right! You have 42 absent. (Laughter)

The roll call discloses 51 "ayes," 42 "nays" five delegates absent and not voting.

Committee Proposal No. 1-63 has passed.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I might explain my vote.

I realize that 42 voted against it; but my feeling is that we're tending to coddle criminals. I don't like this, and, therefore, I voted "no." And I would also indicate to the Committee that this was not a mandate by any means, and I would urge that it be returned to the Committee on Bill of Rights for reconsideration in their Committee.

DELEGATE STANTON: Second it.

PRESIDENT WENSTROM: Are you moving to reconsider the action?

DELEGATE UNRUH: Moving to re-refer it to the Committee for further action.

PRESIDENT WENSTROM: No — no, that is out of order.

DELEGATE UNRUH: Mr. Chairman, I will withdraw that motion.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: The Committee felt that this was just the opposite of coddling criminals; but, rather, giving greater authority to police officers and

those concerned with law enforcement, our fear being that without this additional authority to get search warrants to do these things, perhaps in the original language it might be that they could not.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE DOBSON: I move that the Convention reconsider its action in passing Committee Proposal 1-25.

PRESIDENT WENSTROM: Delegate Dobson moves that the Convention reconsider its action whereby it passed Committee Proposal No. 1-63. Now, do we have a second?

CHIEF CLERK GILBREATH: No. 1-25.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: That was 1-25.

PRESIDENT WENSTROM: 1-25.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Sinner.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: The purpose in asking for reconsideration is to move an amendment, if reconsideration is granted.

The amendment would strike the words in subsection (b) ". . . except in any bill making appropriations of money or property for the operation of the legislative assembly or its permanent or interim agencies."

It is almost inconceivable to me, Mr. President, that one branch of government should have its appropriation immune from veto. For example, some future governor may want to veto travel funds of the Legislative Council.

Mr. President, also, the concept of having a legislative assembly appropriation reserved from veto does not sit well with our concept of coequal branches of government. That is why I move for reconsideration.

PRESIDENT WENSTROM: Any further discussion? Delegate Chase.

DELEGATE CHASE: A point of information.

If we pass this motion on reconsideration, is the floor open then on the general bill, then, or only on the amendment that Dobson is talking about?

PRESIDENT WENSTROM: If you move to reconsider, the bill is before the Convention in the same position it was at the time that proposal was adopted.

DELEGATE CHASE: Thank you.

PRESIDENT WENSTROM: Any further discussion?

The question is on the motion to reconsider Committee Proposal No. 1-25.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I fully support this motion. I have been in the Legislature and I fully support it. I feel that one of the weakest things we could do, as far as public opinion is concerned, is to go out and say the Legislature may set its own salary, with no restrictions. This is very unpopular. It's been tried many times. I think this is a very good suggestion.

PRESIDENT WENSTROM: Any further discussion?

The question, then, is on Delegate Dobson's motion to reconsider action on Committee Proposal No. 1-25.

As many as favor the motion will say "aye;" opposed "no." The "ayes" have it, and the Committee Proposal No. 1-25 is before you.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I have an amendment at the desk.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-25 be amended as follows:

On Page 1 of the engrossed bill, in line 15, following the word "bills", delete the comma and insert in lieu thereof, on Page 1 — insert in lieu thereof a period. Then, on Page 1, delete lines 16 and 17. On Page 1, line 18, delete the word "agencies" and renumber the lines accordingly.

DELEGATE LANDER: Will you repeat it?

CHIEF CLERK GILBREATH: I think —

PRESIDENT WENSTROM: Delegate Roy, would you read it again?

CHIEF CLERK GILBREATH: I'll try to read it as the proposal would read with the amendment.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Am I in order to make a substitute motion? I can't make a substitute motion, but what I would like to propose — and I'm going to, as soon as this motion is approved, if it is — I would move this bill be — proposal be placed at the foot of the calendar, to give the Committee some time and the delegates some time to consider it. Would that motion be accepted at this time?

PRESIDENT WENSTROM: Delegate Hernet, I would rule that, if you wish to lay the matter over one Convention day in order that the proposal can be printed and laid on the desk of each delegate, I would go along with that motion.

DELEGATE HERNETT: Well, if you will accept that motion, I'll make that motion, Mr. President.

PRESIDENT WENSTROM: Yes. Delegate Hernet moves that the proposed amendments — that the Proposal No. 1-25 be laid over one Convention day in order that the delegates can have the proposed amendment on the desk and see how it actually reads at that point.

Now, do we have a second to that motion?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Litten.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be laid over one Convention day.

DELEGATE VOGEL: May I ask a question?

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: Is it possible to offer any other amendment to that proposal, other than the one proposed by Mr. Dobson, at the time that it is reconsidered?

PRESIDENT WENSTROM: Yes, ma'am, it is. When it comes back and is on the tenth order — it will be on the sixth order, and then it will be on the tenth order; then, at that time, you could reconsider it. It will not be on the sixth order. It will be on the tenth order, and at that time you can make any further amendments you wish.

DELEGATE VOGEL: Would there be any way of getting that proposed amendment that I have in mind before the Convention at this time?

PRESIDENT WENSTROM: I do not believe you can get it before the Convention at this time; however, there would be nothing wrong with you having your proposed amendment prepared and placed on the desk of each of the delegates.

DELEGATE VOGEL: At the same time. Thank you very much.

PRESIDENT WENSTROM: Why don't you proceed to read —

CHIEF CLERK GILBREATH: You do not have the engrossed bill in your Bill Book, and when it was engrossed, the line numbers changed. So, as it would read if the amendment were adopted:

You start with Section b). "The governor may veto a bill passed by the legislative assembly. He may, by veto, strike items in appropriation bills."

Then the rest would be deleted, and portion — "Portions of the bill not vetoed shall become law."

And that is how it would read, if the amendment were adopted.

PRESIDENT WENSTROM: Do you have anything further at the desk?

CHIEF CLERK GILBREATH: We've got some announcements.

PRESIDENT WENSTROM: Announcements? We'll be on the eighth order of business.

CHIEF CLERK GILBREATH: Executive Functions Committee will meet one-and-one-half-hours after Plenary Session on Monday, January 17th, in Room G-5 and 6.

Keys to the Senate locker rooms are available to the women delegates and can be picked up in the Constitutional Convention staff office.

Again, you are reminded to keep your receipts for lodging. If you are staying in a hotel or motel, the receipt must show the single rate, if husband or wife is with the delegate. This will speed the processing of the travel vouchers, and they must have the travel vouchers in by January 3rd — 31st.

PRESIDENT WENSTROM: Anything further at the desk? Are there any further announcements?

DELEGATE GEELAN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: May I announce the Rules Committee will meet at 8:30 tomorrow morning — at 8:30 — in the Lewis and Clark Room?

PRESIDENT WENSTROM: Delegate Geelan announces the Rules Committee will meet at 8:30 tomorrow morning at the Lewis and Clark Room.

Delegate Hernet.

DELEGATE HERNETT: Mr. President, I would like to announce a meeting of the Executive Functions Committee, oh, about two o'clock, a quarter-to-two, or somewhere in there, and I'd also like to mention, also, Mr. President, that I'm real appreciative of the letter and the parking sticker from the Mayor of Bismarck and the City of Bismarck, for two reasons; the first reason is because I like the parking sticker; and the second reason: I've been wondering when the Convention was going to be over, and now I know. (Laughter)

PRESIDENT WENSTROM: Any further announcements? Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. The Judicial Functions Committee will meet in its usual place at two o'clock.

PRESIDENT WENSTROM: Anything further? Delegate Saugstad.

DELEGATE SAUGSTAD: For the information of the delegates, it was discussed in Calendar Committee that the substantive committees will have finished their public hearings, or presumably will have finished their public hearings — on Wednesday. That means, then, that we can remain in session into the afternoon and less time will be devoted to committee hearings.

Now, these committee hearings will probably be called at an hour such as three or four o'clock — probably four o'clock — beginning on Thursday. We do have public hearings scheduled for Monday — today, Tuesday, and I believe there is one committee having hearings scheduled on Wednesday. But, after Wednesday, that means, then, that we can begin to run our regular full sessions into the afternoon.

PRESIDENT WENSTROM: Delegate — we'll continue on the twelfth order of business, and Delegate Christensen moves that the absent delegates be excused.

May I have a second?

Seconded by Delegate Rundle.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the absent delegates are excused.

Anything further at the desk?

CHIEF CLERK GILBREATH: One announcement.

I have had two of the delegates tell me that they — their vote was on the voting board, but it did not register as voting on the print-out, and, therefore, did not get in the Journal. I talked to the voting machine men, who are here

working on it, and they say if the light is on, there is not supposed to be any way that it does not punch your vote on the print-out; but I — we've had trouble in the past. I don't know what the new switch is, but please watch. Sometimes the switches pop back off, and if you see yours do that, please get up and announce your vote immediately, so we can get it into the record correctly. But they tell me, if your light's on and stays on, it is supposed to be punched out, because there's no way electronically that it won't punch out. Evidently, we broke the rules already on the new machine. If you see your light go out right away or your button switch back, will you please get up and announce your vote?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'd like to announce that those of you on Style and Drafting Committee plan your evenings. We'll be meeting this Wednesday at eight o'clock to begin our arduous task.

DELEGATE HARDMEYER: Mr. President.

PRESIDENT WENSTROM: Delegate Hardmeyer.

DELEGATE HARDMEYER: The Legislative Functions Committee will meet at two o'clock in the usual place.

PRESIDENT WENSTROM: Further announcements? Hearing none — Stan?

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: The desk is clear.

DELEGATE SAUGSTAD: Oh, I beg your pardon. Did you want a motion — we have not adopted the permanent rules yet. Did you want to move those proposals that we passed on to the Style and Drafting Committee — namely, 1-40, 1-56, 1-58, 1-59, 1-61, 1-62 and 1-63?

PRESIDENT WENSTROM: In case there's any question, I suppose we could take the motion; but we did adopt that rule, Stan. We did adopt that one rule.

DELEGATE SAUGSTAD: Okay.

PRESIDENT WENSTROM: So I'm sure that that is accurate.

DELEGATE SAUGSTAD: All right. Then no further announcements? I now move that we adjourn until 9:00 A.M., January 18th.

PRESIDENT WENSTROM: It's been moved that we now adjourn until 9:00 A.M. on January 18th. Do I have a second?

DELEGATE SIMONSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Simonson.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we will be adjourned until tomorrow morning.

(The Plenary Session adjourned at 12:25 P.M., Monday, January 17, 1972, until 9:00 A.M., Tuesday, January 18, 1972.)

VOLUME XII

(January 18, 1972)

MORNING SESSION

(The twelfth day of the Plenary Session commenced at 9:05 A.M., Tuesday, January 18, 1972, Second Vice President Stanley Saugstad presiding, as follows:)

VICE PRESIDENT SAUGSTAD: The House of Delegates will come to order.

This morning the invocation will be given by Reverend John Miller, Baptist Temple Church of Mandan.

REV. JOHN MILLER: Let us pray.

Our Father, we call upon You in prayer knowing that You will hear us as we come before You with a hunger to know Your will.

We give thanks for Your Creation, which You have allowed us to enjoy.

We thank You for Your presence always — for Your love that is always directed toward us through Jesus Christ.

And we give thanks for Your gifts to our bountiful State of North Dakota and to its people.

Lord, these delegates are making decisions about a constitution that will guide the people of North Dakota for a long time, and we ask for Your divine direction for these delegates.

We ask that You would give the delegates an ability to listen to You, an ability to listen to each other as they make decisions, and, above all, we ask that You give us the ability to put together a constitution that will help us live in peace and harmony, with freedom to complete Your will in our lives.

We give thanks for the day, for the opportunities and the privileges and the responsibilities of it.

In Jesus' name we pray. Amen.

VICE PRESIDENT SAUGSTAD: Next, we will be on the third order of business — Roll Call.

The key will be opened. You may record your presence.

Has everyone indicated their presence? The key will be closed and the Clerk will take the roll.

The roll call discloses 90 present, eight absent. We have a quorum.

Next we shall be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 14th day of January, 1972, and recommends the same be corrected as follows:

On page 187, line 2, following the word "accordingly" insert the following: "which motion prevailed."

And when so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moved that the report be adopted.

VICE PRESIDENT SAUGSTAD: You have heard the motion. All in favor signify by saying "aye," opposed "nay." The "ayes" have it. The motion carried.

Next we're on the —

DELEGATE HERNETT: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hernet.

DELEGATE HERNETT: May we be on the twelfth order of business?

VICE PRESIDENT SAUGSTAD: We may be on the twelfth order of business.

DELEGATE HERNETT: At this time I would like to move that Delegate — or Committee Proposal No. 1-25 be re-referred to the Committee on Executive Functions.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE CHASE: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Chase.

DELEGATE HERNETT: The reason being that we have appointed a sub-committee of our Committee, to meet with a like committee — the Legislative Functions Committee — and we have another bill which will be under consideration by them, too, and this is probably the — it's a proposition where there's an overlap of these two Committees' work, and I imagine that we're going to have some more of this before this Session is over.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Representative Dobson.

DELEGATE DOBSON: There's an amendment pending at the desk. That should be withdrawn, I believe.

VICE PRESIDENT SAUGSTAD: Delegate Dobson has requested permission to withdraw the proposed amendment to Proposal No. 1-25.

Does anyone have any objection? Hearing none, Delegate Dobson has the unanimous consent to withdraw his amendment, and the request is granted.

Now we're on the motion.

Representative Sinner — or Delegate Sinner.

DELEGATE SINNER: May the record show that I'm present, please?

VICE PRESIDENT SAUGSTAD: Let the record show that Delegate Sinner is present.

DELEGATE KELSCH: May the record show that Delegate Kelsch is present?

VICE PRESIDENT SAUGSTAD: Let the record show that Delegate Kelsch is present.

DELEGATE McINTYRE: Mr. President, let the record show that Delegate McIntyre is present.

VICE PRESIDENT SAUGSTAD: Let the record show that Delegate McIntyre is present.

We are now on the motion of Delegate Hernettt that Proposal 1-25 be — which committee was this? — be re-referred to the Committee on Executive Functions.

All of those in favor, signify by saying "aye;" opposed "nay." The "ayes" have it and Delegate Proposal 1-25 will be re-referred to the Committee on Executive Functions.

We will now be on the fifth order — Report of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: A majority of your Committee of Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-11 has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegates Longmire, Roney, Engelter, Fallgatter, Gipp, Hartl, Hougen, Kessel, Kretschmar, Rundle, Wallin and Warner.

Delegate Longmire, Chairman.

Delegate Longmire moved that the report be adopted.

Mr. President: A minority of your Committee on Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-11 has had the same under consideration and recommends that the report of the majority be amended; and when so amended, recommends the same do pass.

Delegates Aubol, Bassingthwaite and Hoghaug.

Delegate Longmire, Chairman.

Delegate Aubol moved that the report of the minority be adopted.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Representative Longmire — or Delegate Longmire.

DELEGATE LONGMIRE: In checking the desk here of Delegate Hoghaug, it seems that he is absent today, and since he is on the minority side of this proposal that's before the Convention at this time, and I know that he would want to be

heard, I move that we lay this report over one legislative day in order to permit Delegate Hoghaug to state his position on the report.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE RONEY: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Roney. Any further discussion?

Hearing none, we are on the motion of Delegate Longmire that further consideration of the Committee Report on Proposal 1-11 be laid over one Convention day.

All in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carries.

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: May I ask a question, please?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE LANDER: Do I understand that since this has a majority and a minority report — for example, we would have discussed it this morning, and in this instance we will discuss it tomorrow morning; is that correct or not?

VICE PRESIDENT SAUGSTAD: Yes, I believe that is correct.

DELEGATE LANDER: Then, if so, is there — do I have and can't find the information that I should have and know what I'm talking about, so that I know what the majority amendment is and I know what the minority report is, and so that I know what the minority amendment is?

VICE PRESIDENT SAUGSTAD: Delegate Lander, by tomorrow there will be printed in the Journal the majority and minority report.

DELEGATE HENDRICKSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson.

DELEGATE HENDRICKSON: I think I'm almost repeating what Delegate Lander said. But as I look at this, there's no way we, as delegates not on this Committee and perhaps more uninformed than the rest, can do any homework in preparation for this majority and minority report that's coming in in the morning. It comes to the floor and the discussion goes on immediately. Is that my understanding — under the fifth order?

VICE PRESIDENT SAUGSTAD: We are — the House of Delegates will be voting, of course, on the Committee Report, to either adopt or reject one or both of the Committee Reports. I believe that under the motion that was accepted, by Delegate Longmire, that this will appear on the following Convention day, which will be tomorrow, and — but it will be — the report of the majority and the report of the minority of the Judicial Functions Committee will be printed in the Journal; but I'm assuming that the Journal will not be on — the printed Journal will not be on your desk, probably, until tomorrow morning.

DELEGATE HENDRICKSON: There's no other place where we can refer to what the minority report is going to be?

VICE PRESIDENT SAUGSTAD: I could answer it this way:

I believe, by a motion from the floor, it could be requested that either a duplicate copy — that is, a mimeographed copy, or something like that — be placed on the desks of all of the delegates.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: By way of some explanation and help to the delegate — even though it's out of order at this time — I suppose we could be on some order where it could be discussed — it's just to state this one brief thing about what these reports are.

With few minor exceptions, the only difference between these reports — or the only major difference is that the majority report elects judges; the minority report will appoint judges, and the necessary language to carry out those two

methods is what we will be debating tomorrow, and I'm sure that the majority will state their position very clearly, very convincingly, and that is the issue.

DELEGATE HERNETT: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hernettt.

DELEGATE HERNETT: I'd just like to make one comment.

I think what Delegate Hendrickson is getting at there really is no solution to it. On a committee report coming in, unless somebody takes the time and the trouble to explain to each delegate what is probably going to happen the next morning, they're not going to have any way of knowing what the committee reports are going to recommend. There is no simple answer to our problem, at least. Maybe there is, but, ordinarily, there isn't.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. A very simple solution, I'd find, is just to give the page — I just sent a note to Delegate Aubol and said, "In a thousand words or less, what's the score?" (Laughter)

VICE PRESIDENT SAUGSTAD: Any further comment?

Delegate Hartl.

DELEGATE HARTL: Mr. President. I feel that this can be of vital importance because, in our particular Judicial and Political Subdivisions Committee the report coming in tomorrow as a minority report is only one of a few others to follow, and I feel that we are going to also have this position occur as far as the other committees are concerned, and if I'm in order under any of the particular topics, let us move to that order, and then I would so move that from this time forward that when the body has a minority report, that copies of that minority report be furnished to each desk one day prior to consideration of the report, so that we all have the opportunity to observe, read and discuss the issues.

VICE PRESIDENT SAUGSTAD: In answer to Delegate Hartl: Now, remember this: I just happen to be sitting here, and I would not care to make a final decision on this; but the suggestion that I am offering is this:

That any — first of all, the desk force does not know ahead of time which reports will be coming in from the committee with a majority and minority report; so they have usually no advance notice. Secondly, I believe that actually about the only way that this matter could be handled would be that at the time a minority report is read from this desk, that any delegate may move to have it laid over for one or more Convention days or to a time certain, and then also request that copies be made of the minority report or the majority and minority report and be placed on the desk of each delegate.

Now, Delegate Hartl, did you wish — you did not quite make a formal motion, but did you wish to put your idea in the form of a motion?

DELEGATE HARTL: I thought I had, Mr. President, and I would so move at this time, since I do know that there are two minority reports with reference to the Judicial Functions and Political Subdivisions Committee. I would move that the minority report with reference to Section 1 — or Committee Proposal 1-11 be furnished to each delegate of the Convention.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE VOGEL: Second.

VICE PRESIDENT SAUGSTAD: Delegate Vogel seconds the motion.

Any discussion?

DELEGATE LONGMIRE: Mr. President. I am wondering why the Delegate limited it to just the minority report. Does he want both reports before them for study?

DELEGATE HARTL: I do, Mr. President; but it was my understanding that the majority report already appears as the committee proposal in our book. If it does not, I would then amend the motion to also include the majority report.

VICE PRESIDENT SAUGSTAD: Does the second — Delegate Vogel — accept the amended version of Delegate Hartl?

DELEGATE VOGEL: I do.

VICE PRESIDENT SAUGSTAD: All right. Any further discussion?

We're on the motion, then, of — or the question is on the passage of Delegate Hartl's motion to accept —

DELEGATE BURBIDGE: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Burbidge.

DELEGATE BURBIDGE: I think the Delegates should be aware of the implication on this matter for tomorrow's business. We have moved that an order come before us tomorrow — or a proposal come before us tomorrow that has a majority report and a minority report, and if this motion prevails — and I'm rather sympathetic to it — I think we should be aware that the staff will have to get out today the issue before us tomorrow.

VICE PRESIDENT SAUGSTAD: We are on the motion of Delegate Hartl that a copy of the majority report and minority report or minority reports on Delegate — or Committee Proposal No. 1-11 be placed on the desk of each delegate.

DELEGATE HENDRICKSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson.

DELEGATE HENDRICKSON: Delegate Hartl's motion is only on 1-11. When we have a delegate proposal, that is, in essence, the same thing as a minority report, and we know that it's coming up. I don't feel then we need this printed material any more than I feel we need the majority report, because the majority report has to be the proposal; right?

VICE PRESIDENT SAUGSTAD: No.

DELEGATE HENDRICKSON: No?

VICE PRESIDENT SAUGSTAD: No.

DELEGATE HENDRICKSON: How does it differ?

CHIEF CLERK GILBREATH: Completely.

DELEGATE HENDRICKSON: I mean I have to know these things before the show gets going.

DELEGATE HERNETT: What's the difference between a majority report and a proposal as printed in the Journal?

VICE PRESIDENT SAUGSTAD: If you'll just hesitate here for a moment.

A majority report means — or could contain the following language: "Strike everything after the title and insert the following." So it could be completely new language.

DELEGATE HENDRICKSON: Oh! All right.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: And it is pretty much so! (Laughter)

VICE PRESIDENT SAUGSTAD: We are on the motion of Delegate Hartl that a majority and minority report be printed in some manner and placed on each delegate's desk.

All in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carried. It will be done.

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Would I be in order to move that the majority-minority reports be considered on Thursday, instead of tomorrow; that they be placed on the calendar an additional legislative day or Convention day?

VICE PRESIDENT SAUGSTAD: In other words, you would move to have the Committee Report considered at a time certain, and that date being —

DELEGATE AUBOL: Thursday, the 20th.

VICE PRESIDENT SAUGSTAD: Yes. Thursday, January 20th. You're — that is in order.

DELEGATE AUBOL: I would so move.

DELEGATE HARTL: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Hartl. And the motion is —

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: All right.

DELEGATE LONGMIRE: Mr. President, speaking on the motion. It so happens, Mr. President, that I have to go back for personal business Wednesday night on a plane to Grand Forks, and I'll be back here by nine o'clock the next morning, Thursday, on the plane, if the weather permits; and if it didn't permit, I wouldn't want to have this debated in my absence.

Now, I'd have no objections to it going to Friday or tomorrow or any other day; but in view of the fact that I might get caught in the weather, I would not be here, naturally, for this discussion.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Mr. President. One reason for the request for the extra day is because the position of the minority is going to be a substantive discussion on Wednesday evening at the Highway Building, along with some other issues before the Convention, and I'm sure that the Convention, if Delegate Longmire is not back on Thursday, would not take action on it — on this.

VICE PRESIDENT SAUGSTAD: A motion at that time — excuse me.

A motion at that time would certainly be in order to lay it over for an additional day. Fine.

We are now on the motion of Delegate Aubol that the consideration of the majority and minority report on Proposal 1-11 be laid over until Thursday, January 20th.

All in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carries.

DELEGATE HUBRIG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. I am present.

VICE PRESIDENT SAUGSTAD: Delegate Hubrig will be marked present.

We are now back on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: A majority of your Committee on Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-14 has had the same under consideration and recommends that the same be amended; and when so amended, recommends the same do pass.

Delegates Hoghaug, Rundle, Gipp, Hartl and Aubol.

Delegate Longmire, Chairman.

Delegate Hoghaug moved that the Report be adopted.

Mr. President: —

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: This sounds okay. I'm not so sure — were you reading the majority report or the minority report?

CHIEF CLERK GILBREATH: That was the majority report.

DELEGATE LONGMIRE: Well, then something has gone wrong, Mr. President, because that doesn't sound like the people who are on the majority; and if that is the majority report, I would move that back to the Committee so that we can get it straightened out. But if that was the majority report, we'll buy it.

CHIEF CLERK GILBREATH: No. I read the wrong names. I'm sorry.

On the majority — on the majority report is Delegates Longmire, Roney, Bassingthwaite, Engelter, Fallgatter, Hougen, Kessel, Kretschmar, Wallin and Warner.

Delegate Longmire, Chairman.

Delegate Longmire moved that the report of the majority be adopted.

Mr. President: A minority of your Committee on Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-14 has had the same under consideration and recommends that the same be amended; and when so amended, recommends the same do pass.

Delegate Longmire, Chairman.

Delegate Hoghaug moved that the report of the minority be substituted for the report of the majority.

Delegates Hoghaug, Rundle, Gipp, Hartl and Aubol.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. The same reason exists here for carrying this report over, since Delegate Hoghaug was the main sponsor in the minority report.

So I move that this be laid over one legislative day, for the same reason, so that he can be heard on his side of the report.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE RUNDLE: Second.

VICE PRESIDENT SAUGSTAD: Representative Rundle seconds the motion.

Is there any further discussion? Hearing none, all those in favor of laying the committee reports — this is 1-14? — committee report on Proposal 1-14 be laid over one Convention day. All in favor signify by saying "aye," opposed "nay." The motion is carried.

Now —

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. I don't think it's necessary to print these two reports. Briefly, what they both relate to is the description of the boundaries of the State. The majority brought an engineer and called Washington and brought the description up to modern-day language and tied it down more definitely. The minority wanted to keep the old description that appeared in the 1889 Constitution and change nothing. So those are the two reports, and you can be guided accordingly.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: I don't know what order, but that demands a little answer, I feel, from the minority.

As a matter of the minority, the real reason that we object to the change in language is because our affable Chairman Longmire lives within a few feet of the Minnesota border. Many delegates live on the Canadian border, and some on the other borders, and we are afraid that the one expert of one, mind you — one expert we listened to — might possibly move Delegate Longmire into Minnesota, and we didn't want to risk that.

VICE PRESIDENT SAUGSTAD: Delegate Rundle, you are somewhat out of order. We are not discussing the substance of it. This was merely to hold this committee report over for one Convention day. Thank you.

We are still on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Judicial Functions and Political Subdivisions to whom was referred Delegate Proposal No. 2-11 has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-11.

Delegate Longmire, Chairman.

Delegate Longmire moved that the report be adopted.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President.

Delegate Proposal 2-11 is a very long proposal that was submitted by Delegate Engelter. The Committee is very much indebted to Delegate Engelter for all the time that he spent on this proposal, because much of the content of his proposal

was included in 1-11. It also served another great purpose or value to the Committee, because we more or less started out from the beginning on that proposal as kind of a working draft, and we used it at one time or another throughout our deliberations on 1-11. And so we have discussed this matter with Delegate Engelter. We wanted to give him credit for his proposal. Even though it's being given a decent burial, it served a great purpose during its life, and Delegate Engelter is in full accord with the Committee report to indefinitely postpone it, since it has been included — a lot of it — in the other proposals?

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, we are on the motion of the Committee on Judicial Functions and Political Subdivisions that Delegate Proposal 2-11 be indefinitely postponed.

All those in favor signify by saying "aye," opposed "nay." The "ayes" have it. The motion carried.

We are on the ninth order of business — Introduction and Reference of Proposals to Committees.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-98, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 16 of the present constitution of the state of North Dakota, which pertains to bills of attainder, ex post facto laws and obligations of contracts, be retained."

VICE PRESIDENT SAUGSTAD: The Committee Proposal 1-98 will be referred to the Committee on Preamble, Bill of Rights and Suffrage.

Tenth order. We'll now be on the tenth order of business — Consideration of Proposals.

First on the calendar is Committee Proposal — yes, Committee Proposal 1-23, which has been amended. Page 178 of the Journal.

CHIEF CLERK GILBREATH: Committee Proposal 1-23, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that sections 174, 175, 178, 179 and 186 be repealed; and that new sections to the constitution of the state of North Dakota be created; all of which pertain to finance and taxation and state moneys.

"SECTION 1. REPEAL.) Sections 174, 175, 178, 179 and 186 are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"RAISING OF REVENUES. The legislative assembly shall provide for the raising of revenues sufficient to defray the expenses of this state for each year. A two-thirds vote of the members-elect in each house of the legislative assembly may provide an annual property tax, based on value, for state purposes for not in excess of two years unless re-enacted.

"SECTION 3.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"LEGAL BASIS FOR TAXES. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied. Notwithstanding any provision of this constitution, laws imposing taxes on or measured by income may be defined, measured and imposed by reference to the provisions of the laws of the United States as the same may be or become effective at any time, and such state laws may prescribe exceptions or modifications to any such provisions.

"SECTION 4.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"NO SURRENDER OF TAX POWER. The power of taxation shall never be surrendered or suspended, except as provided in this constitution by any grant or contract to which the state or any county or other municipal corporation shall be a party.

"SECTION 5.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"PROPERTY ASSESSMENT. All taxable property except as hereinafter provided in this section shall be taxed or assessed in the taxing district in which it is situated as provided by law. The property of railroads and public and private utilities, except highway common carriers, while used for their intended purposes and unless otherwise provided by law shall be taxed or assessed by a state board or commission.

"SECTION 6.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"DEPOSIT OF STATE MONEYS. All state moneys from whatever source derived, except as otherwise provided by this constitution or by law, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only as provided by law."

VICE PRESIDENT SAUGSTAD: Any discussion? Delegate Burke.

DELEGATE BURKE: Mr. President.

The Finance and Taxation Committee, which is chairmanned by Mr. Donnell Haugen, believes that at this time that there should be a general discussion of the philosophy of the Finance and Taxation Committee with regard to this proposal, as well as succeeding proposals which will come on the floor.

The Finance and Taxation Committee had the benefit of many citizen groups appearing, such as North Dakota Farm Bureau, the North Dakota Farmers Union, the Stockmen's Association, the County Commissioners Association, Township Supervisors Association, League of Cities, Assessors Association, General Contractors, Greater North Dakota Association, AFL - CIO, School Boards Association, Education Association, Liquor Dealers Association and many others. From these groups our Committee not only analyzed their desires and hopes as to tax matters, but in many instances we were given the suggested language for certain constitutional sections.

In addition to citizens' groups, our Committee had the benefit of probably more experts in the field of taxation than any other committee. Because the work of the Finance and Taxation Committee is highly technical, we had the complete cooperation of the Attorney General's office, the State Tax Department, the Bank of North Dakota, a bonding expert from Minneapolis, the Chief Executive of this State, the Lieutenant Governor, the Industrial Commission, the Agricultural Commissioner, the State Auditor, and many others very knowledgeable in this field. Perhaps the greatest help our Committee received in analyzing and sifting all of this material was from our hard-working staff attorney, Dave Peterson.

Our Committee has not only looked into the future to anticipate our state's needs, such as, in the field of irrigation, but we have also looked backward and borrowed language from our present Constitution, as well as from our state's 82 years of experience of living under this Constitution.

We believe we have anticipated and provided for all of the technical requirements needed in the field of bonding, as well as liberal provisions for our state's future.

The Finance and Taxation Committee has unanimously arrived at a certain philosophy which we have tried to follow in all of our proposals. One element of this philosophy is that a certain amount of protection must be given to the owners of real estate from the burdens of taxation. Experts in the field of taxation testified that the real estate tax is probably the most unfair, inequitable, and least productive of all forms of taxation. Pursuant to our philosophy, we have recommended the deletion of the one-mill levy for the University Medical Center as an unfair burden on real estate. Likewise, we are deleting the state 4-mill levy provision on real estate under old provision 174 of the Constitution. We are recommending the retention of debt limits in political subdivisions to protect real estate owners from the excessive burdens on real estate. We are recommending the 60%, or the super majority vote in order to approve increased debt limits in political subdivisions.

Our Committee will propose that present business activities of the State and political subdivisions be protected. These would include the Bank of North Dakota, the State Mill and Elevator, as well as the various public service businesses

carried on by cities. A limitation on future businesses is worded to include only those which would extend a public service, and is intended to prevent the State or its subdivisions from indiscriminately entering fields of private competitive businesses.

Detailed analysis of each Committee proposal will be offered by a member of the Committee, but it is believed that this extensive summary of our Committee's philosophy and goals would serve to save the time of this Convention.

These remarks represent the combined intent of our Committee and has been authorized by the Committee.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: If I might be in order, Mr. President, I would like to move that the remarks of Delegate Burke be printed in the Journal.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE STANTON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Stanton.

We are now on the motion of Delegate Haugen that the remarks of Delegate Burke be printed in the Journal. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it and the motion carries, and the remarks will be printed in the Journal.

DELEGATE HAUGEN: Mr. President, would you now recognize Delegate Trenbeath for the first explanation?

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President and Delegates:

I have been assigned the duty to explain the Committee's proposal as far as Section 2 is concerned in the Proposal No. 1-23 in your books.

As a delegate — first, I would like to make this comment, especially in regard to Delegate Burke's statement. It is kind of out of proportion when we see the headlines in the paper this morning — when we see that the Constitutional Convention is considering unlimited North Dakota property tax, because this is really contrary, Gentlemen and Ladies, to the philosophy of the Committee. We have taken the absolute opposite philosophy, and felt that the property tax has gotten to be excessive; and not only in this state, but all over the nation. And it is of concern to the property owners in this regard. So the first section of this Constitution does deal — or Section 2 that we're considering now does deal with the property tax.

You have an amendment in your book, and it is practically written verbatim the way Section 2 reads, but we did this for clarification purposes.

Presently, our Constitution provides that the Legislative Assembly may levy up to four mills on the state level for property taxes. It also provides another little added provision in there that says this can go to pay interest on state debt. Now, we have pulled those words out simply because interest is generally referred to as to paying on bonded indebtedness, and we didn't want any inference in this section to reflect on another section that will deal with the debt; so we have pulled those words out. But the main difference that we have provided here, Delegates, is that the Legislature, by a two-thirds vote — and we say a two-thirds vote because it would be an emergency situation only where the property tax would be implied upon the real estate owners in the State of North Dakota. We have said by a two-thirds vote they can levy any amount that they wish for only a two-year period. It could be a one-year period, but no longer than a two-year period, and then it has to be re-enacted.

Delegates, we had to look over our shoulders, because, simply, of the California and Texas decisions right now that might possibly knock out the property tax at the local level for educational purposes. If this happened, and the U. S. Court — Supreme Court — decided that this was proper, then we could be losing our local property taxes for education. So we have provided an emergency means by the language we have placed in the section whereby the Legislature can, by a

two-thirds vote, enact a so-called unlimited property tax for education purposes in this circumstance just to get the whole thing off until it is corrected.

Another wording we have added is that the property tax can be based on value. Now this, the Tax Department thought, should be inserted in this section simply because we do have in-lieu-of taxes for property taxes, and we didn't want to get this confused with the ordinary taxes that are placed on property as to value.

Now, this, in essence, Delegates, is what this section is doing. It's doing away with the one-to-four mill levy which previously provided a substitute "in-lieu-thereof" tax by the Legislative Assembly, and a two-thirds vote, can levy what they wish and what they feel necessary to have for the necessary expenses of the State, but no longer than a two-year period.

DELEGATE McELROY: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate McElroy.

DELEGATE McELROY: In view of the press we have had this morning, I would move that Delegate Trenbeath's remarks be printed in the Journal.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE QUAM: Second it.

VICE PRESIDENT SAUGSTAD: Delegate Quam. We are now on the motion of Delegate McElroy that the remarks of Delegate Trenbeath be printed in the Journal.

All those in favor signify by saying "aye;" opposed "nay." The remarks of Delegate Trenbeath will be printed in the Journal.

DELEGATE BUTLER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Butler.

DELEGATE BUTLER: I have a question of Delegate Trenbeath.

As this particular section indicates to me that a two-thirds vote of the Legislative Assembly is required, there is no limitation at all on the mill levy that could be levied at a state level to create a fund to take care of schools, welfare, or whatever you want to; is that correct?

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Delegate Burke — or Butler — that is exactly correct; but it can only be placed for a one and no longer than a two-year period.

DELEGATE BUTLER: Years ago, they put a sales tax in for a limited emergency situation. I think that was about four years ago, or thereabouts. We've still got it, and I don't like the looks of that particular section in there, where it puts no limitation at all on the amount of property tax that can be levied at the state level, if they so choose to do so, with a two-thirds vote, and keep it there by renewing that action the following two years.

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: The only thing that I can answer to that is that this was thoroughly recognized in committee, but we could see no other way of providing some method by which the Legislature in an emergency situation — and most certainly it's an emergency situation with a two-thirds vote — that somewhere — somewhere we had to have a relief valve where, if we ever got into a situation like probably we could on a Supreme Court decision on education, particularly, we would be stuck if we didn't have this kind of an emergency escape valve.

DELEGATE PAULSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: I arise not to defend the headline, because it simply shows what kind of reaction you can get from other people when they read our language, and the proposed language does open the way for this extra property tax within the limitation prescribed by the Committee.

I would ask whether the Committee has considered if the present practice followed by the Legislature of avoiding the Constitution has been considered.

The present Constitution prohibits a statewide levy in excess of four mills. The North Dakota Legislature, for several years, has avoided or evaded this limitation by directing that the counties levy 21 mills for school equalization, and have, in effect — and has, in effect, imposed a 21-mill-limitation — or a 21-mill levy for school purposes on a statewide basis. There is no avoiding this tax by any county. The county has no control over it. It is a tax imposed by the State Legislature, despite what our present Constitution says, period.

Excuse me. I'm used to dictating, and I'm putting in my punctuation.

(Laughter)

Now, under the new language, would the Legislature be able to boost that 21-mill levy imposed by the counties, presumably up to 60 mills, as has even been suggested in the Legislature, or do we go back to a two-thirds requirement for a two-year period only?

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Delegate Paulson, I can only answer that in this way:

As you know — as you know, in past years there has been considerable discussion on whether this 21-mill levy is constitutional or not, whether it is a state levy or whether it is a county levy. But we, as a Committee, in our discussions, have no way of having the ability to prejudge what the courts might say on this. So, to be safe, we just had to do this for emergency situations. They may — the Legislative Assembly may, in the future, for instance, if this court — the California and Texas case goes to the Supreme Court and the Supreme Court rules in their favor, the Legislature might turn around and say, "We shall levy the 60 or 80-mill levy — county levy. But it's a situation that has to be determined by the courts — whether it is constitutional or not — whether it is a state levy or whether it's a county levy. They are the ones — in essence, in the end, they're going to have to make that determination, if it is brought to their attention.

So we, as a Committee, can't pre-judge what that decision might be.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: In defense of the Committee's position, and in regard to the 21-mill levy, at present, as I — it is my understanding that the proceeds of the 21-mill levy are retained in the county and distributed by the county. If a situation arises where we have to all of a sudden raise practically all of the money needed for education on the state basis, then that money is going to have to come into the state treasury for distribution. So it is going to require a state tax.

Now, there's no question about this, and the Committee, as Delegate Trenbeath has said, can see no way to provide for an emergency situation, except by language similar to that that we have included in this section. I don't believe that any member of this Convention, as desirous as we all are of protecting property from unfair taxation, from excessive taxation, would want to see the state crippled, if we came to a case where we had to support our educational program through a state levy. This is the purpose of the language, and we have studied this carefully and long, and we think it will do what we want it to do.

DELEGATE AAS: Mr. Speaker.

VICE PRESIDENT SAUGSTAD: Delegate Aas.

DELEGATE AAS: Mr. Speaker and Fellow Delegates. The Committee certainly considered the question posed by Delegate Paulson. The Committee is concerned and did ask the question: Is the 21-mill county levy a state levy? But not everybody is in agreement that this is a state tax levy or that it is being levied by the Legislature, and there is a feeling that is quite opposite from what Delegate Paulson says — that it is a state levy — and we are under no ability to remove totally the taxes.

And as far as the question posed by Delegate Butler, I think that we have made every effort to protect the real estate tax or the real estate from a state

tax, and a two-thirds vote of the Legislative Session, of both houses, if we have a two-house session, will mean that it's going to take a lot of effort before that will be passed. I'm sure that most of us here know that most legislators are real estate holders and they are not going to pass a two-thirds — by a two-thirds majority any of the taxes, unless they do feel it's necessary; and, furthermore, we have put a limit on so that it must be reenacted by subsequent legislative sessions, which means that it cannot continue in the same way as we have done in the past on our sales tax, and some of those, with a majority vote — it's a little easier to get a majority vote than a two-thirds vote — we all know that — and the Legislature is not going to pass by a two-thirds vote a real estate measure, unless it feels that an emergency does exist. We do need to have some way to provide for an emergency type of levy, if we need it. We do need to expect that, if the California **Serrano** decision or the Texas decision is upheld, that we have a method and a mode by which we can proceed to tax real estate, if this is necessary. It's not the intent of the Committee in any way to tax the State — to place a tax on real estate for the operation of the State itself. We're going to have to leave the door open for the school taxes, if that becomes necessary, and this is the feeling of the Committee on this section.

VICE PRESIDENT SAUGSTAD: I'll recognize — the Chair will recognize Delegate Knudson.

DELEGATE KNUDSON: Mr. Chairman and members:

I can see that the Committee has given very serious consideration to this problem, and I confess I can't come up with any better solution than they have. But, still, it presents, really, a serious — a serious situation for property owners in North Dakota. I don't believe it really provides the protection that's necessary. I know from experience how difficult it is to get a two-thirds majority in the North Dakota Legislature. We must remember that the complexion of our Legislature is changing, with the one-man-one-vote decision. The membership is moving away from the rural areas, from the rural property holders, and perhaps in the future it will not be so difficult to get two-thirds of the members to put a tax on the other one-third, which could very easily be the situation.

Currently in North Dakota the property tax is extremely unfair in its effect, because of the depressed rural economy. A man out in my area phoned me one day last week and asked me to get the Constitutional Convention to straighten out something he was concerned about. He said in his particular school district 62 percent of the valuation was in the rural area, 38 percent was in the town. It's not a very big town — I suppose 1,500-to-2,000 people. The school enrollment was directly the opposite; 62 percent of the school enrollment was in the town, 38 percent of the children were in rural areas, where the 62 percent evaluation was.

Now it's coincidence, of course, that that district came out with the exact reversal of figures; but still it's fairly typical of most of the communities in that situation, in a fair-sized small town and a great deal of the rural area.

Now, the average — NDSU's figures for 1970 show that the average farmer had an investment in his farm of \$87,000. He had 1,024 acres, with actual cash value in 1970 average, statewide, was \$74 an acre, for \$87,000.

Now, we can expect that besides this, this farmer had an investment of enough land and cattle and other — in cattle and equipment to make over a hundred-thousand-dollar investment. Well, that same report showed that this average farmer netted \$4,500 for 1970. I have figures here from Representative Dornacker, which were given to a legislative committee last week, and of course these are based on different statistics and they perhaps don't match up — jibe exactly — but they can give us the general impression of what actually exists.

Representative Dornacker's figures show that in 1970 there were forty-four thousand North Dakota farm families, and these farm families were paying a property tax of approximately one thousand dollars. So the situation right now is extremely unfair. If we do have to go to a statewide property tax, which is very possible in the light of these court decisions, we will probably be stuck with something that will go on for as many years as our sales tax has. As Delegate Butler mentioned, the sales tax was put in as an emergency back in the Depression

years. It was reenacted every two years at two percent for many years. We've had it expanded to a much higher tax today. The same thing could very easily happen with property taxation.

I hope this Convention will make it clear to the people of North Dakota that we're doing the best we can in this respect, and we do not want the property taxpayers to be burdened with the entire expense of financing the schools.

DELEGATE HARDMEYER: Mr. President.

DELEGATE CHASE: Mr. President.

VICE PRESIDENT SAUGSTAD: I would recognize Delegate Chase.

DELEGATE CHASE: Well, if the Committee wishes to reply to Delegate Knudson, I yield. I had an inquiry on another matter.

DELEGATE HARDMEYER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hardmeyer.

DELEGATE HARDMEYER: Mr. President, Fellow Delegates:

To me, to expect us to propose and to act favorably upon a measure which would allow an unlimited mill levy for emergencies, seems rather contrary to the history of the State. In 1963 we were deep in an emergency and we could not operate our schools. No one could pay their taxes. Now, to add more mills to people who already can't pay their taxes, or to take their land away from them in a more rapid fashion, by levying more taxes, it seems rather ridiculous to me. I think, if we are in an emergency and we cannot meet our obligations already with the taxes we have on property, to add more, I would say, would certainly remove the property from the people in a more rapid manner.

So I would oppose this unlimited mill levy.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

Ladies and gentlemen, I think you have all seen in the last few years how reluctantly the districts vote more money for anything — school districts, cities — all kinds of elections — as high as two and three in single school districts have been killed because they will not vote for higher taxes. And this issue — not to argue the theory of this — but the plain, honest-to-goodness fact — how much chance do you think — and this — I'm not arguing this headline — it's correct — it's an unlimited — it has some limitations on how you get it, but it's an unlimited levy — and if this — the papers of the State will come out in a few days and say, "unlimited North Dakota property tax is final — finally passed," you may go home and try to explain it. I do not care to. I think it's absolutely impassable, and I also agree that we should not — if we're in such an emergency, why not raise the income tax, the sales tax? — because, don't forget, if the people are having trouble paying a little more sales tax or income tax, the boys with the real estate, both in town and in the country, are having one heck of a time paying their real estate taxes, and I hope this proposal is defeated.

Thank you.

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President and Delegates, it looks like this — the talk has been out of all proportions to the thinking of the Committee.

I want to make it very clear that we are just as conscious — that Committee — as anybody else is with regard to the property taxes. Not only this, but in another section — in our bonding section — we spelled out completely and clearly that the property taxes shall not be used to pay off state bonds, which was never in our Constitution. And I want to make it clear to you that this was the philosophy of the situation. But there can be situations — an emergency situation — when the State has to reach down to the property tax to get some money; and if you don't believe in this philosophy of the State doing it at all, then kill this section. But, for goodness sakes, if you feel that this State needs some money in this respect, somebody come up with an amendment so we can get on with our business.

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: Mr. President. This is — am I recognized, sir?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE LANDER: This is the time when I wish that I were eloquent, and I am not, because if I would rise to anything — and I'm willing to stack my property taxes up against most of them — I would say that the Committee has been unnecessarily conservative in what it is proposing. I'm not on that Committee, so I'm not defending it; I'm simply speaking as one of 98.

I know this is an extremely emotional issue, and as a school board member who has been here before the Legislature many times asking for increases in sales and income taxes in order to run our schools, I know how hard it is, also, to get those raised. But I think the most important thing is that we don't get carried away here as the only 98 people who are trying to rewrite this Constitution right now to start with — don't get carried away with this, what I consider to be a very irresponsible avenue as to what our responsibilities as citizens and as parents are. I wish you would look up in the balcony today and see the children that are here. I have four of them. Some of you have them. We don't have to have these children. Nobody says we have to have schools. We've elected that this is our responsibility, and we've got to run them.

I don't like property taxes in our State, and those of you who have had to find ways to pay for the operation of the State realize how hard it is in our State, if you do not use property taxes of some kind in order to raise moneys which we have to have. If there are other viable alternatives, heavens, let's use them. But, as I say — let's — I speak for this particular thing, although I would — if I were going to write it, I would not put in the sixty-six and two-thirds percent; but if that is the — if that is the compromise which has to be made, I think it's a very good thing and ought to be supported.

DELEGATE BASSINGTHWAITE: Mr. President.

DELEGATE SANSTEAD: Mr. President.

VICE PRESIDENT SAUGSTAD: The Chair recognizes Delegate Bassingthwaite.

DELEGATE BASSINGTHWAITE: I would just like to request at this time that we divide this question and vote on Section 2 of the second item.

VICE PRESIDENT SAUGSTAD: Delegate Bassingthwaite, are you making a motion, then, that Section 2 be voted on separately?

DELEGATE BASSINGTHWAITE: Right. This is my motion — to vote on Section 2 as a separate item.

VICE PRESIDENT SAUGSTAD: Yes. Any delegate can request a division. That request is granted — that Section 2 will be voted on separately.

Is there any further discussion?

DELEGATE OMDAHL: Mr. President.

DELEGATE McELROY: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: As a former Tax Commissioner, I can support all the statements that have been made here about the evils of the property tax, and I don't imagine that the evils are ever going to be corrected, because it is based primarily on a system of judgment, in which even experts disagree. It is regressive in its very character in many cases, and it is mal-administered, with all kinds of people involved in the process, each trying to jockey for his own economic advantage.

But I concur with the statement of Delegate Langer that we are confronted with a very serious situation, in that this matter is now processing through the courts, and it isn't only a matter of it having been determined by the Supreme Court of California, which is no minor court in the country, but it has also been decided by a three-judge district court or special court in the State of Texas — a federal court — and they have held that property taxes must be redistributed for school purposes under the equal protection clause, I believe it is.

What is going to happen if the U. S. Supreme Court sustains these lower courts? North Dakota is in the same predicament as most states, in that we have gross inequities existing between the school districts of the State, and the North Dakota Legislature is going to be confronted with the problem of reassessing the property taxes we now have at a state level so that they are uniform throughout the State.

What is going to be the consequence of this requirement or this problem? — because there are existing inequities between the school districts now. This means that a new levy will adjust the tax burden. It will reduce the tax burden in some districts and it will increase the tax burden in other districts.

Now, this is not only an academic problem as far as North Dakota is concerned, because we've just gone through about 10 years of fighting over what is known as the "Sales Ratio Study," which determines the levels of assessment in each county and links the money that is being sent to the counties under the school equalization fund; and what happens under the Sales Ratio Study is that money is subtracted and some counties get more money for schools and others get less.

After the impact of this new language came into effect in the early 1960's, and it came in, unfortunately, just when I happened to be Tax Commissioner — we had wailing throughout the land as to the gross inequities that were arising out of this equalization process that was developed under the Sales Ratio Study. Today you couldn't get a majority vote in the Legislature to reenact, if you had to reenact the impact of the Sales Ratio Study.

So I don't see how you're ever going to muster a two-thirds vote in the Legislature, regardless of the justness of the cause, because when it comes to property taxes, there is only one just cause, and that is to keep my property taxes down. And so we lose — we subscribe to the principle of equalization. We subscribe to the principle of equalization in the abstract; but when it comes to applying to specific situations, we abandon it and we find other principles that become more important, such as keeping our taxes down.

And so I feel, for those of you who are afraid, that the Committee has gone overboard. I see that what the Committee has done is going to create a crisis in the very near future, because those counties or those legislators who are from those districts who are going to have to raise their taxes under a statewide levy, are going to oppose it, and they're not going to subscribe to these — you know — these high-sounding principles about what is good for the State as a whole, and so forth, when they have to go back and face the electorate and tell them, "I now raise your property taxes." It isn't going to be done, and so I don't see where you're ever going to get a two-thirds vote; and so, for those of you who are concerned about an unlimited property levy, this provision here is for no property levy.

Now, it would be okay. I would find it easy to subscribe to, if we were able to maintain the status quo. But the courts are eroding at the other end, you see, and some action is going to be necessary at the state level, and I'm afraid we're going to deprive the Legislature of its own ability to respond to what is known as an emergency, because when your own taxes are going to be raised, it's very difficult to see anything known as an emergency.

So I hate to write a Constitution or be involved in a Constitution that is going to require amendment two years from now or four years from now or six years from now; and on this matter, I doubt if you would ever be able to amend this provision out, once you've got it in there, because why would the people vote to change it? The demagogues would run up and down the land and say, "There's no real emergency. We can go someplace else and we don't need to raise the taxes. We don't need to authorize the Legislature to impose a property tax for support of schools."

Another thing that's very curious is we seem to believe that we're the only body that is ever going to be assembled in this State that doesn't like property taxes. I'll submit to you that the State Legislature despises property taxes as much as we do, and I think we can show a little confidence in them, and I think that, by a simple majority, really, which I doubt could ever be mustered, except

in emergency, that they ought to be able to deal with this question. We're going to need flexibility in the future because the situation is fluid at this time.

Now, it was by action voluntary — no compulsion — that the State Board of Equalization quit levying property taxes at the state level. They had no mandate. They just did it because it was within their jurisdiction. This signifies that there are people who will not support increasing property taxes unnecessarily. So the legislators, the administrators — neither one — are going to be for property taxes. And, in addition — in addition, if the Legislature does impose a property tax in a lapse — in a lapse of rationality, the people can refer it. The people can still refer it, and we have another emergency valve here. And so I think that our fears and our misgivings are unfounded. I would like to see us strike any reference to property tax at all in the Constitution, which would leave it up to the Legislature.

DELEGATE KESSEL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates:

We have heard about these emergencies that are coming off in two, three, four years and what the courts will come out with. Unless we put a limit on this, our first emergency will be coming this summer by the voters. I would hesitate even attempting to explain to the people down there that, regardless of what the words are, that we are passing an unlimited tax levy here by this group of people.

Thank you.

VICE PRESIDENT SAUGSTAD: The Chair recognizes Delegate Lerberg.

DELEGATE LERBERG: Mr. President. I think we have to recognize here that these are not going to be additional property taxes burdened on top of property taxes; but they're primarily in case of this possible crisis in education. They're going to be substituted for local levies. So they're not going to be additional property taxes. I think Delegate Omdahl's position reflects very accurately that of the Committee, in that we did not want to allow the possibility of statewide property taxes, except in the case of a very dire emergency, and the two-thirds vote, I think, recognizes this, and if you will — I don't have the figures in front of me, but if anybody will look at the figures in terms of what is provided by property taxes for education, what is provided the State through income taxes or sales taxes, I think even the most eager politician, in terms of pleasing the electorate, in terms of coming out for lower taxes when he knows lower taxes are not possible, will realize that it would be an impossibility to operate this State — the kind of state we are — it would be an impossibility to operate the educational system without some kind of property taxes. We could not raise income taxes or we could not raise sales taxes enough to replace the property taxes that go to education. I think we have to look at this in that light, and I think the people have to be made aware of this in that light — that politicians may say, "We can do away with these;" but, as a practical matter, it's an impossibility.

DELEGATE SANSTEAD: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President. I knew there was going to be a parting of ways between my colleague and myself back here, and I kind of suspected it might come on this issue.

I've always been opposed to a super majority type of vote being required by any kind of body, and I think we have, once again, the question of the super majority here, and it seems to me that, as has been stated by other speakers, we're going to have a real emergency before any kind of increase of property tax levy for any period of time is voted by a legislative assembly.

More than that, I think we ought to ask ourselves some serious questions about these property taxholders. How much land do they have, for example? I am in the category of people which, except for about a hundred and seventy-five feet, is unlanded, who does not live basically off the land, and yet I think it's a very serious question in this State, if we're going to be against the property tax — if we're going to oppose the property tax — then we ought to be able to progressively tax that land which an individual has, so that individual who is con-

stantly increasing and increasing in size the property value that he has, I think that that poor individual in the city who doesn't have a hundred-thousand-dollar investment in either equipment or land, and I think of the easy statement which is, "Let's put some more sales tax on it," and my colleague said not so long ago, "Let's put some more sales tax on to tax that individual who doesn't have even an income potential off of that kind of property." So I think that when we say that we have to have a super majority vote when we say that we have to raise sales and income taxes, then I think we are, in effect, forgetting that the size of our farms is constantly increasing and the landholdings of many of these individuals is increasing to the extent that we ought to do something about a progressive tax system on that land for the individual who's been able to accumulate so much of it.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President. I have two questions.

First of all, did the Committee consider the possibility that the United States Supreme Court could throw out the two-thirds requirement on the basis of the one-man-one-vote ruling? Now I realize that an earlier decision has not done this, but I — I think it's a very real possibility.

The second question is: Did the Committee consider putting in, after the word "may" in the fourth line, or somewhere in there, the words "to replace a local property tax already in force"?

If you put that in, in the line — the fourth line, after the word "may" — I'm not sure that's the right line — I'm groping a little bit — but something like that may allay the fears of lots of people and not in any way destroy the intent of what you're trying to do.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. The Committee did consider the matter of the constitutionality of a super majority, and we based our decision on the most recent court decision, which did uphold — did uphold a requirement — a provision for more than a majority to support a bond — bond issues or tax issues, and we can do nothing else but base our thinking on that most recent decision.

Now, in regard to the second part of Delegate Sinner's question — a very intriguing question — and we did not consider this — and my initial reaction is that this is a good suggestion — probably a suggestion that might help solve this difference of opinion among the delegates. I'll say, for the Committee, that we are aware that no committee can be sure what's going to happen to its proposal when it hits this floor; but we did anticipate that the opposition would come forward, based upon Delegate Omdahl's discussion, and on those who were afraid of the increase in mill levies.

I think that I could speak for the Committee in saying that we would probably accept Delegate Sinner's suggestion. We are sorry that we didn't think of it; and of all of the people who appeared before us when this was being considered, no one made this particular suggestion.

Now, I don't know whether the rest of the Committee would agree to take this proposal back. The Convention, of course, has the right to send it back to us, if they wish to. I think we would prefer, before such a question is put or such a decision is made, that we have discussion on the rest of the sections of this proposal.

DELEGATE HOUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hougen.

DELEGATE HOUGEN: Mr. President. I think all of us are aware that it's the obligation of the State Legislature to provide funds for the running of this State. Myself, I would like to just have only one sentence in this first section, and that would be that "The Legislative Assembly shall provide for the raising of revenues sufficient to defray the expenses of the state for each year and to pay the interest on state debt."

I believe it's going to be pretty hard for us to look forward to what might happen next year, in ten years, in fifteen years, in providing strong limitations as to what the Legislature can do. I'm sure that the Legislature is going to be limited by the wishes of the people in each of the years that are coming.

DELEGATE POULSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Poulson.

DELEGATE POULSON: I'd like to direct a question to any member of the Committee.

Was the only emergency that was envisioned by this Committee the possibility of this pending emergency now being obtained by court decisions, regarding education?

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President, I don't know what was in the minds of the rest of the members of the Committee in this regard, and I refer to Delegate Poulson's question and also to Delegate Sinner's; but it certainly passed my mind many times that there could be other emergencies, other than this education thing. For example, I remember one session of the Legislature, when I was down here, we got one of the worst snowstorms that the State of North Dakota has ever seen, and we had to call out the National Guard to assist these people in the counties in getting their livestock fed and their roads open. These emergencies can come upon us again — these natural disaster things. Here, again, if you start using the word "replace a local levy at the state level", this just doesn't work because there are no local levies primarily in this respect. So here's one instance.

Another instance might be: As you people know, we have a lot of revenue bonds outstanding for dormitories, primarily, at our institutions of learning, to the tune of about forty million dollars. These bonds are running past the year 2000. A circumstance might — now these are revenue bonds — they're not really the obligation of the State; but here you have a moral obligation. If something happened that these revenue bonds could not be paid off by the institution or by the earnings of that building or that facility, it just might be possible that the State could proceed. They should be picking up the tab for these bonds simply because it would reflect on all the bond sales for anything else in the State of North Dakota. Now these might be examples that the State might get into an emergency without being able to replace, actually, without a local property tax.

DELEGATE LERBERG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lerberg.

DELEGATE LERBERG: One more thing which was very much in the minds of the Committee, both in this section and the other sections they looked at, was this forthcoming irrigation, which is rather a vast project for the State, and there's been considerable discussion about the needs of raising money for this and the possibilities, and that was one reason, I think, why the — even though education was a primary topic, that it wasn't limited to this when it came out of Committee, because this was another vast area which will be of great benefit to our agricultural people and which we didn't want to preclude the possibility of this being used for.

VICE PRESIDENT SAUGSTAD: Delegate McElroy.

DELEGATE McELROY: Mr. President. I don't like real estate taxes either, but I certainly don't agree that there are no limitations on this mill levy.

In the first place, a two-thirds vote is extremely difficult to get, and this was primary in our minds when we put that on. We also restricted the time to two years.

Now, the Legislature can raise almost any other tax they want to by a simple majority, and it seems to me that they are going to take the easiest way out and the most sensible way out before they tackle this property tax. I think that any kind of a ceiling you put on anything in terms of mills or dollars is doomed to failure because we don't — we can't predict what's going to happen ten or

twenty or fifty years from now. But this sort of a provision leaves it up to the Legislature, and sometimes they have pretty good judgment! (Laughter)

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Mr. President. I had not expected to talk on this subject, which has got to be quite a debate.

I'd like, first, to refer to the county 21-mill levy, which is Section 57-15-24, and while I'm not the legal authority, it looks to me very much as though that was merely a requirement that each county had to levy 21 mills to go into its equalization fund before they could share from the State-distributed funds. So I can't, by any stretch of the imagination, accept the proposition that that was invading the four-mill levy.

Now, we go on, and the property tax burden is heavy. In 1970, we had a slight reduction from 1969, due to the exemptions. In 1969 there was a total of \$125,171,158 for general and special fund levies. That dropped to \$116,076,000. So we did a slight reduction. But it was not anywhere in accordance with the so-called 18 percent reduction of assessed valuation.

The events under which we are living are just forcing costs up all the time and, as I view this change in the language here, while I was not enamored with it, I realized that we've got to have solid foundation in the end on which we can base some way of getting a cost of government. I've lived a long time in this State, and I can distinctly remember two periods — one after World War I, and, again 1930 to 1943 or 4, when this State had to struggle to get enough money just to pay a few clerks and keep the schools open on a minimum basis. Now that could come again — I hope not — but it could. And especially we might have economic disaster. I hope we never have to go through another ten-year period of natural disaster, like we did from 1931 to 1940. But I think we're still going to have to use an open door somewhere so that, in an emergency, they can go to get a few dollars to help tide things over and keep government operating; otherwise, we could have chaos.

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: I yield to Delegate Aas.

VICE PRESIDENT SAUGSTAD: Delegate Aas.

DELEGATE AAS: Mr. President.

Thank you, Delegate Aubol.

I think that this Committee did seriously consider this real estate problem, and we felt that we had to face the realities that we can have emergencies.

As far as the question that was asked by Delegate Sinner: We did not face that question in those exact words, but I do think that we faced it a little bit more than what our Chairman, Donnell Haugen, has mentioned, because we were concerned with other emergencies that can arise, and one of the things that we're concerned about is future development of the State of North Dakota. As was mentioned by Delegate Lerberg, we are going to have the possibility of irrigation districts and huge irrigation districts requiring a large amount of money. The State is going to need to be in a position where they can provide a special assessment type of tax or any other type of tax that is necessary at the State level to the affected land, if necessary. There are going to be other situations when we need to face the fact that we might need a state levy. But we are in a real quandry on that Committee, and this Committee, I might say, is made up of real estate holders, in the vast majority all opposed to any additional real estate tax or any real estate tax at the State level; but they were making a sincere effort to be responsible, and I think that, if you count the number of people on the Committee, which I have done, I believe there are only four of us on that Committee that do not make our principal income from the farm real estate, and these people who were on this Committee were being as responsible and as conservative on this real estate tax as they could be. They probably are real conservative on this two-thirds figure. I think the two-thirds figure is necessary in here as a compromise; but I cannot see how we can go any further than we have, and I do believe that, for the future of North Dakota, we are going to have

to meet emergencies further than any repeal of existing real estate taxes at the local level, and so contingencies can arise; we need to face them, and we cannot ignore them. I know of no other way that we can solve the problem.

DELEGATE POULSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Poulson.

DELEGATE POULSON: In all the discussion this morning, Fellow Delegates, I have had an opportunity to reflect, and I have come, in my own mind, to the conclusion that we are primarily talking about education. I happen to come from a district that is primarily rural and, I happen to come from a school district which has voluntarily taxed itself to the very maximum to operate a school. Somehow I feel that I can go back to the people in my area, should this bill pass — this proposal — and I hope it does — and I might add I, too, am a property taxpayer, and I happen to derive a majority of my income from agriculture. And, as you all know, that's been a pail of skim milk for the past few years. But somehow I think our primary responsibility here lies to the future of the State of North Dakota, and I happen to think of our kids. I happen to think how we taxed ourselves in our district, to approximately three dollars an acre — the majority went for education — and I very selfishly would somewhat welcome this idea of the State, if the need arose, to equalize the school taxes, because in so doing, our Legislature, I am sure, would do a great deal to improve the efficiency of many of our schools who are hanging by a thin thread of existence and shortchanging our kids every day of the week.

For my own part, I think we can't look at tomorrow. We've got to look beyond the hills. We've got to look to these kids, and if this situation should arise that the Supreme Court of the United States should uphold the District Court of the State of Texas, I would hate to think of the situation we would be in taxwise for our schools, and if for no other reason, for our schools it would be utter chaos. I'm willing to cast my future and the future of my children with our Legislative Assembly, particularly with this super majority, to get the job done.

DELEGATE PEARCE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Pearce.

DELEGATE PEARCE: I rise for a question. I have restrained myself on Section 2 because I'm interested in Section 3.

Is it proper now to speak on Section 3?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: I think, Delegate Pearce, in fairness to the Committee, would you first hear the Committee explanation of the reason for this?

DELEGATE PEARCE: Yes, I'm perfectly happy to.

DELEGATE HAUGEN: Yes. I think we appreciate that, if we're through with discussion on Section 2 —

DELEGATE OMDAHL: A point of order.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: If we divide the question, is it then proper to discuss an item that is not a part of the division? I believe we had a motion by Delegate Bassingthwaite to separate Section 2 earlier in the morning.

VICE PRESIDENT SAUGSTAD: The Chair takes this position: That, in view of the fact that Bassingthwaite requested a division, then that Section 2 of Delegate — or of Committee Proposal 1-23 will be voted on separately, and the first vote, then, will be on the section — the following sections: 3, 4, 5 and 6 of Proposal 1-23.

Following the vote on that, the vote will be separately on Section 2.

I stand corrected. The desk force tells me that we need — that is, when we consider the Sections 3, 4, 5 and 6, we shall also consider Section 1, which is a repealer. So we'll be voting then on Section 1, 3, 4, 5 and 6, and, also, following the vote on that, we shall then next vote on Section 2.

The Chair at this time will exercise his privilege of declaring a short recess, and this is to help the desk force as much as anything. This becomes a very tiring thing for the Reporter, and the Reporter, I know, needs to have a rest here at this point.

So, at this point, the Chair will call for a 10-minute recess.

(The Session recessed at 10:45 A.M. until 11:04 A.M., the same day.)

VICE PRESIDENT SAUGSTAD: The Convention will come to order.

We are on the tenth order of business. We have under consideration Committee Proposal 1-23. I believe now that we are ready to begin discussion of Section 3.

DELEGATE LERBERG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lerberg.

DELEGATE LERBERG: Section 3 is the — I'm referring to the Interim Report, on page 40 here — and it takes up all of these sections. Section 3 is the old Section 175 of the Constitution, and, happily to say, that there's been very little philosophic or substantive change in the proposed Section 3. There's two main changes — one involving taxes, and the second — and I'll just read a short paragraph here:

"The committee has retained unchanged the first sentence of present Section 175, and it has retained the substance of the second sentence of 175. The second sentence has been rewritten and shortened, but the substance of the sentence remains exactly the same."

And, basically, the second sentence refers to the possible federalization of state income taxes. And we had considerable discussion on this. Some people are opposed to the State federalizing the income tax; but the Committee felt we, at least, ought to allow the Legislature that option in the future, if they wished to do it, rather than not allowing them that option.

VICE PRESIDENT SAUGSTAD: Is there any further discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President and Fellow Delegates:

I'm addressing myself to the second sentence of Section 3, beginning on line 20 of the bill that is in your book that starts out "Notwithstanding" and I have an amendment proposed, which is at the desk, and I would ask the Clerk to read it first.

VICE PRESIDENT SAUGSTAD: The Clerk will read the proposed amendment to Section 3.

CHIEF CLERK GILBREATH: Committee Proposal 1-23 be amended as follows:

On page 1 of the engrossed proposal, in line 20, delete the word "Notwith" and delete all of lines 21, 22, 23, 24 and 25, and renumber the lines accordingly, which would leave this as follows:

"LEGAL BASIS FOR TAXES: No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied."

DELEGATE PEARCE: Mr. President. As you can see, even though the reference refers to the engrossed bill, I have numbered it here the same, so I'm talking about the last sentence on the bottom of page 1 of 1-23 as it appears in your book. This is, in my opinion, contrary to proper practice.

The present Constitution does not permit the Legislature in enactments of statutes to incorporate the provisions of some other statute by reference, even in our own State Code. This would change the Constitution so that the Legislature could, in imposing an income tax, simply state that your income tax would be one percent, ten percent, 25 percent, 50 percent or 98 percent of whatever your federal income tax is. In order to determine what your state income tax would be, you could not only refer to your own income and records and the laws of the State of North Dakota, but you would have to be aware, of course, of what the federal income tax laws were. You would, by that, be incorporating all of the changes that Congress might make between one session of the North Dakota Legislature and another, whether it be down or up. You would also, in my

opinion, be incorporating by reference all of the multitudinous regulations of the Internal Revenue Service, and if you have never looked at all of those regulations in toto, you ought to. So — it's quite a stack.

Furthermore, those are by no means immutable and change from day to day and case to case as their rulings change. The exemptions, of course, are not and for many years have not been the same in federal and state income tax. It would, in my opinion, be enormously complicated to attempt to provide other exceptions or modifications, as the last sentence would seem to provide, and I am opposing it because I think it's fundamentally the wrong way to legislate. Certainly our Legislature can impose whatever income tax they see fit and the people will be willing to sustain; but it ought to be done by the Legislature and it ought not to be palmed off as a fraction of some other tax; and if we're going to stand on our own feet as a sovereign state, certainly this is no time to surrender, in my opinion, the taxing powers to the federal government. I don't know what your federal income tax is, but I would be alarmed by paying any given percentage of it simply as a flat rate. It might make it lower, but it could be considerably higher than it is now. I don't think it's a proper thing for the Legislature to do that. I think it would be highly improper and dangerous to give the Legislature the power to do that, such as this.

So, therefore, I do move, in accordance with the motion that was read from the desk, striking out the last sentence, beginning with the word "Notwith" on line 20 and the remainder of that page.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE BAKER: Second the motion.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Baker.

Is there any further discussion?

DELEGATE DOBSON: Mr. President.

DELEGATE BURKE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Burke.

DELEGATE BURKE: Mr. President, I oppose the amendment. This language which the Committee has adopted is essentially the language which was voted on by the people on September 16, 1966, and was adopted as part of the North Dakota Constitution by a vote of some forty-six thousand or thirty-seven thousand, and allows what we call the so-called "federalizing" of the North Dakota tax.

This language of the Committee was gone over with tax experts from the State Tax Department, and they urged the language which is in the Committee Report.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: This is a section with which I am a little bit familiar, because of my activities in the Tax Department a few years ago.

All this language does that is in there is it authorizes the Legislature, if in its wisdom at some future date, to simplify the State income tax by making it conform to a greater degree with the federal. I am hopeful that during our proceedings we would adopt a constitution that would be somewhat flexible, so that we could adjust to changing situations as our society changes, and I think this is one area where we need a little flexibility. We have not solved the problem in the Legislature in simplifying the state income tax, but it will never be simplified if we do not give the authority to the Legislature to decide how much simplification is possible and necessary.

So I resist the amendment because I think that it is — it is going to give — the present language that the Committee has recommended is going to give the Legislature flexibility, and if they see the same evils in federalization as Delegate Pearce does, I'm sure that they will be very cautious in using this power.

VICE PRESIDENT SAUGSTAD: Delegate Solberg.

DELEGATE SOLBERG: Mr. President, I think this is one time we should listen in total to the sage advice given by Delegate Pearce, because of the fact

that simplicity and convenience is not a good label to give to the application of a tax, with the implications that are involved in it. Taxation in all of history is not a simple process of passing a law and collecting revenue. This is most important to evaluate — that simplicity does not always become a factor in determining what is a good tax. To me, taxation has much deeper and farther-reaching effects. It can change production, and we recognize this in a one-producing type of state, such as we have here — one kind or other, particularly. A tax can change labor concepts. It can change production concepts. It can change the whole perspective of our role in our dependency as a self-sufficient constitution or state. In fact, it can change our entire way of living. And at the same time it can destroy an existing economy.

Therefore, if we are going to rely entirely upon what is done in the nation, then, for the first time in our lives, we'd better reemphasize and reiterate the fact that we have always said that we are different from New York State, that we are different from California, that we are North Dakota and that we should write our own tax laws and not be dependent upon some kind of a concocted story that causes us to believe that federalization is good for the State of North Dakota or for any other state, for that matter, and these are some of the things which must be considered by government — this government — in contemplation of the levying of a tax. And since Adam Smith wrote his great book, **The Commonwealth**, why we find — **Common Sense** — not "**Commonwealth**" — we find that even he, way back in those early days in the 1700's, said that any person or any institution or any political body that feels that it can find complete equity in any form of taxation had better begin to evaluate and analyze the structure that he now lives under or will live under in the future. And so I had in mind a definite influence, if I have any at all, to the thoughts that have been expressed and to the amendment now given by Delegate Pearce, because I think it is important in this particular instance. Our complex economy presents many problems which require concentrated research and analyses by both the taxing authorities and the student of economics in the analysis of the causes and the effects of taxation. It is for this purpose that theories of taxation have been developed by economists, and I must subscribe to them, and one of them is that we are a state sovereignty and that we should not be tied into, as far as the Constitution is concerned, to any federalization at this time, but that we should rely entirely upon the judgment of the Legislature that will serve in the future.

DELEGATE CHASE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate — I believe the Chair will recognize Delegate Vogel, first, and then Delegate Chase.

DELEGATE VOGEL: My attention was distracted for a minute, and perhaps I missed something, but I wonder how many delegates — I think somebody did mention this — but I'd like to repeat it — I wonder how many delegates are aware that this sentence is at present a part of our Constitution. It is not something new. You will find it in Article 82 of our present Constitution — an amendment adopted six years ago. We are not talking about something that is being added. We are not talking about something new. We are talking about something under which we have been functioning for the past six years.

DELEGATE STANTON: Mr. President.

VICE PRESIDENT SAUGSTAD: I'll recognize Delegate Chase.

DELEGATE CHASE: Mr. President. Will Delegate Pearce yield to a question?

VICE PRESIDENT SAUGSTAD: Delegate Pearce?

DELEGATE PEARCE: Yes.

DELEGATE CHASE: Delegate Pearce, if we passed the amendment that you recommend, will it prohibit the Legislature from somehow basing the state income tax on federal income tax?

DELEGATE PEARCE: Mr. President. It wouldn't prohibit them from simply making reference. They could, each two years, adjust the income tax to the current federal tax, but they'd have to spell it out in the law how that tax was arrived at, and it would prohibit a simple reference that your tax be 25 or 22 percent of what your federal tax is, so that you would be simplified simply by

filing a copy of your federal return, multiplying it by 25 percent and sending in a check for the difference — for the balance.

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Stanton, and Delegate Unruh.

DELEGATE STANTON: Mr. President and Fellow Delegates:

I rise to speak in support of the amendment, too. I think there has been a constant erosion of state powers to the federal government, and if this is in our Constitution, we certainly have deleted other things, and this, also, should be deleted. I think that your voice is heard much louder in the State Legislature than in your federal government. I feel like a voice crying in the wilderness when I go to our federal government. So I want our Legislature taking care of this; I don't want it passed on to our federal government, and I would urge that you support Delegate Pearce's amendment.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Well, Mr. President, every legislative session we have been required to pass a piece of legislation updating the references to the Internal Revenue Code as amended from time to time, and they have been amended, as you know, in every session of Congress.

The reason for passing this legislation some years ago — or this initiated measure — was to eliminate this necessity.

Now, I might call your attention to the fact that in the last few sessions, those of you who have served in the Legislature know that the Tax Department has been very assiduously proposing some sort of reform in our state income tax, including, but not exclusively, the adoption of the federal tax based on a percentage. The Tax Committee in both the House and the Senate have pretty much rejected this out of hand. There has been no success whatever in adopting any federalization to any great extent, and the result has been that we are continuing with our present rather difficult state tax form. We have asked the Tax Department on many occasions to simplify it, and they say that, under the present conditions, it is almost impossible to simplify the North Dakota tax return. There is some question about this; but, at the same time, we have to face the fact that we are living with a very complex tax system. I would urge that we adopt the language of Article — of Proposal 1-23 as it is stated, as merely restating that which the people voted for some years ago. I can't see that we'd have any particular problem in selling the point of view on this to the folks, and I think you can trust the Legislature for many years to come to reject the idea of federalizing the state income tax. It just isn't in the cards, and I really don't think you have anything to worry about on that score.

DELEGATE BUTLER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Butler.

DELEGATE BUTLER: For the past three sessions I have served on the Finance and Taxation Committee in the Senate and I — and I agree that the wording in the language as proposed in Section 3 cannot be injurious to the citizens of North Dakota, particularly inasmuch as it says it "may." These laws imposing taxes may be — may define the measure. And I go along with the fact that you have the choice of the Legislature. Our forms and our methods of paying our income tax can be considerably simplified over what we are now trying to do. We have various exemptions that are different on the federal and the state and, as a result, as Delegate Unruh just stated, we have at each session of the Legislature to try to decide whether some of these changes in the state tax structure should be adapted to the federal or not, and I had mixed emotions about that at first, but I believe I will vote in favor of the language as it is there now, and against the amendment.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, we are on the motion of Delegate Pearce to further amend Section 3, the amendment having been read from the desk.

All those in favor signify by saying "aye; opposed "no."

The Chair is in doubt. The key will be opened and you may record your vote. If you are in favor of the amendment, vote "aye;" if you are against the amendment, vote "nay."

Saugstad votes "aye."

All right. Has everyone voted? Anyone wish to change their vote? If not, the key will be closed and the Clerk will record the vote.

There were 25 ayes, 68 nays; therefore, the motion lost.

Now we are back on consideration of Proposal 1-23. Are there any further comments?

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Are you ready to take Section 4?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE UNRUH: Turn your page to page 2, and if you would care to refer to your Constitution, it is Section 178, which reads:

"The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any county or other municipal corporation shall be a party."

You notice new language in our proposal. We say: "The power of taxation shall never be surrendered or suspended, except as provided in this constitution, by any grant — and then the wording is the same except that we have taken out "any county or other municipal corporation" and substituted "political subdivision or public agency."

Now, I'll explain why we changed that. Some of you come from areas where the Municipal Industrial Development — MIDA Act, as it's called — is being used to foster new industry, the development of industrial parks, and things of this nature to help build our State, and particularly raise our tax base in the long run. The legislation that provided the MIDA Act operates under somewhat a small gray cloud, which is created by Section 178. If you are reading it literally, there might be a question in your mind — Does this permit the State or political subdivision or a political — a public agency to be the recipient of any sort of suspension of the taxing power of the State? In other words, you're telling a new business, "Okay. You can come in and develop or you can develop this industrial park and you can suspend taxing power — the levying of taxes up to a period of five years." This is all done by purely local intercession. So it seems to apply in place of old 178. So we felt, in order to clear this up, we would have to add the phrase "except as provided in this constitution", and it relates then to the use of MIDA bonds as — it gives them permission to be used, in other words, without any cloud over them. We feel that the change is necessary to remove this doubt, and we would recommend the passage of this particular section.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, we can move on to Section 5.

DELEGATE HAUGEN: Delegate McElroy, this is your responsibility. Sorry to interrupt your newspaper. (Laughter)

VICE PRESIDENT SAUGSTAD: Delegate McElroy.

DELEGATE McELROY: Mr. President. You caught me kind of flatfooted! I didn't know this was coming.

Well, this section is similar to the old one. It does provide that the basis of taxation — or assessment, rather — shall still stay in the locality where the property is situated; in other words, the section would still operate the same as it did. Other types of public service businesses will still be assessed by the Board of Equalization or some — whatever kind of board supersedes it at a later date.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

DELEGATE KELSCH: Mr President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: If we may go back to Section 4, I'd like to ask Delegate Unruh: Is there any need for the language in line 5 and 6? I realize that was in the old Constitution, but I have a hard time seeing its purpose.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Well, we didn't think that we should bobtail that sentence right after "as provided in this constitution." I realize it may be slightly

superfluous, but we felt we should include it. If you'll note your amendment, it says "to which the state or other public agency shall be a party." And that "public agency" in this case could be a municipal industrial development corporation, or something in that area. That's why we kept the language.

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: I would like to ask somebody on the Committee what a "private utility" is.

VICE PRESIDENT SAUGSTAD: Does anybody care to answer? Delegate McElroy.

DELEGATE McELROY: Mr. President. To answer that question: There are some pipelines, I understand, that are owned privately, but they extend across county lines or political subdivisions, and we felt that it was not practical for the local assessor to be handling these types of things. They're better handled as a public pipeline, I believe.

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Mr. President. In regard to and in support of what Delegate McElroy has said: We have quite an oil industry in North Dakota and all those lines — gathering lines — and then the pipeline, like from the oil field and the refineries, and so forth, would be regarded as public — as private utilities. They are not regulated by any state agency as to rates, and so forth, or as to having to prove public convenience and necessity to operate, in comparison with what is known as a public utility, like a telephone company or an electric company, or such as that. But the Committee feels that they should properly remain under the jurisdiction of the State Board of Equalization for assessment purposes, because you take the local township assessor or the city assessor, if they should go through a municipality, they wouldn't begin to have the data, and so forth, to give a proper figure for the assessment on these properties.

VICE PRESIDENT SAUGSTAD: Any further discussion?

I believe, then, we should move to Section 6.

Delegate Cart.

DELEGATE CART: Mr. President.

If you will refer to Section 186 of the present Constitution, you would see that that is a very lengthy section — and the Committee has boiled it down, but, I think, kept all of the essential parts intact in that short section this is now before you.

There is one change that I think was very necessary when we considered this. The old section, you will note, says "All public moneys, from whatever source derived . . ." well, there's never been any attempt to go out and interfere with a township, county and municipal funds, but this should be limited to state funds, so that they wouldn't have to send the local taxing district moneys up to the State Treasurer and then have to get it back some way, or something like that. But it does require all of the state public moneys to be deposited with the Treasurer, and then apportioned out by appropriation by the Legislature, the same as formerly.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I'd like to inquire of the Committee:

I notice that under the old section, the moneys could be disbursed or paid out only pursuant to appropriations made by the Legislature. The new language now says that the moneys shall be paid out and disbursed only as provided by law. I think that there may be a difference. It may be subtle. But in the old Constitution, there had to be a legislative appropriation each time to take funds out. If you say "provided by law," could not the Legislature then pass a law that would say hereafter so many moneys — so much money would be taken out of the State Treasury for a certain purpose, and avoid the necessity to reappropriate? And if that's the case, is this what we want to do?

VICE PRESIDENT SAUGSTAD: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

We discussed this in Committee rather carefully, and we have in other sections of this article provided — placed in the wording “as provided by law.” I realize that it might be just a little close, as you say, Delegate Kelsch, that it is possible that we could pass a blanket piece of legislation; but, nevertheless, it would be the responsibility of the Legislature, and we felt in Committee that the Legislature should make the provisions for the disposition, and this is consistent with other articles or other sections of the article which we have — the “as provided by law” feature.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, we are now on the main question. We are on the question of the passage of Committee Proposal 1-23 as divided on the floor.

Now we are not voting on Section 2 and, also, then, it would follow that we delete in line 6, Section 174. So now we are voting on 1-23 with those sections and, also, in the title.

DELEGATE MAXWELL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Maxwell.

DELEGATE MAXWELL: I'd like to request a division on each of these sections, if I may, please.

VICE PRESIDENT SAUGSTAD: Delegate Maxwell has requested that we vote on each — separately on each of these sections. That request is granted.

So then at this time we will be voting on Section 3 — it's becoming a little complicated here — we are voting on Section 1; however, Section 1 is just a repealer clause, and these clauses refer — the sections refer to and correspond with the sections that are contained in Proposal 1-23. So, actually, if we vote on Section 3, we are voting then that — my interpretation of this is that if Section 3 passes this body, then Section 175 and the repealer clause would automatically be taken care of. Do you follow?

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Could I suggest that we leave consideration of Section 1 until the other sections have been voted on, and then we can amend, I think, by general agreement, I think, Section 1?

VICE PRESIDENT SAUGSTAD: Yes, that would be an excellent suggestion.

Delegate Haugen now has moved that we separate Section 1 from the other sections, and we'll vote on Section 1 following completion of the vote on the other sections. A very good suggestion.

I believe that now, that in lieu of the fact that we are voting on each section separately, we may as well begin by voting on Section 2. So now —

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President, at the request of one of the Committee members, in an effort to get the sense of the Convention, I'm going to first move an amendment, and if the amendment should be adopted, I'm going to then move that this section be re-referred to Committee so that the amendment can be refined and researched.

I'll move that on line 13 — pardon me. I think the lines are the same, but I'm not positive. I think it's still line 13. After the word “may” insert the words “to replace property taxes already in effect”.

VICE PRESIDENT SAUGSTAD: Is the suggested amendment — is that at the desk, Delegate Sinner?

DELEGATE SINNER: No, it is not.

VICE PRESIDENT SAUGSTAD: Then — yes. Well, we'll just hold this in abeyance for a moment, so that the proposed amendment can be typed and read from the desk.

DELEGATE PAULSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I have an amendment at the desk that is typed. It speaks on the same sentence. I suppose I have to wait.

VICE PRESIDENT SAUGSTAD: Yes, I believe now that you must wait.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: If it is essentially the same amendment, I'll be happy to withdraw my motion. Is it?

VICE PRESIDENT SAUGSTAD: Delegate Paulson?

DELEGATE PAULSON: Mr. Chairman, I would ask that the Chair read the amendment, and then Mr. Sinner can make up his mind whether it accomplishes his purpose.

VICE PRESIDENT SAUGSTAD: All right. The motion, then, of Delegate Sinner is held in abeyance while the Clerk reads the proposed amendment offered by Delegate Paulson.

CHIEF CLERK GILBREATH: On page 1, strike the last sentence of Section 2, and insert in lieu thereof the following:

"The legislative assembly may levy no property taxes except to provide revenue for distribution among school districts on such system as may be established by law."

And renumber the lines accordingly.

VICE PRESIDENT SAUGSTAD: Representative Sinner.

DELEGATE SINNER: Well, Mr. President, I think I'll stand by my motion then, if I have a second.

DELEGATE KWAKO: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Kwako.

The Clerk will now read the proposed amendment offered by Delegate Sinner.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-23 be amended as follows:

On page 1, in line 13 of the engrossed proposal, following the word "may" insert the following: "to replace property taxes already in effect".

And renumber the lines accordingly.

VICE PRESIDENT SAUGSTAD: Is there any discussion? Delegate Sinner.

DELEGATE SINNER: Mr. President, it's been hashed over enough, I guess; but the reason that I think there is some logic to this, and I admit, as somebody, I'm sure, will suggest, that we are going into legislative affairs. I admit that. But I think at this particular point in time we can't ignore the fact that we do have a lot of property taxes in this State and in most states; but neither can we ignore the fact that property taxes aren't any longer valid in large degree. They begin with a basic inequity and they build on it, and I don't think that we want in any way to suggest to the Legislature that when emergencies arise, that they should turn to the new property taxes to answer those and solve those emergencies. Income taxes and — principally income taxes are the only kind of taxes where you can really do what you set out to do, it seems to me, and so I — that's kind of my thinking on the proposed amendment.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE LERBERG: Mr. President.

DELEGATE PAULSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman.

I think that we all kind of fall into the trap of living in a fool's paradise on the property taxes. It's a never-never land — a land of make-believe. Any time you take a look at what is possible under our existing Constitution and what we are doing, you begin to realize that from the time that new taxes became possible to the State, that the property tax has been adjusted downwards to the point that it no longer reflects anything that was in mind in 1889. For instance, you form a property tax that is now authorized, but not levied, which would bring in a

maximum of two million eight hundred thousand to the State under today's valuations and assessment systems; but if the State Legislature raised the taxing base from 50 percent to 100 percent and the Board of Equalization assessed at 100 percent of full and true value, as the law says it should, that two million eight hundred thousand all of a sudden would become twenty-eight million in the property tax. And this is what's possible under existing law. I think that when we talk about replacement levies, as Mr. Sinner proposes, we're just fooling ourselves and deluding the public.

Now, let's recognize that the future problems revolve around school taxes, and I think that if Mr. Sinner's amendment and my proposed amendment, which I can still send down to the Committee, if the bill goes back there, should be discussed in light of today's discussion. I don't think that we need a two-thirds vote required in the Legislature, and I think, when we talk about our replacement deal, we are beginning, again, to fool the public over the long run.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. I'm not speaking for or against the amendment; only to confuse the issue a little further, to ask a question.

In the amendment, it says "to replace property taxes already in effect." Now, I think I know that Senator Sinner means the State, as well as local subdivisions; but he didn't say that, and I think when the — if this amendment does pass and the Committee studies it, they ought to consider putting in "already being levied by the State or any of its subdivisions," because that being a technical question, it might come up as to whether or not the money that's being — or the taxes that are being levied now by any school district — whether or not that would cover it. So just a suggestion, Delegate.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President.

When I gave this amendment earlier, I had the word "local" in there, but I took it out so that we wouldn't preclude the Legislature from passing the one-mill levy for the Medical School, also.

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: I agree with Delegate Sinner that something of this nature will have to be put in; otherwise, we will still have that emergency come this summer.

VICE PRESIDENT SAUGSTAD: Delegate Knudson.

DELEGATE KNUDSON: Mr. President, I support Delegate Sinner's amendment. I think it makes Section 2 a great deal more plausible.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, now we are on Delegate Sinner's motion, which is to amend Section 2.

All those in favor, signify by saying "aye," opposed "nay."

The Chair will rule the "ayes" have it.

Does anyone want — want a division?

All right. How many want division?

All right. The key will be opened. You may vote on the report. If you're voting — you're voting to adopt Delegate Sinner's amendment to Section 2.

All right. The key will be open. You may cast your vote. Saugstad votes "aye."

Has everyone voted? Anyone wish to change their vote? If not, the key will be closed. The Clerk will record the vote.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate — wait just a moment.

DELEGATE SINNER: Oh! I'm sorry.

VICE PRESIDENT SAUGSTAD: The tally shows 57 "ayes," 37 "nays." Therefore, the motion carries. The amendment has been adopted.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President, can — can — or should I move this section back to Committee, or do you want to wait and throw the whole thing back?

VICE PRESIDENT SAUGSTAD: I'll defer to — Delegate Haugen.

DELEGATE HAUGEN: Well, Mr. President, I assume that your answer, as a member of the Committee, would have probably been the same as mine; that we don't want the whole thing back. No, we surely don't. We don't. And if this amendment is approved — and I voted for it and I think it makes it more — makes the section more acceptable — if this amendment is approved and the section is also approved, I can really see no reason why it should go back to the Committee. I think we have a Style and Drafting Committee that can iron out any problems about language. Would that be okay?

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I now move my amendment as an amendment to Section 2 as amended, for discussion purposes.

VICE PRESIDENT SAUGSTAD: The Clerk will read Delegate Paulson's proposed amendment to Section 2 as amended.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-23 be amended as follows:

On page 1, strike the last sentence of Section 2, and insert in lieu thereof the following:

"The legislative assembly may levy no property taxes except to provide revenue for distribution among school districts on such system as may be established by law."

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE KELSCH: Second.

VICE PRESIDENT SAUGSTAD: The motion has been seconded by Kelsch — Delegate Kelsch.

DELEGATE PAULSON: Mr. Chairman. I think that this idea deserves your serious consideration. In the discussion that went on for an hour-and-a-half, we were talking about schools and the forthcoming emergency from the various state and district courts about property taxes. Any emergency in state operations can never be solved by a property tax, because it takes too long to realize any revenue from that system. In other words, if the State Legislature, by a two-thirds vote, did decide to levy a property tax to help finance state government here in the State Capitol, it would be a good year or 18 months before the fund became available.

DELEGATE TRENBEATH: Mr. President —

DELEGATE PAULSON: And if we are talking about the school system, the wording I have proposed, I think, would make — remove any questions about the present system and would give the Legislature the authority to move in and tackle whatever emergency may develop out of the various court decisions that seem to be bothering the tax programs of all states.

I would like this proposal to be thoroughly examined by either the Committee or this body.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I suggest we also consider this approach:

First, I thought that Delegate Sinner's suggestion would solve the problem; but if we analyze what we've done, we've simply said the State can levy taxes to replace another tax. So if the subdivision was levying 30 mills for other things, the State could take the 30 mills and use it for state money. It's just a replacement of the money. It doesn't indicate where it will go.

Now our problem concerns if we have schools in the future, and I think Delegate Paulson's proposed amendment gets to this problem. It allows the assessment on property for schools. I don't think that Delegate Sinner's really does that. If there's 30 mills being levied now, it would go on the State level and the State can collect that money and not say where it goes. I feel this is such a crucial section and there's so much controversy on it that we should send

Section 2 back to the Committee so they can consider the approach of Delegate Sinner and Delegate Paulson; but I do think Delegate Paulson's approach is a better approach, and I urge your approval of that.

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Now we're getting right down to the nitty-gritty, so to speak, that faced our Committee, because these very things were kicked around. I'm sorry, Delegate Paulson — I interrupted you before. I thought you were through. But by taking either one of these amendments, there's one thing you're doing, Delegates; you're precluding — or you're looking down the road — you're looking at a crystal ball, so to speak, saying that the education thing is the only thing that will ever be what this State will be confronted with as to having to find the moneys, other than sales and income taxes.

As I mentioned before, there may be other circumstances, other than schools, that we possibly can do this with; but I certainly feel that this body should vote on Delegate Paulson's motion, so that the Committee could get the feel and get the pulse of what the Convention feels; and, also, possibly another amendment should be tried out in regard to whether a majority vote or a two-thirds vote is what this Convention feels in this regard. Then the Committee could probably have some guidelines by which we could put this thing back together.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, just to clarify it:

If the Paulson amendment is adopted and should remain the final language, couldn't the State levy enough property tax to pay for all the secondary school needs and also replace the money that comes now from the State Equalization — or the State payment to the schools, and thereby really impose a rather large and significant new property tax? Is that conceivable, or am I misinstructed?

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. The Legislature has already imposed the 21-mill school equalization fund levy. In the last session of the Legislature, there was serious consideration given to a State-imposed 53-mill county equalization fund levy. We can only surmise that the Legislature is going to act within the bounds of acceptability, because as soon as they get outside those bounds, any problem that they come up with in severely changing the impact of the property tax, is going to be referred and voted down. We know. This is our State, and we know exactly what will happen. But in this amendment, we limit the use to school purposes. We limit it for payment in the school districts — not for substitution of State expenses.

Now, true, the State Legislature could completely wipe out all state agency schools; but it could do that today. But then the load would have to be back on the local districts. What is happening in the court system is that the court systems are saying that the — the locally-imposed property taxes are an illegal or unconstitutional way to finance schools. So we have to give the Legislature some way around this possible Supreme Court declaration.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Delegate Knudson.

DELEGATE KNUDSON: Mr. President. I will oppose Delegate Paulson's amendment. It removes this two-thirds vote protection. Shaky as I think that may be at some future time, it has some value in 1972.

VICE PRESIDENT SAUGSTAD: Delegate Devine.

DELEGATE DEVINE: Mr. President. I would speak in favor of Delegate Paulson's motion, while I appreciate what Delegate Sinner was trying to do, and I think he raised a very valid question. I really would like to see it go back to Committee. I am concerned about all these other property taxes that are now existing. We probably have a dozen different property taxes that are existing. If these were knocked out, would you want this to all come back to the Legislature? I would think not.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Might I suggest to the delegates, so that we can move on, that we vote on Delegate Paulson's amendment. This would show how the delegates feel about that approach; then we proceed to indefinitely postpone or kill Section 2. This would enable the Committee to bring it back, after considering the debate, with the possible amendments. We could then go on and pass Sections 3, 4, 5 and 6, instead of — this would avoid — if we try to refer Section 2 back to the Committee, we'll wonder what happened to the others. So, if we vote on Delegate Paulson's amendment and get this out — I urge you to vote "no" — then that would urge the Committee to come back with something in accord to the wishes of the Convention, and we could get back on the others and vote on them.

VICE PRESIDENT SAUGSTAD: Delegate Lerberg.

DELEGATE LERBERG: Mr. President and Delegates:

I might say, just for the Convention's information here — and I appreciate the fact that the Committee's report shouldn't be accepted as such, and great discussion's been had on the floor on this and many other things — I might just observe, though, that this particular proposal is the place where the Committee put what it considered were the most noncontroversial parts of its deliberations, and the other ones are still to hit the floor! (Laughter)

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I have a question I'm not entirely certain on.

If we follow the procedure that Delegate Kelsch has outlined, do Sections 3, 4, 5 and 6 then stand as approved, and they will require no further action? Would this be your ruling?

VICE PRESIDENT SAUGSTAD: Well, no. The way I understand it, the question has been divided, so we're voting on these sections separately. I believe that any of the sections which are passed by this body will have been deemed to have passed as a part of Proposal 1-23, and they will have been disposed of either by passing or failure to pass.

DELEGATE HAUGEN: Yes. Then I don't believe that the Committee or myself, personally, have any objection to this. Evidently, the Committee did make a mistake in not breaking down our proposals into separate sections. As Delegate Lerberg observed, we thought that this one was going to go through without any question. (Laughter)

VICE PRESIDENT SAUGSTAD: We are now on the motion of Delegate Paulson to further amend Section 2. All those then — if you vote "aye," you vote in favor of Delegate Paulson's motion to adopt his amendment to Section 2 as amended; if you vote "no," you are voting not to adopt it.

I'll now put the question. All those in favor signify by saying "aye;" opposed "no." The Chair will rule the "noes" have it, unless a division is called for.

DELEGATE KELSCH: Division.

VICE PRESIDENT SAUGSTAD: How many want a division. Division granted.

So now the board will be opened and, if you vote "aye," you're voting to adopt Delegate Paulson's motion; if you vote "no," you're voting against adopting that amendment.

You may record your vote. Has everyone voted? Saugstad votes "aye."

Does anyone wish to change their vote? If not, the board is closed. The Clerk will take the tally.

The vote shows 65 "nays;" 30 "ayes." The motion lost.

So now we are back to the main motion — the adoption. We are now back on the main motion of — to vote "yes" or "no" on Section 2 as amended.

Delegate Haugen, do you want to make a motion?

DELEGATE HAUGEN: Well, Mr. President, I have a question in my mind as to what is the best thing to do. I presume that the fair thing is to bring this section back to Committee for further discussion. Personally, I may say

that I am convinced in my own mind that the section as presently worded is a good section; that it fits the Constitution; it fits the new Constitution, as I believe it should; it gives the Legislature authority to take action in case of emergencies. But in the interests of fairness, I will move that Section 2 be re-referred to the Committee. No? Let's vote on my motion. I believe that there is a feeling among some of the delegates that we should consider this further. The Committee is in good order, as far as its work is concerned. I have no assurance what the Committee will do if it comes before you again; but in the interests of fairness to those who do oppose the wording of the present section, I will move that it be referred to Committee and the balance of the section — or the balance of Committee Proposal 1-23 be voted on at this time.

DELEGATE BAKER: Second.

VICE PRESIDENT SAUGSTAD: The motion has been seconded by Delegate Baker.

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: Mr. President. I thought that I recall when we had this issue up several days ago, the desk had indicated it was almost impossible for them to keep track of a proposal half in one position and half in another. That was why I thought we had to do what Delegate Kelsch had suggested, which was simply vote "no" on Section 2, in which case the old section of the Constitution remains alive; that the Committee will then have to come in with a new proposal, but 1-23, somewhat emasculated, will then go on its merry way.

VICE PRESIDENT SAUGSTAD: I believe that that statement made by Delegate Lander is correct. Of course that we have these various sections tied into Delegate — or, that is, Committee Proposal 1-23, and perhaps for the record, as far as the desk force is concerned, there should be a vote on Section 2. If it is defeated, then it would naturally follow that it would be necessary for the Committee to bring in a committee proposal replacing that section of the Constitution.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Personally, I certainly — personally, I certainly prefer to vote. I did make sort of a commitment to move it — to refer it. If my second will agree and you hold that my motion is not in order, I would rather withdraw it at this time.

VICE PRESIDENT HAUGEN: Delegate Haugen has asked to have his motion withdrawn, with the consent of the second.

(Delegate Baker nodded.)

VICE PRESIDENT SAUGSTAD: It is granted, and the motion has now been withdrawn.

DELEGATE HOFFNER: Mr. President. Mr. Chairman.

VICE PRESIDENT SAUGSTAD: I believe Delegate Engelter was first.

DELEGATE ENGELTER: Mr. President. I think because Section 2 has been amended, it would be necessary to suspend the Rules.

VICE PRESIDENT SAUGSTAD: That is correct. Before we could vote on it, it would be necessary to suspend — are you offering that as a motion?

DELEGATE ENGELTER: I think that would be proper.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: I move that the Rules be temporarily suspended and Section 2 of 1-23 be deemed properly re-engrossed and placed on the calendar for final passage.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Delegate Litten seconds the motion, and we then have the motion that the Rules be suspended and have this properly before us for passage. Did you wish to speak, Delegate Hoffner?

DELEGATE HOFFNER: Yes, Mr. Chairman. I just want to mention, for the information of the Committee, that we have another avenue, if this is defeated — Section 2. They could attach it to another proposal that deals with noncontroversial issues and resubmit it. (Laughter)

VICE PRESIDENT SAUGSTAD: We are now on the motion of Delegate Omdahl that the Rules be suspended, that Section 2 be considered properly re-engrossed, and be placed on first reading and first passage as amended.

All in favor signify by saying "aye," opposed "no." I believe the "ayes" have it, and the motion prevails.

DELEGATE PAULSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: I think that the discussion plainly points out that there should be one more look given to this section of the bill before it goes to final passage. It could carry by 51-55 votes, and we wouldn't be happy with it. Therefore, I move that further consideration of Section 2 be indefinitely postponed and the subject matter be referred to the Tax and Finance Committee.

VICE PRESIDENT SAUGSTAD: I believe that's out of order.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate — first, I believe that I would rule that motion out of order. I don't believe that we have a provision — that provision in our rules.

DELEGATE KELSCH: To accomplish the very same thing, I would urge you to vote "no" on Section 2. That will cause the Committee to have to re-present it to us, and we'll see what the Committee comes up with.

VICE PRESIDENT SAUGSTAD: All right. Now we are on the main motion of passage of Section 2, Proposal 1-23 as amended.

The board will be opened and you may cast your vote. Saugstad votes "nay."

Has everyone voted? Anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The vote shows 21 "ayes," 74 "nays," three absent and not voting. Therefore, that Section 2 of 1-23 lost.

We will now be on the next order of business, which is consideration of Section 3 of Proposal 1-23.

The question has been called. The board will be open and you may cast your vote. Have all voted? Does any delegate desire to change his vote? Saugstad votes "aye." The board will be closed and the Clerk will take the record.

The record discloses 85 "ayes," 9 "nays," four absent and not voting. Therefore, Section 3 is adopted.

Next we shall have under consideration Section 4. All right. We will now call — the main question is on passage of Section 4.

The board will be opened. You may record your vote. Saugstad votes "aye."

Have all voted? — Does anyone — does any Delegate desire to change his vote? The board will be closed and the Clerk will take the record.

The record discloses 89 "ayes," three "nays," six absent and not voting.

Therefore, Section 4 of 1-23 has been adopted.

Next we shall have under consideration Section 5 of 1-23.

The question has been called. The board will be opened. You may cast your vote. Saugstad votes "aye."

Have all voted? Does any delegate desire to change his vote? The Clerk will close the board and take the record.

The record discloses 93 "ayes," one "nay," four absent and not voting.

Therefore Section 5 has been passed or adopted.

Next we shall have under consideration Section 6 of 1-23.

The question has been called. The board —

DELEGATE PEARCE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Pearce.

DELEGATE PEARCE: May I ask the Committee a question on Section 6?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE PEARCE: The last Legislature provided that many State boards, including the State Bar Board, of which I am the Chairman, should not deposit license fees that they collect with the State; that they should, instead, deposit them in a bank and account for them in that manner. Now, would this Section make that 1971 Act unconstitutional?

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Mr. President. No. The purpose of the wording here on line 19, "except as otherwise provided by this constitution or by law," will permit agencies, such as the Bank — or the Bar Board not to have to do these things monthly, because, as you can understand the operation of a bank, you can't follow this same general rule. It just isn't a practical thing. So that's why the section is provided in there.

VICE PRESIDENT SAUGSTAD: Does that answer your question, Delegate Pearce?

DELEGATE PEARCE: I think so.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: That answer raises the question: Why have it in the Constitution then? If the Legislature isn't going to be able to say whether they should deposit it or not, what's the purpose of having that particular part in the Constitution?

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Mr. President, I was rising to ask the same question that Delegate Kelsch asked. Why have it in the Constitution at all?

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Well, Mr. President, it seems perfectly clear to me that this is a blanket provision for the way the money is to be handled, unless it is otherwise specifically mentioned in the law or elsewhere in the Constitution. If you didn't have this, you would have to have a separate piece of law on every piece of money, I suppose.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, are we ready for the question?

All right. Then the board will be opened and you may — you will be casting your vote on Section 6 — Section 6 of Proposal 1-23. Saugstad votes "aye."

Have all voted? Does any delegate wish to change his vote? If not, the Clerk will close the board and take the record.

The record discloses 82 "ayes," 12 "nays," four absent and not voting. Therefore, Section 6 has been adopted.

DELEGATE WARNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Warner.

DELEGATE WARNER: I would now like to explain my reason for voting "no."

As I understand, there's going to be a recommendation that the Office of the State Treasurer be removed from the Constitution, and we have just adopted a provision in the Constitution that money shall be deposited in that office.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Well, Mr. President, in answer to Delegate Warner, we have a — we have a Committee on Style and Drafting, and one of their duties and responsibilities is, in the end, to take care of these conflicts that may arise because one committee is not able always to take into account what another committee is doing, and in the final draft to be presented to us, I'm sure that this matter will be taken care of.

Mr. President, now I think — I believe that, for the purpose of the record, the motion that the figure "174" in line 1 — I assume — I don't have this written down, so I imagine that the stenographer is taking it down — that the figure "174"

in line 1 be deleted, the figure "174" in line 6 be deleted, all of lines 8, 9, 10, 11, 12, 13, 14 and 15 be deleted, and that the section numbers and line numbers be corrected.

I so move. And then may I make an inquiry of the Chair?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE HAUGEN: In order that there be no misunderstanding of what we have done here today, I would then think that a motion should be made that 1-23 as further amended be re-engrossed and be placed on first reading and passage, so that there will be no question that we are adopting in conformity with the amendments that I have now offered.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE NICHOLAS: Second.

VICE PRESIDENT SAUGSTAD: Delegate Nicholas seconded that motion.

We have a motion then from the floor by Delegate Haugen that — the desk force informs me that they think that your motion is in order in removing Sections 1 — reference to Section "174" in lines 1 and 6; that the engrosser will automatically remove that portion dealing with Section 2 which occurs at lines 8 through 15; that that will be taken care of automatically; but then to remove the reference — the references to Section "174" and that the lines should be re-numbered accordingly, and that that portion of your motion is perfectly in order. So, if you will accept that change in your motion —

DELEGATE HAUGEN: If this meets the requirements, I will so move.

VICE PRESIDENT SAUGSTAD: All right. It has been then moved and, I believe, seconded by Nicholas, that Haugen's motion in reference to Section "174" be removed from Committee Proposal 1-23 and that the Rules be suspended and that it be considered properly re-engrossed and that the entire proposal now be placed before us.

All right. The motion then, of Delegate Haugen is that the references to Section "174" will have been deleted and that the Rules be suspended and that it be considered properly re-engrossed and that it will now be placed before us for first reading and final passage.

Do you have a question, Delegate Kelsch?

DELEGATE KELSCH: Mr. President, a point of information.

I wonder — I thought the ruling was, of the Chair, that we would not vote again once these have been passed. If we open up that situation, we have the very difficult situation where some of us voted "yes" on some and some of us voted "no" on some, and I thought we were going to consider the section passed, a section is passed, and there would be no need for a further vote. I do think that the amendment is necessary that Delegate Haugen is making, and I do think we have to vote on Section 1 as amended, but I don't know that we should re-submit the package of Sections 2, 3, — or 3, 4, 5, and 6 and 1 on a further vote.

VICE PRESIDENT SAUGSTAD: I believe that Kelsch has raised a — his point, I think, is well-taken, and I believe that an earlier point we did adopt — that is, I think the Chair ruled that once there had been a division on a proposal and that then we voted on each of the sections separately and they carried, that that was it. However, in this particular instance, I believe that we have not dealt with Section 1, and so then I believe that if this will meet with the approval of Delegate Haugen, then, that his motion will be, then, that we vote on Section 1 as amended.

DELEGATE HAUGEN: Yes. That's all right.

VICE PRESIDENT SAUGSTAD: All right. Now we are voting on Section 1. If there is no further discussion from the floor —

DELEGATE PAULSON: A point of order, Mr. Chairman.

I don't think we have voted on the amendment yet.

VICE PRESIDENT SAUGSTAD: Yes. Properly, we should adopt the amendment to delete that. I'm glad you mention that. The first vote will be on the adoption of the amendment to delete reference to Section "174".

All those in favor signify by saying "aye;" those opposed vote "nay." The "ayes" have it and that section — Section 1 — has now been amended by deletion of Section "174."

Now, Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I haven't heard the master motion here of suspending the Rules before we vote on each of those, if we're not going to vote on them again, and I know we didn't in this particular section, and since this is first reading and they have amended on the floor, it seems to me the Rules would have to be suspended when we voted on each section. I don't know whether we did it on the others or not, but I know we didn't on this one.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I would move that the Rules be suspended and that Section 1 be deemed properly re-engrossed and placed on the calendar for first reading and passage.

VICE PRESIDENT SAUGSTAD: Is there a second? Seconded by Delegate Lander.

All those in favor signify by saying "aye;" opposed "no." The "ayes" have it.

So now we have before us Section 1. Is there any further discussion? Hearing none, the board will be opened and you may record your vote. Saugstad votes "aye."

Have all voted? Does any delegate wish to change his vote? If not, the Clerk will take the record.

The record discloses 93 "ayes," no "nays," five absent and not voting. Therefore, Section 1 has been passed or adopted.

Now — Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, a point of inquiry:

Does the record show that we suspended the rules on these other sections? If not, we've got to do something, because I know Delegate Pearce, when he got in there on that section that has the reference to the United States, would jump on it and say that wasn't properly enacted.

DELEGATE LERBERG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lerberg.

DELEGATE LERBERG: I don't think any of these other sections have been amended.

VICE PRESIDENT SAUGSTAD: That is correct. Our record at the desk shows that none of the other sections were amended on the floor.

We will next then have —

DELEGATE KELSCH: Mr. President, may we be on the twelfth order?

VICE PRESIDENT SAUGSTAD: Yes, we may.

DELEGATE KELSCH: Mr. President. Fellow Delegates, I would like to move we reconsider our action by which we passed Proposal No. 1-28, and if I get a second I'll explain my reasons.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE SANSTEAD: Second.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead seconds.

DELEGATE KELSCH: Fellow Delegates, this is the proposal by which we set out a five-year residence requirement to hold office — any state office in this State — and my amendment at the desk would change that to two. This is a late date for moving this. I hate at this late hour to bring this up. But this is the last day for moving it, and still have a majority vote. So I felt I had to, and I would like to ask you to reconsider our setting a five-year residence requirement for holding State office. I think our main content of this Proposal is to prevent carpetbagging. I think two years would do that. I don't think anybody is going to come to North Dakota and wait two years to try to run it. I think two years would be long enough. But what I'm concerned about is the fact of what this

may do to our young people who go out of the State to find employment and decide to come back to North Dakota, and while they're out of the State, and they can relax the residence requirement of the other states, they may well vote in the other states and come back to North Dakota. Fine. But they could not run for state office for five years.

I'm also concerned with the fact that now, when our young people go out of the State to go to college, with the relaxing of residency requirements, it's very likely they would want to vote in the other state or establish residency in the other states to get favorable tuition treatment, and these are 18-year-olds now, and they decide to vote and then to come back in North Dakota and live and vote. But if they stay away, out of North Dakota, they'd have to wait five years. And this is one of the problems we have in getting some of these people to run for office — qualified people to run for office. So I would urge you consider the action.

So the motion is at the desk. The motion would be that we drop the word "five" years residency to "two" years.

VICE PRESIDENT SAUGSTAD: Any further discussion? If not —

DELEGATE LARSEN: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Larsen.

DELEGATE LARSEN: Is this thing working?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE LARSEN: As the records show, I voted against Section 1-28 at our last meeting, and I voted because I felt that the age limit should have been lowered to 21, and I so wish that to be shown; and if so, will make an amendment on this Section 1-28 to that effect.

VICE PRESIDENT SAUGSTAD: Delegate Larsen, I believe that we will have to dispose — unless — yes. You can either further amend Delegate Kelsch's motion or wait until Delegate Kelsch's motion has been made, and then offer an additional amendment.

DELEGATE HERNETT: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hernet.

DELEGATE HERNETT: I think everybody's hungry, and I would like to recess. I believe, since we haven't adopted our permanent Rules, that you're only going to need a simple majority at any time, Delegate Kelsch, and I would like to see us put this off until tomorrow, so that the Committee could talk about it, so we can think about these things. It's a late date to consider amendments.

VICE PRESIDENT SAUGSTAD: Well, just again, the Chair is not supposed to speak on these matters; but this is an instance, I believe, where the motion of Delegate Kelsch could be placed, if it carries. Then we have already considered it and then someone could either move to have it referred to Committee or placed someplace on the calendar. So then there's no question about that we have it before us again.

Hearing no further discussion, we are now on the motion of Delegate Kelsch that this body reconsider its action on Proposal 1-28.

All those in favor signify by saying "aye;" opposed "no." The Chair will rule the "ayes" have it, unless a division is called for.

No division being called for, we now have before us Committee Proposal No. 1-28. What is your wish?

DELEGATE HERNETT: Well, now, Mr. President —

VICE PRESIDENT SAUGSTAD: Delegate Hernet.

DELEGATE HERNETT: Since it is here, I'll move now that it be placed at the foot of the calendar.

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Delegate Hernet has moved that Committee Proposal No. 1-28 be placed at the foot of the calendar. Is there a second to that motion?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Warner Litten seconded that motion.

All in favor signify by saying "aye;" opposed "no." The motion carries and Delegate Proposal No. 1-28 will be placed at the foot of the calendar.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, do you want to recess or adjourn?

VICE PRESIDENT SAUGSTAD: There are some, I believe, some announcements and other things from the desk, and then I believe that there are committee hearings scheduled for this afternoon, so that when we have finished the work at the desk, we will be in a position to adjourn.

DELEGATE RUNDLE: Well, one of the first things of reasonable people is not to die of starvation, and I'm just wondering. (Laughter)

VICE PRESIDENT SAUGSTAD: We will now be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: The Executive Functions Committee will meet one-and-one-half hours after recess of the Session on Tuesday, January 18th.

Apple Creek Country Club, located six miles east of Bismarck on old Highway 10, welcomes all delegates to use their diner and evening facilities. The Club is open on Tuesday, Friday and Saturday evenings.

That's all I've got.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: The Committee on Finance and Taxation had expected to have a vacation this afternoon; but I think that, under the circumstances, I had best call the meeting for two o'clock of the Committee on Finance and Taxation.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President.

DELEGATE HAUGEN: Mr. President:

VICE PRESIDENT SAUGSTAD: Yes, Delegate Haugen?

DELEGATE HAUGEN: Might I suggest that those delegates who have strong feelings on Section 2 of 1-23 appear before the Committee and discuss this matter with the Committee this afternoon?

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Mr. Chairman, the Committee on Legislative Functions will meet at two o'clock in the Large Hearing Room.

VICE PRESIDENT SAUGSTAD: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, the Committee on Education, Public Lands and Resources will meet at 1:30 in G-1.

DELEGATE MAXWELL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Maxwell.

DELEGATE MAXWELL: I would remind the members of the Bill of Rights Committee that our hearing today is at 1:30.

DELEGATE SANSTEAD: Mr. President.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I'd like to announce a meeting of the Judiciary Committee at the usual place, at 1:30, and, fellows, if you'll be there, why we can get out in a little while. There are no women on that committee, as the records will show. (Laughter)

Mr. President, there has been a paper passed out to each of your desks, and I think a little word of explanation, so you make use of it. It has to do with 1-11, and in the first column you will find the old section of the Constitution; in the second column you will find the majority report and where that material was included in the majority report, and in the third column you will find where that provision was dealt with, if it was dealt with, in the minority report. So —

so in referring to that, you'll have to be making full reference to that in making your study of these two records.

DELEGATE SANSTEAD: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I would like to call a meeting of the Education Subcommittee on Trust Lands immediately after adjournment, in Room G-1.

I might explain that Counsel Cuffe informs me that the State Land Department has had an individual ready since roughly noon hour to speak in the Committee about the change; and since we're going to be submitting that to our full Committee this afternoon, I think this emergency session of the Subcommittee on Trust Lands ought to meet immediately in Room G-1.

VICE PRESIDENT SAUGSTAD: Delegate Poulson.

DELEGATE POULSON: Mr. Chairman, I rise to inquire:

I happen to be the possessor, as I know many of you are, of a blue ticket for our party this evening, and being a relative stranger in Bismarck, and being highly desirous of going to the party, I'd like to know how to get there.

VICE PRESIDENT SAUGSTAD: Will someone so inform Delegate Poulson? The Clerk, I think.

CHIEF CLERK GILBREATH: The tickets are for tonight's party. The ticket is good for one couple at the door, at the Municipal Country Club, which would be eight or nine blocks directly west of the Capitol, on Boulevard, I believe. It would be on Boulevard, and you'd run into the golf course, and there's a sign that says "No Snowmobiles." That's as close as I can tell you to get there. It will open at eight o'clock.

DELEGATE HILDEBRAND: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hildebrand.

DELEGATE HILDEBRAND: I would like to announce that Representative Elmer Miller and Mrs. Miller are visiting us in the Chamber, and I'd like to have the Convention recognize them.

VICE PRESIDENT SAUGSTAD: Very fine. (Applause)

There is one further announcement from the desk.

CHIEF CLERK GILBREATH: The Calendar Committee will meet at 8:30 A.M., Wednesday, January 19th in the President's office.

VICE PRESIDENT SAUGSTAD: The desk is clear. Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I move we adjourn until nine o'clock — woop — woop! I move —

VICE PRESIDENT SAUGSTAD: Delegate Diehl moves that the absent members be excused and seconded by Delegate Daniels.

All in favor, signify by saying "aye;" opposed "no." The motion carried.

Now, Delegate Rundle.

DELEGATE RUNDLE: Now, before I make it, I have an announcement.

The Bismarck Police are very helpful getting you to and from the Municipal Country Club. (Laughter)

I move we adjourn until tomorrow morning at nine o'clock.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: All in favor signify by saying "aye;" opposed "no." The motion carries and we are adjourned.

(The Plenary Session adjourned at 1:38 P.M., Tuesday, January 18, 1972, until 9:00 A.M., Wednesday, January 19, 1972.)

VOLUME XIII

(January 19, 1972)

MORNING SESSION

(The thirteenth day of the Plenary Session commenced at 9:13 A.M., Wednesday, January 19, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

We'll be on the second order of business, the Invocation.

Our Chaplain for this morning is the Reverend Norman Winkelman, Pastor, Calvary United Methodist Church of Bismarck.

REV. NORMAN WINKELMAN: Dear Lord and Father of mankind, forgive our foolish ways. Reclothe us in our rightful minds; in purer lives Thy service find; in deeper reverence, praise.

We thank You, Our Heavenly Father, for the leading of Your spirit in the establishing of our nation under God, and we pray for Your divine guidance as we work to build a constitution to govern our beloved State of North Dakota.

In the midst of the press of the business at hand today, make our minds calm, so that we may be attentive to Your voice of truth. For we pray it in Jesus' name. Amen.

PRESIDENT WENSTROM: We will be on the third order of business — Roll Call.

The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence? The key is closed.

The roll call discloses 95 present; three delegates absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 17th day of January, 1972, and recommends that the same be corrected as follows:

On page 191, in line 49, delete the word "public" and insert in lieu thereof the word "policy".

On page 196, delete 27 "Committee Proposal No. 1-61".

And when so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Paulson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Revision and Correction of the Journal.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report is adopted.

We'll be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-37, has had the same under consideration and recommends that the same be amended. When so amended, recommends the same do pass.

Delegate Hoffner, Chairman. Delegate Hoffner moves the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-37; that the Proposal be amended. Any discussion?

Hearing none, as many as are in favor of the adoption of the report will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-37 will be on the sixth order of business tomorrow.

We'll be on the ninth order of business — Introduction and Referral of Proposals to Committees.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-99, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that article 33 of the amendments to the constitution of the state of North Dakota be repealed; and that new section 8 of Article XVI of the constitution of the state of North Dakota be created, both of which pertain to the recall of certain elected officials."

PRESIDENT WENSTROM: Committee Proposal No. 1-99 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-100, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that two new sections to the constitution of the state of North Dakota, both of which pertain to the executive branch of government, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-100 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-101, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 139 of the constitution of the state of North Dakota be repealed; and that article XVII to the constitution of the state of North Dakota be created, both of which pertain to public utilities."

PRESIDENT WENSTROM: Committee Proposal No. 1-101 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-102, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 71 and 72 of the constitution of the State of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to the executive branch of government."

PRESIDENT WENSTROM: Committee Proposal No. 1-102 is referred to the Committee on Executive Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-103, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 81 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to ethics, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-103 is referred to the Committee on Executive Functions.

Fellow Delegates, it's only a few minutes now until 9:30, at which time, by motion, we have a committee report to hear; and so, rather than take a chance on starting on the tenth order of business, I am going to declare the Convention at ease for just a few minutes.

The Convention will be at ease.

(The Convention was at ease from 9:24 A.M. until 9:32 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. We'll be on the fifth order of business — Report of Committees.

CHIEF CLERK GILBREATH: Mr. President: A majority of your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-53, has had the same under consideration and recommends that the same do pass.

Delegates Maxwell, Daniels, Fiedler, Geelan, Hubrig, Lamb, O'Toole, Schmit and Urdahl.

Delegate Maxwell, Chairman. Delegate Maxwell moves that the report be adopted.

Mr. President: A minority of your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-53, has had the

same under consideration and recommends that Committee Proposal 1-53 be amended as follows:

On line 1 delete the comma after the word "Dakota."

Delete line 2 and insert in lieu thereof the following:

"be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom to obtain employment."

After line 5, add the following:

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"There shall be no discrimination against a qualified person's right to practice a trade or profession or to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade or labor organization or professional group."

And renumber the lines accordingly.

And when so amended, recommends the same do pass.

Delegates Burbidge, Bender, Decker, Huckle, Thompson and Tudor.

Delegate Maxwell, Chairman.

Delegate Burbidge moves that the report of the minority be substituted for the report of the majority.

PRESIDENT WENSTROM: The question is on the adoption of the substitute proposal — the amendment that the report of the minority be substituted for the report of the majority.

Do we have any discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: Since being appointed to the subcommittee on this issue some six months ago, I have heard much testimony on the subject. I have spent a fair amount of personal time — time on personal discussion on the matter and have received quite a little personal mail. I would like to share my experiences and observations with you.

I find two areas of agreement on the subject, one which, I am sure, deeply concerns us all, and the other which greatly compliments us all.

The first area of agreement is that this issue has a substantial bearing on citizen approval of our whole Constitution. Each side on this issue has stated very sincerely and frankly that if we take action contrary to their point of view, serious consequences could develop. I commend each side on being so candid and so honest.

Now, the other area of agreement — and I find this almost unanimous — is that delegate opinion on the subject is not greatly influenced by the game of numbers or by the desire to be on the popular side. Our individual decisions on this matter will be based on what each of us feel is right — on what we can support with honesty and with dignity. This doesn't make agreement any easier, but it should increase citizen confidence in our actions on this and other important matters.

Now, as we face the areas of disagreement, one of the conflicts of which I have become aware is the clash of the Emphasis on Detail versus the Emphasis on Principle. I am aware that some learned and sincere people have become such constitutional purists — on this one issue, at least — that they would delete "right-to-work" from our Constitution because it offends their sensitivities on their definition of what is constitutional material. I take note of their conclusions on this detail, but I respectfully disagree.

There is room in our Constitution to deal with such basic people-to-people rights as the freedom of religion and the freedom of the press. There was room in our old Constitution to deal with "right-to-work." Have we suddenly become so sophisticated that we cannot acknowledge this basic right because it doesn't fit into our narrow definition of constitutional matter? Is space in this Constitution so exclusive and so precious that there isn't room for 50 words protecting the individual's right to dissent? Are we so tidy in our constitutional housekeeping

that we've become excessively concerned about cluttering up our Constitution with a simple statement of rights?

Even if our constitutional purists are right, they are right only on detail — on definition and on form. If we must err in constitution making, let us err on detail, because we have an infinitely greater obligation to be right on principle.

Let's look at the principle involved — let's look at the basic issue that is before us.

Now, we start out our effort on constitution making with the basic and stated premise "All rights are inherent in the people." It is our grave and awesome responsibility in the Bill of Rights to transfer some of these rights to government and to preserve other rights to people.

The subject we are dealing with now concerns both the people's right to govern and the individual's right to dissent — both constitutional matters. Let's look at the constitutional ramifications involved with the power to discriminate.

The power to discriminate is the power to dominate, to coerce, to police. The power to police is a governmental power. The power to discriminate is the power to create monopoly — the power to deny or limit entry into a field of endeavor based on an arbitrary internal decision of a self-interest, non-governmental group.

The power to discriminate is the power to set public policy if private, self-interest groups are granted the exclusive right of domination over their field. The public would thus be governed — often on very important and vital matters — by the internal decisions of a private special-interest group.

The power to discriminate is the power to discourage innovation and change — a matter of vital importance.

The power to discriminate is the power to limit service.

And most of all, the power to discriminate is the power to limit dissent — the power to silence minorities within an organization who, for whatever reason, question the practices and/or the policies of their leaders. It's indirect but important result is a less-effective organization, with the leaders less responsive to the wishes and the objectives of the members. Let's not forget that if the members of a private organization have the power to dissent, they have an effective Bill of Rights — they cannot be a captive minority. The right to dissent has an important role in the democratic process.

Now, some have said that this proposal is antiorganization. I couldn't disagree more. I repeat — I couldn't disagree more. This is neither its intent nor its effect. I hold firmly to the belief that the most effective organization is one whose members want to belong to it because it is effectively carrying out the role for which it was created. Further, the most effective organization is one whose leaders are motivated by the knowledge that they must do the job or they will lose support of the members.

Since the power to discriminate is the power to police, the power to create monopoly, the power to limit innovation and change, the power to set public policy, the power to limit service and, most of all, the power to limit dissent, it is the power to govern. The power to govern and the framework of government is the basic question before this Convention. It is not a mundane legislative detail. It is, and should be, a matter of basic concern in this basic document.

Now, let's look for a moment at the framework of government. In matters of state and local government, we divide responsibilities and delineate and limit powers. We provide for due process to protect both the rights of the individual and of society. The deliberations of this Convention are primarily to this end.

Now, the proposal before you says, in effect, that the transfer of the power to govern, either by omission or commission, shall not be made to special-interest non-governmental groups. It says, in effect, that the Legislature shall not franchise the powers of government — shall not give non-governmental groups dictatorial power for licensing or employment in their special-interest field. It says, in effect, that decisions in licensing of professionals for the public's protection shall be made by boards appointed by and approved by elective officials responsible to and answerable to the electorate. It says, in effect, that due process of law

shall be available to anyone who questions the goals and decisions of the appointed board.

In summary, the proposal before you guarantees that the power to govern shall remain within the framework of government — shall be subject to the Bill of Rights, shall be either directly or indirectly answerable to the citizens for periodic elective approval, and shall be responsible and responsive to the safeguard of judicial remedy.

Fellow Delegates, we have before us a proposal whose intent and objective is right; and, further, it is a basic constitutional matter. I strongly urge your approval of the minority report. If the minority report should prevail today with your support, we have the privilege on the tenth order tomorrow to hold dialogue and discussion on the best alternate to support the intent and objective of the minority on the Bill of Rights Committee.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President:

This is a day of destiny for the 1972 Constitutional Convention. On this day — Wednesday, January 19, 1972 — the fate of the new Constitution will be settled. That fate will not be resolved on election day next spring; but here, today, now.

A majority of the Bill of Rights Committee solicits your endorsement of a course that we are confident is a correct one, and one that is best calculated to assure the success for the product of this Convention. We submit that the Majority Proposal is the correct one because it is founded upon firm constitutional grounds, because it would result in a constitution that is fair and equitable and right, because it would deal even-handedly with all citizens.

We submit that the Minority or Burbidge Proposal is not constitutionally sound and would produce a constitution that would unfairly and unjustly and unnecessarily discriminate against two groups of citizens in this state — organized labor and the organized Bar of North Dakota. We submit that with such a blemish this Constitution is doomed. We suggest that the work of this Convention cannot possibly survive the malignancy of such a defect.

The Bill of Rights Committee has voted to delete Section 23 from the Constitution on what I see has been academically correct constitutional grounds. These grounds are that it deals with statutory rather than constitutional material. We have, all of us, heard and read — and have probably said at one time or another — a lot about what belongs properly in a constitution and what shall be left to the Legislative. I am frank to say that, until a year ago or so, I had not given a great deal of thought or study to the distinction. I think that this was true of all of us to start with. We have since learned that the basic function of a constitution is to establish the essential machinery of government and to protect individuals from governmental abuses. Some have simplified the formula to something like this: A constitution's role is to protect people from government. Protecting people from people is statutory.

I have heard, and so have you — and we've heard it again this morning — that the right to work is a basic right and, therefore, it should be in the Constitution. I don't know what the authority is for the proposition that this is a basic right. It's not found in the common law or in the Magna Carta or in the Declaration of Independence. You won't find it in the Constitution of the United States or any of the amendments to that document. Two-thirds of the states of this Nation don't even have a right-to-work law on their statute books, much less in their constitutions. Out of the fifty states, only six or seven, in addition to this State, have such a provision in their constitutions. The other 43 or 44 have no reference to it whatsoever. In fact, about a half-dozen states go to the exact opposite pole and set out as a constitutional basic right the right of labor to organize and to bargain collectively. So how basic these rights are in these dozen or so states that have spoken on labor-management relations depends on which of the two special interests has the ascendant and can exert the necessary pressure at the time the constitution is written.

Our Committee saw Section 23 as not voicing a basic right at all, but an attempt to regulate people in their relations with each other. This section does

not limit the power of government, as a constitution should; instead, it expands the power of government to regulate citizens, and the Burbidge Proposal would go even further in that direction; and this, Mr. President, is legislative. The posture of the Committee is not one of opposition to right-to-work laws. It is not that at all. It is simply that this is a subject that belongs in the statutes and not in the Constitution; and, of course, right-to-work laws — right-to-work propositions are fully covered in our present statutes. I have counted eight separate and individual statutes dealing with right-to-work, and each one of those will remain unaffected by the deletion of Section 23 from the Constitution.

We have Section 34-01-14, passed by the 1947 Legislature, and it reads: "The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization, and all contracts in negation or abrogation of such rights are hereby declared to be invalid, void and unenforceable." This is the law that was referred by petition to the people, and was approved on June 29, 1948, by a two-to-one margin. As a result of that referendum, this law is strongly rooted in our State, and it would take a two-thirds vote of both houses of the legislature to amend or repeal it. And even if we didn't have that, there are seven others.

There is 34-08-02, which states: ". . . the public policy of this state is declared to be that a worker of this state shall be free to decline to associate with his fellows, . . ."

There is 34-09-01, which reads practically the same. It goes on a little bit further: "The public policy of this state is declared to be that a worker shall be free to decline to associate with his fellow and shall be free to obtain employment wherever possible without interference or being hindered in any way, . . ."

There is 34-01-06, which says: "Every person, corporation, or agent thereof, who maliciously interferes or hinders, in any way, any citizen of this state from obtaining employment or from enjoying employment already obtained from any other person or corporation, is guilty of a misdemeanor."

Section 34-12-02 says this: "Employees . . . shall be free to decline to associate with their fellows and shall be free to obtain employment wherever possible without interference or being hindered in any way."

Section 34-01-04: "Every person who, by any use of force, threats, or intimidation, prevents or endeavors to prevent any hired . . . workman . . . from continuing or performing his work or from accepting any new work or employment, . . . is guilty of a misdemeanor."

Section 12-03-01: ". . . persons shall be deemed guilty of a misdemeanor if two or more conspire: . . . To prevent another from exercising a lawful trade, or calling . . ."

Section 34-12-03: "It shall be an unfair labor practice for a labor organization or its agents: To restrain or coerce employees in the exercise of rights guaranteed . . ." by law; "To cause or attempt to cause an employer to discriminate or restrain or coerce employees in the exercise of rights" afforded by law; or "To hinder or prevent . . . the pursuit of any lawful work or employment, . . ."

How much, Mr. President — how much right-to-work protection must it take? Leaving it out of the Constitution, where it doesn't belong, will affect these eight statutes in no way. They will remain as they are and continue to control labor-management relations with their force and their effectiveness undiminished. Adoption of the Burbidge Proposal will change absolutely nothing as far as labor-management relations are concerned. The only thing — the only thing that such action will accomplish is to insure the defeat of this Constitution.

Why is a vote for the Burbidge Proposal tantamount to a vote to defeat the Constitution? Because, if we adopt the anti-labor Burbidge Proposal, we court the hostility of organized labor. We alienate, Mr. President, this powerful, and now friendly, group. From that point on, defeat becomes a painfully-simple and a crystal-clear matter of mathematics. In September 1970 only about 96,000 people voted on the question of calling this Convention. And, remember, this was in conjunction with the primary election. At the special election to be held this spring, I doubt that that many will turn out. But let us say that 100,000 voters do turn out — which is more than voted on the calling of a constitutional con-

vention. The same 40,000 voters that voted against the Constitutional Convention will be there again to oppose the Constitution. Few of those 40,000 were from organized labor, for labor had endorsed and worked for a "yes" vote on the Constitutional Convention. That means, Mr. President, that labor would need to muster but 10,000 votes to defeat the Constitution. They could do that overnight, and you know it. With 29,000 members and a potential labor family vote of over 50,000, it would be easy; and if we affront labor with an anti-labor constitution, what else can we expect?

Many labor representatives and laboring men and women have appeared before our Committee. They have asked for nothing special — nothing unreasonable. They have asked only one thing: That this Convention treat labor equally with everyone else. That's all — just that they be treated the same as everyone else.

Mr. President, this is a just request to make of this Convention. A constitution should be written so that the citizens — all of them — can equally respect and admire and love it. The laboring man who belongs to a union is just as entitled as an employer, or anyone else, to have a constitution he can be proud of and be thought about. It isn't necessary to put something in it offensive to him. It isn't necessary, it isn't right, and it isn't fair; and if we do, we have wrecked the Convention. The seed we sow today, Mr. President, will be ready for harvest at election time this spring. Whether the fruit it yields will be bitter or sweet is dependent upon what we do now. The majority of the Committee has pointed what we feel is the proper course of this Convention. We respectfully ask that you endorse our action.

PRESIDENT WENSTROM: The question is on Committee Proposal No. 1-53.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: The question before the Convention is that the — the question under debate is that the Report of the Minority be substituted for the Report of the Majority.

Delegate Thompson.

DELEGATE THOMPSON: I'm sure that it's known that I have very strong feelings in this matter; however, I'd like to do something that might be unconventional. The other day, at one of our hearings of the Bill of Rights Committee, a young man with a great deal of guts and fortitude, if you may, appeared at our hearing and followed labor's presentation. This young man's name is Ronald Benjamin. He is a student at Mary College here in Bismarck and is 21 years of age. I asked him yesterday if he would put his words down in writing, and he did, and I would like to read his remarks, and they are as follows:

"The people proposing that 'the right to work' be eliminated from the Constitution have given the argument that this is discriminatory against unions. Well, I say that the elimination of the right to work is discriminatory against non-union members. The deletion of this section would take away this constitutional right to work regardless of race, color, sex, creed, membership or non-membership. I feel strongly that this right to work is a constitutional right as much as the right to worship or the right to assembly.

"Another argument that the right to employment should be eliminated is the fact that it is a statutory right. I say how can one's freedom to employment not be a basic constitutional freedom? What can possibly be more basic than a man's right to earn a living?

"One other argument they give is that if you have a right to work, the State should find you employment. The proposal says nothing to the matter; rather, it says a person should be free to obtain work. I feel this proposal has been given a poor title by saying 'right-to-work.' The word is a poor choice of words. I feel that this idea would more accurately be called the 'freedom-to-work.' The definition of 'freedom' as found in Webster's Dictionary, is 'exemption from a specified obligation or discomfort.' Is this not what we're after — the freedom to work without exemption from a specified obligation or discomfort?"

Thank you.

PRESIDENT WENSTROM: Thank you.

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, I want to speak on the issue. I have typed — had typed my remarks. I want to, quite frankly, say at this point I am a little emotionally disturbed, so I hope that the delegates would be kind enough to bear with me in what I have to say here this morning.

I believe that every delegate knows that I am the only delegate in the Convention that is a full-time labor representative and, if you please, for the Teamsters Union — and I am equally sure everyone knows that I am opposed to the so-called right-to-work. I am not going to take a lot of your time to argue the merits of the so-called right-to-work, because I do not believe that it is necessary; that all know, I am sure, the people who are directly affected by the open-shop law are opposed to it. I am referring to the thousands of people who earn their living by driving a truck or digging a ditch.

But there is one point that I would like to make. I have become discouraged by the reactions of some delegates when I discuss right-to-work with them. Some of the delegates have told me that they agree that the right to work should not be in the Constitution because it is a law, but they are going to vote to keep it in the Constitution because they feel that the folks back home are opposed to unions.

This attitude is very disappointing to me. I have always believed that a man or a woman should do what he or she thinks is right, and this is especially true when you have a position of responsibility.

We all have been given a great responsibility when we were elected as delegates. We have a responsibility to do what is right. If anyone in this assembly believes that the so-called right-to-work legislation does not belong in the Constitution, then he or she has a moral obligation to vote against it. We are here today because the voters believed that we should listen to all of the arguments on all issues, and then do what we honestly believe is in the best interests of our State. The people expect us to follow our conscience.

I did not wish to take the floor for the purpose of delivering a sermon, but I am so concerned for the fact that we might write a bad law into our Constitution, but I had to say these things.

Now, there is one other point that I think should be mentioned. We have not yet reached the halfway point in this Convention, and if we, at this early date, put something into the Constitution that is only suitable for consideration as a law, we will be faced with other attempts to write legislation into the Constitution. The end results of our work will not be good. If we put this legislative matter in the Constitution, then every special-interest group in the State will interpret our actions as an open invitation to put other legislative matters in the Constitution. Don't we trust the Legislature on the right-to-work? If this is true, maybe we should not trust the Legislature on other matters, such as taxes and a multitude of other things.

Just a short time ago, this body objected to locking in the grand jury system into the Constitution. Are we going to today lock in the right-to-work section to the point that the Legislature cannot change the statute as they want to — would want to? Stop and think! Are we being consistent with our argument that the legislative matters should not be in the Constitution? Now is the time for us to draw the line in keeping legislation out of the Constitution. Let us try and quit misleading the people of North Dakota with the so-called fancy words of "right-to-work" when we know that this is false presumptuousness. Let us be honest with our fellow citizens and with The Almighty God. We must face an eternity! Let us be able to live with our conscience while we are on earth, as those days may be short.

Mr. Chairman, I hope that the remarks I have made are not offensive. They were not intended to be offensive to any delegate, as I do not wish to offend anyone. I have a conscience of my own. I am only trying to do what I believe is right for this State, and I urge every delegate to do what they believe is right; and, therefore, I request the deletion of Section 23 of the Constitution and I oppose the Burbidge Proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE URDAHL: Mr. President — Delegate Urdahl.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: Mr. President and Fellow Delegates:

The right-to-work issue is certainly one fraught with high emotion, as well as frustration. It is, therefore, very difficult to deal with it objectively. To many people, all labor unions are put into a category with all the undesirable behavior that some leaders have been accused of. I submit that Labor as a group of people is no better and no worse than any other segment of society. What they do seek is to bargain collectively in a manner that will be of mutual benefit to both the employer and the employee. This certainly must be termed labor-management relations and, as such, surely ought to be included — surely ought not to be included in the permanent law of our state.

In 1889, the Constitutional delegates had an entirely different interpretation of the right-to-work section than is prevalent today. It was indeed their intent to protect the worker against the tyranny of unscrupulous employers and blacklists. Today the interpretation that many people have is to prevent a union shop and thereby to prevent labor from doing collectively what no one can do alone in the improvement of wages and working conditions. This, then, is another reason why we must not lock into the Constitution legislation that will be subject to different interpretations in the different periods of our State history.

I care not what rhetoric is used — “right-to-work” or be it “nondiscrimination in licensing — in employment.” It is all designed to prevent labor collectively to negotiate with employers in areas that are very sensitive to all of us — namely, income, safety and sanitary working conditions.

For the past two decades or more we have seen a loss in population in North Dakota. Many of those who have left have been our young people. Could one of the reasons be better wages and working conditions elsewhere? And should we be asking ourselves if the anti-union clause contained in Section 23 of our Constitution has been a deterrent to the industrial development of North Dakota? I don't think for one moment that industry will locate in our state solely because of an abundance of cheap labor. I think it is becoming increasingly obvious to all of us that any issue that pits one group of people against another group of people should not be included in the constitutional law. These kinds of issues are more properly handled by statutory law. Therefore, my Fellow Delegates, I earnestly urge you to keep discrimination and legislation out of the State Constitution.

PRESIDENT WENSTROM: Delegate Fiedler.

DELEGATE FIEDLER: Mr. President, Fellow Delegates:

I think you will all agree that there is not only an implied right to work, but there is also an implied obligation; and yet we have six percent of our workable force unemployed and about as many are on welfare. To understand and tolerate the situation, one must conclude that this right and this obligation are contingent in nature. The obligation to work is contingent upon the mental and physical ability to work. The right to work is contingent upon there being an employer. Until the employer and employee meet, Section 23 has no possible application. Once they are enjoined, it becomes a legislative matter to set forth the conditions of employment. Recognizing this in 1947, the Legislature passed a definite statute on the right of persons to work. We agree it is legislative in matter and, as such, should be deleted from the Bill of Rights. We recommend that it be so done.

Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHMIT: Mr. President.

PRESIDENT WENSTROM: Delegate Schmit.

DELEGATE SCHMIT: Mr. President. Fellow Delegates:

In reviewing the history of labor-management relations, I find that in 1927 newly-formed unions were taken into court and charged with conspiracy and restraint of trade. In 1935, after 108 years of struggle, American workers' right

to join a labor organization and bargain collectively was finally accepted by passage of the Wagner Act in the United States Congress. In 1947 the Taft-Hartley Law was passed in the United States Congress, which prohibited the full union-shop and allowed the states to enact open shops or so-called "right-to-work" laws.

So, to review the evolution of labor-management relations, in which many of the rights of the workers and management were accepted, I cannot help but believe there are more yet to come. In light of this, it is my contention that time will soon come, if it is not already here, that the union shop will be accepted as a basic right of the worker.

Mr. President, who knows but when the final chapter of labor-management relations is written, it may even be the profit-sharing concept?

There are allegations of abuse of power by labor organizations. I'm sure some of them are true. I am in sympathy with both management and the worker. The pendulum always swings back; either labor will clean its own house or have it cleaned for them by state or federal legislation.

These alleged abuses by the labor organizations, be they true or false, should not be used as a hammer to deprive the worker of his basic rights.

Fellow Delegates, a state constitution should be written to protect people from their government — not to stand between one group of people and another. How can we, in good conscience, lock into our Bill of Rights the so-called "right-to-work" law, which meant one thing yesterday and means something else today, and probably will mean something different tomorrow?

Thank you, Mr. President.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE BRAKKE: Mr. President.

PRESIDENT WENSTROM: Delegate Brakke.

DELEGATE BRAKKE: Having involved myself openly with Section 23, I would like to express some sentiments before the Convention.

I have a Delegate Proposal, No. 2-53, and have testified before the Preamble, Bill of Rights and Suffrage Committee on it. As we all know, the majority of the members of this Committee are supporting deletion of Section 23, and the minority report having received tentative support from the majority delegates of the Convention in supporting Proposal 2-78, you can see the odds against the support of my proposal. I would wonder how Jimmy the Greek would have placed them.

A report was placed on all the delegates' desks explaining my position on Section 23. I would have felt hypocritical if I had not pursued my feelings on this issue. Personal and business interests should not be a part of a delegate's decision-making here. We have observed the feelings expressed by North Dakota. Some want to delete and some want to retain Section 23 of the Constitution. I feel far more fits in the same expression.

Corporation farming is a highly-emotional issue in the State and I would grant that if it was contained in our present Constitution, there would be a highly-emotional attempt to retain it.

My basic contention is that if Section 23 is retained in some form in the Constitution, then corporate farming has an equal qualification to be there. If Section 23 is removed, then we can with a clear conscience leave the corporation farming law as a statute.

The question was asked of me, "How can you make this decision when we have a West Coast dock strike affecting grain prices?" I lived in California for six years, and within two miles of my home was a Mexican farm labor camp — workers receiving a dollar a day. We are all aware of the large subsidies that have been paid to corporate agriculture in California. Can this happen in North Dakota? If the strong expressions of farm organizations and farmers is an indication, I would say there is a fear of infringement. In wanting to separate Section 23 from the issue of corporate agriculture, we are saying we want our cake and eat it, too. We are here to establish a framework of government and prepare a document to protect people from their government. Let's have our priorities directed toward this end.

Proposal 2-78, by taking in contrast that "there shall be no discrimination against a qualified person's right to practice a trade because of race, color, sex, creed or membership in trade organizations," disturb me. Here, what does the word "qualified" mean? This statement leads me to wonder who is going to be determining these qualifications. Can volume of sales be called "qualification" in the case of trade organizations, if a trade organization so determines? Is the Legislature, a board or commission going to set up commissions? A farmer practices a trade and some belong to a trade organization. The word "qualified" is a disturbing word for farmers and business alike. It appears that if we put the word "qualified" in the Constitution, it gives the government, courts or juries power to determine a person's qualifications. If it is omitted, that organization shall determine their own qualifications. Are we protecting people from government in this way?

In closing, I will say that I believe it to be unfortunate that a delegate proposal receives a majority before it is submitted to the full Convention. This really supercedes the function of a Constitutional Convention.

I understand that my proposal has been indefinitely postponed by the Committee. Therefore, I will support the deletion of Section 23 at this time.

PRESIDENT WENSTROM: Any further discussion?
Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President, I am a member of an organization — the Farmers Union, in fact. If the delegates to this Convention are prepared to discriminate against working people in the new Constitution of this great State, then I request that my organization be also placed in that same category. I never want it said by my grandchildren that I discriminated against a group that they may some day become a part of.

I challenge any delegate from this organization — from the organizations represented here — to stand up and make the same statement that I have just made, or else vote to repeal Section 23 from the Constitution. We are not here to regulate or to legislate or, heaven forbid our being here to discriminate. I beg you, ladies and gentlemen, not to blemish the history books by taking this action against one segment of our people.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I should like to speak for a few minutes in support of the minority report on the right-to-work question; and, first, in regard to consistency.

Judge Maxwell has made reference to the passage of legislation in 1947 in North Dakota which he believes guarantees the rights of the individual in this respect. I remember those days well. I was a member of the Legislature as a freshman in 1947 in this very chamber, and one of only two voices in the conservative faction at the time willing to speak out in behalf of organized labor. And one of the points that I personally made was that we did not need in North Dakota a right-to-work statute, because this fundamental right of man was guaranteed in our Constitution. It didn't have much effect at the time. The Legislature passed the bill anyway, and it was signed into law and referred, and the people confirmed the judgment, and this seems to be a fairly well-established fact of life in North Dakota now.

But I feel now as I did then — that this question is properly dealt with in the Constitution. I feel that, so far as the relationship between employer-employee and the general public, the most important legislative function is the structure of collective bargaining in the State and Nation, and while the right-to-work law passed in 1947 has had no change since that time, the companion measure, also referred to by Judge Maxwell, has considerable change, and these changes were brought about by continued efforts on the part of organized labor and those of us in the Legislature willing to speak their cause, and the reasoning process of people who came here, so that adjustments have been made from time to time in this very important and properly legislative province.

When I came to this Convention this time, I hoped that what the Convention would do would be not have a right-to-work question as one of the controversial

issues before it. I hoped that there would be a sizeable number who would accept the judgment of the people over the past that this is the sort of thing that we want pretty clearly spelled out and left alone in our Constitution.

Delegate Burbidge and others who have a somewhat different view of the things have provided, however, in my opinion, much better language to guarantee the basic right of employment in the Constitution, so it might very well open again the question in the Legislature at a future time of modification to some degree of the statutory right-to-work law.

The spokesmen for organized labor speak of discouragement. I say don't be discouraged about this. Remember how it has been. Despite what from the viewpoint of organized labor appears to be the unfriendly climate in North Dakota, think of the gains that have been made over the years here in wages, hours, working conditions, union membership strength, status in the community. We have among us today, and they have been with us for several days past, some of the most distinguished citizens of North Dakota — officers of organized labor in North Dakota — excellent citizens — most of them my personal friends. And there have been great things done. While we've been hearing about the emotional issue, such as this right-to-work, you don't hear about all of the things the North Dakota legislatures have done that have improved the wages, hours and working conditions directly or indirectly. In the Legislature, for example, I am thinking of the laws which made it a requirement that they put roofs and side curtains on motor cars for the first time many years ago; improvements in the law regarding workmen's compensation — the benefits to the workmen; unemployment compensation. The most recent that I recall is a strong argument in this assembly on the subject of time off to vote, which, I think, failed at the time, but which produced a desirable result. It brought many employers who were unreasonable in this regard into line at the time, I clearly remember.

In other fields, think of the support that organized labor, with its status in North Dakota, has given to efforts to upgrade the standards of employment in our public service, to improve wages, hours, working conditions, again. So I say don't be discouraged. You're on the right track. Even with some of the hurdles that are here for you to cross to gain your goal, and maybe even because of them, you're doing a better job. I hope that this assembly will support the minority report and place this language in the Constitution so that we can go on along the road of labor-management public relations in the way that we have — and we've been doing fine.

Thank you.

DELEGATE DOBSON: Mr. President.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President, Fellow Delegates:

This Constitutional Convention had before it a few days ago a proposal that we have nondiscrimination in public accommodations. Every citizen should also be entitled to nondiscrimination in licensing and employment, as is provided in the Burbidge Proposal. The free enterprise system works best free. A prime responsibility of business is to provide employment. To tamper with this inherent freedom could set up a roadblock and could prohibit qualified citizens from obtaining employment or practicing their profession simply because they did not choose to pay dues to an organization. The citizens of North Dakota have to earn their living under some rather unique problems that are not — that the other states are not involved with, such as our geographic location, our weather and our sparse population. We cannot change our geographic location. We cannot change our weather; but one way we can maintain our freedom, one way we can maintain our independence and maintain our spirit is to provide nondiscrimination in licensing and employment.

Our Nation and our State were founded on the principle that the individual is supreme — not the organization and not even the State. The Constitution is the proper place to provide supremacy for the individual. The Constitution is the proper place to provide the opportunity for citizens, for unions, farmers, businesses and professions of North Dakota to remain competitive and flexible.

The new proposal is intended to do just that. It is in the best interests of the citizens of North Dakota.

PRESIDENT WENSTROM: The Chair will recognize Delegate Dobson.

DELEGATE DOBSON: Mr. President. Will Delegate Burbidge yield to a question?

DELEGATE BURBIDGE: Yes.

DELEGATE DOBSON: You are by profession a farmer, are you not?

DELEGATE BURBIDGE: Yes, sir.

DELEGATE DOBSON: Thank you.

We are in evident agreement that farming is a profession. In fact, Webster's Third New International Dictionary defines "profession" as "a principal calling, vocation or employment." That certainly fits farming. Webster's definition of "trade" would also apply to farming, I think. Webster defines "trade" as "an occupation requiring manual or mechanical skill and training."

Will Delegate Maxwell yield to a question?

PRESIDENT WENSTROM: Will Delegate Maxwell yield to a question?

DELEGATE MAXWELL: Very well.

DELEGATE DOBSON: You have over the space of some 22 years served as a prosecuting attorney, a practicing lawyer and a District Judge?

DELEGATE MAXWELL: 25 years.

DELEGATE DOBSON: Thank you. One further inquiry, please.

Is it true that a corporation, for legal purposes, is defined as a person?

DELEGATE MAXWELL: Yes, that would be correct.

DELEGATE DOBSON: Thank you.

Thus, Mr. President, the language of the Minority Report is subject to this construction: "There shall be no discrimination against the right of any corporation to engage in agriculture or farming."

Some delegates may dispute that interpretation, but the words stand in bold relief. As we know, it is not the intent of the author which governs future judicial decisions. Frequently the U. S. Constitution, as well as the State Constitution — provisions thereof have been interpreted quite differently than was intended originally. I submit, Mr. President, that the Minority Report, in addition to all the other things it will do, would provide back-door authorization for unlimited corporation farming in North Dakota. I wonder what the voters would think of that!

DELEGATE VOGEL: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Vogel.

DELEGATE VOGEL: In one of the opening days of this Convention, Delegate Tudor brought to our attention Professor James Thayer of Harvard, whose draft formed the basis of so much of our present Constitution, and he said at that time that Professor Thayer was guided by the principle that the Constitution — no constitution should embody the opinions of a temporary majority.

I believe that it is the opinion of the majority of the people in North Dakota at this time that the closed union shop should be barred in North Dakota, and that opinion is reflected in legislation, reinforced by a referral, which outlaws the closed shop. I think that this will probably be the prevailing opinion in North Dakota for quite a few years into the future, and that so long as it is, the laws will reflect that opinion. And this is the business of the Legislature. However, I believe that this is the type of a temporary majority opinion which Professor Thayer was talking about when he said he believed it should not be reflected in a constitution, and you will all recall that this Section that we have under discussion today was not a part of Professor Thayer's draft constitution.

By and large, the rights of a majority do take care of themselves. It is the business of a constitution to protect the rights of a minority. I think it is wrong to single out a minority and say to them, "So long as this Constitution exists, you will not have the right or privilege of seeking a change of laws by the Legislature." This is a right that has not been denied to any other group of

people in the State — to deny them the Legislature as the battlefield of the field of opinion.

Like all the other delegates, I have received a multitude of letters urging me to support the working man's right to work. Without exception, every one of these letters that I received was written not by a working man who is seeking employment, but by someone who is employing the working man.

Several hundred working men came — and women — came to Bismarck last week at their own expense and at considerable inconvenience to say that this proposal was not protecting their right to work. If we are concerned about the working man's right to work or seek employment, I think that these are the voices we should have been listening to. I think it's possible for today's majority in North Dakota to become tomorrow's minority and to be singled out for this same kind of discriminatory treatment, and I think that would be wrong. I think that Section 23 should not be included in the Constitution because that is wrong.

Thank you.

PRESIDENT WENSTROM: Any further discussion? Delegate Sinner.

DELEGATE SINNER: Mr. President, what seems to me to be the gut question here is whether or not the Legislature has the right to extend to communities of people some limited rights to self-government. We have always recognized and enunciated the Legislature's right to extend to geographic communities the right of self-government, and we have, in fact, a long tradition of legislators extending to communities of people the right of limited self-government.

As has been pointed out, the Bar Association, the pharmacists — we have even in some cases extended to private communities of people the right of government of other people in limited ways, as is the case in the Stockmen's Association exercising of the brand inspection laws. I think this is good tradition. I think there's a lot to be said for it. But do we limit it to only certain groups of people? And does the Legislature have the right to extend some limited device of self-government to only certain communities and certain professions? That's the question.

We perhaps need to realize that there is an obligation on all of us to belong to organizations in the professions in which we live and operate; but we are saying in this kind of language that it is all right to give some groups guaranteed existence by law and to govern their members in limited ways with the protection of the law, as we have a long tradition of doing, but not others.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Since the deliberations of this Convention were somewhat compromised by the fact that a majority of the Convention had already signed a proposal supporting the Burbidge wording, I suppose, if I were prudent and wise, I would merely recount the speaker's words when he got up one time and said, "As accustomed as I am to public speaking, I recognize the futility of it," and he sat down. But being neither prudent nor wise, I think that if we just skip the rhetoric aside and we look through all these high-sounding principles and these words put into our mouths by propagandists, in some respects, when they first coined the phrase "right-to-work," I think we see before us that Section 23 is nothing more than a controversy between management and labor; and if this is true, that it is just a controversy between management and labor, then it's indeed a legislative matter which we should not really be considering.

I don't know if you people read the letters you received that Delegate Vogel referred to; but I would read through these letters, and it was sort of astounding to see how employers and employer groups were writing to us, championing the cause of the working man, and yet, at the same time, in paragraph after paragraph, there was written words of fear that the threat of unionism and union bosses would sweep the State and overpower all common sense and reason.

Since we have been in assembly, we have fought continuously a compulsion to become a legislative body. We have struggled with the legislative rules and legislative structure and the legislative psychology, and it's been difficult for many of us who have not been legislators to make this a constitutional convention, instead. And in many respects, this attempt to become a legislature is reflected in some

of our thinking about the issues that are before us. Many of us are or have been concerned about labor's attitude in some of the statements we read in the newspapers about how labor is going to defeat this Constitution, if they don't get fair treatment in their eyes, and we say, "Oh, they're spoil sports. They're just — they're just going to ruin it even though it wouldn't make any difference, you see, if they kill the Constitution; the old Constitution would still be there and old Section 23 would still be there, and so they have nothing to gain by opposing the new Constitution except revenge."

Well, put yourself in their shoes. Put yourself in their shoes. You farmers: How would you like a constitutional provision that would freeze the proportion of property taxes to the rest of the taxes in the tax structure? And you businessmen: Supposing we put a constitutional provision in here that would say you could not join an organization to influence public policy. Or you women, if we have any women's libbers in the group, say that we're going to put provisions in the Constitution that would guarantee you second place from now until eternity. If you were placed at an economic disadvantage, which Section 23 really does to labor, you, too, would probably be incensed with a feeling of revenge. And I doubt there will be an expression of magnanimity on the part of labor in exchange for self-interest on the part of management.

Now, the farmers in this State, as history will tell us, have not stood for this kind of oppression in the past, and I don't see why we ought to expect it from anyone else. I respect Delegate Burbidge and his new thinking, and I commend him for it. I think there's some virtue to some of the facets to it. But I am afraid, when we are suggesting that amendment, that in the carrying of a hundred-pound burden, labor must carry 90 percent and the lawyers must carry five percent and the rest of us will carry the other five percent. I think the removal of Section 23 is only symbolic. The same philosophy that got the right-to-work law passed through the Legislature in 1947, the same philosophy that sustained the referral in 1948, still prevails — the same attitudes. The farmer and — the farmer and management, by and large, are of an individualistic thinking and are very suspicious of unions and labor organizations. So I'm not concerned that what we're going to do will drastically change labor-management relations by repeal of Section 23. Not at all. Not at all.

We have eight laws that would have to be repealed, and we have, finally, the Legislature that would have to repeal it.

Now, what kind of a Legislature are we ever going to get that's going to repeal, and we're going to have to find a governor that would sign the repeal of those eight laws, and we would have to find people who would be willing to sit quietly and let those laws go into effect, without referring any of them.

Are we afraid of the Legislature? Are we afraid of the Governor? Are we afraid of the people? Is the case for right-to-work so weak that it is necessary to seize upon every advantage and insist that it be placed in the Constitution? And, I suppose, if we had options, we add it as an eleventh commandment.

Now, those who believe in right-to-work laws as a matter of philosophy, who really believe that we ought not to have union shops, I say to you your responsibility is to convince your colleagues in business and management that this is not the end of the world. This isn't the end of the right-to-work law, and I don't think it is. I really don't think it is. And instead of adding flames to the panic, run for the fire extinguisher instead of the exit. I say this isn't the end.

Last week I wrote a letter to the Editor of the **Grand Forks Herald** to try to explain to the people my vote on the one-mill levy and my vote on lotteries. Now, lotteries: Now, I remind you, again, that I come from a Baptist faith, who look askance at gambling and other similar vices; and yet I voted to take lottery out of the Constitution, because I think it is a legislative matter, and I don't think lotteries will ever be legalized in this State, and I would be one of the first ones to petition my legislators not to repeal the regulation of gambling in this State. But it is the same kind of an issue. It's the same kind of an issue. Even if I don't favor lotteries, I still think it's a legislative question, and I suggest that every one of us — every 98 of us — have a responsibility for leadership to do what is right, and then go and explain what we do to the people.

Sometimes I think we think the people are ignorant; that reason means nothing to them. Well, I don't hold that view. I think you explain to them why you do right, and they'll understand it, if you do it adequately.

So I say let's call a spade a spade. Section 23 is labor-management relations. Labor-management relations is not a constitutional matter, and I hope this Convention will vote "no" on the Minority Report.

PRESIDENT WENSTROM: The Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and gentlemen:

First, I'd like to soften the atmosphere a little bit with an announcement that I am not a candidate for Governor. (Laughter)

I am not a candidate for reelection to a constitutional convention, either.

I have heard some of the very best speeches that I have ever listened to. I have felt I wasn't going to take any part in this. I was going to be absolutely quiet; and, so help me, I have been for two hours, practically. But now they're getting the better of me, partly because of some references to various things with which I am familiar.

I have a full-page letter here from a man I respect very highly. His name is Fred Vercellino. He comes from Dickinson. He belonged to a union since he was 21 years old, and he's about 80 now. I have known him since I can remember. I got this letter and I thought, "Oh, boy! I'm going to catch it now," because he'll want this law taken out of this — or this proposal taken out of the Constitution; and it was with great relief that I read it, and anyone here may see it.

Among other things, he says, "Earl, I am speaking from strictly personal experience about this union business. We were supposed to have a right-to-work law during World War II. It was on our books, but the unions, under the guise of patriotism and other pressures during wartime, had their lawyers twist the meaning of the law around so much that it was practically useless."

Then another section — he went on almost entirely about the right-to-work law, and down at the bottom I thought was a very intelligent sentence, and I hope you will forgive me reading it. "I know that you are not in my district for this Constitutional Convention, but you have been one of my most admired legislators, because you have not been afraid to get up in meetings and tell the boys just what is what. You're doing a good job. So keep it up, and more power to you."

Ahem!

(Laughter)

That was a very nice sentence.

I would draw your attention to the word — Farmers Union has been mentioned in this argument, and I received from them about eight or nine letters, and the Farmers Union members in my area are hot to keep this in the Constitution. They're very hot for it. I have a lot of letters from Fargo, from the various business interests. I haven't even opened them, because I knew what was in them. But when I have this letter from a lifelong union member, I feel pretty good about my standing to retain the right-to-work law in the Constitution.

And then, another thing: I have at times been opposed to change, and I know I've been called conservative — stubborn.

Now, I'm an old standby, because I stay at the Patterson Hotel, (laughter) in the **Fargo Forum**, and we have now organized a club called The Old Standbys, and it includes the very distinguished Senator Hernet. He's going to be president. But let's not get so emotional about this being — this will kill the Constitution. Boy! There's a dozen things in here that will kill this Constitution! There are a lot of them!

And one other thing, and then I'll let you get back to your better orators. The fact that it's not constitutional — we have heard that many times. Well, I'll just tell you this: If you don't like a proposition — if you don't like it, it doesn't belong there. I like it. It belongs there. It's just as simple as that.

Thank you very much.

(Laughter)

PRESIDENT WENSTROM: The Chair will recognize Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President, Delegates:

There has been a lot of good discussion here this morning. There's been some of it that's been tried to cloud the issue, I fear, but in all of the discussion here this morning, we really have heard nothing about the rights of the third party that's very deeply involved in this issue, and that is those people that suffer from the economic stranglehold placed upon them. Yet some of them — some — they have little voice in the matter in many, many cases. Many of us here, as delegates, have witnessed recently and presently the full force of the effect on their livelihood because a basic right has not been guaranteed in state constitutions elsewhere. So I submit that this is a basic right for our consideration and for the protection of minorities and for the public in general, and should be placed in our Constitution, and I certainly support the Burbidge Minority Report.

PRESIDENT WENSTROM: Is there further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President and Fellow Delegates:

In his remarks, Delegate Burbidge suggested that we uphold the Minority Report and place the Minority Report on the tenth order tomorrow, and if we were not satisfied with it, it would then be subject to amendment. I would suggest, however, that we do not slip this issue in through the back door. If we are not fully satisfied with its provisions, I would suggest that we at this point uphold the Majority Report; that we place that report on the tenth order and that we subject that report to amendment tomorrow.

Now, a good number of delegates signed with the Burbidge idea as a Delegate Proposal — 52 — or 53. A number of delegates who signed are not convinced that it is really what they want. In light of the remarks made today — especially in light of the remarks of Delegate Dobson — I would suggest that the interests of this Convention would best be served by placing the majority report on the tenth order tomorrow.

PRESIDENT WENSTROM: Further discussion?

DELEGATE TUDOR: Mr. President:

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Because I believe in the individual, in his wisdom and in his decency, I oppose all infringements on individual rights, whether from attempts of private monopoly or labor union monopoly, and I ask you to support the Minority Proposal.

Thank you.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is Committee Proposal No. 1-53. The question under debate is the adoption of the Minority Report.

Is there any further discussion?

Those that are in favor of the adoption of the Committee Report will vote "aye;" those opposed will vote "no." The question — that's right — they'll vote "aye," remember now. Is there any question in the Convention on how to vote?

Delegate Lander, do you have a question?

DELEGATE LANDER: Yes. Would you —

PRESIDENT WENSTROM: The question —

DELEGATE LANDER: — restate it, please?

PRESIDENT WENSTROM: The question is on the adoption of the Minority Report; and if you favor the Minority Report, you will vote "aye;" and if you oppose the Minority Report, then you vote "no."

Are you ready for the question?

Delegate Butler.

DELEGATE BUTLER: Mr. President, I request a tabulated vote on it. If I get ten people to stand with me, we'll tabulate the vote — ten for a recorded vote. (A number of delegates arose.)

PRESIDENT WENSTROM: That is a sufficient number. We'll have a recorded vote.

Are you ready for the question?

Again, those that are in favor of the adoption of the Minority Report vote "aye;" those opposed vote "nay" — vote "no." The key will be opened and you will record your vote.

Has every delegate voted? Have we got three absent? Is that right?

CHIEF CLERK GILBREATH: Three.

PRESIDENT WENSTROM: Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 62 "ayes," 33 "nays," three delegates absent and not voting.

Committee Proposal No. 1-53 as amended will be on the sixth order tomorrow.

DELEGATE WALLIN: Mr. President.

PRESIDENT WENSTROM: Delegate Wallin.

DELEGATE WALLIN: I would ask that the delegates' remarks be placed in the Journal.

PRESIDENT WENSTROM: Delegate Wallin, I doubt seriously that that can be done at this time. I think we made an announcement a few days ago that the — that any time you wished your remarks to be placed in the Journal, that they should be — the announcement should be made ahead of time. However, if there is anyone here that does have script that they would like to have placed in the Journal, a motion will be in order to permit that. Let's not forget that the permanent record of the Convention — that in that record the remarks of every one of the delegates that spoke here this morning will be in the complete verbatim record of the Convention.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, maybe this request can't be granted, but I move that the remarks of Delegate Burbidge and the remarks of Delegate Maxwell be printed in the Journal, if they have copies.

PRESIDENT WENSTROM: Delegate Hoffner, if the gentlemen have them in script, then, of course, the motion will be in order. I doubt seriously that the desk has them. You have Burbidge's?

Delegate Maxwell, do you have yours in prepared text?

DELEGATE MAXWELL: No. I'm sorry. I do not. I have only my penciled notes.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: May I remind the members of the Convention that while it might not be possible to have them in the Journal, we are having a verbatim record made, and while that would not be available in the next few days, it will be available for posterity.

PRESIDENT WENSTROM: That's true.

Fellow Delegates, you have been, again, most patient, and I think that at this time in would be in order for the Chair to declare a 15-minute recess. Let's be back at fifteen minutes after twelve — after eleven.

(The Session recessed at 11:01 A.M. until 11:17 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

The Convention will please come to order. We will continue on the fifth order of business — Committee Reports.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-32, has had the same under consideration and recommends the same do pass.

Delegate Hoffner, Chairman. Delegate Hoffner moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report that Committee Proposal No. 1-32 do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report is adopted and will be on the tenth order of business tomorrow.

Any further?

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Could we be on the eighth order for a moment?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order of business — Announcements.

DELEGATE TUDOR: I'd like to announce that there will be an open forum discussion tonight in the auditorium at the Highway Building at 7:30. The moderator will be Mrs. Bea Peterson. The discussion will include dedicated funds, and there will be a film on the "Missouri Plan." Thank you.

PRESIDENT WENSTROM: Thank you.

We'll continue on the sixth order of business. We have a number of announcements at the desk. Eighth order of business. I'm sorry.

CHIEF CLERK GILBREATH: There are schools from Hebron, Maxbass, Driscoll and Robinson with us today.

PRESIDENT WENSTROM: Will the delegations from these schools please rise and be recognized by the members of the Convention? (Applause)

PRESIDENT WENSTROM: Thank you for being with us today. We hope you have enjoyed the debates this morning.

We will be on the tenth order of business.

First for consideration of the Convention is Committee Proposal No. 1-64.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-64, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 2 of the present constitution of the state of North Dakota, which pertains to political power in the people, be retained in its present form."

"SECTION 1.) Section 2 of the present constitution of the State of North Dakota is retained in its present form and reads as follows:

"All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I'm sure this is a noncontroversial subject. The Committee felt that Section 2 of the Constitution of 1889 could not be improved upon, either in words or in content. Therefore, the Committee recommends unanimously a do pass.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. — I'm in error. The question is on the first passage of Committee Proposal No. 1-64.

Is there any further discussion?

Hearing none, those in favor of the Proposal will vote "aye;" those opposed will vote "nay."

The key will be opened and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 82 "ayes," there were no "nays," and there were 16 delegates absent and not voting.

So, Committee Proposal No. 1-64 has passed.

Next for consideration is Committee Proposal No. 1-65.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-65, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section

11 of the present constitution of the state of North Dakota, which pertains to uniform operation of laws, be retained.

"SECTION 1.) Section 11 of the present constitution of the state of North Dakota is retained in its present form and reads as follows:

"All laws of a general nature shall have a uniform operation."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: The subcommittee and the Committee on Preamble, Bill of Rights and Suffrage felt that this section should not be changed. This is as it is in the original Constitution. The courts have held that any classification provided must be natural and not artificial; that it is not necessary that a law operates upon all alike, but it must operate upon all in like situations. And so that's why I would like to move that this Committee Proposal be passed.

PRESIDENT WENSTROM: The question — any further discussion? The question is on the first passage of Committee Proposal No. 1-65.

Hearing no further discussion, those in favor of the adoption will vote "aye;" those opposed will vote "nay."

The key will be opened. You will record your vote. Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 84 "ayes," no "nays," 14 delegates absent and not voting. Committee Proposal No. 1-65 has passed.

Next for consideration is Committee Proposal No. 1-66.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-66, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 13 of the present constitution of the state of North Dakota, which pertains to rights of a defendant in criminal prosecutions, be retained.

"SECTION 1.) Section 13 of the present constitution of the state of North Dakota is retained in its present form and reads as follows:

"In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-66.

Do we have any discussion?

DELEGATE BENDER: Mr. President.

PRESIDENT WENSTROM: Delegate Bender.

DELEGATE BENDER: The Committee on Preamble, Bill of Rights and Suffrage, and, also, the subcommittee, has carefully studied Section 13 and has decided that it should remain as it was written in the old Constitution. We, therefore, ask the Convention to approve Section 13 as a part of the Bill of Rights.

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question is on the first passage.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wonder if the Committee's deliberations had considered using in addition to the word that you should not be "deprived" of life, liberty or property without due process of law — had considered including "reputation" or, possibly, "privacy." Was that ever considered or talked about in the Committee?

PRESIDENT WENSTROM: Can any member of the Committee answer Delegate Kelsch's question?

DELEGATE BENDER: I don't believe that it was brought up.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-66.

Those in favor of adoption will vote "aye;" those opposed "no."

The key will be opened. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call disclosed 92 "ayes," there were no "nays," six delegates absent and not voting.

Committee Proposal No. 1-66 has passed.

Next for consideration is Committee Proposal No. 1-67.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-67, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 20 of the present constitution of the state of North Dakota, which pertains to not granting special privileges and immunities, be retained.

"SECTION 1.) Section 20 of the present constitution of the state of North Dakota is retained in its present form and reads as follows:

"No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE SCHMIT: Mr. President.

PRESIDENT WENSTROM: Delegate Schmit.

DELEGATE SCHMIT: Mr. President and Fellow Delegates:

The Bill of Rights Committee voted unanimously to retain Section 20 of the 1889 Constitution. There are some 20 court cases dealing with Section 20, dating back to 1896. Section 20 relates mostly to police powers and classification. One example is the 1968 court case where the Supreme Court held in the Century Code it violates Section 1 of the Fourteenth Amendment of the U. S. Constitution —

PRESIDENT WENSTROM: Delegate Schmit, would you hold the mike just a little closer to your mouth? I find it difficult to hear, and I'm afraid that a number of the delegates do, too.

DELEGATE SCHMIT: All right, Mr. President.

The Supreme Court held it violates Section 1 of the Fourteenth Amendment of the U. S. Constitution and Section 20 of the North Dakota Constitution. The court decision related to inheritance of legitimate and illegitimate children.

Another example is a 1911 court case where the court held that the statute regarding the privilege to operate a Sunday movie picture theatre is not a violation of Section 20.

In the recent court cases where Section 20 was brought into play, I must say I can't agree with all of the decisions; however, by the same token, I can see many areas regarding police powers and classifications where Section 20 may be used quite exclusively in the future.

Mr. President and Fellow Delegates, I believe that Section 20 serves us well in our Constitution and should be retained without change. Thank you.

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question is on the first passage of Committee Proposal No. 1-76 —

DELEGATE CART: 67.

CHIEF CLERK GILBREATH: 67.

PRESIDENT WENSTROM: Those in favor of adoption will vote "aye." Pardon?

CHIEF CLERK GILBREATH: 1-67.

PRESIDENT WENSTROM: What did I say?

CHIEF CLERK GILBREATH: "76."

PRESIDENT WENSTROM: 1-67 is the one before us.

Those in favor will vote "aye;" those opposed "no."

The key will be opened. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 94 "ayes," there were no "nays," there were four delegates absent and not voting.

Committee Proposal No. 1-67 has passed.

Next for consideration of the Convention is Committee Proposal No. 1-68.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-68, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 24 of the present constitution of the state of North Dakota, which pertains to declaration of rights remaining inviolate, be retained.

"SECTION 1.) Section 24 of the present constitution of the state of North Dakota is retained in its present form and reads as follows:

"To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: This proposed section in the new Constitution is in precisely the same language as is found in present Section 24 of the Constitution. The Committee urges its retention without modification. We saw no way to improve upon the singular beauty of this rhetoric and, moreover, we felt that the principle announced — that is, that the Bill of Rights protects forever the dignity of the individual against trespass by the government — that such principle was too important to be left unsaid in a constitution to be brought before the people.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. Because the proposal refers only to this article, identifying it, I put my trust in the Committee on Style and Drafting that it will be in the same article as it is in the present Constitution; that it doesn't get in some other article.

PRESIDENT WENSTROM: Any further question or discussion?

Hearing none, the question before the Convention is the first passage of Committee Proposal No. 1-68. Those for the Proposal will vote "aye;" those opposed will vote "no."

The key will be opened. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 94 "ayes," there were no "nays" —

CHIEF CLERK GILBREATH: One "nay."

PRESIDENT WENSTROM: I think, Mr. Clerk, there's an error, because I noticed one red one on my tally.

CHIEF CLERK GILBREATH: One "nay."

PRESIDENT WENSTROM: The roll call discloses 94 "ayes," one "nay," three delegates absent and not voting.

CHIEF CLERK GILBREATH: 93.

PRESIDENT WENSTROM: Well, it adds up right. You're sure it's right now?

CHIEF CLERK GILBREATH: Yeah.

PRESIDENT WENSTROM: The roll call discloses 94 "ayes," one "nay," three delegates absent and not voting.

Committee Proposal No. 1-68 has passed.

Next for consideration is Committee Proposal No. 1-71.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-71, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 6 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bail.

"SECTION 1. REPEAL.) Section 6 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2. A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned."

PRESIDENT WENSTROM: Is there any discussion? Delegate Decker.

DELEGATE DECKER: Mr. President and Delegates:

This Proposal embodies — the first sentence embodies the Eighth Amendment to the U. S. Constitution on bail, but we have an additional protection for the people in North Dakota, which is that any witnesses that are detained have to have separate quarters. That isn't covered in the federal Constitution, and some states don't require that; but we do in North Dakota.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President, I wonder if someone on the Committee would inform me why the first section — excuse me — the first sentence of the old Section 6 has been omitted.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President and Fellow Delegates.

The Eighth Amendment to the U. S. Constitution takes precedence in bail, and the Committee felt, actually, at this time that bail has to be allowed in all cases anyhow — reasonable bail — and because of the federal Constitution and the rights, and what we did — we took that, plus the additional protection.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

In taking out the words that all persons are entitled to bail, what we're saying is excessive bail should not be charged, and I don't — if that's all you say, it's conceivable that the Legislature could not allow bail in many cases, and I'm not satisfied with that, because this is guaranteed in the federal Constitution, we shouldn't also have it in our Constitution. I think that we have to state that in all cases you are entitled to bail, as well as not only state that bail shall not be excessive, and maybe include the exception that the old Constitution had that in the case of capital offenses you could refuse bail, which is our practice now. But I think we're making a mistake if we take out the granting to the individual the right to bail in the first instance.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President.

I agree with Delegate Kelsch that the clause should contain the words substantially the same as the first phrase in our present Section 6 — "All persons shall be bailable by sufficient sureties . . ."

I did want to congratulate the Committee for taking out the second phrase

of the sentence — the first sentence in our present Section 6. It always seemed to me one of the strangest things we had in our Constitution. It said, "... unless" — meaning that you could always have bail — "... unless for capital offenses when the proof is evident or the presumption great."

Other places in our Constitution it says that everybody is presumed to be innocent. So when was the presumption of guilt great?

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: As I recall discussion in the Committee, another reason that this "capital offense" thing was put out or taken out, was because the Committee has a proposal which, I think, will be coming up shortly, or in a few days, at least, on "death shall not be prescribed as a penalty for crime." Therefore, there would be no capital offense.

PRESIDENT WENSTROM: Any further discussion? Hearing none —

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think this is probably too serious just to pass over, and I don't have an amendment at the desk, but I would — ah, I — I have my advisor here.

I move that 1-71 be moved to the bottom of the calendar.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Omdahl moves that Committee Proposal No. 1-71 be moved to the foot of the calendar. Do I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Litten.

Any further discussion?

Hearing none, as many as are in favor of the proposal say "aye;" opposed "no." The "ayes" have it and Delegate — and Committee Proposal No. 1-71 is placed at the foot of the calendar.

For consideration by the Convention is Committee Proposal No. 1-73.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-73, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 4 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to religious freedom.

"SECTION 1. REPEAL.) Section 4 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The free exercise of religious belief and worship, shall be forever guaranteed in this state."

PRESIDENT WENSTROM: Any discussion?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President and Fellow Delegates:

The Committee, during the interim, passed over Proposal No. 1-73 several times, and prior to the opening of this Session, we had included in there the language, "But the liberties herein preserved shall not justify practices inconsistent with the peace or safety of this state."

I think, to be fair to the other delegates, we better explain why we took this language out.

The reason we took it out is because testimony was presented in our Committee, and after many people did a great deal of research on the matter, we

found that the fears that some people had because — that necessitated this language, were unfounded. The biggest fear seemed to be the fact of the use of drugs — hallucinogenic — marijuana and such — for excusing them of their use as a religious practice.

Now, the courts in every instance, in several cases in the Supreme Court, in the Federal Courts of this country, have said that freedom to act under the First Amendment guarantees of religious freedom is conditional and relative and Congress may prescribe and enforce certain conditions to control conduct which may be contrary to the person's religious beliefs and the interest of public welfare and protection of society. This is in the *Leary v. United States*, 1967. Leary, as you all recall, was a rather famous proponent of the use of drugs as a religious experience.

We felt that there was such a case law on this thing that it was not necessary in our Constitution, and we felt that this statement made here that "the free exercise of religious belief and worship shall be forever guaranteed in this state," was concise and it came to the real meaning of what religious freedom is.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I note that the Committee — I agree with the Committee's position on this, and I agree with the language; but there's one other point that I would like to inquire about.

In Section 4 as it was written, it further provided that "No person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief."

Now, I'd like to inquire of the Committee as to why that was deleted. I'm not sure that I'm opposed to it being deleted, but it does have some ramifications with certain religious practices in this State. I believe it's some religious — for example, say they did not serve as a juror because they believe it's not man's function to judge other men. We might have some person as a matter of religious belief who would refuse to consider themselves competent to assert to a fact at a trial and, under our present Constitution, if I were to contend one of those two positions, I could be found in contempt of the court system and imprisoned. I believe in Minnesota not too many years ago a member of a religious faith refused to serve on a jury. The court found him in contempt, declaring that his duty to serve on a jury is as sacred or as important in our system as the duty to serve in the military armed services, and I believe at the present time this is the law in North Dakota. I know of no juror who has personally ever been found in contempt. I think generally the courts have excused jurors who take that religious stand. But the court could, under the Constitution as it is presently written now — if we take this out of the Constitution and don't speak on the subject, I want us all to understand that then I could contend as a matter of religious belief that I could not judge other men and, therefore, would not serve on a jury; or I might go further, as in the case of testifying, and contend that I am not competent to speak as to certain facts — because of some religious belief or other, I can't know facts for a certainty, and refuse then to testify.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-73.

Hearing no further discussion, those in favor of passage will vote "aye;" those opposed will vote "no."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The ballot sheet is incorrect. We don't have enough people voting. The key will be opened. You will vote again.

Those for the passage will vote "aye;" those opposed will vote "no." The key will be opened and you will record your vote.

DELEGATE THOMPSON: Mr. President, apparently my key isn't working, and I vote "aye."

PRESIDENT WENSTROM: The key will be closed.

The roll call discloses 77 "ayes," there were 17 "nays," there were four absent and not voting.

Committee Proposal No. 1-73 has passed.

Next for consideration will be Committee Proposal 1-78.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-78, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to the death penalty, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Death shall not be prescribed as a penalty for any crime."

PRESIDENT WENSTROM: Any discussion? Delegate Lamb.

DELEGATE LAMB: Mr. President and Fellow Delegates:

The Preamble, Bill of Rights and Suffrage Committee had this as a delegate proposal. After a great deal of discussion as to the ramifications of such a measure, they passed this out almost unanimously.

Now, there are two crimes in the State of North Dakota that are punishable by death at this time under the statutes. There is no reference in the present Constitution to the death penalty. They are treason, in which you can either be sentenced to death or imprisoned for not less than five years; the other is murder in the first degree while under life sentence for murder in the first degree.

If any of you have had an opportunity to read the statutes which govern the death penalty, it is a grizzly experience, and I think that most of the people in the Committee felt that this was an unusual punishment — unusual and cruel punishment, and I think we in this Convention have spoken to punishments of that type prior to now.

I would like to yield to our resident psychiatrist, Dr. O'Toole, to continue the argument. (Laughter)

PRESIDENT WENSTROM: The Chair will recognize Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, Fellow Delegates:

Just to help you review the reasons for punishment, there are three. One is rehabilitation. The death penalty certainly does not rehabilitate.

Second is retribution. I do not feel that the death penalty gives any retribution. It does not help the person that has been killed. I feel that it's an archaic type of an interpretation, of making retribution its goal.

The third is deterrence, and it does not deter. The presence of the death penalty is a malignant influence which holds back progress throughout our entire correctional system. It creates chaos in the courtroom. It creates despair in the prison where its pernicious effects set the tone for a punitive, rather than rehabilitative, approach. The death penalty is more detested by prison workers than the so-called "bleeding hearts" or humanitarians. Wardens and guards realize that this grotesque symbol of society's vindictiveness eventually permeates every aspect of correctional practice. And a few years ago I had the opportunity of traveling throughout the nation and visiting and talking with a great number of wardens and guards in various prisons, and the great majority felt that it was cruel. I wish that many of you could have stood with me in our little group as we looked at the gallows and had them described in Kansas, or looked at the chambers for cyanide poisoning in California. The physical presence of offenders who are about to be executed indicated extraordinary emphasis on custody and leads the other offenders to distrust the intentions of society.

Such a state of affairs is not conducive to enlightened criminology. Even if we were to ignore the humanistic arguments, it is not easy to create a non-violent society where government itself is willing to kill. And the practical argument is there is no evidence whatsoever that invoking the death penalty reduces the number of crimes of violence. Against this procedure, the amount

of damage that it does in the correctional system is sufficient reason for its abolishment. The death penalty is not only a blight upon our correctional system, but it is a blight upon our democratic society.

The social rituals which have become a part of our effort to determine whether we are to spare the offender or destroy him are incredibly cruel and sadistic. One merely need to examine the history of a given case, such as the Caryl Chessman case, to appreciate that the ghastly business of delays, appeals, further delays and final execution represents about as sadistic a cat-and-mouse game as society can play. It is a kind of mass perversion — a perversion which is sanctimoniously rationalized as a form of justice.

PRESIDENT WENSTROM: Any further discussion? Delegate Devine.

DELEGATE DEVINE: Mr. President.

At the risk of being branded a nut by our resident psychiatrist, I will state my opposition to this provision.

I agree with much that he has to say, particularly the ritual that is used in the performance of this penalty. However, I do not feel that the field of criminology is enlightened. They don't really know which way they're going. They don't know whether it's effective. There's many theories and lots of experiments, and it's a field which has a long way to go. I would suggest that this matter be left to the Legislature, so they can make such provisions as they may find warranted in years to come. I don't feel that the statute should be expanded at this time or that this should even be on the books; but I do not feel that this provision should be in the Constitution.

PRESIDENT WENSTROM: Delegate Chase, did you wish the floor?

DELEGATE CHASE: Mr. President.

Would Delegate O'Toole yield to a question, please?

PRESIDENT WENSTROM: Will Delegate O'Toole yield to a question?

DELEGATE O'TOOLE: Yes.

DELEGATE CHASE: Delegate O'Toole, how important is it as a deterrent for a first degree convicted murderer attempting to break out and commit an additional murder?

DELEGATE O'TOOLE: It seems to have very little deterrence. We have never had a case of it in North Dakota, and it hasn't been — or very seldom used in other states. I might add one other thing here, while I have the floor: That in my opinion, and from what I have seen, and I've had a little bit — not a large amount — of criminology, that many of these people that are confined for first degree murder are ill, rather than evil, and I think in the time of organized crime, this may have had some argument; but right at the present time, there's no basis for this as a deterrent.

I might also add, while I have the floor here, again, and speaking to Delegate Devine, certainly criminology has got a small start and is in its infancy. But one of the big arguments that has been used throughout the country is that if we kill the people, for them — for themselves killing, we certainly will never get any further.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-78.

Those in favor of its passage will vote "aye;" those opposed will vote "nay." The key will be opened and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll call discloses 76 "ayes," 7 "nays," five absent and not voting. Committee Proposal No. 1-78 has been passed.

CHIEF CLERK GILBREATH: 17. My mistake. 17 "nays." My mistake.

PRESIDENT WENSTROM: The tally sheet was in error. I'll reread the report. The "ayes" are 76, the "nays" were 17, and there were five delegates absent and not voting.

Committee Proposal No. 1-78 has passed.

We will be on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-57, has had the same under consideration and recommends that the same be amended, and when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report No. 1-57.

The proposal is to amend.

As many as are in favor of the motion will say "aye; opposed "no."

The "ayes" have it. Committee Proposal No. 1-57 will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee an Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-60, has had the same under consideration and recommends that the same be amended, and when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Proposal — the Committee Report on Committee Proposal No. 1-60. The proposal is to amend.

Hearing no discussion, as many as are in favor of the adoption of the report will say "aye;" opposed "no." The "ayes" have it and the report is adopted. It will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-79, has had the same under consideration and recommends the same be amended, and when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-79, which is to amend.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it and the Proposal will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-89, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-89 — that is, to amend.

Hearing no discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-89 will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Finance and Taxation, to whom was referred Committee Proposal No. 1-97, has had the same under consideration and recommends that the same do pass.

Delegates Unruh, McElroy, Burke, Aas, Ketchum, Lerberg, Miller, Nicholas, Quam and Saugstad.

Delegate Haugen, Chairman.

Delegate Unruh moved that the Report of the Majority be adopted.

PRESIDENT WENSTROM: The question is on the adoption —

CHIEF CLERK GILBREATH: No. I've got to read the Minority.

PRESIDENT WENSTROM: Do you have it there?

CHIEF CLERK GILBREATH: Yes.

Mr. PRESIDENT: A Minority of your Committee on Finance and Taxation, to whom was referred Committee Proposal No. 1-97, has had the same under consideration and recommends that the same be amended; and when so amended, recommends that the Report of the Minority be substituted for the Report of the Majority.

Delegate Haugen, Chairman.

Delegate Cart moved the Report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Minority Report on Committee Proposal No. 1-97.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to move that consideration — or further consideration of this Committee Proposal or Report be laid over one Convention day and that copies of the Report be placed on the delegates' desks.

PRESIDENT WENSTROM: Delegate Haugen moves for consideration of Committee Proposal — the Report be laid over one Convention day and that copies of the Proposal be laid on the desk of each delegate to the Convention.

DELEGATE AAS: Second.

PRESIDENT WENSTROM: The motion has been seconded. Any discussion? Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and this will be laid over one Convention day.

DELEGATE CART: Mr. President:

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I would assume that both the Minority and the Majority would be placed on the desks.

PRESIDENT WENSTROM: That is correct.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Am I correct in assuming that the Majority Proposal is 1-97? Is the Majority Proposal 1-97? So there would be no need to spend the money to reproduce that.

PRESIDENT WENSTROM: The desk informs me that the only part that is necessary to reproduce is the Minority Report.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-23, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moved that the Report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-23, which is to amend. Is there any discussion?

Hearing none, as many as are in favor of the adoption of the Report will say "aye," opposed "no." The "ayes" have it and it will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-48, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the Report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-48, that the Proposal be indefinitely postponed.

Is there any discussion? Is there any discussion?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: This was a proposal presented to our Committee, and I think that, if most of the delegates would read the Proposal over, they would discover that it probably has no place in a constitutional convention or in the Constitution; and so that's why the Committee unanimously, as I recall, voted to — for indefinite postponement.

PRESIDENT WENSTROM: Is there any further discussion?

The question is on the adoption of the Committee Report on Proposal No. 2-48 — that the Proposal be indefinitely postponed.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it. Proposal No. 2-48 is indefinitely postponed.

We will be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: The Judicial Functions Committee will hear Committee Proposal 1-12 at two o'clock in the Gold Room, January 19th.

The Executive Functions Committee will meet Wednesday, January 19th, at 2:00 P.M. in Rooms G-5 and 6.

Your calendar for tomorrow is Committee Proposals 1-84, 1-94, 1-95, Delegate Proposal 2-26, Committee Proposal 1-28, Committee Proposal 1-32, and Committee Proposal 1-71.

Your sixth order will be 1-37, 1-53, 1-57, 1-60, 1-79, 1-89 and 2-23.

PRESIDENT WENSTROM: Any further announcements? Delegate Geelan.

DELEGATE GEELAN: Mr. President, the Rules Committee will meet at 1:30 in the Lewis and Clark Room today.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. President, I have a note here from Al Austin of the University of North Dakota, who wants me to remind the delegates, again, of the Editors Day luncheon Friday noon at the Town House. He says that if you haven't heard from your favorite editor or your nonfavorite with an invitation, you are still invited; but you're on your own for lunch for three dollars.

Our esteemed Vice President will attempt to bring the editors up to date, and maybe some of us, on just what we have accomplished in the first three weeks of this convention. I trust that you will hear from your editor, but if you don't, don't be bashful, and come around anyhow.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, the Committee on Legislative Functions will meet at two o'clock in the Large Hearing Room.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President. I wonder, if you don't have a favorite editor or any editor, if Delegate Paulson would be willing to be my editor?

(Laughter)

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, I wonder if 1-53 should be on the tenth order or — you called for the sixth order, I believe.

CHIEF CLERK GILBREATH: On the sixth, according to my notes — on the sixth order tomorrow.

DELEGATE DECKER: I don't believe that there were amendments. I think the Committee — the Minority Report should put it on the tenth order. I may be wrong, but —

PRESIDENT WENSTROM: Are there further announcements while they're checking on this point?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I'd just like to tell the rest of the delegates that Mrs. Simonson's little boy, that was here yesterday or the day before, visiting, was operated on early this morning for an emergency appendectomy and that's why Mrs. Simonson had to fly home; and in view of that, I move that the absent delegates be excused.

PRESIDENT WENSTROM: It's been moved that the absent delegates be excused. Do we have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, the Committee on Education and Natural Resources and Public Lands will meet at 1:30 in G-1.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I would like to announce that Delegate Quam is absent today because he is taking his wife to a hospital for minor surgery tomorrow morning; so he might possibly be absent, also, tomorrow.

PRESIDENT WENSTROM: Delegate Decker, about the answer to your question —

CHIEF CLERK GILBREATH: I have it that 1-53 — the Minority Report was adopted, which was to amend. Is that correct? And then it will go on the sixth order to adopt the amendments tomorrow.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: However, the amendment was to put language in. I don't think there's anything to change. I think it really was a substitution more than an amendment.

CHIEF CLERK GILBREATH: You substituted the report for the Majority, which was a committee report to amend, and it just goes on the sixth order, the same as the regular committee report to amend.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I want to remind the lucky members of the silent faculty we are meeting tonight in G-7.

PRESIDENT WENSTROM: Being that everybody is making announcements, the Chair would also like to make an announcement that I am requesting a meeting of the chairmen of the six substantive committees, plus the Vice Presidents Pearce and Saugstad and Secretary Vogel, plus the chairman of the Committee on Style and Drafting and the Committee — the chairman of the Committee on Coordination and Transition. I request that these delegates appear in my office for a very short meeting at one o'clock. And, Delegate Geelan, I'm sure that we will be out or we will be through in time for your Committee on Rules. So, if you people that I have mentioned here will be at my office at nine o'clock — or at one o'clock, it will be much appreciated.

Any further announcements? Hearing none —

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: The desk is clear.

DELEGATE SAUGSTAD: I now move that we adjourn until 9:00 A.M., January 20th.

PRESIDENT WENSTROM: It's been moved that we now adjourn until 9:00 A.M., January 20th. Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Stanton.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we will be adjourned until tomorrow morning at nine o'clock.

(The Plenary Session adjourned at 12:18 P.M., Wednesday, January 19, 1972, until 9:00 A.M., Thursday, January 20, 1972.)

V O L U M E XIV

(January 20, 1972)

MORNING SESSION

(The fourteenth day of the Plenary Session commenced at 9:02 A.M., Thursday, January 20, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

We'll be on the second order of business — the Invocation.

Our Chaplain for this morning is the Reverend Phillip Lint, with the McCabe United Methodist Church of Bismarck.

REV. PHILLIP LINT: Let us pray.

Lord our God, You give us hearts and minds and feelings, and Your wisdom is poured out upon those who seek it. We bow as we begin this day's work and ask You to deliver our hearts from self-deceit, clear our minds for sound thinking, and make us sensitive to one another and to the needs of those who we are here to serve.

Grant to us the wisdom to learn from the past, to anticipate the future, and to use wisely the present moment.

In Christ's name we offer this prayer, Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — taking of roll.

The key will be opened and you will record your presence.

Has every delegate recorded his presence? The key is closed.

The roll call discloses 88 present, ten absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 18th day of January, 1972, and recommends that the same be corrected as follows:

Page 201, line 29, delete the word "renewal" and insert in lieu thereof the word "removal."

On page 204, last line, delete "Longmore" and insert in lieu thereof "Longmire."

Page 208, following line 33, insert the following: "Section 2 of Committee Proposal 1-23 was declared lost."

On page 209, following line 7, insert the following: "Section 3 of Committee Proposal 1-23 was declared passed."

On page 209, following line 42, insert the following: "Section 4 of Committee Proposal 1-23 was declared passed."

On page 210, following line 16, insert the following: "Section 5 of Committee Proposal 1-23 was declared passed."

On page 210, following line 50, insert the following: "Section 6 of Committee Proposal 1-23 was declared passed."

On page 211, following line 36, insert the following: "Section 1 of Committee Proposal 1-23 was declared passed."

And when so corrected, recommends that the same be approved.

Delegate Dobson, Vice Chairman.

Delegate Paulson moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Revision and Correction of the Journal.

Are there any questions?

Hearing none, as many as are in favor of adopting the report will say "aye;" opposed "no." The "ayes" have it and the report is adopted.

We'll be on the sixth order of business — Consideration of Amendments.

CHIEF CLERK GILBREATH: Delegate Hoffner has moved that the amendments to Committee Proposal 1-37, as recommended by the Committee on Legislative Functions and as printed on pages 213 and 214 of the Journal, be adopted.

The amendments are:

On line 1 delete the word "section" and insert the word "sections" and after the numeral "41" insert ", 53, 55 and 56".

On page 6 delete the word "Section" and insert the word "Sections" and after the numeral "41" insert ", 53, 55 and 56".

On line 7 delete the word "is" and insert the word "are".

Delete all of lines 11 through 18 and insert in lieu thereof the following:

"Section 8. The terms of service of the legislators shall commence on the first Tuesday after the third day of January following their election. The legislative assembly shall meet to organize on the same day and may meet in plenary session no more than eighty natural days during the biennium. The days need not be consecutive and meetings for the purpose of impeachment or on call of the governor shall not count against the eighty-day limitation. The legislative assembly may authorize its committees to meet at any time during the biennium. No house of the legislature may recess or adjourn for more than three days without the consent of the other house."

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the proposed amendments.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The Committee on Legislative Functions rather substantially amended the bill as it was originally proposed, as you can tell by the reading by the Clerk, and as long as it's on the sixth order, unless anyone has any specific question on the amendments, we could wait until tomorrow, at which time we'll discuss the bill on its merits.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-37.

As many as are in favor of adopting the amendments will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted and Committee Proposal No. 1-37 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Delegate Burbidge has moved that the amendments to Committee Proposal 1-53, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 215 of the Journal, be adopted.

The amendments are:

On line 1 delete the comma after the word "Dakota".

Delete line 2 and insert in lieu thereof the following:

"be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom to obtain employment."

After line 5 add the following:

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"There shall be no discrimination against a qualified person's right to practice a trade or profession or to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade or labor organization or professional group."

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-53.

Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-53 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal No. 1-57, as recommended by the Committee on the Preamble, Bill of Rights and Suffrage, and as printed on page 225 of the Journal, be adopted.

The amendments are:

After line 11 add the following new paragraph:

“No public funds may be expended in support of any organization which, in the selection of its membership, discriminates on the basis of race, color or national origin.”

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-57.

Is there any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I'd like to report my presence, first of all; and, second, I'd like to see an explanation of what this amendment is trying to do. It's meaningless to me.

PRESIDENT WENSTROM: Will a member of the Committee that considered Committee Proposal 1-57 — Delegate Lamb.

DELEGATE LAMB: Mr. President.

The purpose of this amendment is that if any organization, fraternal, etc., discriminates in its method of obtaining membership, the State or its agencies cannot expend any of its moneys at that organization — at that organization's facilities, for banquets — things of this nature — as long as it's State funds.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I think the Convention would be well - advised to defeat this amendment. Funds spent at such a club would not be in support of that organization. Those funds would be spent for services rendered, facilities used.

Secondly, I don't think we need to take a gratuitous kick in the Constitution at any fraternal organizations in the state. Whether their policies are right or wrong, it's not a matter of constitutional concern.

I urge rejection of this amendment.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. President. Fellow Members — Delegates:

I, too, urge rejection of this amendment on the basis of the unknown ramifications; to-wit, the amendment states “No public funds may be expended in support of any organization which, in the selection of its membership, discriminates on the basis of race, color or national origin.”

Having been one of the few white individuals who, in the neighboring state of Minnesota some few years past, was ejected from a hotel because of so-called Mexican ancestry, I still have not been able to convince Delegate Gipp that I can join his forces, and am sincerely concerned that, because of the fact that we now have four separate Indian reservations within the State of North Dakota, all of which in some method or other obtain public funds, qualifications for membership in the Turtle Mountain Tribe, the Standing Rock Tribe, the Three Affiliated Tribes there, and others, is a degree of blood being traced back historically or on some blood line situation. I think the amendment as it is drafted would, in effect, prohibit the State from allowing funds to be expended in support of our native Indians; and on that basis, I think the amendment should be defeated.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I would like to comment on the amendment, also.

This is the first time that I did see it in substance, written down as it is.

I would say at this point of time I would tend to agree with Delegate Hartl. The words “in the selection of its membership” are somewhat — I have a number of questions with respect to this — this clause there. I don't recall that, in meeting with the Committee and appearing before them, I don't recall the phrase — whether this was Delegate Sinner's suggestion. I don't believe that it was my suggestion, and I would like, maybe, a little more explanation from the Commit-

tee on this. But at this point, I would not support the amendment as is, nor was it my intent to provide this kind of a statement. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Sinner.

DELEGATE SINNER: Mr. Chairman, the words "in the selection" are not mine, although I think the rest of it is. For some reason, I can't find the — I haven't the amendment in front of me. Here it is.

The "in the selection" was not my language that I recall.

The object of this amendment, as I think everyone knows, is to help guarantee equal treatment of all of our citizens, and I think it does belong appropriately in this Section.

As you know, many of the fraternal organizations in this State have passed resolutions to ask our national organizations to not go along with this kind of discriminatory clause in their charters, and I think that most people that are members of fraternal lodges in North Dakota vigorously protest this sort of discriminatory language, and yet, for reasons that remain unclear to me, have been unable to get these charters changed. And it's my firm belief that the existence of this kind of language is not only appropriate in the Preamble to the North Dakota Constitution, but that it will help these organizations make their point to less concern with the national organizations.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President, if there is a question about the language, I would like to move that it be placed at the bottom of the calendar and allow Delegate Gipp and some others to take a look at it.

PRESIDENT WENSTROM: Delegate Sinner moves that Committee Proposal No. 1-57 be placed at the foot of the calendar.

De we have a second?

DELEGATE SONDRAL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sondreal.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be placed at the foot of the calendar.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, Delegate Devine would like to report present.

PRESIDENT WENSTROM: Delegate Devine reports present.

DELEGATE NICHOLAS: Mr. President, I would like to report present.

PRESIDENT WENSTROM: Delegate Nicholas reports present.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-60, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on pages 225 and 226 of the Journal, be adopted.

The amendments are:

In line 11 after the word "criminally" insert the words "for a felony".

In line 13 after the period insert the following: **"The legislative assembly may change, regulate, or abolish the grand jury system."**

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendment to Committee Proposal No. 1-60.

Any discussion? Any discussion?

Hearing none, the question is on the adoption of the amendments to Committee Proposal No. 1-60.

As many as are in favor of the motion will say "aye;" opposed "no."

The "noes" have it and the amendments are defeated.

DELEGATE DOBSON: Division.

PRESIDENT WENSTROM: The division — there's a sufficient number standing.

The question now is on the adoption of the amendments to Committee Proposal No. 1-60.

Those in favor of adopting the amendments will vote "aye," and those opposed will vote "no."

The key will be opened and you will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll indicates there were 77 "ayes," there were 14 "nays," there were seven delegates absent and not voting. The amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-79, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 226 of the Journal, be adopted.

The amendments are:

In line 2 of the title after the word "keep" delete "and bear."

Delete all of lines 6 and 7 and insert in lieu thereof the following:

"No law shall abridge the right of the citizens to keep arms for self defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the unlawful carrying of concealed weapons."

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-79. Any discussion?

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Since it might come up later, I would like to ask of the Committee: Did they consider the law which requires registration of hand guns a law that abridges the right of the citizens to keep arms?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: We considered that, and for Mr. Hill's information, this is very similar to the one that was just adopted by New Mexico, and we felt that it would not abridge that right.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-79.

As many as are in favor of the motion will say "aye;" opposed "no."

The "noes" have it, and the amendments are lost.

(A division was called for.)

PRESIDENT WENSTROM: The question is on division. We have a sufficient number.

Now, those in favor of the adoption of the amendments will vote "aye," those opposed will vote "no."

The key will be opened. You will indicate your choice. Has every delegate indicated his choice — his preference? The key will be closed.

The roll indicates there were 79 "ayes" and 14 "nays," six delegates absent and not voting. So the amendments to Committee Proposal 1-79 are adopted.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-89, as recommended by the Committee on Preamble, Bill of Rights and Suffrage, and as printed on page 226 of the Journal, be adopted.

The amendments are:

In line 11 after the word "and" insert the following:

"the interests of the general public and".

In line 12, after the word "or" insert **"estimated just compensation".**

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-89. Any discussion?

Are you ready for the question?

As many as are in favor —

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, a short explanation I would appreciate.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: As many of you know, Section 14 of the Declaration of Rights is on eminent domain. It has a lot of legislation in it.

The only protection, as far as the Constitution is concerned, for the property owner, as we see it, is to protect the property owner in the matter of compensation.

After giving this, I suppose, more study than almost any other section, we have come to the conclusion that legislation should be taken out of this section. It is true, if this passes without legislation, a great deal of new legislation will be required in the matter of quick takeover, because the amendment that was adopted, I think, in 1956, was for the benefit of the Highway Department. For one thing, it allowed them the quick take, without having to go to the Legislature for any other legislation.

Now, we think that, in the first place, the property owner should be protected not only in the matter of compensation, but he should also be protected as far as his property rights are concerned.

Then we think there's another matter that should be taken into consideration. We think the public — the interests of the public should be taken into consideration in this day when we're talking so much about ecology and environment and recreational purposes. So what we've tried to do is simply state a principle — protecting the general public — protecting the property owner not only in the matter of his compensation, but also in the matter of property rights; and that if this passes, it will, of course, necessitate compensation; but we are staying with the principle the Constitution should state principle and stay away from legislation.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-89.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Delegate Proposal 2-23, as recommended by the Committee on Preamble, Bill of Rights and Suffrage, and as printed on page 227 of the Journal, be adopted.

The amendments are:

Delete all of lines 7, 8 and 9.

In line 10 delete "**greatest obligations of citizenship, the**" and insert in lieu thereof the word "**The**".

In line 11 delete the word "**these**".

In line 12 delete the word "**shall**" and insert in lieu thereof the word "**may**" and also in line 12 delete the word "**such**".

In line 13 insert a period after the word "**assembly**" and delete the remainder of the line.

Delete all of line 14.

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Delegate Proposal No. 2-23.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: Would you please — could it be read from the desk? I'm all confused. I'd like to know what it says.

PRESIDENT WENSTROM: Yes, ma'am.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-23 will now say:

"A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"In grateful appreciation of the sacrifices and contributions made by the men and women who served in the Armed Forces, and recognizing that these veterans have fulfilled one of the greatest obligations of citizenship, the people of North Dakota do herein declare that these North Dakota service men and women shall be given such special consideration as determined by the legislative assembly providing some measure of recompense for lost economic opportunity and disruption of careers and home life."

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I think Roy forgot to delete lines 7, 8 and 9.

CHIEF CLERK GILBREATH: Oh! I'm sorry. That's the original bill, and until it is — the amendments are adopted, or if they're adopted, I don't have any engrossed bill; so I have no way of putting it together.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I think the way it would read is, ". . . the people of North Dakota do herein declare that North Dakota service men and women shall be given — may be given such special considerations as determined by the legislative assembly", period.

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: Delegate Tudor, did you wish —

DELEGATE TUDOR: Mr. President, the "such" should be omitted or deleted, also. This language was originally so flowery that we felt that it should be reduced to what we were trying to say, and I believe we have.

PRESIDENT WENSTROM: Does your copy show that the word "such" is omitted? Yes.

Any further —

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Well, to simplify it a little, may I ask: Doesn't it just mean that bonuses are to be paid without a constitutional amendment? Yes. A measure passed by the people?

DELEGATE THOMPSON: Not quite. It also allows the Legislature to grant job preference and other bonus — schools, and things like that.

PRESIDENT WENSTROM: Anything further?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Just a word of explanation. The Finance and Taxation Committee has an amendment coming, in which we built in a measure to grant bonds to cover veterans compensation.

PRESIDENT WENSTROM: Anything further?

The question is on the adoption of the amendments to Delegate Proposal 2-23.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and the amendments are adopted.

Next for consideration is Committee Proposal No. 1-57.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I see that Delegate Gipp is out, and, therefore, I'll move that this be laid over one day.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved that Committee Proposal No. 1-57 be laid over one Convention day, and the motion was seconded by Delegate Litten.

Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-57 will be laid over one Convention day.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: May we be on the twelfth order of business.

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business.

DELEGATE HERNETT: At this time I would move that Delegate Proposals No. 2-1, 2-25, 2-27, 2-32, 2-33 and 2-29 be returned to the Convention from the Executive Functions Committee.

If I get a second, I'll explain what I'm doing.

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Aubol.

DELEGATE HERNETT: The reason I'm doing it this way is the delegates who I have talked to would rather withdraw their proposals, rather than have them postponed; and so, in the interests of economy, I'm making one motion to cover all of them, and they will then be before the Convention, and each of the delegates can then get up and make the motion then to have them withdrawn, and we'll get rid of them in one brief period here — the six proposals.

PRESIDENT WENSTROM: Delegate Hernet, would you again read the numbers of those proposals?

DELEGATE HERNETT: They are at the desk.

PRESIDENT WENSTROM: Oh, I see. Fine.

The question is to vote on the motion; but I think the delegates would like to know just what they're voting on. So would you read the numbers again on the proposals?

CHIEF CLERK GILBREATH: Delegate Proposals No. 2-1, 2-25, 2-27, 2-29, 2-32 and 2-33.

PRESIDENT WENSTROM: The question is on the motion that the Delegate Proposals as read from the desk be returned to the Convention floor from the Committee on Executive Functions.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the proposals are now before the Convention.

DELEGATE HERNETT: I might just — in case — I have talked to all of these people. I know, just in case they forgot the numbers, that Dr. Tudor has No. 1, Delegate Vogel has 25, Delegate Byrne 27, Delegate Chase 32, Delegate Hill 33, and Delegate Rundle 29.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I was well-prepared and well-briefed by Delegate Hernet, except for my laryngitis, and at this time I would like to withdraw my Delegate Proposal 2-1.

PRESIDENT WENSTROM: Delegate Tudor asks unanimous consent of the Convention to withdraw Delegate Proposal No. 2-1.

Hearing no objection, your request is granted.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I request permission to withdraw No. 2-29, so it can have an honorable burial.

PRESIDENT WENSTROM: Delegate Rundle requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-29.

Hearing no objection, the request is granted.

DELEGATE VOGEL: Mr. President.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I request permission to withdraw Delegate Proposal No. 2-25, which has served its purpose, and I would like it withdrawn.

PRESIDENT WENSTROM: Delegate Vogel requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-25.

Hearing no objection, the request is granted.

Delegate Byrne.

DELEGATE BYRNE: Mr. President. I ask at this time unanimous consent to withdraw Delegate Proposal No. 2-27, which has been considered by the Committee, and part of it incorporated in a committee proposal.

PRESIDENT WENSTROM: Delegate Byrne requests unanimous consent to withdraw Delegate Proposal No. 2-27.

Hearing no objection, the request is granted.

Delegate Hill.

DELEGATE HILL: Mr. President. I request permission to withdraw Delegate Proposal No. 2-33.

PRESIDENT WENSTROM: Delegate Hill requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-33.

Hearing no objection, the request is granted.

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I request permission of this body to withdraw Delegate Proposal 2-32.

PRESIDENT WENSTROM: Delegate Chase requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-32.

Hearing no objection, the request is granted.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Are we still on the twelfth order of business?

PRESIDENT WENSTROM: We are on the twelfth order.

DELEGATE RONEY: At this time, Mr. President, I would like to move that the Committee Proposal 1-11 be re-referred to the Committee on Judicial Functions and Political Subdivisions.

If I could get a second —

PRESIDENT WENSTROM: Do we have a second?

DELEGATE KRETSCHMAR: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Kretschmar.

DELEGATE RONEY: Mr. President —

PRESIDENT WENSTROM: The motion is that Delegate Proposal No. 1-11 be re-referred to the Committee on Judicial Functions.

DELEGATE RONEY: That is "Committee Proposal" — Committee Proposal No. 1-11.

The Minority Report acted as an amendment, and I would ask that it be withdrawn so that further changes can be made, and when the Committee met yesterday, the Committee agreed unanimously that this should be done in order to save the Convention time.

PRESIDENT WENSTROM: The question is on the motion to re-refer Committee Proposal 1-11 from the Committee on Judicial Functions and Political Subdivisions.

As many as are in favor of the motion will say "aye," opposed "no."

The "ayes" have it and the proposal will be re-referred.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: I was tardy for roll call. I'd like to check in.

PRESIDENT WENSTROM: Delegate Nething reports in.

We'll be on the ninth order of business — Introduction and Reference of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-104, introduced by Committee on Preamble, Bill of Rights and Suffrage:

“Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to governmental immunity, be created.

“SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

“Suits may be brought against the state and its political subdivisions for negligent injury to a person or his property; and the legislative assembly may provide reasonable limitation on the amount of recovery.”

PRESIDENT WENSTROM: The question is on adoption of Committee Proposal 1-104.

It is referred to the Committee on Preamble, Bill of Rights and Suffrage.

We'll be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Judicial Functions and Political Subdivisions, to whom was referred Committee Proposal No. 1-14, has had the same under consideration and recommends the same be amended, and when so amended recommends the same be passed.

Delegates Longmire, Roney, Bassingthwaite, Engelter, Fallgatter, Hougen, Kessel, Kretschmar, Wallin and Warner.

Delegate Longmire, Chairman.

Delegate Longmire moves that the Report of the Majority be adopted.

Mr. President: A minority of your Committee on Judicial Functions and Political Subdivisions, to whom was referred Committee Proposal No. 1-14, has had the same under consideration and recommends that the same be amended as follows — be amended.

Delegates Hoghaug, Rundle, Gipp, Hartl and Aubol.

Delegate Longmire, Chairman.

Delegate Hoghaug moved that the Report of the Minority be substituted for the Report of the Majority.

PRESIDENT WENSTROM: The question is on the adoption of the alternate report; that the Report of the Minority be substituted for the Report of the Majority.

Delegate Engelter.

DELEGATE ENGELTER: Mr. President. I think, having both the Majority and the Minority read from the desk and the delegates following Section 1 as stated in 1-14, which we don't have any amendments to, would help the delegates to discern what differences there are between the Minority and the Majority Report.

PRESIDENT WENSTROM: Do you request that the reports be read from the desk?

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Mr. President and Fellow Delegates:

I think we had a gentlemen's agreement yesterday that if this came up when Delegate Longmire was gone, we would hold it over one day, if that is permissible. And I would like to move that this be held over one day.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton that consideration of Proposal 1-14 be laid over one Convention day.

Delegate Aubol.

DELEGATE AUBOL: Mr. President, is it possible that the proposed amendment of the Majority also be placed on the desk of the delegates? I think only

the amendment of the minority is on the desks of the delegates, and the delegates have no idea of what the Majority is.

CHIEF CLERK GILBREATH: 1-14, I don't believe, is either; but they're in the Journal of the 18th — in the Journal of the 18th, you'll find both the Minority and the Majority, on page 204.

PRESIDENT WENSTROM: The question before the Convention is on the motion that Committee Proposal No. 1-14 — that is, the report be laid over one Convention day.

As many as are in favor of the motion say "aye;" opposed "no."

The "ayes" have it and 1-14 will be laid over until tomorrow.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-97, has had the same under consideration and recommends that the same do pass.

Delegates Unruh, McElroy, Burke, Aas, Ketchum, Lerberg, Miller, Nicholas, Quam and Saugstad.

Delegate Haugen, Chairman.

Delegate Unruh moved that the Report of the Majority be adopted.

Mr. President: A Minority of your Committee on Finance and Taxation, to whom was referred Committee Proposal 1-97, has had the same under consideration and recommends that the same be amended.

And when so amended, recommends the same do pass.

Delegate Cart, Trenbeath and Binek.

Delegate Haugen, Chairman.

Delegate Cart moved that the Report of the Minority be substituted for that of the majority.

PRESIDENT WENSTROM: The question is on the Minority Report; that the Minority Report be substituted for that of the Majority.

Do we have any discussion? Delegate Cart.

DELEGATE CART: Mr. President. My voice is a bit husky this morning, but I'll try and be understood.

There is quite a basic difference between these two reports.

The Report of the Majority would permit all property to be classified and subject to exemption by the Legislature, while the Minority Report would still retain the exemption features as defined in Section 2 of the present constitutional provision, and that is that any or all classes of personal property would be subject to exemption by the Legislature, and buildings, fixtures and improvements are classified as personal property.

Now, we could envision a situation arising as time goes on where there would be a scramble for exemptions, and maybe practically none of the property left taxable. But if I was speaking for my own personal interests, I would be in favor of the Majority Report, because what little of this world's goods I have is land. But I want to see at least a substantial portion of our taxable value left not subject to tax exemption, because our local subdivisions — cities, townships, school districts and all the other subdivisions — have got to have something of a base on which to survive on. If you open this up to where any of the property that is now taxed on the ad valorem basis, as it is so-called, and is the real foundation of your local government — now the proposed Minority Report is somewhat different. The language is the same in the Minority Report as it is in the present Constitution, until you get clear down to the third paragraph, and there that line has been shortened up. Instead of spelling out the "by ownership," like the United States and the city, county, and so forth, it reads, "Provided, however, that property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation." And continues on with the saving clause that all taxes and exemptions in force when this Constitution is adopted would continue until changed by law.

I think it would be much better if we would continue the situation which we have now, because our tax base is getting very small for these local subdivisions. We've exempted all personal property with a blanket exemption here in 1969. It

has not been tested out in the court yet how wide a range that exemption covers; but there is good cause to think that we might end up with only about 57 or 8 percent of the original tax base on the tax rolls, if buildings, fixtures, pipelines and various things like that are wiped out. Then we're in serious trouble already.

So I would urge and plead with you to adopt the Minority Report.

Thank you.

DELEGATE AAS: Mr. Speaker.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. Speaker and Fellow Delegates:

Today I am substituting for the person who was to give the Majority Report — Delegate Quam, who is absent from this room.

I first would like to respond to the statements made by Delegate Cart as relates to the Minority Report.

Now, Delegate Cart has told you that if we adopt his language, he firmly believes, and I concur, that personal — that the real estate that we now tax, including buildings, as we do in the cities, could be declared a little bit on the unconstitutional side because, if you read very carefully this section of the Constitution, it does say that all personal property, including buildings, are considered personal property for this section; and so it is very possible that under the repeal of the 1969 personal property taxes, that we don't have the basis to tax houses or other buildings as part of real estate. I think this section is clear, and if there were a test, we conceivably could lose the taxes that we now are paying on buildings and improvements.

With this in mind, our Committee feels that we should change the Constitution. We should change the Constitution so that we can tax buildings and improvements on real estate under our Constitution.

The people have spoken. The Legislature has spoken to us, at least, to say that they don't want personal property taxes. They're getting down to clarifying the classes of personal property to the extent that building improvements are defined and included — continued to be included. And so I think the majority of our Committee feels that we should be sure that, when we do tax buildings and improvements, that they are taxable and that it will meet the constitutional test. So this is the first difference that we have.

Now, our Committee has deliberated long and loud on occasions about tax exemptions which are granted specifically in the Constitution to churches, schools, cemeteries, religious organizations and other charitable-type of organizations, and at one time in our November meeting we voted 11-to-3 to totally eliminate the constitutional protection for tax exemption of any of these organizations. We did come back and feel that we are never going to tax some of these organizations, such as churches and schools, and we did include them in the Constitution in our Proposal, because we did not want to create any more irritations or concerns or develop any loss of vote, if it was at all possible. We do feel, however, that there is room for improvement in our regulation and control of tax exemptions; and so we have omitted a portion of that original Constitution which says "charitable or other public purposes shall be exempt from taxation." That portion we have had omitted, and our reason for so doing is that it is adequately protected in the Code — the North Dakota statutes.

57-02-08 lists 28 — or 22, rather, specific exemptions. Amongst those are the ones that are in the Constitution, and they are repeated. But there are numerous other ones, also, in this section. Under this section, at item No. — at one of our items here, we do exclude farm buildings, as an example, from tax exemption, and this has stood the test of time. The people certainly realize that we have farm buildings excluded and farm improvements excluded. Some of the other areas here have stood the test of time. We would like to see the Legislature have an opportunity to determine what should be exempt and what is not exempt, and there are some standards, I believe that the Legislature should apply in determining what should be given exemption.

Now, we have included schools, churches, and cemeteries in our tax exemptions; but we prefer to leave the rest to the Legislature.

In our present Code, we do exclude the — we do allow tax exemption for the

real and personal property owned by lodges, by farmers organizations, commercial clubs and that type of nonprofit organization. We do provide exemption for fraternities, sororities and various other organizations of that kind. We do provide exemption for public hospitals and other organizations used for public charity. And I think we can continue to do that. But it should be the legislators' opportunity and the legislators' decision on how they are going to regulate these.

Today we have before us for amendment 1-57 of our proposals here, and if you will take a look at 1-57, the concern there is that we do not discriminate within our organizations. Well, I think that should be up to the Legislature to determine whether or not they have tax exemption, if they are discriminating; and here, ladies and gentlemen, is one opportunity that we can apply sincerely a test for discrimination. We can tax those organizations, if the Legislature so determines. But if we put that into the Constitution, there's no room for the Legislature to do any moving or to apply any standards or any tests of any kind. We need some accountability of our tax-exempt organizations.

I'm sure if you would think back in your own communities, and you do have some that you wonder now why are they tax-exempt? Do they really meet the test? But because they are organized under the various sections of the Code that provide tax exemption, they are granted tax exemption under the Constitution. And is this really fair when all of us are having a hard time paying taxes? Is it really fair that some of these organizations are shielded behind tax exemption when they should not be?

I believe, and our Committee believes, that this should be a decision which the Legislature makes. We should have a showing, then, that there is accountability. Perhaps they should make a public financial statement, if they are to deserve tax exemption in some of these organizations. And why not? But I would like to know how we can do it if we give them the constitutional protection?

So I submit to you that we need to give the Legislature some room in which they can operate to determine the legitimate tax exemption and the deserving of the tax exemption of these various organizations. Every person in this room is concerned about the amount of tax he pays and the amount of tax his constituents pay. You heard that when we discussed the real estate taxes in here. We are afraid that we are going to apply additional taxes; but, yet, how can we honestly apply or allocate a certain group and call them charitable, tax-exempt organizations without first scrutiny, and then give them a tax-exempt base? It certainly seems proper that if they are competing with business — private businesses that are paying taxes, that there should be some room for tax exemption disallowance. And with this in mind, our Committee has sincerely felt that we need to make some corrections, and the only way to do so is to open this up and give this latitude to the Legislatures. We feel that there is not going to be any removal of tax exemption where it is due and just; but we do feel that there is adequate reason why we should take this out of the Constitution, and I think that we should not continue the proliferation of tax exemptions that we have had in the past. We have too much of it already, and we submit, in the majority, that we should remove this section of the Constitution.

PRESIDENT WENSTROM: Any further discussion?

Delegate Fiedler.

DELEGATE FIEDLER: I rise on a point of a question.

What would you consider the status of a hospital organized as a nonprofit organization?

PRESIDENT WENSTROM: Delegate Aas, would you answer the question?

DELEGATE AAS: Mr. President.

Under our statutes at the present time, it is exempt under the Constitution.

Under our statutes, they also have tax exemption under 57-02-08; and subsection 8: "All buildings and contents of institutions used for public charity, including hospitals, shall be tax exempt."

PRESIDENT WENSTROM: Any further discussion?

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: One of the things that is of great concern to me in our day of increasing medical costs, and the prime need for these care-type organizations — I have a letter in front of me from a hospital administrator who is very concerned that this is not included in the present 1-97 — the inclusion of such things as non-profit hospitals, schools of nursing, nursing homes, mental health and retardation centers, and as such.

I find that using the same rationale of locking "school, cemetery or religious purposes" into the Constitution, we should also lock some of these nonprofit health-care facilities into the Constitution. They certainly are charitable. We certainly do not like the rising costs of medical care at the present time, and if we allow the Legislature to change it, they may at any time they wish.

I agree that they should substantiate the nonprofit status. I have no question about that. But I rise in opposition to the 1-97 and support the Minority Report.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Well, Mr. President, I think that I can say that I have some concern in the health field, myself. But I would like to believe that our charitable, hospital type of organizations — our homes for the aged — and what are they? — maybe can justify their tax exemption. I have seen what I believe are hospital operations that I wonder just how much charity they offer, and, secondly, just how much they are — are operating in an effective, efficient way which would deserve the tax exemptions which we are granting them. And if we tie it into the Constitution, then there's no way for the Legislature to regulate it.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: I would like to direct a question to Delegate Aas.

Would this include the Kildahl Empire at Minot — food service, ambulance service, and such, organized under the turnkey hospital association? If it would, I would be opposed to it.

PRESIDENT WENSTROM: Can Delegate Aas answer the question?

DELEGATE AAS: I'm not too sure just what the question is; but his organization would be subject to the same scrutiny as any other organization, by the Legislature, if this bill is passed.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I am not certain, after listening to the reports of both the Minority and the Majority, which option is available here in regard wanting to protect charitable institutions, particular hospitals and nursing homes. Perhaps the question should be initially to Delegate Cart:

Does the Minority Report include protection for those existing agencies?

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: The language in the Minority Report is identical to the language in the present Constitution, with the exception of the publicly-owned lands — lands owned by schools, by the United States Government and by the State and the municipal and county corporations.

Now, as far as the exemptions in the Minority Report are concerned, it's still to those institutions that are used exclusively — and remember the word "exclusively" — for these purposes. That has not changed. If it comes to the personal property, the buildings and the hospital are personal property, the same as they are of a home or a barn or a granary, and it would be up to the Legislature to provide exemption or deny exemption. That is in contrast to the Majority — Minority — Majority Report, which leaves it up to the Legislature to classify all properties in the State and provide or withhold exemptions as they see fit, except for those churches, and so forth, that are — their language is "property used exclusively for schools, cemetery or religious purposes." Those are the ones that are exempted in the Majority Report — not anything else.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President.

The Minority Report should be denied because it builds into the Constitution a serious constitutional defect.

The Finance and Taxation Committee, in another proposal, has provided that the power of taxation shall never be surrendered or suspended, except as provided in this Constitution, and upon the advice of experts — the Attorney General's Department and our Staff Attorney — we adopted the language, "The legislative assembly may by law define and exempt any and all classes of property."

Now, the prime purpose of this was to take care of the municipal industrial bonds and the exemptions on a local level, and if you refer to the first proposal that I mentioned — the provision — "The power of taxation shall never be surrendered" — then the Minority Report has no provision for these exemptions on a local level.

Another reason why the Minority Report should be denied is, to lawyers and legal scholars, the second sentence is sort of abominable to legal scholars, because buildings and other structures naturally go with that, and this provision says, for the purpose of this section, buildings, and so forth, are deemed personal property, and as we all know, the purpose of this was for the exemption of farm buildings, and the Majority Report is not denying the exemption on farm buildings because under the broad provision that is put into the Majority Report, the Legislative Assembly may by law define and exempt all classes of property. Farm buildings will still be exempt under this provision, and the Majority Report also provides that all taxes and exemptions in force when this Constitution is enacted shall remain in force, unless otherwise provided by statute, and I would hope the delegates would deny the Minority Report, because it has serious constitutional defects in it.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to caution the delegates against considering the merits of the Majority and Minority on the basis of exemptions. The real difference — the fundamental difference between the two reports is in Section 2 — or, rather, the second sentence, dealing with exemptions. The Committee feels that it is necessary to change the wording of the present Constitution; that it is an unwieldy and unreasonable definition of "personal property." I am a farmer and interested, of course, in the continuation of exemptions on farm buildings, but that exemption is by statute now and would continue to be by statute under the Majority Proposal.

So, as I say, I would hope that you would not make a decision on the basis of exemptions. There is going to be a proposal made tomorrow on the tenth order to amend the bill to extend the exemptions, and this — if you are interested in further exemptions, this is the way to do it, not to turn down the Majority Report because it doesn't contain all the exemptions you would like.

PRESIDENT WENSTROM: The Chair will recognize Delegate John Paulson.

DELEGATE PAULSON: Mr. Chairman. I would like to direct some questions to the Tax Committee, to be answered either today or tomorrow when the bills come up for final passage.

Under the Majority Report, you would give the Legislature complete authority to classify all property and grant exemptions. That means, in my mind, that you would permit the Legislature to classify by ownership as well as use. You could eliminate entire farmsteads or the home quarter from taxation or you could eliminate homes, you could eliminate businesses, depending upon what group had got control of the Legislature at any one specific time. The fault that exists today in the exemption of personal property is easily erased by the Legislature. All it has to do is set up a classification of personal property for residence and commercial buildings and declare that they are not exempt from taxation in the general personal property exemption. This should have been done many years ago, but they simply created a special class of personal property for farm buildings and exempted those and did nothing about the rest of the buildings that were declared to be personal property in the old phraseology. I wonder, and I would like the questions answered either today or tomorrow, about the power you are giving to the Legislature to classify on the basis of ownership or use, and so that the demand for uniform taxation can go pretty much out the window if the Legislature takes full advantage of

the powers we would grant in the reading of the Majority Report, according to my interpretation.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, going back to answer Delegate Burke on the proposition of personal property and real estate:

According to our public land surveys, we've gotten our area divided into townships and sections of land and quarter-sections, and then we have set up municipal governments with a new survey, and this is into lots, and they describe the number of rods or feet or miles in these areas, and even if you put a building on it, why you can move it away or you can tear it down and you've still got that lot. That's the land. And the building thereon is certainly man-made and subject to removal by man. That's why all buildings are classified in the Constitution as personal property. No other reason. And when the exemptions were originally written, way back in 1919, farm buildings were included at that time; also, one thousand dollars of the value of a city home used for residential purposes, and many other items — household goods to the extent of, I believe, \$300 — tools of a working man — I can't enumerate all of them. I remember now — they can all be looked up in the 1919 Session Laws. And as time went on, apparently the city governments found themselves in distress to some degree to get revenue. So those exemptions were removed and the farm buildings are the one remaining items of that original exemption passed way back in 1919, after the Constitution was amended.

So I certainly take issue with a building can be classed as a part of the legal description of the survey of this area on which we live — the public lands survey as enacted by the United States way back in 1818. There's 18 states in this Union that do not have public land survey, and the nineteenth one has part of that, and that's part of it under the Old Spanish land grants down in Texas.

So we're dealing with a well-founded situation in principle right here in North Dakota. We're a public land survey state, and the public land survey is what I am contending should remain, taxable or not, subject to the exemptions; that the buildings should be classified properly as personal property and the right of the Legislature either to exempt or not exempt, as they see fit, and if the 1919 — or 1969 Session of the Legislature had merely specified the personal property they wished to exempt by class — if it was thought some merchandise, state it; livestock, state it, just very simply "all animals" — that would take care of that, and machinery, or anything else — household goods — state it; and then you would be in no difficulty or there would be no cloud over what they have done. But they took the Mother Hubbard approach and it was easy to write it that way, and covered everything — I won't say where.

PRESIDENT WENSTROM: Any further discussion? Delegate Lander.

DELEGATE LANDER: Mr. President.

I would like to ask one or more of the experts in connection with this argument about defining the exemption of personal property, et cetera. What would be the effect of the Constitution if we didn't try to put either the Minority statement or the Majority statement — the Minority or Majority statement in, and simply were silent, after saying "Taxes shall be uniform upon the same class," et cetera? What would be the effect of that? Would that preclude the Legislature from proceeding with all of these very fine definitions which they have done over the years?

PRESIDENT WENSTROM: The Chair will recognize Delegate Haugen.

DELEGATE HAUGEN: I don't believe I get the full intent or the full meaning of your question. Would you — is it directed to what would happen if we leave out the entire section?

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Yes. Again, it's — yes. In 1-97, in order to refer to something that we can see: On line 12 begins the sentence, "The legislative assembly can by law define or exempt all classes of property," and in the Minority Report, the second sentence redefines that in the old terms. If you didn't have either one of those sentences in either the Majority or the Minority Report, what would be the situation?

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Can Delegate Lander direct this to an expert? I am not an expert and I certainly don't claim to be.

I am, of course, the Chairman of the Committee and have some responsibility for this Proposal.

What would happen, in my opinion, I think —and I think in the opinion of the members of the Committee — if this were left out, there could be no exemptions under the Constitution whatsoever. The Legislature would have no power. They could not exempt personal property. You could not exempt church or religious property or any type of property, if this section was left out. I don't think there's much question about that.

I would like to answer Delegate Paulson's question on exemptions — what this would mean. We do have certain exemptions now made by the Legislature that are pretty-well accepted by the people. They have never been brought to a court test. I would refer to Section 57-02-08.1, which exempts homes of elderly people with limited means from a part of the tax load. This has never been tested, and we believe it would be unconstitutional at present — 176. Then, as Delegate Burke mentioned, the industrial development bonds. In 1969, the Attorney General issued an opinion to the North Dakota Industrial and Business Development Department that said, in part, that these industries given tax exemptions under this Act might well consider the possibilities that the land exemptions be subsequently declared unconstitutional in view of the provisions of 176 of the North Dakota Constitution. This is another exemption. It's clearly unconstitutional, if ever brought to a test in the courts, and we think that these are important enough so that the Legislature should be given authority to continue this type of exemption and others that might arise in the future. After all, basically we have to depend upon the Legislature in many of these cases and believe that it will reflect the feelings of a majority of the people at the time it might act on these exemptions.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I visited with the Tax Department regarding these two proposals, because they are relatively vague, and I'd like to respond to Delegate Lander's question.

In the first place, even the first sentence isn't necessary because we have that under the Fourteenth Amendment of the U. S. Constitution — equal protection — and there's plenty of case law on that, and I think that the Legislature has the authority to do whatever it wants to do, unless it is prohibited by the Constitution of the State and unless there is a specific prohibition someplace else in the Constitution that says the Legislature may not exempt — the Legislature does not have the authority to exempt anything that it wants to exempt. The only reason we put it in constitutions is to be sure that they get the exemption, and the Legislature can't take it away from them. And so, personally, I plan to vote against this section because I don't — I don't — well, it's necessary only to the extent that we have already passed another provision, which says that they can't surrender the power of taxation. So, by putting that extraneous language in the Constitution in one other place, we have to put more extraneous language in another place, and thus the Constitution gets longer. I think that Delegate Burke has raised a very valid point, and I don't think it can be over-emphasized. If you're going to provide for an exemption under the Municipal Industrial Development Corporation Act, you have to permit an exemption of the land, and the Minority Report is more defective than the Majority Report in this respect, in that it would not be possible to exempt land under the Municipal Industrial Development Corporation Act. Therefore, since we're going to have this horse in the same stall to kick around tomorrow, I think that it would be wise to reject the Minority Report, adopt the Majority Report and do some amending on tenth order.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President and Delegates:

I have sat silent on this thing for quite awhile, and I'm on that Minority Report. But I want to make it clear that I agree not wholeheartedly with what Elmer

Cart has to say; but I got on the Minority Report simply so he could get out on this floor and state his case, and he has some justification and real justification, and there's been a lot of clarification on what this — on what this means.

Now, as to the second part of this bill, either the Minority or the Majority Report, I think that can be taken care of by the tenth order tomorrow. My personal opinion is that if you're going to spell out in the Constitution the exemptions on religious and education facilities and the cemeteries, that you might just as well go the whole gamut and include charitable and other public-purpose institutions.

But the only reason I signed this Minority Report is to bring this back to your attention. In the first part of this Proposal, both the Majority and Minority Report, the key difference is — is whether we should empower the Legislature to also exempt real estate, which our present Constitution does not. The Minority Report classifies personal property and allows the Legislature to exempt personal property, but it does not allow them to exempt real estate, and there is a conflict, as Delegate Burke has stated, in our present situation, and this, I feel, has to be corrected. The only reason I signed that Minority Report was to bring this to your attention and what can happen — and it happened in the last legislative session. Because personal property was removed, we had an industry in our area that is an enormous taxpayer — in fact, it is, I think, the biggest taxpayer in the State of North Dakota under one roof — they pay a quarter-million dollars in property taxes each year. Now, if personal property taxes were removed, it would be complete chaos, if we took all the personal property tax money away from that school district. So what the Legislature did then was classify that piece of real estate in one classification.

Now, here we have — and this is good in respect to what can happen at the local level; but how good is it for this industry? Here they came into being just ahead of the so-called industrial exemption that came about. They're paying this enormous tax load. They got no relief whatsoever when the personal property tax went off, and here's what can happen when you leave the definition of real estate up to the Legislature. And I'm not saying the Legislature was all wrong in this Act, but how far can we go when we start exempting this real estate? Because when you do, the burden has got to fall somewhere else. This is the only reason I bring this back to your attention. I think I'm going to support the Majority Report, also, and leave it on the tenth order as to just what should be charitable and what not charitable in that category.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Thank you, Mr. President.

The Legislature, last session, did something which some of you may not be aware of, and that is they defined what real property was, and they said, calling on my memory, that real property was the land and ditches and things attached to it, like buildings. If you put a house on real estate, it becomes real property. If you put plumbing in the house, it becomes a part of that real property. If you put in air conditioning and lights and all these things, these are considered, in the true legal sense of the word, real property. So, you see, we have a diametrically opposed position. The Legislature has stated correctly what real property is, where the Constitution — the present — doesn't, and we think it needs to be cleared up; and for that reason, I am on the Minority Report on 1-97. I do have reservations about leaving out charitable institutions, and I hope that tomorrow if the opportunity comes, that we can amend those in and eliminate a thorn in our side.

PRESIDENT WENSTROM: The Chair will recognize Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, I think this discussion on this section clearly demonstrates the incredible inequities with which property taxes begin and at which they end and are enforced. I can't possibly support the section as it is presented, as long as some exclusions are built into the Constitution. There are plenty of schools being run strictly for profit, there are cemeteries being run strictly for profit, and there are, I'm sure, religious groups operating strictly for profit under the name of religious; and if these things are to be excluded in the Constitution and given a false protection, I can't see how we can support this section, or any other, that does not, as someone suggested, go on to other logical — sometimes-logical exclusions.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, I agree with most of what Delegate Sinner has said there; but let's remember that this is a compromise, at best — our Majority Report. The Committee voted 11-to-4 — 11-to-3, rather, at one time, to remove all exclusions out of this Constitution — all of the specified exclusions. We feel, however, that the cemeteries that are operated for profit and the schools that are operating for profit are taken care of otherwise, because they are organized under the profit section of the — they're not under the nonprofit sections of the corporations; so they do pay taxes in those cases. I, personally, myself, would rather see these organizations left out. But we had to be somewhat realistic in our Committee and try to get something acceptable to the largest number. And I might say, in response to Delegate Omdahl, that this is not a perfect document by any means, and I'm sure that we could do better, but we — again, I have to say that we need to compromise, and we're not going to get in this thing what each one of us wants.

Now, I cannot agree that just because we have the schools, the churches and the cemeteries in this Constitution that we should give a carte blanche authorization to all organizations that are organized under the tax-exempt statutes to have tax exemption. I think they should be compelled in some way or another at some time down the line to show that they deserve that tax exemption, and I don't care whether it's a school or whether it's a hospital or whether it's an old folks home or whether it's a lodge, or anything else — they should first be able to show that they deserve it; and then, secondly, they should show nondiscrimination, and I think that this is the very best that we can come up with. And, so help me, I don't understand why, if we give churches tax exemptions, that we should give carte blanche exemptions to all other organizations for tax exemption.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I think one reason why cemeteries are in that, if the land is taxed, if someone doesn't pay the County Auditor, someone has to run the cemetery; so whether it's a problem or not, I would like to have the cemetery as nontaxable land.

I was tempted, after the Legislature removed the personal property tax, to start a proceeding to stop paying taxes on my house, because under this section, for tax purposes, it was personal property, and I think that would have relieved me of a substantial tax burden. But I realized that if I did that, I would be in the same frame of mind as another man in Shakespeare, who said, "We bear these ills we have, rather than flee to others we know not of." That might apply to quite a few things here in this Convention.

There is a real dichotomy, and that's a very popular word these days, in the second sentence in Section 176. It is true that other sections of our statute specifically say what is real property, and I have examined the last Legislature's definitions with great care. This section, of course — this sentence in the present 176 doesn't say that farm buildings or any buildings are personal property, period. It says that "within the meaning of this section," meaning as to taxes. That thing happens in other places. You may transfer half of your property or have your property to yourself and your wife in joint tenancy. Upon your death, under the law, that is her property. But the Federal Government doesn't pay any attention to that when it comes along to figuring out estate taxes. They pay no attention to that at all. And so we do have these strange situations. I, personally, am in favor of some additional exemptions, and I find myself in favor of the Majority Report, with the idea that tomorrow we may look at the exemptions on the tenth order of business. I believe that the Constitution, as it is written now, is confusing. It is possible that the Legislature would have the right to classify a property, if it is a reasonable classification, as they do for many other purposes, besides taxation, without any provision that they may do so. It's perfectly correct that our Constitution is a restrictive one and not one that grants powers; and because of that, it is the reason why I want certain charitable institutions exempt in the Constitution; otherwise, leave it up to the Legislature.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, for fear this debate may extend into the next day and I won't get paid for today, may I request that the record show that Delegates Fritzell and Longmire have reported for duty?

PRESIDENT WENSTROM: Thank you, Delegate Longmire.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Any further discussion? Delegate Nicholas.

DELEGATE NICHOLAS: Yes. I'd just like to bring out a point that I don't think any of the other Committee's members touched on, and in our Committee we received about 600 letters from various church groups throughout the State, with some one thousand signatures, supporting the exemptions for the churches; and, as per Delegate Sinner's part, I hope he wants absolution in the future, because it may be hard to get if this is left out. (Laughter)

I do hope the members of the assembly here will support the Majority Report, and if they feel further exemptions should be left in, they can amend it as they see fit tomorrow.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I don't want to belabor this question much longer. I think it's been well-explored. I think a lot of our trouble comes right back to the 1967 legislative act which attempted to vacate and set aside this constitutional provision which states that all fixtures, buildings, and so forth, put on the land are personal property. There they attempted to vacate and set that aside and classify buildings as real estate. So then, from there on now, we've got a rather confused situation. Maybe it isn't quite as bad as quoting Shakespeare again, like Delegate Pearce did, but with not the same quotation; but probably the Legislature has created its masterpiece of confusion.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President, I really haven't got too much to add to this, except the question of letters came up, and would Delegate Maxwell yield to a question?

DELEGATE MAXWELL: Yes, I will.

DELEGATE AUBOL: How many letters did your Committee receive on that particular issue?

PRESIDENT WENSTROM: Delegate Maxwell, would you care to answer?

DELEGATE MAXWELL: I couldn't, without checking. I'm sorry.

DELEGATE AUBOL: Oh. I understood it was in the area of thousands.

DELEGATE MAXWELL: Are you referring to the right-to-work issue?

DELEGATE AUBOL: Yes, I am, sir.

DELEGATE MAXWELL: Yes. We received close to two thousand letters.

DELEGATE AUBOL: My only point, Mr. President, is that we should not always base our actions in this Convention on how many letters we have received.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I am a little confused, but I would like anyone that cares to answer — either side. Which side would permit the Patterson Hotel to organize as an old folks home and be tax exempt? (Laughter)

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, in response to Delegate Rundle's inquiry, it's probably exempt now, if you wanted to go to court and get it. (Laughter)

PRESIDENT WENSTROM: Any further discussion? The question — the question is on the adoption of the Minority Report — that the Minority Report be substituted for that of the Majority.

Is there any further discussion? Hearing none, as many as are in favor of adopting the Minority Report will say "aye;" those opposed will say "no." The "noes" have it and the report lost.

DELEGATE CART: Let's have a division.

PRESIDENT WENSTROM: Did you say "division"?

DELEGATE CART: Yes, please.

PRESIDENT WENSTROM: Would we have five rise? That is a sufficient number. We will have a division.

Now, those that are in favor of adopting the report — the Minority Report — will vote “aye,” and those opposed will vote “nay.”

The key will be opened. You will indicate your choice.

Has every delegate voted? Does any delegate wish to change his vote?

Delegate Knudson, have you voted?

DELEGATE KNUDSON: Yes, I have. I vote “no.”

PRESIDENT WENSTROM: It wasn't on my board. That's why I asked.

DELEGATE KNUDSON: Knudson votes “no.” It's not on the board.

PRESIDENT WENSTROM: Any delegate wish to change his vote?

The key is closed.

The roll call indicates that there were 14 “ayes”; there were 80 “nay” votes; there were four delegates absent and not voting. So the question of adopting the Minority Report failed.

The question now before the Convention is on the adoption of the Majority Report. I don't think we need further discussion.

Hearing none, as many as are in favor of the motion to adopt the Majority Report will say “aye;” those opposed “no.” The “ayes” have it and the report is adopted.

This will be on the tenth order then tomorrow.

Fellow Delegates, I think we should take a break for 15 minutes.

Say, just excuse me. Before we do that: Take the sixth order — or eighth order. We have some announcements here. We have a number of school children visiting us.

CHIEF CLERK GILBREATH: Delegate Binek would like to announce that the Dickinson State College has 50-to-60 students, with Mr. Church in charge, in the balcony. (Applause)

Memorial Junior High School from Minot has 40 selected students in the balcony

PRESIDENT WENSTROM: Will those students please rise? (Applause)

CHIEF CLERK GILBREATH: And Delegate Kelsch would like to announce that there are 29 students from the eighth grade of Christ The King Grade School in the balcony.

PRESIDENT WENSTROM: Will the student please rise and receive the recognition of the Convention? Will you please rise? (Applause)

PRESIDENT WENSTROM: Then we will be in — I now declare the Convention to be in recess until eleven o'clock.

(The Session recessed at 10:43 A.M. until 11:04 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: Could we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE URDAHL: There's a group of 45 junior and senior high school students from Medina, North Dakota here under the leadership of A. K. Zimmerman and Don Smellner. I'd like to extend our welcome to them.

PRESIDENT WENSTROM: Would the visitors please rise and be recognized by the assembly? (Applause)

We will continue on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-36 has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal No. 1-36 — that it be amended and then that it do pass.

Is there any discussion? Hearing none, as many as are in favor of the motion will say “aye;” those opposed “no.” The “ayes” have it and Committee Proposal No. 1-36 will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-45, has had the same under consideration and recommends that the same be amended.

And when so amended recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-45; that the Proposal be amended and then adopted.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and the Committee Report is adopted and will be on the sixth order of business tomorrow.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I'm not supporting the Minority Proposal, but I think it should be called to the attention of the delegates that there was a new sheet here placed, on which will be — which Delegate Burke plans to present to the Convention on tenth order, to amend 1-45. I announce this at this time so the delegates will have a chance to look at this and remember that it's in relation to 1-45 that this amendment will be proposed tomorrow.

PRESIDENT WENSTROM: Thank you, Delegate Omdahl.

We'll continue on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-55, has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-55 — that it do pass.

Is there any discussion? Hearing none, as many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. Proposal No. 1-55 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-61, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-61; that the Proposal be indefinitely postponed.

Is there any discussion? Is there any discussion?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: The reason that this is being indefinitely postponed is that there is a new Committee Proposal that is taking the language of the old Constitution or the present Constitution.

PRESIDENT WENSTROM: Any further discussion?

The question, then, is on the adoption of the Committee Report; that Committee Proposal No. 1-61 be indefinitely postponed.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and it is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-72, has had the same under consideration and recommends that the same be amended.

And when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-72; that it be amended.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and this Report — 1-72 — will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-76, has had the same under consideration and recommends that the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-76; that it be given a do pass.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-76 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation, to whom was referred Committee Proposal No. 1-77, has had the same under consideration and recommends the same do pass.

Delegate Haugen, Chairman.

Delegate Haugen moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-77; that it be given a do pass.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Proposal will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-86, has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-86; that it be given a do pass.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-86 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-92, has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-92; that it do pass.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Proposal will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-98, has had the same under consideration and recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report to Proposal No. 1-98; that it be given a do pass.

Is there any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Proposal No. 1-98 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands, to whom was referred Committee Proposal No. 1-101, has had the same under consideration and recommends that the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-101; that it be given a do pass.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no."

Delegate Peterson, did you wish to —

DELEGATE PETERSON: I didn't get up fast enough. The Proposal 101 — is that the one that's from —

PRESIDENT WENSTROM: Yes — 101 — 1-101.

DELEGATE PETERSON: Yes. That's the one on public utilities?

PRESIDENT WENSTROM: I'm sorry. I can't tell you. Yes, that is correct.

DELEGATE PETERSON: I vote against it. Will we get a chance tomorrow to discuss it?

PRESIDENT WENSTROM: Yes, ma'am. That will be on the tenth order of business tomorrow.

I will restate the motion.

The question is on the adoption of the Committee Report on Committee Proposal No. 1-101; that it be given a do pass.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: As one of the Committee that hurried that back out, I would like to remind you that it isn't in the books yet and, hopefully, those will be on the desks today sometime. Actually, however, it is — if you want to look in your book under 1-20, the content of 1-101 amounts to Section 2 of 1-101. Is that not right? Yes, that's correct.

PRESIDENT WENSTROM: Thank you, Delegate Lander.

Delegate Hoghaug, did you have a question?

DELEGATE HOGHAUG: I just wanted to report it isn't in the book.

PRESIDENT WENSTROM: I'm sorry. He did make reference to where it is in another proposal.

Then the question is on the adoption of the Committee Report on Proposal No. 1-101.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and this Proposal 1-101 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-2, has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-98.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-2; that it be indefinitely postponed.

Is there any discussion?

Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman: This is similar to the bill that we — that the Preamble, Bill of Rights and Suffrage had introduced, and we just indefinitely

postponed it, and I felt that the wording in Delegate Proposal 2-2 was much better than what we have reintroduced, and I do not support the new language, but, rather, would have Section 2-2 presented by Delegate Geelan.

PRESIDENT WENSTROM: Any further discussion?

Delegate Daniels.

DELEGATE DANIELS: I, too, support Delegate O'Toole's position. This is the bill of attainder and ex post facto portion, and it contains the definitions for these, and I still contend it should be in the Constitution, even though it adds a few words.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE GEELAN: Mr. President.

DELEGATE GEELAN: Since I was the delegate who introduced the Delegate Proposal 2-2, no, I'm not at all happy that it's going to be indefinitely postponed; but I'm accepting the will of the Convention that voted negatively on our Committee Report, so I am, with Delegate Rundle, am now attending the funeral of a proposal that I really thought had merit.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I do not believe that a preliminary vote always reflects the will of the Convention. This Convention has already changed its mind on one occasion that I know of. I would support — or I would oppose indefinite postponement of this Proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Is it not correct that we're going to be discussing this part again? Is this not one of the — Section 16 that we're going to discuss tomorrow morning on the tenth order?

PRESIDENT WENSTROM: Well, Delegate Hendrickson, as far as the Proposal before the Convention, if we indefinitely postpone this at this time, this Proposal will not be before the Convention again, unless there is a motion someplace along the line to reconsider it.

DELEGATE HENDRICKSON: Well, I'm against indefinitely postponing it, until we have discussed the companion suggestions from the Committee.

PRESIDENT WENSTROM: Any further discussion?

The question is on the Committee Report that Delegate Proposal No. 2-2 be indefinitely postponed.

As many as are in favor of the motion will say "aye;" those opposed "no."

I believe the "noes" have it.

Division? A division has been requested.

We will have a division. Now, remember, those that are in favor of indefinitely postponing Proposal No. 2-2 will vote "aye;" those that are opposed to indefinitely postponing it will vote "no."

The key will be opened and you will record — or you will indicate your choice.

Has every delegate voted? Any delegate wish to change? The key is closed.

The vote indicates that there were 46 "ayes," there were 47 "nays," there were five delegates absent; and so the motion to indefinitely postpone lost, and I really question it. I don't know that my hearing was that good.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I would now move that Delegate Proposal 2-22 be placed on the calendar.

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Delegate Saugstad moves that Delegate Proposal 2-2 —

DELEGATE SAUGSTAD: I beg your pardon. 2-2.

PRESIDENT WENSTROM: — 2-2 be placed on the calendar. Do we have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Sanstead.

Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and it will be on the calendar.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: As long as we have no 2-2, and 1-98 dealing with the same subject on a different approach, I would move that they be presented on the tenth order, one following the other.

CHIEF CLERK GILBREATH: 2-2 second or first?

DELEGATE KELSCH: It doesn't make any difference.

PRESIDENT WENSTROM: 1-97 —

CHIEF CLERK GILBREATH: 1-98.

PRESIDENT WENSTROM: Have we adopted that?

CHIEF CLERK GILBREATH: Yes.

DELEGATE KELSCH: 1-98, I think, is on the tenth order tomorrow, and that they come together, because they deal with the same subject.

PRESIDENT WENSTROM: Thank you, Delegate Kelsch. We will proceed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-3, has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-58.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-3; that it be indefinitely postponed.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee — or Delegate Proposal No. 2-3 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-4, has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-89.

Delegate Maxwell, Chairman.

Delegate Maxwell moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-4; that the same be indefinitely postponed.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Delegate Proposal No. 2-24 — 2-4 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-53 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-53; that the Proposal be indefinitely postponed.

Is there any discussion?

DELEGATE BRAKKE: Mr. President.

PRESIDENT WENSTROM: Delegate Brakke.

DELEGATE BRAKKE: I see no real purpose in trying to keep this Proposal

before the Convention any longer; so at this time I request the unanimous consent to withdraw Proposal 2-53.

PRESIDENT WENSTROM: I think we can — if there is no objection from the Delegates to the Convention that we give Delegate Brakke permission to withdraw his proposal — it requires unanimous consent, however. Is there any objection to granting him the permission to withdraw the Proposal at this time?

Hearing none, your request is granted, Delegate Brakke. There will be no further consideration, then, at this time of the motion or the proposal to indefinitely postpone.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-68, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-68; that it be indefinitely postponed.

Is there any discussion? Hearing none, the question is on the adoption of the Committee Report; that the Proposal be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Proposal is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-78, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-78; that the Proposal be indefinitely postponed.

Is there any discussion? Hearing none, the question is on the indefinite postponement of Delegate Proposal No. 2-78.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Proposal 2-78 is indefinitely postponed.

We will be on the seventh order of business — Reports of Select Committees — and we will have a report of the Committee on Rules.

CHIEF CLERK GILBREATH: Mr. President: Your Procedural Committee on Rules appointed to review and recommend changes in the temporary rules has had the same under consideration and recommends that the temporary rules of the Convention be amended as follows:

Rule 13 —

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I would move that only the new language be read.

PRESIDENT WENSTROM: Delegate Saugstad moves that only the new language in the proposed rules changes be read.

DELEGATE UNRUH: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Unruh. Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we will read only the new language on these rules changes.

CHIEF CLERK GILBREATH: The new language in Rule 13 will start with the paragraph "All delegate" — "All delegate and committee proposals shall be reported out of the substantive committees for first reading not later than the eighteenth day of the plenary session. Any proposals re-referred to a substantive committee alter the eighteenth day of the plenary session shall be returned to the Convention floor within the next two Convention days. At the close of the twenty-third day of the plenary session all proposals shall have been acted upon on first reading and first passage."

PRESIDENT WENSTROM: Do we have a second?

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kelsch.

The question now is on the adoption of this amendment to the Rules. I believe that in our adoption of Rules in the past to sections or amendments, we have used only the one section at a time, and I think we better proceed with that — follow that procedure.

The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President. Fellow Delegates:

The rule change in Rule 13 provides for a specific time when all delegate proposals shall be reported out of the substantive committees, and this calls for them being reported out not later than the eighteenth day of the Plenary Session.

Now, so that you will know what that means, the eighteenth day will be January 26th. That means — January 26th, which is next Wednesday — and that means that all — all committee — all delegate proposals must be reported out of the substantive committees. Then any proposal re-referred to a substantive committee after the eighteenth day of the Plenary Session shall be returned to the Convention floor within the next two Convention days. That is, in the even a proposal is re-referred to the substantive committees, they must be reported out of committee within the next two Convention days. Then, at the close of the twenty-third day of the Plenary Session, all proposals shall have been acted upon first reading and first passage.

Now, that — I think we should spend just a little time on that. What that means — what that spells out is that all delegate — all committee proposals will have to have been acted upon; that is, in other words, they will have to have been on the calendar and then have to have been on first passage — first reading and first passage and have been acted upon, and it means that by the end, then, of the twenty-third day of the Plenary Session, which will be Wednesday, February 2nd — and that means, then, that everything — all proposals then will be — or will have been referred to the Committee on Style and Drafting.

Now, the reason for these suggested rules is that it will speed up our — or regulate our time, so that we will be in a position where we can complete our work within the 30 days allocated to us.

I would then move for the adoption of Rule 13 as amended.

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: Delegate Saugstad moves that Rule 13 be amended, and the motion was seconded by Delegate Trenbeath.

Any discussion? The Chair will recognize John Paulson.

DELEGATE PAULSON: Mr. Chairman, I would like to inquire as to the exact status of the Committee on the Constitutional Ballot. Is it a study committee or procedural committee? Because that is a committee that will present proposals to this Convention, if it thinks that they should go on the ballot.

So I think that the rules should be specific, so that the Constitutional Ballot Committee can submit to the Convention a proposal or proposals after the twenty-third day deadline, because the delegates won't know whether they should offer alternates until all of them have received first passage.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: In response to Delegate Paulson's question, I believe that the rules adopted setting up the Ballot Committee are such that will allow — we tried to include in the rules procedures that would allow for handling the type of problem that you are suggesting. Remember this: That these rules which we are adopting and which we have been considering will be at the will of the majority of this body, and I believe that, should there be — or in the final analysis this body will have to decide how many and which specific set-aside proposals will be considered, and then this body will have to decide which ones will be placed on the ballot. So, in the final analysis, it will become the decision of this body. However, the mechanics of handling these set-aside proposals, of course, and the mechanics of preparing them, will rest with this special committee.

PRESIDENT WENSTROM: Any further discussion?

The question is on the motion to adopt the rule on Rule 13 — the amendments on Rule 13 as presented.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: This still doesn't answer my question. Twenty delegates can introduce an alternate proposal. Is the way cleared for that introduction beyond the eighteenth day or is Rule 13 —

PRESIDENT WENSTROM: Delegate Paulson —

DELEGATE PAULSON: — is Rule 18 completely separate from Rule 13? Is it a procedural committee, or what?

DELEGATE SAUGSTAD: It is a procedural committee, and I believe it was the understanding of our committee that it would — yes, that this restriction is separate and different; that is, in other words, that there's a special set of rules — that's a special set of rules under which the Ballot Committee operates.

DELEGATE PAULSON: All right.

PRESIDENT WENSTROM: Delegate Paulson, the Chair will rule that in the event that that Committee does desire to introduce a proposal after that particular — the day designated here, that it will be accepted by the Convention.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: The rule that we adopted the other day on alternate proposals is specific; accepting introduction of alternate proposals. The third paragraph says the limitation on the time for introduction of proposals as provided by Rule 18, which is the regular rule on introduction, shall not apply to alternate proposals.

PRESIDENT WENSTROM: Thank you, Delegate Haugen.

Any further discussion then?

The question is on the adoption of the amendment to Rule 13.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted.

CHIEF CLERK GILBREATH: Rule 18. INTRODUCTION OF PROPOSALS.

DELEGATE SAUGSTAD: Mr. President, I would again move that we do not read the entire Rule 18, but only that portion which contains the new language.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Saugstad and seconded by Delegate Kwako that we do not read the entire rule; only that portion which is new language.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we will proceed in that manner.

CHIEF CLERK GILBREATH: The only new language in Rule 18 is the substitution of "sixteenth" for the "twentieth" day at the bottom — the last sentence of the Rule.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Again, this was done to conform with the suggested amendments to Rule 13, and, in other words, then, it says that the sixteenth day of the Plenary Session becomes the last day on which Committee Proposals may be introduced, and that date will be January 24th; in other words, Monday — next Monday, January 24th, will be the last day that a Committee Proposal can be introduced without suspending the Rules.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SAUGSTAD: I move the adoption of the amendment and, after the adoption of the amendment, the adoption of Rule 18.

PRESIDENT WENSTROM: The question, then, is on Saugstad's motion to adopt the amendment as proposed to Rule 18.

Now, do I have a second?

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Jestrab. Any questions? Delegate Lander.

DELEGATE LANDER: Yes, Mr. President. I would then question: Does this mean that, as before, that this would have to be done before we adjourn on Monday, and then, practically, that the committees would have only this afternoon and tomorrow afternoon in order to complete anything they have to do?

PRESIDENT WENSTROM: This is with regard to the introduction, as I interpret it, of new proposals, and the reason that this was changed, Delegate Lander, to the sixteenth is to conform with what we just did in Rule 13.

DELEGATE LANDER: Okay. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

The question now is on Delegate Saugstad's motion that the Rule now be adopted as amended, and a second to that?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Kwako seconded the motion.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the Rule is adopted as amended.

CHIEF CLERK GILBREATH: The new language in Rule 29. **MOTION FOR RECONSIDERATION.**

"MOTION TO RECONSIDER BY DELEGATES. Any delegate may move for reconsideration of any question. The motion for reconsideration cannot be made on the same question more than once in each Convention day.

"On the same or next two succeeding Convention days, a motion to reconsider the action on a proposal shall require a majority vote of the delegates-elect (50 votes).

"After the same and next two succeeding Convention days, a motion to reconsider the action on a proposal shall require a two-thirds vote of the delegates-elect (66 votes).

"MOTION TO RECONSIDER BY STYLE AND DRAFTING COMMITTEE. The Committee on Style and Drafting may move for reconsideration of the action taken on a proposal at any time. A motion to reconsider the action on a proposal made by the Committee on Style and Drafting shall require a majority vote of the delegates - elect (50 votes).

"MOTION TO RECONSIDER MATTERS OTHER THAN PROPOSALS. On the same or next two succeeding Convention days, a motion to reconsider matters other than proposals shall require a majority vote of the delegates voting.

"After the same and next two succeeding Convention days, a motion to reconsider matters other than proposals shall require a two-thirds vote of the delegates voting."

DELEGATE FALLGATTER: Mr. President.

PRESIDENT WENSTROM: Delegate Fallgatter.

DELEGATE FALLGATTER: Here we go, again, on Rule 29.

Just a brief explanation for the changes here that were made by the Committee:

We made some language improvement here and, also, reference in paragraph 8 regards the motion to reconsider by Style and Drafting. The change here was that it would be no longer necessary for the Committee on Style and Drafting to file a written report with the Clerk of the Convention. It was felt this would speed up the process of handling proposals, and I would move the adoption of Rule 29 as amended.

PRESIDENT WENSTROM: Delegate Fallgatter moves that the amendments to Rule 29 be adopted.

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Solberg.

Is there any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President, I notice that the new Rule 29 differs from

the old one in that the old Rule 29 said that the same majority shall be required to adopt a motion to reconsider as was required to take the original action. Now, I'm not a member of the Rules Committee and I don't understand all these high-sounding terms, but what did you do when you took that language out?

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: There's no change in this, because to adopt a proposal required a majority vote of the delegates. So we just put it over in there and spelled it out very clearly. Then, on the same or succeeding days it required 50 votes. However, to reconsider that, it takes two-thirds, after the third day. It was the same thing that was stated in another sentence — that the same vote shall be required as was required on the original matter.

PRESIDENT WENSTROM: Any further discussion?

The question, then, is on the adoption of the amendments to Rule 29. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and the Rule is adopted — the amendments are adopted.

Now for adopting the Rule, may I have a motion?

DELEGATE SAUGSTAD: I'll move that Rule 29 be adopted as amended.

PRESIDENT WENSTROM: Delegate Saugstad moves that Rule 29 be adopted as amended.

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: And Delegate Fallgatter seconded the motion.

Any further discussion? As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and Rule 29 is now adopted as amended.

CHIEF CLERK GILBREATH: The new language in Rule 33 is "INTRODUCTION OF VISITORS. Recognition or introduction of visitors or guests shall be read from the desk."

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: We added the language at the bottom for the simple reason it would be more sophisticated, probably, so the delegates wouldn't have to introduce their guests from the floor; that it be done from the desk.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hubrig moves that the amendments to Rule 33 be adopted. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton. Any further discussion?

Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and the amendment is adopted.

Delegate Fallgatter moves, and Delegate Stanton seconds, that the Rule 33 be now adopted as amended. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and Rule 33 is amended — is adopted.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I now move that the Temporary Rules as amended become the Permanent Rules of this Convention.

PRESIDENT WENSTROM: Delegate Geelan moves that the Temporary Rules as amended now become the Permanent Rules of this Convention.

Do I have a second?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fallgatter. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and the Temporary Rules of the Convention now become

the Permanent Rules for this Constitutional Convention.

We'll be on the ninth order of business — Introduction and Reference of Proposals to Committees.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-105, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 1 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.”

PRESIDENT WENSTROM: Committee Proposal No. 1-105 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-106, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 2 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.”

PRESIDENT WENSTROM: Committee Proposal No. 1-106 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-107, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 3 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.”

PRESIDENT WENSTROM: Committee Proposal No. 1-107 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-108, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 4 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.”

PRESIDENT WENSTROM: Committee Proposal No. 1-108 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-109, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 5 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.”

PRESIDENT WENSTROM: Committee Proposal No. 1-109 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-110, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 6 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.”

PRESIDENT WENSTROM: Committee Proposal No. 1-110 — or this is Committee Proposal No. 1-110 — is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-111, introduced by Committee on Legislative Functions:

“Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 7 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.”

PRESIDENT WENSTROM: Committee Proposal No. 1-111 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-112, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 8 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people."

PRESIDENT WENSTROM: Committee Proposal No. 1-112 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-113, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 9 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people."

PRESIDENT WENSTROM: Committee Proposal No. 1-113 is referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-114, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that Article XIX to the constitution of the state of North Dakota, which pertains to adverse possession of public lands, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-114 is referred to the Committee on Education, Resources and Public Lands.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-115, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 153, 154, 155, 156, 157, 158, 160, 161, 163, 164 and 165 of the constitution of the state of North Dakota be repealed; and that Article VII to the constitution of the state of North Dakota be created; all of which pertain to trust lands."

PRESIDENT WENSTROM: Committee Proposal No. 1-115 is referred to the Committee on Education, Resources and Public Lands.

We'll be on the eighth order of business — Announcements.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: The Budget Committee will meet in the President's office at two o'clock.

While I am making that announcement, I — it may be unnecessary, but since there will be meetings in February, I would like to remind all of the delegates of the law which says that you only have four paid trips home; so keep track of how many you used.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, is it your thought that the session will be over shortly?

PRESIDENT WENSTROM: I intend, Delegate Meidinger, to recess until one o'clock, and then do some more work. I believe maybe I should ask, first, if there are committee hearings scheduled before 2:00. I don't believe there are, but maybe I'm in error.

Are there any committee hearings scheduled before two o'clock? So I think we'll follow that procedure then.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: May I inquire, then, if it is the intention of the Chair to adjourn about two o'clock?

PRESIDENT WENSTROM: Yes, it is, sir.

DELEGATE HAUGEN: The Committee on Finance and Taxation has a meeting scheduled for 3:30, and I want the Committee members to know that, and we will probably move that up by about an hour.

PRESIDENT WENSTROM: Then we'll continue on announcements.

CHIEF CLERK GILBREATH: Representative Francis Weber is in the gallery.

PRESIDENT WENSTROM: Francis Weber, would you stand and receive the recognition of the Convention, if you're still with us? I believe she has left.

CHIEF CLERK GILBREATH: "He."

PRESIDENT WENSTROM: Any further announcements?

CHIEF CLERK GILBREATH: The Legislative Functions Committee will hear Delegate Proposal 2-57, pertaining to uniform legislative treatment of corporations, at 4:00 P.M. in the Large Hearing Room Thursday, January 20th.

Delegate Darold Benz is still in the hospital, but is feeling better. He plans on going home tomorrow.

Trinity Lutheran Church Men's Annual Pancake and Sausage Supper, Trinity Lutheran Church, located at Third and Avenue A, Thursday, January 20, 1972, from 5:00 to 8:00 P.M. Adults \$1.50.

PRESIDENT WENSTROM: Any further announcements?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: The Committee on Style and Drafting is contemplating another meeting tonight at eight o'clock in G-7.

PRESIDENT WENSTROM: Any further announcements? Hearing none, the Chair is about to declare a recess of the Convention until one o'clock. We're still in convention (rapped gavel).

I hear no objection to that, so we will be back at one o'clock and proceed with the regular orders of business.

Hearing no objection, the Chair will rule that the Convention is now in recess until one o'clock this afternoon.

(The Session recessed at 11:57 A.M. until 1:00 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:07 P.M., Thursday, January 20, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

We'll be on the eighth order of business — Announcements. The Clerk has an announcement.

CHIEF CLERK GILBREATH: Delegate wives and staff wives: There will be a no-host luncheon at the Elks Club on January 25th at 1:00 P.M. Please make your reservations with President Wenstrom's secretary no later than Monday noon, January 24th.

PRESIDENT WENSTROM: Just so the delegates understand how come we broke precedent and had ordered announcements on the opening of the Session, is because those orders came from my wife! (Laughter)

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If I might rise on a matter of personal privilege, I'd like this referred to in the Journal. I, myself, and a number of other delegates appear as having voted "no" on Proposal 1-73, which is the Proposal on religious freedom, in yesterday's Journal, on page 224. I know Delegate Hartl feels the same as I do.

We would like the record to show our reason for voting "no" was not that we were opposed to the concept of religious freedom; it was the concept that it deletes other language in the repeal clause of the Proposal.

Would that be printed in the Journal?

PRESIDENT WENSTROM: If you so desire.

Delegate Kelsch and Fellow Delegates:

On a question that you just brought to the attention of the Convention, I think that when there is a question of language on a proposal and when we are debating it on the tenth order, I think it would really be worth the effort to offer an amend-

ment to that particular piece of — or that Proposal, rather than finding yourself — the amendment might be adopted — and do it that way, rather than have yourself forced to vote “no” on something that the only reason you have against it is simple the verbiage in the particular proposal. So I think that it would be well if you did at least try to amend it and, if it doesn’t pass, why it just didn’t pass and you’re no worse off than you were before.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Speaking for this trio back here, who were also recorded against it, I feel the reason — that the Committee did not respond to what we thought was a very important and legitimate question by Delegate Kelsch, and so we’re going to support his and our answer, to have a negative vote; and we also were recorded against it, and I certainly wouldn’t want my Seventh Day Adventist friends to note it as being opposed to religious freedom.

PRESIDENT WENSTROM: Do you want your remarks placed in the Journal?

DELEGATE SANSTEAD: Yes. Did you get those?

CHIEF CLERK GILBREATH: No.

DELEGATE SANSTEAD: That’s not necessary to have that in the Journal. I’m not sure —

DELEGATE PETERSON: Mr. President, my reason for voting “no” was exactly the same. I felt at the time I was wishing that Delegate Kelsch had made that a motion, and I agreed with him that the language was not correct.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I’m in the same boat.

DELEGATE TRENBEATH: Me, too, Mr. President.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: I think we have an accounting here of almost all the “no” votes for that.

Delegate Rundle.

DELEGATE RUNDLE: My constituents are all very religious people. Ditto.
(Laughter)

PRESIDENT WENSTROM: We will be on the tenth order. Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, may we be on the eighth order of business?

PRESIDENT WENSTROM: Without objection, we’ll be on the eighth order of business.

DELEGATE HOFFNER: The Legislative Functions Committee will meet 15 minutes after adjournment this afternoon. We have a lot of work to do.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Now that Chairman Hoffner has started it, I’ll continue and announce that the Bill of Rights Committee will meet 15 minutes after adjournment.

PRESIDENT WENSTROM: Thank you. Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, the Committee on Education, Public Lands and Natural Resources will meet 15 minutes after the conclusion of the session today.

PRESIDENT WENSTROM: Any further announcements?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, there will be a short meeting of the subcommittee or the Judicial Functions — excuse me — for the Executive Functions and Legislative Functions Subcommittee, right after we adjourn.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Let's make it unanimous and announce that the Finance and Taxation Committee will meet 15 minutes after recess today.

PRESIDENT WENSTROM: Thank you.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: The Judiciary Committee will meet 14 minutes after the Convention.

PRESIDENT WENSTROM: Fine.

Anything further? Then we will go on with the calendar, on the tenth order of business.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-32, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 194 of Article II of the constitution of the state of North Dakota be repealed; and that section 22 of Article II to the constitution of the state of North Dakota be created; both of which pertain to grounds for impeachment.

"SECTION 1. REPEAL.) Section 194 of Article II of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Section 22 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"SECTION 22. All elected state officers and judicial officers elected to represent more than one political subdivision shall be subject to impeachment for crimes, corrupt conduct, malfeasance, misdemeanor in office, or because of chronic and continuing inability to perform the duties of office. The house of representatives shall have the sole power of impeachment by a vote of the majority of those elected in the house. The senate shall have the sole power of trial in impeachment cases. A two-thirds vote of elected senators shall be required for conviction."

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-32.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: There is an amendment at the desk on 1-32. I would like to have that read.

CHIEF CLERK GILBREATH: The amendment for Committee Proposal 1-32 is:

On line 1 delete the word "section" and insert the word "sections" and after the numeral "194" insert ", 195 and 196" and after the word "Article" delete the numeral "II" and insert the numeral "XIV".

On line 4 delete the word "both" and insert the word "all".

On line 6 delete the second word "Section" and insert the words — the word "Sections" and after the numeral "194" insert ", 195 and 196" and after the word "Article" delete the numeral "II" and insert the numeral "XIV".

On line 7 delete the word "is" and insert the word "are" and renumber the lines accordingly.

PRESIDENT WENSTROM: Now, do we have a second to the proposed amendment?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Delegate Solberg seconds the motion. So we have before the Convention the amendments as offered to Committee Proposal No. 1-32 by Delegate Stanton. Is there any discussion?

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I am disturbed by the words on lines 14 and 15, "because of chronic and continuing inability to perform the duties of office." It seems to me that impeachment has traditionally been a method of moving against people who do things while they're in office that they should not do; but this would add as grounds for impeachment the inability to conduct your office because of a heart

attack, of a stroke, of a disabling accident, and it seems to me that these ought not to be grounds for impeachment. I don't know how a man or a woman who has suffered from a disabling stroke or a heart attack could stand trial, for one thing, and impeachment supposes that this will be followed by a trial. It seems to me that these words "because of chronic and continuing inability to perform the duties of office," do not belong in there. It seems to me that this is something that happens to you, not something that you do, and that there is something wrong with including these as grounds for impeachment.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Aren't we just moving on the amendment, which is really just the correction of section numbers?

DELEGATE VOGEL: I beg your pardon. I thought you asked for discussion. I'm out of order.

DELEGATE STANTON: All we want to do is correct the section numbers which were not correct, and that's all the amendment amounts to. Discussion will follow after this.

PRESIDENT WENSTROM: Thank you, Delegate Stanton. Any further comments?

Hearing none, the question is on the adoption of the amendments. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I would now move that the Rules be suspended and that Committee Proposal 1-32 be deemed properly engrossed and placed on the calendar for passage.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Stanton moves that the Committee Proposal No. 1-32 — that the Rules be suspended and that Committee Proposal No. 1-32 be properly engrossed and be placed on the calendar for first passage, and it is seconded over here — seconded by Delegate Litten.

DELEGATE STANTON: Now, Mr. President —

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I will attempt to tell you what we've done.

Sections 194, 195 —

PRESIDENT WENSTROM: Delegate Stanton, just a moment, until we vote on this motion that we have before the Convention.

DELEGATE STANTON: I'm sorry.

PRESIDENT WENSTROM: The question is just stated by the Chair:

Those in favor will say "aye;" those opposed "no." The "ayes" have it. And now — Committee Proposal No. 1-32 as amended is before the Convention.

Now, Delegate Stanton.

DELEGATE STANTON: Okay. Section 194, 195 and 196 all pertain to matters of impeachment, and the original section has not been changed a great deal, except that we have included under the new section that all elected state officers and judicial officers elected to represent more than one political subdivision shall be subject thereto. Grounds for impeachment as contained in Section 196 have been omitted in favor of "chronic and continuing inability to perform the duties of office." And under the bicameral system, of course, the House and the Senate would still handle impeachment, as they do now.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE VOGEL: Excuse me. I'm sorry I was out of order, but I think that probably everyone heard what I said — that I feel that if we're going to abolish habitual drunkenness, which, admittedly, is something in the area between something one does voluntarily and something that happens to one, and I suppose it was in this case considered as an illness, but I think this covers more than what it was intended to cover in its present state.

PRESIDENT WENSTROM: Any further comments? Any further discussion?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I perhaps should apologize for saying anything, because I don't recall that I debated this issue in the Committee; but because of Delegate Vogel's remarks, it does occur to me that perhaps when we use "impeachment" rather than any other form of removal for "chronic and continuing inability to perform the duties of office" — not failure, mind you, such as failure to show up — but, as she has pointed out, something may happen to a man which makes him unable — that's the "inability" part. I grant that he may well be removed, because you can't continue to let some offices remain vacant without an incumbent to exercise the functions; but the word "impeach" has an almost criminal approach to it; in fact, all of the other things prior to that are crimes — corrupt conduct, malfeasance, misdemeanor — which have a sort of criminal thinking. In the word "impeachment" in legal proceedings, it means that you have made a witness out a liar by impeaching him by some other statement he has made, or something to that effect, and it does appear to me at this late date that possibly "impeachment" is the wrong method for removing a man for something which is not his own fault, which might well be under this language.

PRESIDENT WENSTROM: Any further comments?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I think the practical application of an article in a constitution like this would be something like this: That a person is probably criminal or corrupt, or something like that, and you get rid of him and be sorry when you're doing it, and then comes the fellow who is ailing and it's apparent to everyone else that he is not doing his job right. So his friends encourage him to resign, and sometimes he does and sometimes he doesn't, and if it gets to be a plain contest of wills, the threat of impeachment might encourage resignation. That's how I think this kind of a section is worded.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President and Fellow Delegates:

Section — or Proposal 1-26 had a provision which discussed the matter of disability, and it's been referred back to the — to a joint subcommittee of the Judicial — excuse me — the Legislative Functions and Executive Functions Committees, and we are going to be discussing in that committee the matter of removal for disability, and we're going to be meeting as soon as we adjourn today, and I'm wondering if maybe it might not be well that we look at 1-32 in conjunction with our other sections, and if the Convention would so approve, we could lay this over one Convention day and then see how we have it merged together, and if the President would accept that motion, I would make it at this time.

PRESIDENT WENSTROM: I would accept the motion.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson. Excuse me.

DELEGATE PAULSON: I think if Delegate Nothing would hold his motion one moment, I think an amendment I have submitted to the desk would clear up the question as far as this one proposal is concerned.

PRESIDENT WENSTROM: Is that agreeable with you, Delegate Nothing?

DELEGATE NETHING: That's fine.

PRESIDENT WENSTROM: Thank you.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson has the floor.

DELEGATE PAULSON: While they are typing the amendment, Mr. President, I will give it to the body.

In line 15, delete the word "inability" and insert therein the words "willful failure."

PRESIDENT WENSTROM: Now, Delegate Paulson moves the amendment. Will you read the amendment, Mr. Clerk?

CHIEF CLERK GILBREATH: The amendment to Committee Proposal 1-32 is as follows:

"In line 15, delete the word 'inability' and substitute in lieu thereof the words 'willful failure' and renumber the lines accordingly."

PRESIDENT WENSTROM: Now, do we have a second to the proposed amendment?

DELEGATE WARNER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Warner.

DELEGATE PAULSON: Mr. Chairman, I think this simply separates the two reasons for inability to perform, and then the removal from office for other reasons can be taken care of by the Executive Functions Committee in its future proposal.

DELEGATE FRITZELL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill. Delegate Hill, did you wish the floor?

DELEGATE HILL: I've changed my mind and have an amendment after that was done.

PRESIDENT WENSTROM: Thank you. And Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, I'm wondering if it's necessary to have both "chronic and continuing" in that case. To me "chronic and continuing" serve the same purpose, and it's only a repetition when it comes to "chronic, willful failure" or "continuing willful failure." It doesn't seem necessary to have them both.

PRESIDENT WENSTROM: Any further discussion on the amendment as proposed by Delegate Paulson that the word "inability" in line 15 be stricken — stricken and — what were the two words? — and "willful failure" inserted in lieu thereof. If there is no further discussion, as many as are in favor of the proposed amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

Now, Delegate Hill, I believe you wish to further amend.

DELEGATE HILL: Yes. Would the amendment be read from the desk?

CHIEF CLERK GILBREATH: Delegate Hill's amendment to Committee Proposal 1-32 is as follows:

"In line 15 delete the words 'misdemeanor in office' —

DELEGATE HILL: Line 14, please.

CHIEF CLERK GILBREATH: "In line 14 delete the words 'misdemeanor in office,' and renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to that?

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: That's seconded by Delegate Chase.

Now the question on the proposed amendment as offered by Delegate Hill.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: The reason for that amendment is in the line prior to that, you're subject to impeachment for crime. By definition in our Code, a crime is either a misdemeanor or a felony. I fail to see what the language "misdemeanor in office" means, if it's already provided for subject — we've already provided impeachment for crime, and crime does include that term "misdemeanor," and to me that kind of language is simply worthless, and I'm deleting it for that reason.

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question, then, is on the amendment as offered by Delegate Hill.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I would now move that the Proposal be — excuse me — that the Rules be suspended and that the Proposal be deemed properly engrossed; that it be placed on tomorrow's calendar for the first reading and first passage.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Nething, and seconded by Delegate Stanton, that the Rules be suspended, that Committee Proposal No. 1-32 be deemed properly engrossed, that it be placed on tomorrow's calendar for final passage.

As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it and Committee Proposal No. 1-32 will be on the tenth order of business tomorrow as amended.

Next for consideration will be Committee Proposal No. 1-84.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-84, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the State of North Dakota, which pertains to right to counsel for indigents in civil proceedings in which the state or its subdivisions are adverse parties, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"An indigent person shall have the right to counsel at public expense in administrative or court proceedings in which the state, its agency or subdivision is an adverse party."

PRESIDENT WENSTROM: Is there any discussion? Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, this is a new section, and the intent of the section is that if any person who does not have finances, you might say, to protest a decision of a welfare board or any other agency of the State government, that he would be entitled — he or she would be entitled legal counsel to appear before such boards. At the present time, this is not clear in the statute, and I believe that the people should be entitled to legal counsel when they're going to appear before a board for protest.

We do at the present time furnish legal counsel for people who have — may have committed as much as murder and claim that they do not have the ability to employ an attorney or legal counsel. The State then gives legal counsel to such people, and certainly it's my belief if we can afford legal counsel for people who have committed a crime such as murder, certainly we should be entitled — or the people should be entitled to legal counsel who are protesting the decision of some board that they might not agree with. I would, therefore, move for the adoption of this Proposal.

PRESIDENT WENSTROM: Thank you. Delegate Christensen.

DELEGATE CHRISTENSEN: Mr. President and Fellow Delegates:

1-84, which attempts to establish the fact that indigent persons are entitled to counsel at public expense in administrative and court proceedings in which the State or one of its agencies or subdivisions might be an adverse party is a proposal that concerns me and many other people greatly.

This right to counsel could and possibly should be viewed in the light of another service which the State should render to its indigent people. If this is deemed proper, it would involve an appropriation of funds to make the service available. For this reason, I believe this service as, say, with the existing medical services rendered, would be more appropriately an item to be considered by our Legislature, and, therefore, I'm going to oppose this Proposal.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Might I ask the members of the Committee, or Delegate Hubrig: Who is to determine in the case of this type when the party is indigent?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell, will you answer?

DELEGATE MAXWELL: Yes. That would be a matter for the Legislature to determine in supplementing and implementing this constitutional provision. Normally, it would involve court proceedings. I presume it would be up to the Court to determine, and in administrative proceedings, perhaps it would be up to the administrative hearing officer to make that determination. But this is not an attempt to define it and to tell the Legislature who should make that decision.

DELEGATE KESSEL: Thank you. I thought possibly this would just be an automatic case for any state agency to pay the fees. Thank you.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: As a member of the Bar, who pays his fee to the integrated association, objectionally, and who is looking at this particular bill, I wonder if every person who goes up to the Welfare Board is not now going to be able automatically to take along with him counsel furnished at the expense of the State; and if it is so, I know that Delegate Rundle is going to object strenuously to the lawyers having this free-found new batch of clients.

On the basis of the wordage in this bill, I am certain that I would have to vote against it, if this is what it's going to automatically provide is counsel for everyone at any time that they may want it before any administrative body.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President and Fellow Delegates:

I, too, will speak against the bill, although I may be speaking against my own interests, as Mr. Roney pointed out.

I can see people demanding counsel at every administrative hearing that may be. If they raise my property tax on my house — not mine, but if somebody raises the property tax and they say, "Well, I have a right to counsel and the city shall furnish it." If the State takes away a driver's license, they can say up in Cavalier that "You come down to Bismarck and represent me and the State's going to have to pay your way." I think this is entirely too far-reaching. I think that everybody recognizes that anybody charged with a felony has a right to counsel, and I think this is good and proper and as far as it should go.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Delegate Roney was entirely right. I object to this strenuously. I don't think the lawyers would even call this a lawyer bill, because what good would more food stamps do them if they took it on a contingency basis? (Laughter)

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. President and Fellow Delegates:

I rise to oppose this bill, primarily on the basis as to what the other gentlemen have indicated. Who is to determine at what time the public expense shall stop as far as the administrative proceedings and the court proceedings are concerned? The stop sign violation in Cavalier County could require an indigent person's right to have counsel from Bismarck.

I would also call your attention to the fact that it has been determined by the Federal Judiciary, the Federal Court System, under the Uniform Criminal Justice Act, that in the U. S. Magistrate Court, which we now have, that petty offenses which provide for up to six months imprisonment for criminal offenses against the United States Government or, in addition, a fine of up to \$500, these offenses at this point of time are not offenses for which counsel can be provided at federal expense. For this reason, among others already stated, I believe I would have to oppose the motion, since we are opening up an expense voucher of unknown amounts as far as tax levies would be concerned.

PRESIDENT WENSTROM: The Chair will recognize Delegate Cart.

DELEGATE CART: Mr. President.

I want to call to the attention of the Convention — the delegates — an item that hasn't been discussed. Now, this is specific and mandatory, and it refers to administrative or court proceedings.

Now, the Public Service Commission is an administrative agency and is so classified, and its rules of conduct is all spelled out in the Code. But when you

have, say, a major utility case and you go around over the State, if the utility has a widespread operation and you hold hearings all over the State and people come in there maybe by the two or three or four-dozens to protest whatever the petition calls for, are they going to be required to have the State or the subdivisions furnish them counsel? You might run out of lawyers. You know, this can get to be quite large when you go to that extent. I've tried a lot of those where we've had to listen, probably, to say 40 or 50 witnesses, and it wasn't a major, wide — or state-wide case, either. So I think this has got to have some clearer definition than what it's got now, if it's passed.

PRESIDENT WENSTROM: Mr. Hubrig.

DELEGATE HUBRIG: Mr. Chairman, it's amazing today, from listening to yesterday, of all the rights of people. Today we are opposed to rights of the poor person who goes before the Welfare Board and asks for an increase in his welfare payments because he got cut on the welfare payments because of the ten percent increase in the cost of living on Social Security. The law does say that, if you're not entitled — if you are not satisfied with the welfare payments, that you may go to the courts; but if I am broke, how do I get to the courts without an attorney? If I am so broke I'm asking for food, I wouldn't be asking for food if I had attorney fees in my hip pocket. This is what I'm trying to get at.

We had a case up in Minot, North Dakota — and I've got proof — that a doctor over there said that the person's only problem was malnutrition. Now, isn't this something in the State of North Dakota?

Yesterday we talked about how rosy everything was. Today we're talking the reverse. Now, have we got the right to go to court? You cannot get into court, in my understanding, before a judge unless you are an attorney. Probably the Bur-bidge Proposal yesterday would give me the right to appear in court without an attorney, if I were broke.

So I think that we should give this bill some deep consideration. It was not designed to protect me, if I had money to appear before a public utility or any other public agency, if I had the money to hire an attorney. This was not the intent of the bill whatsoever. It was the intent to strictly try to help the people that actually needed the money, and I believe that the Court — the courts, before they would appoint an attorney, would find out if you had the money to hire an attorney yourself or if you were actually financially in such a bad shape that you had to have counsel. How do you determine if you commit a — how do they determine if you need free legal counsel if you committed murder and you say you don't have money to get legal counsel? They must check out to find out do you actually have money or do you not have money before they give you legal counsel. I can't see any reason why a judge can't make an investigation before he does grant that person legal counsel free.

PRESIDENT WENSTROM: The Chair will recognize Delegate Stanton.

DELEGATE STANTON: Mr. President, I oppose Committee Proposal 1-84. I think the long-range ramifications here are endless, and I don't think that this sort of a proposal should ever be adopted, unless it has had an indepth study to find out whether the service is really needed, how much the service would cost, and so forth. Anyone on welfare who doesn't like the decision of the Welfare Board has every right of appeal, and they get a very fair and impartial hearing from the State.

I believe very firmly that this is a legislative matter and should be handled there.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I would like to state to Delegate Hubrig that every man has a right to appear on his own behalf in any court, from the bottom up to the top. His problem, however, of course, is a little bit like I find myself sometimes as a delegate here; I need somebody to show me the ropes before I go through.

I do think we're leaving out one large class of people who might need protection, and that is how about the people who weren't indigent at the beginning of the lawsuit, but were indigent after the lawsuit ends? (Laughter)

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I'm just wondering how this proposal ties in, possibly, with the other proposal, 2-26. If this proposal is defeated, is there some relief for the people who are frustrated because of the operations of the bureaucratic government through 2-26? I don't expect at this point the Convention has considered too much about 2-26, but I think that Delegate Hubrig has a point, and I'm surprised that some of his fellow committee members aren't standing up and coming to his defense, because it is their vote, because there are people who are frustrated in their work with the government, and I think that deserves consideration.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. I can't disagree with the intent of the proposal, but I do disagree with the hazy language, and I think that the conversation has gotten off course when we start talking about welfare. For instance, every county every year proceeds against individuals for nonpayment of taxes and takes title to property. After a period of time, it sells that property. Now this is a State proceeding, too, to collect its due, and under this proposal, it would seem to me it would have to finance the court defense of the owners who, by simply showing that they were unable to pay the taxes, can prove they're indigent. I think that the hazy language is the intolerable part of the proposal.

PRESIDENT WENSTROM: Any further discussion?

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President.

What this Proposal is aimed at is the innate inequities in a situation where, on one side, you have the State or a political subdivision; on the other side a poor person who cannot afford an attorney. The State, with all of its resources and manpower and money against the impotent poor person. We think that this is a situation that a constitution should speak on. At first, we gave consideration to the proposition which is gaining some currency throughout the Nation, that in every civil proceeding, where a person cannot afford an attorney, and who is, therefore, at a very definite disadvantage in the proceeding, whether it be a court proceeding or an administrative hearing, that they should have counsel furnished at public expense. We didn't think that we could go that far, but where we have the situation of the government as opposed to one of its citizens and that citizen cannot afford to have an attorney and, therefore, cannot possibly be properly represented, that the State should pay for an attorney so that he could be represented in a contest with the State or political subdivision. That's the intent and the aim of the Committee as far as this proposition is concerned. If it needs some polishing as far as language, we would welcome whatever suggestions that the delegates may have.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. Chairman — Mr. President.

Without wishing to shock Delegate Stanton too much, I am inclined to agree with her. But, also — (laughter) — but, also, because I think there is some substance to the idea of an ombudsman and the idea that is expressed here, I would like to move an amendment at the end of line 10, to add the words "as shall be provided by law."

Mr. Chairman — I suppose I better wait for a second.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Kwako.

DELEGATE SINNER: Mr. President, I don't want to emasculate this section, but I think that we can, maybe, by doing it that way, encompass the idea of the ombudsman and provide a way that this real concern of the Committees can some day work.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Sinner.

DELEGATE CHASE: Would you restate the amendment, please?

PRESIDENT WENSTROM: I believe I can. After the word "party" insert the following: "as provided by law."

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: If we ever get to 2-26, I will attempt to explain the ombudsman; but I do not believe that this language in this will in any way affect the ombudsman by adding this other line, because, as I will attempt to describe, the ombudsman does not have any counsel — or advocate — legal powers, I should say. He has other powers, which I'll explain later.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President, I'm in favor, I think, of the concept the Committee was trying to get at here; but I think the way it is drafted, even with the amendment, it would be unsatisfactory. I don't have any proposed language, but I have a question, perhaps, of Chairman Maxwell.

What we're trying to get at here, is it that we're trying to say that an indigent person shall not be denied representation in the court because of such indigent — indigent — indigency?

DELEGATE MAXWELL: Yes, that would be it.

DELEGATE HILL: Well, why, instead of stating in here "a political subdivision," how about a poor wife who is married to a poor husband? What's her recourse?

PRESIDENT WENSTROM: Delegate Hill, I believe you're off the amendment. I don't believe you're talking on the amendment. The question before the Convention is on the adoption of the amendment to be inserted on line 10, after the word "party", "as provided by law," and I don't believe that —

DELEGATE HILL: Well, my thought is, Mr. Chairman, I'm speaking against the amendment, because it doesn't do all the things that it should do. It still has quite a ways to go.

PRESIDENT WENSTROM: All right. If you are on the amendment, you may proceed.

DELEGATE HILL: You might be right! (Laughter)

PRESIDENT WENSTROM: The question — Delegate Butler.

DELEGATE BUTLER: I'll wait.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Sinner.

Hearing no further discussion, as many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "noes" have it and the amendment lost.

Delegate Butler.

DELEGATE BUTLER: Mr. President, I am, fortunately, not one of those people who will be affected by this legislation; but I was elected to come to this Convention with the idea in mind that we are writing a constitution for everybody in North Dakota — all our citizens. Periodically a businessman like me, or many of the other folks in the State, get very irritated because we have to pay our attorneys to fight against the State of North Dakota, and we also have to pay the State's Attorneys to fight against us; and so I would propose an amendment.

I move that the two words on line 8 "An indigent" be stricken and substitute the word "Any" — A - N - Y.

PRESIDENT WENSTROM: You have heard Delegate Butler's proposed amendment. Do we have a second?

(No response.)

PRESIDENT WENSTROM: I'm afraid the proposal died for lack of a second. The question before the Convention now — let's see — we've taken care of all the proposed amendments, haven't we?

CHIEF CLERK GILBREATH: So far.

PRESIDENT WENSTROM: The question, then, is on the first passage of Committee Proposal No. 1-84.

Those in favor of its adoption will vote "aye;" those opposed will vote "no," and the key will be opened. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 39 "ayes," 54 "nays," five delegates absent and not voting.

Committee Proposal No. 1-84 has been defeated.

Next for consideration is Proposal No. 1-94.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-94, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 142 of the constitution of the state of North Dakota, which pertains to the regulation of common carrier corporations, be repealed.

"SECTION 1. REPEAL.) Section 142 of the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: Delegate Engstrom.

DELEGATE ENGSTROM: Mr. President and Fellow Delegates:

This deals with Section 142 of the present Constitution, which was previously before this Convention and was returned to committee because of some question. At that time it was submitted with a group of others for repeal. It is now being returned to the Convention from the Committee, after further study, with the same recommendation for its repeal.

Section 142 concerns legislative control of rates charged by railroads for transportation of freight, intelligence and passengers within the State. Most of the railroad transportation today is interstate and very little of it is intrastate. As such, most of our transportation now on these railroads comes under the control of the Federal Government through the Interstate Commerce Commission, and it is not under the State's jurisdiction. That very small portion of intrastate railroad transport today is being controlled by the Public Service Commission as is set up by Sections 82 and 83 of the present Constitution. These sections set up the Public Service Commission and authorize the Legislature to fix its duties, which do include regulation of intrastate railroad rates. Therefore, we feel that this Section 142 is no longer necessary and, Mr. President, we move that Proposal 1-94 be adopted.

PRESIDENT WENSTROM: Is there any further discussion on Proposal No. 1-94?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I believe I objected in the first place to having this in the package, and I still wonder if there isn't enough intrastate commerce to at least keep some kind of a hold on it, rather than saying that the Federal Government is doing everything, so we need no regulation. And I'm not completely satisfied, because they have testified that our own bodies in the State wouldn't still have something to say about these things. It is quite a ways across this state. There is quite a little commerce within the State, and I'd like further explanation on it.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, in way of explanation: Back at the time the original Constitution was adopted, the railroads and corporations generally were pretty much of a boogeyman, and I think that this provision was put in essentially to show that corporations are no different than people, and the State has the right to regulate them. I think the State has the right to regulate railroads to a certain extent, where they're not preempted, and corporations, even without this provision. I'm of the opinion that this provision essentially is a window-dressing thing and this power is inherent in the State, what has not already been reserved.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I have the report from the Constitutional Revision Commission that met between '65 and '69, and they had this section under consideration and recommended its repeal, and explained it in this way:

"This section declares that railroads or public highways are common carriers and that the Legislative Assembly has the power to enact laws regulating and controlling them. The Legislative Assembly has this power with or without this constitutional provision, to regulate, control and classify railroads, except where state authority is preempted by the federal government."

So this authority is in the Legislature anyway, and I don't really know if we should be arguing about regulating railroads, because there aren't any railroads left.

PRESIDENT WENSTROM: Fellow Delegates, let's interrupt the proceedings just long enough to read a message at the desk.

CHIEF CLERK GILBREATH: This is an emergency for Mrs. Harold Well, and she's to call 255-0624 immediately. Mrs. Harold Well. She may be with a group from St. Mary's or the League of Women Voters.

PRESIDENT WENSTROM: Now we'll proceed.

Delegate Cart, did you wish to comment?

DELEGATE CART: I would like to — Mr. President, I would like to correct a few errors that crept into this discussion. Now, whether it's necessary to retain that section in the Constitution probably is debatable, but intrastate handling — handling of intrastate matters is still just as important today as it ever was. The Interstate Commerce Commission Act was passed in 1887, two years before this Constitution was adopted — the one we are living under. The Interstate Commerce Commission, of course, took jurisdiction over interstate transportation. But we do have substantial transportation in North Dakota. The lignite that moves from the mines to the plants, if it is moved by a common carrier, is still subject to that jurisdiction, and there's many other commodities that are moved and, if anything, this section probably should be brought up to date to cover highway transportation, as well as rail transportation. But I'm not going to pursue this matter any farther, other than to protest the impression that's given here that the State has no jurisdiction in transportation matters because of the Interstate Commerce Commission.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-94.

Hearing no further discussion, those in favor of its adoption will vote "yes;" those opposed will vote "no."

The key will be opened. You will record your vote. Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 84 "ayes," 9 "nays," five delegates absent and not voting. Committee Proposal No. 1-94 has passed.

We will be on the eighth order of business — Announcements.

Any announcements at the desk? Any announcements from the floor? Hearing none —

DELEGATE SAUGSTAD: The Calendar Committee will meet at nine — no — at 8:40 — twenty-minutes-to-nine — Friday morning, January 21st.

PRESIDENT WENSTROM: Delegate Christensen moves that the absent delegates be excused. Delegate Kwako seconds the motion.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the absent delegates are excused.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I move we adjourn until nine o'clock — didn't we excuse the absent members?

PRESIDENT WENSTROM: They have been excused.

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Will you hold just a second, Delegate Rundle?

DELEGATE CHASE: One point of information: Could the Clerk read the calendar before we adjourn until tomorrow morning?

PRESIDENT WENSTROM: The Clerk will read the calendar.

CHIEF CLERK GILBREATH: On your tenth order: Committee Proposals 1-37, 1-53, 1-60, 1-79, 1-89. Delegate Proposal 2-23. Committee Proposal 1-97, 1-55, 1-76, 1-77, 1-86, 1-92, 1-98. Delegate Proposal 2-2. Committee Proposal 1-101.

On the sixth order — wait a minute!

On the tenth order, you'll have, also, from today's tenth order, you'll have Committee Proposal 1-95, Delegate Proposal 2-26, Committee Proposal 1-28 and 1-71.

On the sixth order, you'll have Committee Proposal 1-36, 1-45, 1-57 and 1-72, and I would guess that your calendars will be in your books tonight.

Now, for those who have been asking about what day we're on, on this calendar it will tell you. This says the fourteenth Convention day. So, if you are wondering what Convention day we're on, if you'll look on the top of your calendar, it will tell you each day what day we are on.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I'd like to ask the Clerk if he misread on one — he read "1-55." Should it be "1-45"?

CHIEF CLERK GILBREATH: I've got 1-45 on sixth, and 1-55 on the tenth.

DELEGATE PAULSON: Thank you.

PRESIDENT WENSTROM: Now the Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I move we adjourn.

PRESIDENT WENSTROM: Delegate Rundle moves that the Convention be now adjourned. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Convention is adjourned until tomorrow morning.

CHIEF CLERK GILBREATH: I'm sorry. On your calendar, those who are keeping it, I forgot Committee Proposal 1-32, which was laid over; so that will also be on your tenth order tomorrow — 1-32.

(The Plenary Session adjourned at 2:08 P.M., Thursday, January 20, 1972, until 9:00 A.M., Friday, January 21, 1972.)

VOLUME XV

(January 21, 1972)

MORNING SESSION

(The fifteenth day of the Plenary Session commenced at 9:06 A.M., Friday, January 21, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

We'll be on the second order of business, the Invocation.

Our Chaplain for this morning is the Reverend A. Benjamin Dove, Pastor, First Presbyterian Church of Mandan, North Dakota.

REV. A. BENJAMIN DOVE: Let us pray.

Almighty God, Lord of order and author of man's freedom, lend a generous measure of Your own spirit of wisdom and courage to this assembly. O God, we know too well the pride and the fear and the selfishness of men, including ourselves. And for these failings, we ask forgiveness. But grant that this Convention will be able to look beyond our obvious limitations to the gleaming potential of those who will live under this new Constitution.

Even as we learn from the past, save us from accepting that view as our total vision. Grant each delegate here a boldness born of trust. Amid the heat and the pressure of this forum, enable them together to shape a document clean and sharp — a frame broad enough to meet the new trials and the opportunities which already appear around us.

Gracious God, we are grateful that here, through the work of human minds and hands, You, too, are at work. Let that be both spur and hope to Your servants here. And this we pray confidently in Christ's name. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call.

The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence? The key is closed.

The roll call discloses 92 present, six absent. A quorum is declared.

We'll be on the fourth order — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 19th day of January, 1972, and recommends that the same be corrected as follows:

On page 213, delete lines 29 and 30.

On page 219, in line 19, delete "feasibly" and insert in lieu thereof "being".

On page 219, line 40 and 41, delete "recorded" and insert in lieu thereof the word "rooted".

On page 220, line 31, delete "If you have" and insert in lieu thereof "Few of".

On page 220, line 32, delete the word "who".

On page 221, line 33, delete the word "high" and insert in lieu thereof the word "yes".

On page 220, line 51, delete the word "not".

On page 226, line 58, delete "which motion prevailed and the report was adopted."

On page 227, line 25, and line 26, delete "be adopted, which motion prevailed and the report was adopted." And insert in lieu thereof "be substituted for the Report of the Minority."

And when so corrected recommends the same be approved.

Delegate Dobson, Vice Chairman.

Delegate Paulson moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report of the Committee on Revision and Correction of the Journal.

Are there any questions?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Committee Report on Revision and Correction is adopted.

Delegate Lamb.

DELEGATE LAMB: Mr. President, may we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE LAMB: Mr. President, I move that we reconsider our action on Committee Proposal No. 1-84.

PRESIDENT WENSTROM: It's been moved that we reconsider our action on Committee Proposal No. 1-84.

Do I have a second?

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate O'Toole.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: The reason that we would like to have this Proposal back before the body is that we feel that there is a new right that could be available to certain people, and we felt that we had an amendment which we placed upon your desks that could answer substantially many of the objections to the Proposal yesterday, and if we are successful in reconsideration, we will then move to place the Proposal at the foot of the calendar.

PRESIDENT WENSTROM: Any further discussion? Any further discussion?

Hearing none — remember, this takes 50 votes to reconsider. So, in order to be accurate on this, I'm going to have the Clerk open the key and we will record your votes.

Mr. Clerk, I believe we have to — we haven't cleared the board, have we? At least my board isn't cleared.

Is the big board cleared now? Mine wasn't.

So those in favor now of reconsideration will vote "yes;" and those opposed to reconsideration will vote "no."

The key will be opened. Has every delegate voted? Any delegate wish to change? The key is closed.

The motion to reconsider has carried. So the Committee Proposal No. 1-84 is before the Convention.

DELEGATE HAUGEN: Mr. President, could I indicate that Delegate Haugen is present and was present when the roll call was taken, but he was in the wrong place?

PRESIDENT WENSTROM: The request is granted.

Delegate Lamb.

DELEGATE LAMB: Mr. President, I move that Committee Proposal No. 1-84 be put at the foot of the calendar.

PRESIDENT WENSTROM: It's been moved that Committee Proposal 1-84 be placed at the foot of the calendar.

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Knudson.

Is there any discussion?

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Could I request that the comments this morning be recorded in the Journal on this proposal for reconsideration?

PRESIDENT WENSTROM: I believe, Delegate Hubrig, that we have ruled that, unless you request prior to the time, so that the Secretary takes the notes, that you can't request — make the request, unless you have a script — have the remarks in script. Otherwise, you understand, the Secretary doesn't take the

script on that — on these talks — take it down verbatim. So I would have to rule it out of order.

So the question before the Convention is that Committee Proposal No. 1-84 be placed at the foot of the calendar.

As many as are in favor of the motion say "aye;" those opposed "no." The "ayes" have it and 1-84 is at the foot of the calendar.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Can we be on the twelfth order for a minute?

PRESIDENT WENSTROM: We are on the twelfth order.

DELEGATE LANDER: I think I want to make a motion. I have been distressed by the fact that, as we have carried over items on the tenth order from day to day, they get lost in numerical order on the following day's calendar. I don't see anything about that in the Rules. I don't know why it is such, but if it is authorized, I would like to move that, in the absence of specific action on the part of the Convention, any items on the tenth order carried over from day to day to remain in their priority position.

DELEGATE JESTRAB: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: If that was a motion, I'd like to second it. I think we should retain the tenth order as it was on the preceding day and add to it from that point.

PRESIDENT WENSTROM: The question is on the motion by Delegate Lander that the calendar sequence of one day be added to, rather than rearranged on the following, or words to that effect, and the motion is made by Delegate Lander and it is seconded by Delegate Jestrab.

Any further discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and that precedence will be followed.

Anything further? Hearing none on the twelfth order, we will move to the sixth order of business.

CHIEF CLERK GILBREATH: Delegate Hoffner has moved that the amendments to Committee Proposal No. 1-36, as recommended by the Committee on Legislative Functions and as printed on pages 231 and 232 of the Journal, be adopted.

The amendments are:

Delete everything after the word "That" in line 1 and insert in lieu thereof the following:

"section 202 of Article XV of the constitution of the state of North Dakota, and Article 88 of the amendments thereto, be repealed; and that sections 25 and 26 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the manner in which the constitution may be altered.

"SECTION 1. REPEAL.) Section 202 of Article XV of the constitution of the state of North Dakota, and Article 88 of the amendments thereto, are hereby repealed.

"SECTION 2.) Sections 25 and 26 of Article II to the constitution of the state of North Dakota are hereby created to read as follows:

"ARTICLE II

"Section 25. Any constitutional amendment may be proposed by the legislative assembly and, if the same shall be agreed upon by a roll call vote of two-thirds of the members elected to each house, it shall be submitted to the electors at the next general election. If a majority of votes cast thereon are affirmative, the amendment shall be effective thirty days after the election.

"Section 26. The legislative assembly may by law at any time submit for a vote of the people the question: 'Shall a constitutional convention be called?' If the question has not been submitted once in any thirty year period, the secretary of state shall place it on the ballot at the next general election."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Any discussion on the amendments —

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: — to Committee Proposal 1-36?

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I think, to clarify it a bit, you will see that the amendments make the added words “effective thirty days after the election,” which were not there in the original proposal, and the amendment also makes an automatic call for a constitutional convention if a legislature does not provide for one.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Now, I'd like to ask why the thirty-year period was settled upon?

PRESIDENT WENSTROM: Can someone on the Committee answer Delegate Rundle's question?

DELEGATE RUNDLE: And I'll tell you — I would explain my interest. After serving in some of these sessions, I would not want to sit on another one very soon. So I think the figure should be even larger than that.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: This thirty-year period is not calling a convention, but getting — giving the people an opportunity to vote if they think they need a convention at that time.

Actually, this developed out of a proposal from Delegate Lamb, and the Committee was quite satisfied with this period of thirty years at the time when the electors should be given the opportunity to see if they wanted a convention. This does not mean a convention would be held by any means.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: A question to any member of the Committee, and referring up to the first paragraph, on line 3, where it says “two-thirds of the members elected.” Now, I note that in our present Constitution it's a majority, and I'd like an explanation of why that was raised to that kind of a figure, if possible.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: That question has nothing to do with the amendment.

DELEGATE CHASE: A roll call vote of two-thirds of the members elected can propose an amendment, as I understand it. Isn't it in our present language that it is a majority?

DELEGATE HENDRICKSON: But that's in our original Proposal, and we're only speaking to amendments. Right?

DELEGATE CHASE: I'm still questioning the two-thirds.

PRESIDENT WENSTROM: Well, I'm wondering if that couldn't be brought up, Delegate Chase, when we discuss the Proposal when it's set in its entirety.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I still have a question in that regard.

In my mind, Mr. President, it seems to me it's germane. I hope that when the Proposal came in for amendment, the amendment would be from two-thirds or a simple majority; but if that's not being discussed now, I have no quarrel with the decision of the Chair. However, I have another question, also.

Section 202 also provides for the initiative in placing a constitutional amendment, and by repeal that appears now to be gone. Is it to be replaced by something else some other time, or just what?

DELEGATE HENDRICKSON: Yes. If you'll read over the powers of the people section. This has been moved —

(President Wenstrom rapped the gavel.)

PRESIDENT WENSTROM: Let's have a little order — decorum in the chamber.

Do you wish to — do you direct a question to the lady or —

DELEGATE BAKER: Anyone.

PRESIDENT WENSTROM: Then, Mrs. Hendrickson — Delegate Hendrickson, you may proceed.

DELEGATE HENDRICKSON: If you'll look in the powers of the people section, this has been moved to that section.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: Just a comment on Delegate Rundle's comment on the thirty years. I have been told by members of the Common Cause organization that some of the states in the East are now contemplating calling a constitutional convention as often as five years or ten years, because of the many differences and difficulties that arise; so I think thirty years is quite a few.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-36.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Hoffner has moved that the amendments to Committee Proposal 1-45, as recommended by the Committee on Legislative Functions and as printed on page 232 of the Journal, be adopted.

The amendments are:

On line 1 delete the word "section" and insert the words "sections" and after the numeral "28" insert "and 34".

On line 4 delete the word "both" and insert the word "all".

On line 6 delete the second word "Section" and insert the word "Sections" and after the numeral "28" insert "and 34".

On line 7 delete the word "is" and insert the word "are".

On line 11 delete the words "member of" and insert in lieu thereof the words "person elected to" and also delete the word "shall" and insert in lieu thereof the words "must be".

On line 12, after the comma, delete the word "be".

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-45.

Delegate Benson.

DELEGATE BENSON: Mr. Chairman, these amendments are all routine. There was a section inadvertently omitted. There has been — there have been some changes in the wording, but, essentially, the section remains as it was.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal 1-45.

Hearing no further discussion, as many as are in favor of the motion will say "aye" —

DELEGATE BERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: There's another amendment at the desk.

PRESIDENT WENSTROM: Pardon?

DELEGATE BERG: I say there is another amendment at the desk.

PRESIDENT WENSTROM: Delegate Berg, we are on the sixth order. That will be taken care of on the tenth order on the next Convention day.

So, again, the question is on the adoption of the amendments to Committee Proposal No. 1-45.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-57, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 225 of the Journal be adopted.

The amendments are:

After line 11 add the following new paragraph:

"No public funds may be expended in support of any organization which, in the selection of its membership, discriminates on the basis of race, color or national origin."

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-57.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Gipp.

DELEGATE GIPP: Mr. President, Fellow Delegates:

My impression, myself, is that several delegates in the council feel that the amendments to 1-57 should be defeated. I believe it is not an appropriate statement, and I think it is misleading. I, therefore, urge the defeat of this particular amendment to 1-57.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I am willing to go along with the defeat of this amendment, not because I think that the principle is wrong, but that for reasons that are far beyond my control. It does, in fact, bring in reservations, and at this time I can't see how we can impose any more problems on minority groups while trying to help them. Delegate Hartl explained some things this morning to me that clarified to me what might happen with this amendment, and I'm sorry that we do have to defeat it; and if he would like to explain it on the floor, I think he would be in order.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: The majority of the remarks that I made yesterday, I believe, would be appropriate in reference to the reasons as to why we should defeat the amendment at this time; primarily, as I reviewed the amendment, I think we possibly had the probability of discrimination in reverse, which definitely is seen by Delegates Gipp and Sinner. It is not the intention of this paragraph as it was originally conceived and drafted. It was drafted with the idea of assisting minority groups; but because, particularly, of the phrase "in the selection of its membership," we ran into problems and, additionally, we felt we would run into problems on the basis of a police-type action when we state, "No public funds may be expended," meaning that we in the State would possibly have to set up an agency to determine the organizations who were discriminating on the basis of selection of membership. It is too broad and too all-encompassing.

One of the simple illustrations is, for instance, on the Turtle Mountain Reservation, which I am quite familiar with, as well as the Three Affiliated Tribes

by-laws at New Town, the requirements for membership in the Tribe and for election to the Tribal Council, which, in effect, is the governing body of the Tribe, similar to a municipal corporation. Membership requires a certain amount of blood line tracings — that is, a white man by marriage to a person of Indian blood will not qualify for membership on the Tribal Council or as a member of the Tribe, and because of this type of a restriction, we, in hearing this, felt that we possibly were limiting the intent and providing a problem which we could not overcome at this time; and, therefore, I, too, urge the defeat of the amendment.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendments to Committee Proposal No. 1-57.

Hearing no further discussion, as many as are in favor of adopting the amendments will vote "yes;" and those opposed will vote "no."

The question now: As many as are in favor of the motion will say "aye;" those opposed "no." The "noes" have it and the amendments lost.

And then, Committee Proposal No. 1-57 will be on the tenth order of business on Monday.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-72, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 233 of the Journal, be adopted.

The amendments are: Delete all of line 14. Delete all of line 15.

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-72.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President, the reason that the deletion of the last — of lines 14 and 15, is that it is in a separate proposal.

PRESIDENT WENSTROM: Any further discussion? Hearing none, as many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it and the amendment is adopted, the Committee Proposal 1-72 will be on the tenth order of business Monday.

We will be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Judicial Functions and Political Subdivisions, to whom was referred Committee Proposal No. 1-14, has had the same under consideration and recommends that the same be amended.

Delegates Longmire, Roney, Bassingthwaite, Engelter, Fallgatter, Hougen, Kessel, Kretschmar, Wallin and Warner.

Delegate Longmire, Chairman.

Delegate Longmire moved that the Majority Report be adopted.

Mr. President: A Minority of your Committee on Judicial Functions and Political Subdivisions, to whom was referred Committee Proposal No. 1-14, has had the same under consideration and recommends that the same be amended.

Delegates Hoghaug, Rundle, Gipp, Hartl and Aubol.

Delegate Longmire, Chairman.

Delegate Hoghaug moves that the Report of the Minority be substituted for the Report of the Majority.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Minority Report; that the Report of the Minority be substituted for that of the Majority as an amendment.

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and members of the Assembly.

May we go on 1-14 again? This bill was reported nearly two weeks ago, I think, and should have been adopted and in the hands of the Engrossing for

proper language by now; but it was called back and we have had quite a lesson in geography since then.

The proposal of the Minority copies the words exactly as they were in the Constitution of 1889, telling us where the State of North Dakota is.

No matter what we do here, we're not going to change the location of the State of North Dakota. We have added the following words: "The boundary on the ground is more exactly defined by astronomical measurements at points on the boundary and surveys between boundary markers."

These were words that we stole from the experts that came and testified before us. We had Mr. Robert Williams, from the U. S. Geological Survey, appear before us. He had a slide and a picture of the State, so we could all see where we lived, and he and Counsel then worked up a proposal, using a little different language, telling where our State is. And then he said, well, he wasn't sure at that meeting at that particular day that this was exactly right; he'd have to call Washington, D. C., and check with the Bureau of Land Management, which he did. The next day we had 1-14 again, and a few words were changed, so we still had 1-14 in new language.

Gentlemen, Minnesota was adopted to the Union in 1858, so our eastern boundary is there, and so we're not going to change it. In 1961, when the Red River acted up a little bit, North Dakota gave them 20 acres; but it took consent from the State of North Dakota, the State of Minnesota and the Congress of the United States to accomplish this small change.

On the South Dakota border; it's quite substantially marked. There are cut stones. They're seven feet long, they're ten inches on top, they're set three-and-a-half feet in the ground, and I don't propose that this Convention can do anything there, at least I don't think.

This discussion kind of reminds me of a discussion I had with my grandchildren not too long ago. I was urging the youngest one if he could tie his shoes I'd give him a roll of nickels, and there's 40 nickels in that roll, and he'd better get busy and practice tying his shoes. The younger — or the older grandson, who had already accomplished this feat, didn't know whether it was fair. He said, "I hope you've got two dollars worth."

Ladies and gentlemen of the Convention, we haven't had any bloodshed over border wars with Manitoba or any of our sister states. This business of technically describing is very difficult. You know the earth is round and we think, for instance, when we get to the corner of South Dakota, North Dakota and Montana, that the line then goes north; but this isn't exactly true, because we're one degree, so many minutes, so many seconds and fractions of a second angling to the west. Then you go to the next marker and then the angle will change by a fraction of a second. So I don't think, especially now, with our sister state of Montana about to adopt a new constitution, I would hate to have us make a change in description that might try to take two feet or four feet from Montana by some slight technical difference, and when the Majority presents their opinion or description, the word "approximately" will be used. Well, while we know this is true — it's approximately correct; but our old description has stood the test of time. It's been on the books for nearly 83 years. There's been no trouble about it, and I propose that it is better to stick with something that we know is good. And so I would urge the adoption of the Minority Report that has stood this test of time.

Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I hope that the Convention will not adopt the Minority Report, because we think that, while their report is good, we have one that is much better in the Majority. Now, we have amended the boundary descriptions of — as it was in the old Constitution, but we have left — we have added to it, rather than modifying it or changing the boundaries in any way. We are not taking any property from Minnesota in the Majority Report. We're not

taking any from South Dakota. We're not taking any from Manitoba or anywhere else.

As you will recall when this bill first — or this Proposal first came onto the floor, and it was the first proposal that was acted on by a committee in this Convention, some delegate called to our attention that a geography professor had mentioned that the word "meridian" was no longer used in engineering circles in locating points on the earth. Well, you will note in the old description that it did apply there and was used. We of the Majority felt that we ought to let them know that in North Dakota we're working on the latest principles in engineering and that, if they were not any longer using that, we ought to leave it out, and our Report, of course, leaves it out and goes on longitude and latitude, which are the terms that are used in locating a point such as this.

When this came back to our Committee, we had an engineer in from the Geological Survey, who pointed out something I think that many of us didn't know. With the old description that we had, it would go in a curve sort of thing like this (illustrating), all the way around the State, rather than being in straight lines. In the new description, it will still be curved somewhat, but as in both reports, it was tied down by an extra sentence to say that it would be tied in with points that were made by reckoning on the border along the way that could be made by engineers.

The old description, as you will note, refers only to degrees. We felt that we ought to put it down to minutes, so that any school child who was working on the descriptions of the boundary of our State would be able to take a map that was not marked and be able to locate the boundaries of North Dakota better, if he had the minutes set forth in it; and, of course, you will note in the Majority Report that those are put in parentheses and they are stated to be approximately. That will aid anyone in locating the boundary. We're not putting it down to seconds, because if you're over one second, according to the engineer, it throws your boundary off 70 feet. So all we're doing is to put in a little more definite description of what the boundaries will be.

Now, the most serious defect in the old description is this: We have a very fine member on our Committee from the great City of Wahpeton and that area — Delegate Warner. We wanted to be sure that he was a qualified delegate and stayed in the State of North Dakota. Under the old description you will note that it said they would go down the center channel of the Red River. Well, the Red River ends at Wahpeton. And so the Bois de Sioux and the Otter Tail Rivers join there, and from Wahpeton on south, you don't have a Red River. So we ended up, under the old description, with no exact boundary line from Wahpeton down to the South Dakota line. So we felt, then, that we ought to clear that up definitely, once and for all, make Delegate Warner a citizen and resident of the State of North Dakota.

So you will note in the description that we did go down on a line of latitude, down to the South Dakota line, and that it will be exact in establishing that for the future.

Both our reports, of course, have in the last sentence stated that these points along the border can be established definitely with the engineering reckoning that is put in.

The Majority Report — or the Majority on the Committee felt that at this time, at least, that we ought to get this a little more exact and certainly to tie up the definite border in the southeast corner.

For those reasons, we hope, that you will vote against the Minority Report and accept the Majority Report.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

It is true that we didn't want to exclude Delegate Warner from the State of North Dakota. I was the one that brought it up in Committee, and it was purely — among the Committee, it was a joke, and still is, because the old geography books showed the Red River all the day down, and now somebody has changed

one of the tributaries and it makes no difference — they are still described — and we notice that Delegate Warner is still here, and I'm quite sure that under our present Constitution if he was in Minnesota, we'd have kicked him out before this, because he would have been quite controversial. I'm sure that we aren't either putting him back in the State in the Minority Report or taking him out. He's been there — well, he isn't 82, but he's been there. If we ever take — I think we passed four little proposals in a row from the Preamble, Bill of Rights and Suffrage Committee and I think they should be complimented. There was very little argument. They were the same as they had been. This proves one thing: That when this body will vote on what's in the old Constitution in a few minutes, and unanimously, it just may affect other people that way, and if anyone can tell me why a deed — and this is about what it is — a description of North Dakota, which has held up for 82 years without any trouble — why we should change it now because one expert — and I want to tell you that we didn't have a counter-expert in — just one expert came one day and he said, "They don't use the word 'meridian' so much any more, but I better call Washington." So he called the Bureau of Land Management, came back with a revised proposal, and left the word "meridian" in there. So here was an expert with two decisions in two days, and we didn't have anyone — any other expert in on that question.

Are we going to change the historical document proving where we are because one man came in? I went and contacted, on Saturday, a man I consider as much an expert in legal phraseology as anyone. He writes hundreds of deeds a year. And he says he still uses the word "meridian." I don't think that there is any need to change this whatsoever; but I would like to recite this one little story that Delegate Saugstad told me. He said that when they originally surveyed the South Dakota line, there was a farmer — or the engineers ran the line and put in the stones ten feet at the side of his house, and the engineer told him, "I'm sorry, Mister, you're not in North Dakota now; you're ten feet inside the State of South Dakota." And the man said, "Thank God, I don't think I could have stood another one of those North Dakota winters."

(Laughter)

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Mr. President, I have a question I'd like to direct either to Delegate Longmire or Delegate Hoghaug.

Delegate Hoghaug described the South Dakota and North Dakota line markers. I live eight miles — about eight miles north of the South Dakota border, but I have one of those markers in my back yard by my garage door. My question is: Does a marker determine which state I'm in or is there something else in here that points out how far north I am of the State Line?

PRESIDENT WENSTROM: Delegate Hernet, that was what we were worried about. We didn't want to start any wars between North Dakota and South Dakota, and we like you in North Dakota, and that's where we intend to keep you.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I had a precarious position on voting on this Committee Report. I've got to vote "no" both ways. I suppose my proper position will be on the tenth order; but unless I can do something about moving that international border about 70 feet to the north, I never will get rid of an earth curtain up there that's giving us fits.

(Laughter)

PRESIDENT WENSTROM: Any further discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President and Fellow Delegates:

I joined to the Minority primarily due to the fact that, as a lawyer, I have examined a number of deeds. Those of you who are farmers and have any safes or safety deposit boxes, numerous abstracts, which, if when you first observe the patent or the receiver's receipt, will sometimes indicate in some of the older descriptions "Commencing at a point where the old oak tree was so many moons from the Red River." We had one in the City of Rugby which starts from the center of the street where a gas pipe is exposed. We do not have the street or the gas line. We continue to use the marker.

As Delegate Longmire stated, they used minutes to describe the problems — meaning minutes were approximately 70 feet. However, since they could get no nearer than the parentheses in a new description, and I quote “approximately forty-five degrees, fifty-six minutes north latitude,” they then, at the end, at the request of the expert concluded as we did, to go along with the expert’s theory of the unknown, since Washington will change, and add “The boundary on the ground is more exactly defined by astronomical measurements,” et cetera. If you would take the word “astronomical” out of context, I’m certain you can immediately see what our so-called expert has accomplished in this case. He’s accomplished the same thing as some of the other federal bureaus have accomplished. For lack of actual purpose, to earn the keep in calling himself an expert, he has come up with the description which can either be exactly wrong or exactly right. Since our State was a state which was originally part of the Dakota Territory and was described by the Red River and other similar descriptions common to the time, I believe we are in error to join with the Majority at this point of time in attempting to clarify a description which the Majority indicates is nothing but an approximation. And, for that reason, I would ask the Convention delegates to accept the Minority Report as being an historical but yet just as exact a document as the Majority is attempting to perpetuate here under the approximate-measurement theory.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: Yes, Mr. President. I’m sure all of you realize that we aren’t going to change the border of North Dakota, no matter how much talk we do on the floor of this House. I might point out, though, that the Majority Report does more closely define the borders of North Dakota. There is nothing wrong with this. Further, our old language does not mention the Bois de Sioux, which is absolutely part of the North Dakota border. For this reason, I suggest that we support the Majority.

PRESIDENT WENSTROM: Any further discussion? Delegate Longmire, did you wish the floor?

DELEGATE LONGMIRE: No.

PRESIDENT WENSTROM: The question is on the adoption of the Minority Report; that the Minority Report be substituted as an amendment for the Report of the Majority.

Hearing no further discussion, as many as are in favor of the motion will say “aye,” those opposed “no.” The “noes” have it and the Minority Proposal lost.

DELEGATE HOGHAUG: Division.

PRESIDENT WENSTROM: Is the delegate requesting a division?

DELEGATE HOGHAUG: Yes.

PRESIDENT WENSTROM: A division has been requested. There are a sufficient number standing to have a division.

Now, those — the question, again, is on the motion that the Minority Report be substituted for that of the Majority as an amendment.

Now, those in favor of the adoption will vote “aye,” and those opposed will vote “no.” The key will be opened so you can indicate your preference.

Has every delegate voted? Any delegate wish to change his vote. The vote is closed.

The roll indicates that there were 30 “aye” votes, 62 “nays.” So the motion failed.

Now we’re back on the motion to adopt the amendments to the Committee Report as recommended by the Majority on the Committee.

In other words, we’re back to accept the report on the amendments as proposed by the Majority.

If there’s no further discussion, the question, then, is on the adoption of that report. As many as are in favor of the motion will say “aye,” those opposed “no.” The “ayes” have it and this 1-14 will be on the sixth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-85 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-85; that it be given a do pass.

Any discussion?

Hearing none, as many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it and the report is adopted. This will be on the tenth order of business on Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-82 has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-82; that it be given a do pass.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report is adopted, and this Proposal 1-82 will be on the tenth order of business on Monday.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-83 has had the same under consideration and recommends that the same do pass.

Delegates Maxwell, Bender, Daniels, Fiedler, Geelan, Hubrig, Huckle, Lamb, O'Toole, Schmit and Urdahl.

Mr. President: A Minority of your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-83 has had the same under consideration and recommends that it be amended.

Delegates Burbidge, Decker, Thompson and Tudor.

Delegate Maxwell, Chairman.

Delegate Thompson moved that the Report of the Minority be substituted for the Report of the Majority.

PRESIDENT WENSTROM: The question before the Convention is on the Minority Report; that the Report of the Minority be substituted for that of the Majority.

Is there any discussion?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: The Minority Report merely adds the no-party registration of voters. We had a great deal of testimony relative to this by the League of Women Voters of the State of North Dakota, and I think a good example of what this would help do would be to prevent a situation like we had in Grand Forks at the last election. I believe that there are only about two states that do not require — other than North Dakota — that do not require voter registration. Also, you notice in the residence requirements our Committee has seen fit to change that from one year in the State, ninety days in the county, thirty days in the precinct, to ninety days in the State, thirty days in the precinct, and I think that this voter registration would also help clear up that problem.

PRESIDENT WENSTROM: Any further discussion? Delegate Lamb.

DELEGATE LAMB: Mr. President. I rise to support the Majority of the Committee and hope that this body accepts the Majority Report.

Now, the basic question here is not to clear up situations that happened as such in Grand Forks, because those could still remain under any form of a

registration system. Furthermore, in the present statutes in the State of North Dakota, the municipalities can establish a registration system, if they so desire. The basic question is: Are we going to make it harder for people to vote?

The idea of voting is one of the basic rights. It's one of the most important things there is. And if we put deterrents by placing this and locking it into the Constitution, we are giving an opportunity for the minority in many cases to decide important issues before the local political subdivisions, not only throughout the State. So I hope that the Majority Report prevails. We've got to remember: Do not put a deterrent on voting.

PRESIDENT WENSTROM: Any further discussion? Delegate Lander.

DELEGATE LANDER: Mr. President. Unless I am incorrect, this is one more instance where I guess, because of the Rules, we are talking about something at least I don't know much about, since we don't have something in front of us, and by virtue of its being on the fifth order, I would like to move that the consideration of this matter be laid over one Convention day. Is that in order?

PRESIDENT WENSTROM: Yes, it is in order.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It's moved and seconded that the matter of adopting this Committee Report be laid over one Convention day.

CHIEF CLERK GILBREATH: Would you want it two days? That way it would be Monday in the Journal, and give you time to study it, if you would like.

DELEGATE LANDER: I'll have to have it two days, if that doesn't hold anything else up.

PRESIDENT WENSTROM: It will be in the Journal then —

CHIEF CLERK GILBREATH: Yes. Then they will have Monday to read it.

PRESIDENT WENSTROM: Then, if your second will yield, may it lay over two days?

(Delegate Stanton nodded.)

PRESIDENT WENSTROM: The question, then, is on the motion of Delegate Lander that the Report on Proposal No. 1-83 be laid over two Convention days.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and it will be laid over two Convention days.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal 1-114 has had the same under consideration and recommends that the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-114; that it be given a do pass.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report's adopted, and this Proposal, 1-114, will be on the tenth order on Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-115 has had the same under consideration and recommends that the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-115; that it be given a do pass.

Delegate Knudson.

DELEGATE KNUDSON: Mr. President — excuse me, Mr. President.

Committee Proposal No. 1-115 is the latest and, we hope, final draft of Com-

mittee Proposal No. 1-17. It is substantially the same. It's not yet in the bill books, but it's substantially the same as 1-17.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and the Report's adopted and will be on the tenth order of business Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-29 has had the same under consideration and recommends that the same be amended.

Delegate Hoffner, Chairman.

Delegate Hoffner moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-29; that the Proposal be amended.

Is there any discussion? Hearing none, as many as are in favor of the motion to adopt will say "aye," opposed "no." The "ayes" have it. Committee Proposal No. 1-29 will be on the sixth order of business on Monday.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-70 has had the same under consideration and recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-70; that it be given a do pass.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. That was pretty feeble! And it will be on the tenth order of business on Monday.

We'll be on the ninth order of business — Introduction of Proposals.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-116, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 174 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to raising of revenues."

PRESIDENT WENSTROM: The question is on the Committee Proposal No. 1-116. It is being referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-117, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 174 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to raising of revenues."

PRESIDENT WENSTROM: Committee Proposal No. 1-117 is referred to the Committee on Finance and Taxation.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-118, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to having a justiciable right to an electoral system not prejudicial to his candidacy, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-118 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-119, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 7 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to jury trial."

PRESIDENT WENSTROM: Committee Proposal No. 1-119 is referred to the Committee on Preamble, Bill of Rights and Suffrage.

We will be on the tenth order of business.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-28, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 73 and 84 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to qualifications and compensation of elected officials, be created.

"SECTION 1. REPEAL.) Sections 73 and 84 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Qualifications and Compensation.

"To be eligible to hold an elective office established by this article, a person must be a qualified elector of the state, at least twenty-five years old, and a resident of this state for the five years preceding his election. The attorney general shall be licensed to practice law in this state. Their compensation shall be prescribed by law, but shall not be diminished during the term for which they were elected."

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-30 — or 1-28. Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I move that the body reconsider this proposal. We had already passed it, and it's up for reconsideration, and the reason, simply, was that I felt that five years residence requirement for election to any state office was unnecessary, and I think, too restrictive. I think the Committee felt what we should be concerned about was the possibility of carpetbagging. I don't think it's too likely that people are going to come to North Dakota when they run for office, from other states, but I think two years — I don't know if the Clerk has read the amendment. Has it been read?

CHIEF CLERK GILBREATH: No.

The amendment to Committee Proposal 1-28 is as follows:

On the engrossed bill, in line 13, following the word "the" delete the word "five" and insert in lieu thereof the word "two".

DELEGATE KELSCH: That is the amendment that I would like to have this body consider.

The other factor, I think — I think that two years is sufficient to discourage carpetbagging. And the other point I think we should consider is that we're making a change. We are including all state officials. The present Constitution requires only one year of residency to run for Attorney General, State Auditor, or any of the other elected officials, except the Governor, without exception. Now, the Committee is changing that to five years, and I think that's too much to require. I think it discourages young people to run for office — anybody to run for office — and I'm especially concerned about young people, and I would urge that you consider the amendment and vote favorably on it and reduce the five to two years.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson. Just a moment here. There's a little bit of confusion with the Chair. Roy?

(A discussion was had between President Wenstrom and Chief Clerk Gilbreath, off the record.)

PRESIDENT WENSTROM: Delegate Kelsch, I believe that you neglected to make a motion to put this amendment before the Convention.

DELEGATE KELSCH: I would move the amendment read by the Clerk, Mr. President, to reduce "five" years to "two" years.

PRESIDENT WENSTROM: Then may I have a second?

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lamb.

Now, we've heard your discussion.

Now, Delegate Dawson.

DELEGATE DAWSON: Mr. President, the Executive Functions Committee deliberated on several occasions the establishment of age qualification and residency requirements for holding an elective office in our executive branch of government. Apparently you agreed with our decision and, a week ago today, passed 1-28 by a vote of 87-to-2. Tuesday the proposal was called back to the Convention for reconsideration and the Executive Functions Committee again has had it under discussion and came to the conclusion that the arguments that justified our original decision were still valid and the Committee, by a super majority, voted to stand by 1-28 as originally proposed.

Now, I have checked the delegates' biographies and believe that each and every one of us would be eligible to hold an elective executive office under this proposal; so, you see, we haven't been too discriminatory. We do not feel the proposal restricts our ability to obtain qualified people to seek elective office; and, possibly, by changing the qualification for office, we would open the gate for people who might not be quite as well qualified. Our young citizens are knowledgeable enough to realize, and our older citizens insist, that experience and maturity are necessary to successfully manage a business and supervise personnel. State government is big business — the biggest business we have in our State. Our proposal only affects 14 department heads at the present time.

I am a firm believer in job qualifications for many state officials, whether they are elected or appointed; however, it is not practical in a constitution to establish strict qualifications for elected officials, other than age to secure responsibility and residence to secure an up-to-date knowledge of our State and its citizens.

We have taken the realistic approach, and I urge your continued support of 1-28, which establishes a minimum age of 25 and a residency of five years in order to hold one of the 14 elected offices in our state departments.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I rise in support of the amendment. I realize fully that if I would have been a candidate for elective office at the time I ran for the State House of Representatives, I could not have sought that office because of having taught in Minnesota for one year, and I think that five years is preposterous.

I would agree and concur with the delegate who just spoke that it is true that all of us in this assembly would be able to seek any one of those 14 elective offices, but let's remember that the average age of the delegate in this assembly is 51.9 years, and I think that's a pretty significant fact, and it is a fact that the young people need to take a look at. I think the youth of our State are becoming increasingly concerned about the hypocrisy of an older generation which tells them to get involved and then, on the other hand, would bar some of the top executive offices, providing they could get a party endorsement, providing they would be accepted in that kind of a role, that would bar them from seeking that kind of an office, and I think we just might get that kind of super majority youth around some day, too.

DELEGATE VOGEL: Mr. President.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: As a member of the super minority of the Executive Committee which considered this, I would like to point out two traps which, I think, are not apparent to everybody here in this five-year residence. It would disqualify not only newcomers to the State, but in many instances people who had been almost lifelong residents of the State of North Dakota. In this mobile age, many people change jobs, are transferred out of the State, and perhaps I think of the person who has lived all his life in North Dakota, who has been transferred

out of the State, goes to another state for perhaps six months, and during that time, with these shortened residence qualifications, votes in his new state; he decides that he does not like the state, returns to North Dakota, and is unable to run — to qualify as a candidate until he has been back in the State for five years, though he may have played some role in the political life of the State before his departure.

I also think of the many students who go and take graduate work in other states and at some time during that time, perhaps at the age of 19 or 20, would have voted in another election, becoming absorbed in the political affairs of a local area. Then, six years later, having completed his graduate work as a teacher, as a doctor, as a lawyer, he returns to the State of North Dakota, which has been really his home, and must stay here five years before he qualifies to run for office in the executive department. I think these are the traps which this five-year residence has built into the — into this constitution, and I just wanted to call this to the attention of the other delegates.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I think that most of the arguments used in support of the super majority deal really with the age requirement, rather than the five-year limitation. We're looking for qualified men to run — run and be elected to these positions. I think the five-year residency would do nothing but hinder it, and I think the arguments used here in support of this Majority Report — this proposal — deal with the age limit and not with the residency requirement. I would go along with Delegate Kelsch's amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE STANTON: Mr. President:

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I speak in support of Committee Proposal No. 1-28. I think that it is our responsibility to see that responsible people run for office. We're talking about high office in the State right now. I think the youth of our State are smart enough to know that they need some experience and some wisdom, and this would simply make them more responsible, and I don't think that they would object to this in the least bit.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rude.

DELEGATE RUDE: Mr. President. Fellow delegates:

May I refer the delegates to Delegate Proposal No. 2-23, which we just passed yesterday? Out of 700,000 service men to be returned in the months ahead, certainly a certain number of these veterans will be returned to North Dakota. We would show by this Convention that the veteran has priority for whatever North Dakota may have to offer, or whatever opportunities may exist or arise. I, therefore, urge your support of the five-year residence requirement. Thank you.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I would support Delegate Kelsch's amendment — the reduction from five to two years. I believe we are at a time of things when we are facing such problems as the loss of our population. It has been declining for some time. I believe that one of the things that we can afford to do is to take a look at the kinds of people that we have in the State. I think the kind of leadership we have among both young and old is at a premium. I think we have to understand this. I think we have to take into consideration those who might return to this State, whether they be veterans, whether they be young people, whether they be former residents, natives of North Dakota who have returned. I think we should provide the greatest and the best opportunity for them to take part in governmental affairs in this state; and for that reason, I support Delegate Kelsch's amendment.

DELEGATE POULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: I rise in support of Delegate Kelsch's amendment. Somehow, it's difficult for me to equate responsibility with either residency in the State or the magic number "25." Thank you.

PRESIDENT WENSTROM: Any further discussion? The question is on the amendment. Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, just a short statement.

I support Delegate Kelsch's motion. Remember, the people decide whether this person is qualified to be that state official, and if they feel he's qualified to be a governor or lieutenant governor, or whatever, after being here in residence for two years, I think they should make that determination.

PRESIDENT WENSTROM: The question is on the adoption of the amendment.

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I think that the amendment should be defeated, recognizing that if most of us feel or some of us feel that five years is too restrictive, it could be moved to a position in between two and five. But two, I think, is a little bit — a little bit too liberal.

I agree with Delegate Hoffner, but, at the same time, when we talk about residency, this is a very, very — I don't think the term has really been described to the point where any of us understand what a resident is. Could you come into North Dakota, for example, and rent a place, and so forth? And what is a resident? Could you come in here if you wanted to run for an office and establish a residency that might be questionable?

So I think that the amendment should be defeated and, if the delegates have it in their own heart that it should be between two and five, why we could work on that.

PRESIDENT WENSTROM: Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President, I agree with Delegate McIntyre in his remarks that primarily the majority's case rests on a question of age — not residency — and I wonder, really, as Delegate Poulson pointed out, our present qualifications call for all state officials, except the governor, and aren't we really abusing the other governmental offices because it only requires residency of one year? I support Delegate Kelsch's amendment very strongly.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I would just like to remind the delegates that Senator Humphrey can move from Minnesota to North Dakota thirty days before the election and be elected to the Senate from the State of North Dakota. I can remember the case of Senator Kennedy moving from Massachusetts to New York, and we're setting up guidelines that are far more restrictive for much less important offices.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: I think we should further remember the amount of railroad people that transfer not by will, but by the rules of a railroad corporation, probably from North Dakota to Montana, Washington, on into the State of Illinois, due to the system of the transcontinental railroads that we have today. It's not by their wish that they get transferred. They may come back here and may want to run for office and are constitutionally denied, unless they stay here — for five years; and people working on the railroad, many times they're residents for a certain amount of years before they build seniority. The same thing happens to the over-the-road motor truck driver that crosses from the West Coast to the East Coast. He may be transferred until he builds enough seniority. We're going to be denying these people the right to run for public office, also. It's probably not too important that they would run for public office; but, nevertheless, I think that they should not be denied that opportunity either.

The schoolteacher does the same thing, too, possibly because they cannot get a job in the State of North Dakota for one season or two seasons; they have to go to another state, and they certainly should be protected, also.

PRESIDENT WENSTROM: The Chair will recognize Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates: I'm sure all of us know some of your younger people that have been born and reared in the State of North Dakota and then, for some reason, have left the State and have come back, and they have been here possibly two or three years, but probably well-qualified in every respect, and we, by one stroke of a vote here, would take them out of the opportunity to run for an office. I, therefore, support Delegate Kelsch's amendment.

PRESIDENT WENSTROM: The Chair will recognize Delegate Vogel. Do you wish the floor?

DELEGATE VOGEL: I just wanted to clarify any question that might have arisen in Delegate Paulson's statement. This, of course, has no bearing at all on the qualifications of a candidate for United States Congress or the United States Senate, because the State can't set the qualifications for them. It would not operate one way or the other in connection with national office; only for the officers of the State executive department.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I think there's very little correlation between the length of time you live in the State and the amount of knowledge you might have in the business of that state. I think all of us have had a pretty extensive and rapid education in state government. I think others have been in the state maybe 70 years or more, and they probably haven't been able to get the knowledge we have.

So I see no correlation in this length of time within a state, if you are interested in that state and interested in the government of that state. I urge you to support Delegate Kelsch's motion.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendment as offered by Delegate Kelsch.

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

DELEGATE LARSEN: Mr. President.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: I now move the amendment, and the Clerk has it at the desk.

CHIEF CLERK GILBREATH: The amendment to Committee Proposal No. 1-28 is as follows:

On line 13, delete the word "twenty-five" and insert in lieu thereof the word "twenty-one".

DELEGATE LARSEN: If I receive a second, I'll explain it.

DELEGATE GIPP: Second.

PRESIDENT WENSTROM: Okay. The motion has been seconded by Delegate Gipp.

DELEGATE LARSEN: Fellow Delegates:

Legal qualifications for the office of Governor and other state officials are often laid down in state constitutions. Now, in a few of the states, a governor need possess only the qualifications of an elector. That means if the elector is 18, he can become a governor, if he gets the nomination and the support of the people; but in most states additional requirements are made.

I do not request that the age requirement be lowered to eighteen, but I do believe that we can no longer set an age qualification as high as twenty-five and hope to have our young voters become enthusiastic over their franchise. The placing in the Constitution, however, of an age qualification for the Governor's office and any other office is legally a self-imposed limitation upon the power of the people to elect whom they will.

Now, fellow delegates, what privileges or responsibilities have we allowed our youthful voters so far in this Convention? Really, none, except the right to vote, and that was granted by the Federal Government. If a young twenty-

one-year-old voter would be able to secure the nomination and has shown the capable judgment necessary to assume the responsibilities of such a position as governor, or any other office, I firmly believe it should be my prerogative to vote for him, should I desire.

Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I would like to resist this amendment. We viewed this for a long time in the Executive Functions Committee, and there is a difference here. When you're elected as a legislator or as a member of this delegation, you have immediately in your right hand or your left hand — all around you — both counsel and opposition, and with that counsel and opposition, you're better able to come to a decision that probably meets with what the people need and the people want and we want, and we who have studied this a long time arrive at. But when you appoint a fellow or elect a fellow to run a department or to run this state government, he doesn't have that kind of counsel and opposition among his peers; he may have counsel among those he's appointed, but in any other form of life, in any other form of administration, it is better when you have people who are the executive at the top, running something, to have experience, and it is more important that he have his experience when he is at this position than it is when he's among a house or a senate or a constitutional convention or a unicameral body. I would urge you to resist this motion to amend.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I think that Delegate Larsen hit the point right on the head; that if a person is qualified at the age of twenty-one to assume office, the people should have the opportunity to vote on him.

Now, our present Constitution in this judicial article does not talk or set — does not talk about an age or set an age for a judge. This is set by law, and I certainly think that the age of a judge is more important than the age of a state official. After all, the judge is dealing with the very lives of people, and it would seem to fit in our old Constitution that you set a mandatory age for judges, and I support Delegate Larsen.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

I think all of us would like very much to leave the matter of choosing public officials to the public themselves. I would call your attention to the fact that currently we have an age limit of thirty for the office of governor, twenty-five for the others, and unless we receive a favorable vote on this Constitution as presented, that's what we're going to keep. I think that there are people looking for areas where they would like to improve the Constitution, and we have reached an agreement day after day as a body; but what is the individual voter thinking about some of these things? And we're giving another opportunity for people to vote against this — that is, those that think that the age of twenty-one is too young, and we've given that person another opportunity to vote against this, as we may for those that think the age of twenty-five is too old. We've had a lot of appeal to the younger voter, and I think, personally, that's fine; however, don't forget there are a lot of people that are over the age of twenty-five that are going to be called upon to vote for this Constitution, too, and we must, in some way, try to make this document appeal to them.

I think the amendment should be defeated.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President, I really have mixed emotions on this particular issue. I am one of those that would support the eighteen-year-olds,

and in the last day or so, if I recall, we passed a proposal stating that any citizen eighteen years of age shall be called an adult for all purposes. So I — I have mixed emotions on this thing, but I'm going to support Delegate Larsen's amendment, because I do feel that it should be the people's choice.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I rise to support Delegate Larsen's amendment, because I think that we are living in an age where we need to involve the young people of our State. I can't think of anything that would be more encouraging than they could be eligible at an early date to hold a responsible office. I think we don't need to be too fearful that unqualified people are going to be elected to this high position. I have the greatest respect for the judgment of the average person that votes, and I think they will allay any fear that we might have along this line, and I would strongly urge you to support this amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, in reply, certainly, to one of the delegates who just previously spoke, I think it is fair enough to say that one of the best ways to get the eighteen-year-olds who are going to vote on this Constitution to vote for it is to make sure that they're eligible for the kind of citizenship responsibilities that we have given them, both at the national and state level, and I think that that, in effect, would be the best way to get a positive vote, rather than have them take a look at it and say, "Well, you're very good on the platitudes, but you don't want to give us the opportunities to serve in the kind of responsible positions that we could be elected to."

PRESIDENT WENSTROM: The Chair will recognize Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, I would also support Delegate Larsen's proposal. There's many times that I sit in my office and I get the remarks by various employers when they're hiring somebody that they don't want the old-timer over there. It's a kind of a sad affair, when you're too young to work, before you're eighteen years of age; but then when you get to the wholesome age of thirty, you become an old-timer.

Now, we've got a gray area between eighteen and thirty sometimes to get a job; but, at the same time, I believe that if a person could qualify at the age of twenty-one to hold office and the people have got enough respect for him, I think he should be entitled to run for office and hold office. I'm sure that citizens are not going to support somebody that has not got the ability at that age.

And in the second place, here we have people in the Armed Forces from the age of eighteen on up. Do we keep them all privates until they're twenty-five? I'm sure that's not true, and certainly we expect them to go out and fight for our country and to hold office in the military before they're age twenty-five. So I can't see why we should use the word "twenty-five". I would support Delegate Larsen's proposal on those grounds, that I think a person shall be entitled to hold office at the age of twenty-one.

PRESIDENT WENSTROM: The Chair will recognize Delegate Dawson.

DELEGATE DAWSON: Thank you, Mr. President.

I don't think that we're going to alienate any of the young people by setting this age at twenty-five. I don't think a nineteen or twenty or twenty-one-year-old person expects to be a bank president or a corporation manager or a president of a union or a Supreme Court judge, and they realize this, and I think we're being very realistic in establishing the age of twenty-five, and urge your support.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I heard the call for the question, so I'll try to keep this short.

I feel that I'm young enough to speak to this question, and I would speak in opposition to the motion. A person can have the ability, the capability or the charisma to be elected, but I do believe that he may not have the maturity.

There are certain experiences in this world that you can only learn through the passage of time, and I feel that the needs of this office require a little bit more maturity than the average twenty-one-year-old would have.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President.

When I was eighteen, I was exceedingly wise. In the many years that have elapsed since that time, it's been a process of discovering how many things I didn't know. I would be better off sometimes, I think, if I went back to my status at eighteen.

Mark Twain once said that when he was sixteen years old, he thought his father was one of the most ignorant of men; when he was twenty-five, he was amazed at how much the old man had learned.

I support the lowering of the age. The Legislature passed a law at the last session that declared that persons eighteen years of age were adults. To exclude any adult, then, from participation in democracy is, in a sense, a discrimination. We are creating two classes of adults. We do that with certain things still. He's an adult at eighteen and he can vote; but he can't take a drink. And if I were defending somebody at the present time who was eighteen, I would allege or raise the defense that he was being discriminated against as an adult. I'm not asking for clients in that respect, by the way. (Laughter)

But, to me, age has nothing to do with this. If we reach a maturity at a certain time and, obviously, if a man can be President of the United States at thirty, it seems to me that by the time he's eighteen, he ought to be something.

Now, by the way I speak, you would think I was for lowering it to eighteen; and if that were the amendment, I'd be in favor of that.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I rise to support Delegate Larsen's amendment. I was one of the two who voted against 1-28, not because I opposed the proposal itself, but because of the age limits. If I had my way, I think I would lower it down to eighteen. But I am satisfied with Delegate Larsen's proposal — amendment, and I simply place the questions of — I've heard the words about maturity, age, knowledge, lack of experience, and all of these things, I think. I think we're living in a time when we have educational systems which provide us more knowledge than we have ever known to young people in our educational systems, deficient as our schools sometimes may be or the kind of criticisms you have in your own communities. I think we live in a day and age where we are constantly — constantly undergoing new forms in absorbing different types of knowledge. Through the communications media themselves, the electronic media, the newspapers, the formal education systems themselves, I think all of these systems have led to a high degree of knowledge by young people in this State, and I think, for one on this point, we are — we are second guessing young people along these lines; we are second guessing them that they do not and cannot have the knowledge at the age of twenty-one to hold an elective office.

Secondly, I say who is to be the judge of maturity? Who is the judge of maturity? Are you mature at the age of eighty or eighty-five? Are you mature at the age of eighteen or twenty-five? I sometimes wonder about myself. Let's put it that way. But I sometimes wonder about those who claim to be very, very mature and very, very well-experienced, as to what does this add to how we really mature and in what way — what kind of maturity? Experience in office?

My personal belief here is that I think, again, we have a premium in our young people in this State. Why not put the trust that is needed in them at the age of twenty-one? Why not provide that trust by letting this age drop to twenty-one years? Why not begin to give them the experience that is necessary to provide the future leadership?

I think that this is an important issue. I think that we do have some young people in this State who do have the maturity, who do have the knowledge and who do have the ability to gain experience. Experience to me is one of those

things that you can gain over seven years' time or you can gain it in a day or a year or two years. It is, I think, a matter of how you utilize that experience. That is what I think.

I think we would be underrating our young people if we would choose to keep this age of twenty-five. I think it should be lowered to twenty-one, and I firmly support Delegate Larsen's proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: Yes, I would like to just rise in support of my fellow delegate's proposal, and I would like to point out a personal experience.

When I was twenty-one years old, I was nominated for the State Senate, and I had people circulating my petitions who were old enough to be my grandparents, and I think this is a valid point here, that this age should be lowered to twenty-one.

I was quite young at that age, but I feel I could have served in this assembly across the hall here quite well, if I would have been elected at that time. And so I think we should lower this age to twenty-one.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment as offered by Delegate Larsen; that on line 13, delete the word "twenty-five" and insert in lieu thereof the word "twenty-one".

Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The Chair is in doubt.

We will open the key. Those in favor of the adoption of the motion — of the amendment, will vote "aye;" those opposed will vote "no." We will open the key and you will record your preference.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, a "yes" vote would be in favor of Delegate Larsen's amendment, and a "no" vote would be opposed to the amendment, wouldn't it?

PRESIDENT WENSTROM: That is correct.

DELEGATE SANSTEAD: Thank you.

PRESIDENT WENSTROM: The Clerk will open the key. You will record your preference.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The vote indicates there were 55 "ayes," 37 "nays" and six delegates absent and not voting. The amendment as proposed by Delegate Larsen has been adopted.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would move that Proposal 1-28 be considered — the Rules be suspended and it be properly re-engrossed and placed on the tenth order for passage.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Kelsch moves that the Rules be suspended and that Committee Proposal No. 1-28 be deemed properly engrossed, that it be placed on the calendar for first passage as amended.

Now, we have a second over here. Seconded by Delegate Litten.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-28 is now before the Convention as amended. It is for first passage.

Is there any discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

I didn't get into the argument at all, but I have a question.

As I said yesterday, I am not running for governor, so I don't have to worry so much about these things.

But what about the compensation? You know, a lot of the state officials now are getting what they call "unvouchered expenses," and how's this going to affect the fact that the Governor is getting a certain salary now and he's getting some unvouchered expenses? Now what will this last sentence mean?

PRESIDENT WENSTROM: Can anyone answer Delegate Rundle's question?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President.

Delegate Rundle, the language is that that replaces Section 84 of the current Constitution, which states that "Salaries of public officers shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the state treasury." And what we're doing is just keeping the language that we have and attempting to make it a little more explicit and cut down on the excess verbiage.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, could I address a question to Delegate Nothing?

DELEGATE NETHING: Yes.

PRESIDENT WENSTROM: Does Delegate Nothing yield?

DELEGATE NETHING: I yield.

DELEGATE CART: Would this language then include the Supreme Court Judges?

DELEGATE NETHING: I believe that the intent of the Committee — of course, we're only working on the executive article and we believe that everything following the executive article is limited to the executive department.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-28 as amended.

Hearing no further discussion, those in favor will vote "aye," and those opposed will vote "no."

The key will be opened and you will record your vote.

Delegate Cart, I don't believe you voted.

DELEGATE CART: Well, I tried to, but —

PRESIDENT WENSTROM: Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 89 "ayes," 3 "nays," six delegates absent and not voting. Committee Proposal No. 1-28 has been passed.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, could we be on the twelfth order for a minute?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order.

DELEGATE DECKER: Mr. President, I would like to move that Committee Proposal 1-60 be returned to the Committee, and taken off the calendar, and if I get a second, I'll explain it.

PRESIDENT WENSTROM: Delegate Decker moves that Committee Proposal — Committee Proposal or Delegate Proposal?

DELEGATE DECKER: Committee.

PRESIDENT WENSTROM: Committee Proposal No. 1-60 be returned to Committee. Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

DELEGATE DECKER: Mr. President, 1-60 has a question on misdemeanor in it, and the Committee would like to have it back — that's the Preamble and Bill of Rights Committee — would like to have it back to clean it up, if possible.

PRESIDENT WENSTROM: You have heard the motion that Committee Proposal No. 1-60 be returned to the Committee on Preamble, Bill of Rights and Suffrage. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and the Committee Proposal will be returned to the Committee.

Fellow delegates, it is now five minutes after eleven. You have not had a break this morning. Do you wish to continue to work until a quarter-to-twelve or do you wish to take a recess at this time for about ten minutes?

DELEGATE LANDER: Keep working.

PRESIDENT WENSTROM: Keep working?

The Chair will recognize Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, I would move the unanimous consent that Proposal 1-17 be withdrawn. If I get a second, I would comment.

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: Delegate Meidinger moves that Committee Proposal No. 1-17 be withdrawn. He requests unanimous consent of the Convention to withdraw it.

DELEGATE MEIDINGER: Mr. President, this morning Committee Proposal No. 1-114 and Committee Proposal No. 1-115 were referred to this body. All of the material in 1-17 has been covered in the two proposals which have been introduced, and we would appreciate a withdrawal of 1-17.

PRESIDENT WENSTROM: Hearing no objection, the question is on Delegate Meidinger's motion requesting unanimous consent of the Convention to withdraw the motion — or his request is that he withdraw Proposal No. 1-17.

Hearing no objection, your request is granted.

We will be on —

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: While we're on the twelfth order, I would like to offer a motion, and I'd like the Clerk to read it from the desk.

CHIEF CLERK GILBREATH: Delegate Longmire would move that the Rules be suspended and,

1, that the committee reports dealing with Proposal 1-11 be placed on the fifth order:

A. That a ten-minute interval be granted for the minority to explain the minority report.

B. That ten minutes be granted for the majority to explain the majority report.

C. There be open discussion of both minority and majority reports following the explanations under Sections A and B hereof.

D. No amendments of the majority and the minority reports on Committee Proposal No. 1-11 be allowed.

E. No other motions be allowed.

F. At the conclusion of debate, a vote be taken on the minority report.

If fifty delegates vote "aye" in favor of the minority report, the minority report be determined properly engrossed and placed on the tenth order for first passage.

G. If the minority report receives less than fifty "aye" votes, the majority report be deemed properly engrossed and placed on the tenth order for first passage.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE RONEY: Second.

PRESIDENT WENSTROM: Seconded by Delegate Roney.

DELEGATE LONGMIRE: Mr. President, before I get my second, I want to add H. provision to the motion that I have just made. The H. provision would be that debate on the two reports be held commencing at 10:00 A.M., Monday, January 24th, and then I'd like to have a second to all of that.

DELEGATE RONEY: Second.

PRESIDENT WENSTROM: Delegate Roney seconds the motion.

DELEGATE LONGMIRE: Mr. President, this involves, of course, the method of choosing judges for our State, and quite a bit of interest has developed in the Committee, as well as among the delegates here, as to the manner in which these judges shall be selected. The only — or the main difference between the two reports that come in will be just the manner of selection. The Minority Report wants the judges appointed. The Majority Report wants them elected, plus some additional machinery on appointment. And so that will be the only main issue that will be involved.

This motion, of course, is similar to the one and, in fact, almost identical to the one made by Delegate Hoffner, and I think we found from that that we saved a lot of time on the unicameral and the bicameral debate by handling it in that manner, and I think we can save a lot of time by handling this proposal in that manner.

PRESIDENT WENSTROM: Delegate Longmire, where are the — where is Proposal No. 1-11 now? It's in your Committee?

DELEGATE LONGMIRE: Well, Mr. President, the committee report has been prepared — prepared, I understood. I understood our secretary had turned it in; but if it is not — has not been turned in, it will be turned in today, before this session adjourns.

PRESIDENT WENSTROM: Are you ready for the motion? Delegate Aubol.

DELEGATE AUBOL: Mr. President. I concur with Delegate Longmire's motion, but I do have one question on point H. And that is setting the date and time at 10:00 A.M. on Monday. Now, as I explained to Delegate Longmire yesterday, I do have to go home tomorrow night. If a snowstorm comes up, I might not get back to defend the Minority position on Monday, and I assume then it could be laid over another day and, also, Delegate Longmire explained a portion of the Majority Report. I would say that the Minority Report does call for the appointment of judges through a nominating commission and, also, voter approval on the question.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE WARNER: Mr. President.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: Now that I'm part of the State of North Dakota again, I feel I can speak.

I have somewhat the same situation, Chairman Longmire, where I would like to be present to support the Majority Report; but I have to go home and hold court, and I don't know if I'm going to be here Monday either. I'm wondering if it would upset things if we could put it over until Tuesday.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: That will be perfectly agreeable. With the permission of my seconding delegate, I would be glad to amend that to 10:00 A.M., Tuesday.

DELEGATE RONEY: Yes.

PRESIDENT WENSTROM: Your seconding delegate is agreeable, Delegate Longmire.

Delegate Hoffner, do you have a question?

DELEGATE HOFFNER: Mr. President, I was just going to suggest that Monday at ten o'clock Delegate Longmire could make his motion that he's making today, and after he sees that everyone is here, and do exactly what — and not have to set a time. He could at ten o'clock rise and be on the tenth order.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I'm perfectly familiar with the procedure — what motions I can make and what I can't; but I make this motion at this time in order to give the delegates the opportunity to think this over over the weekend and get ready for your debate, and that's why I'm making it at this time.

PRESIDENT WENSTROM: Thank you, Delegate Longmire.

Delegate Saugstad.

DELEGATE SAUGSTAD: I would like to point out to Delegate Longmire and to the delegates here that we could find ourselves in a rather peculiar position, that the Minority Report, for instance, might have a majority of the votes, but less than 50 votes, and I was wondering, for the adoption of a committee report, if Delegate Longmire would be insisting on 50 votes.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Delegate Longmire feels if he can't get 50 votes for the Majority Report, he might as well forget it!

PRESIDENT WENSTROM: Anything further? The question, then — Delegate Aubol.

DELEGATE AUBOL: Mr. President, I do have a question similar to Delegate Saugstad's. And, Delegate Hoffner, would you yield to a question?

DELEGATE HOFFNER: Yes.

PRESIDENT WENSTROM: Does Delegate Hoffner yield?

DELEGATE HOFFNER: Yes.

DELEGATE AUBOL: Are the same divisions that were put down on unicameral and bicameral applicable — a majority of those voting?

DELEGATE HOFFNER: I believe in our case it was — and I'm sorry, Delegate Longmire — I think it was the proposal that received the most votes would be handled the same way as the Rule, in Rule 5 — a committee report. I believe that does not call for a constitutional majority; is that right?

PRESIDENT WENSTROM: That's right. However, the amendment or the motion before the Convention at this time does specifically state 50 "aye" votes.

DELEGATE AUBOL: Mr. President.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Again with the permission of my seconding delegate, I have no objections to making that a majority, instead of 50 votes.

(Delegate Roney raised his hand.)

PRESIDENT WENSTROM: The second is agreeable. I don't know if the Convention is, though, or not. If the Convention — if no one objects, why then we will eliminate the formal procedure for a second and let the distinguished delegate from Grand Forks reword the motion to that point. Strike the "50."

The Chair has a question. Has this amendment been distributed? Has this proposal been distributed to the Convention?

DELEGATE LONGMIRE: Mr. President, I believe a copy of the proposal was placed on the desk of everybody; however, the amendment — I mean the motion that I have made has not been; but I believe a copy of the Majority and the Minority Reports have been placed on the desks. Have they not?

PRESIDENT WENSTROM: Delegate Longmire, my question was relative to your motion — if the motion had been. I was just wondering if this was on the desk of the Convention.

DELEGATE LONGMIRE: No, Mr. President, it hasn't been. In fact, we just got it prepared just a short time ago. But, in explaining what this motion is — in fact, Delegate Hoffner kindly informed our committee of the details of his motion. It worked so well that we felt it would save time here; so it's almost identical with Reverend — or "Reverend"! — with Delegate Hoffner's motion. I thought I was presiding on the Board of Deacons back at the church.

(Laughter)

PRESIDENT WENSTROM: Would the Convention like to have this motion read or re-read now as amended?

Read it, Mr. Clerk.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I'll move the question.

PRESIDENT WENSTROM: The question has been called for. Will five delegates second the motion? We need five delegates. Lander, Kessel, Kelsch, Decker, Quam — unless I have too many.

The question now is to cut off debate and have the vote. So, as many as are in favor of voting on the question at this time will say "aye;" opposed "no." The "ayes" have it. Debate is cut off and further amendments are cut off.

We're now on the motion as presented by Delegate Longmire.

Those in favor of that procedure will say "aye;" opposed "no." The "ayes" have it and we will be hearing Committee Proposal No. 1-11 at 10:00 A.M. on Tuesday.

DELEGATE AUBOL: Mr. Chairman — Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I'm trying to find the right order of business to be on, but I'm looking for an announcement number.

PRESIDENT WENSTROM: That's No. 8.

DELEGATE AUBOL: Can we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE AUBOL: This is just by way of explanation.

At one time both minority and majority reports were both placed on the desks of all delegates. You will recall, however, the reports were referred back to the Committee, and so the Minority Report that you have received is not the Minority Report that will be presented, because there are some changes that were made, and if anybody wanted, I could briefly explain what those changes are.

PRESIDENT WENSTROM: Is this in the Journal?

The answer to your question is that the Minority and Majority Report that will be discussed are not the ones that are in the Journal; that this is not then at the desk. It has not come to the Convention for adoption. Consequently, we do not have copies at this point.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, just a brief reminder. The editors' luncheon is again at noon at the Town House, and if you have no invitation and ticket, you are certainly welcome; but it will cost you three dollars at the door.

Thank you.

PRESIDENT WENSTROM: We'll continue on the eighth order, on announcements.

CHIEF CLERK GILBREATH: Delegate Sanstead announces that 40 students from the Junior High School of Minot and their teachers, Lemoya Mooney, Hazel Flammancy and Mark Hamilton, are with us.

Delegate Gipp would like to announce the introduction of students and faculty from the Solen Public High School. There are 28 students, accompanied by Robert Kutchna and Virginia Nelson.

PRESIDENT WENSTROM: Will the visiting students please rise and be recognized by the Convention delegates? Will you please rise? (Applause)

We're happy that you are with us this morning. I think you have listened to some, in my opinion, very interesting discussion pertaining to questions that you will be very much concerned with in the immediate future.

We will be back on the tenth order of business for discussion of Committee Proposal No. 1-32.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-32, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 194, 195 and 196 of Article XIV of the constitution of the state of North Dakota be repealed; and that section 28 of Article II to the constitution of the state of North Dakota be created; all of which pertain to grounds for impeachment.

"SECTION 1. REPEAL.) Sections 194, 195 and 196 of Article XIV of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Section 22 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 22. All elected state officials and judicial officers elected to represent more than one political subdivision shall be subject to impeachment for crimes, corrupt conduct, malfeasance, or because of chronic and continuing willful failure to perform the duties of office. The house of representatives shall have the sole power of impeachment by a vote of a majority of those elected to the house. The senate shall have the sole power of trial in impeachment cases. A two-thirds vote of elected senators shall be required for conviction."

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I have some amendments at the desk that I would like to move on 1-32, to clarify some of the language after we amended it yesterday, and if the Clerk would read those amendments.

CHIEF CLERK GILBREATH: Amendments to Committee Proposal 1-32:

On line 11, delete the words "elected state officers and".

On line 12, all the following words after the word "subdivision": "and all elected state officers".

On line 14, delete the words "chronic and".

On line 17, delete "those elected to the house" and insert in lieu thereof the following: "the elected representatives".

On line 19, add the word "the" before the word "elected".

And renumber the lines accordingly.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I would move those amendments. If I get a second, I will explain.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE BENSON: I'll second.

PRESIDENT WENSTROM: Seconded by Delegate Benson.

DELEGATE KELSCH: The first amendment, in taking out "elected state officials" in that position was simply to clarify the language so that the words "elected to represent more than one political subdivision" modified "judicial officers." We're just simply reinserting the words in line 12. So it was just to clarify language, so there couldn't be any confusion.

On line 14, after it was amended yesterday, it had read "chronic and willful failure to perform the duties of office." We felt we wouldn't need the words "chronic and", and so the ground would be "continuing willful failure to perform the duties of office," and we felt that this amendment would take out the disabled official, where he couldn't perform his duties. It would have to be a willful act, and it would have to be continuing willful acts, rather than just the one.

Then the last amendments on line 17 are just a style change, so it will be consistent with the sentence on line 19, where it refers to the "elected senators"; we would also say the "elected representatives". So those are just style changes. I would urge the floor's favorable action on these amendments.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendments to Committee Proposal No. 1-32 as offered by Delegate Kelsch.

Hearing no further discussion, as many as are in favor of the adoption of the amendments will say "aye;" opposed "no."

The "ayes" have it and the proposal is before you as amended.

DELEGATE KELSCH: Mr. President. I would now move that the Rules be suspended and that Proposal 1-32 be considered properly re-engrossed and placed on the tenth order for first passage.

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Kelsch and seconded by Delegate Trenbeath that the Rules be suspended, that Committee Proposal No. 1-32 be properly re-engrossed and be placed on the tenth order for first passage as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-32 is now before the Convention for first passage as amended.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Would Delegate Kelsch read the paragraph of the amended language, so that everyone can get it proper?

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Starting with Section 22: "All judicial officers elected to represent more than one political subdivision and all elected state officers shall be subject to impeachment for crimes, corrupt conduct, malfeasance, or because of continuing willful failure to perform the duties of office. The house of representatives shall have the sole power of impeachment by a vote of a majority of the elected representatives. The senate shall have the sole power of trial in impeachment cases. A two-thirds vote of the elected senators shall be required for conviction."

PRESIDENT WENSTROM: Any further questions?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I'd like to ask Delegate Kelsch: Does this almost rule out the fact of illness while it isn't the man's fault? This shouldn't be forever.

DELEGATE KELSCH: Yes. I'm sorry. I didn't mention this to the delegates when I moved these amendments. In the light of the discussion yesterday, the impression was given that the Convention did not want to impeach for disabling illness that would prevent performance, and it wanted this to be a willful act.

Now, we're coming in with a new section, which is attached to the succession — gubernatorial succession on state officials, which will show a method by which you could declare a vacancy in office by reason of the inability to perform.

PRESIDENT WENSTROM: Any further discussion? The question is on the first passage of Committee Proposal 1-32 as amended.

Those in favor of adopting will vote "aye;" those opposed will vote "no."

The key will be opened. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses that there were 89 "ayes" and no "nays" and nine delegates absent and not voting.

Committee Proposal No. 1-32 has passed.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: May I rise on a point of personal privilege?

PRESIDENT WENSTROM: You may state your privilege.

DELEGATE HAUGEN: The Desk Reporter is still not convinced that I'm present. I had assumed that my announcement earlier that I was present, but in the wrong place at the time of roll call, was sufficient; but I would like to have the record show that I am present and have been present this morning.

PRESIDENT WENSTROM: Thank you, Delegate Haugen.

We will continue on the tenth order of business.

Next for consideration is Committee Proposal No. 1-37.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-37, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 41, 53, 55 and 56 of Article II of the constitution of the state of North Dakota be repealed; and that section 8 of Article II to the constitution of the state of North Dakota be created; both of which pertain to a legislative timetable.

"SECTION 1. REPEAL.) Sections 41, 53, 55 and 56 of Article II of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Section 8 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 8. The terms of service of the legislators shall commence on the first Tuesday after the third day of January following their election. The legislative assembly shall meet to organize on the same day and may meet in plenary session no more than eighty natural days during the biennium. The days need not be consecutive and meetings for the purpose of impeachment or on call of the governor shall not count against the eighty-day limitation. The legislative assembly may authorize its committees to meet at any time during the biennium. No house of the legislature may recess or adjourn for more than three days without the consent of the other house."

PRESIDENT WENSTROM: You have heard the reading of Committee Proposal No. 1-37.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. This is an important section of the work of the Legislative Functions Committee. What it does, first of all, it starts the term of office for elected legislators on the first Tuesday after the third of January. It then provides that they shall organize at the same time. It then provides that the Legislature may meet for eighty natural days and provides that these days need not be consecutive, and that where the Legislature meets for purposes of impeachment or upon call of the governor, this time will not be counted against the eighty days.

It also authorizes the Legislature, if they desire, to permit its committees — organized committees to meet at any time during the biennium, and it provides as a working tool that neither house may adjourn for more than three days without the consent of the other.

Now, what we're doing with this proposal — we're repealing Section 41 of the Constitution, which says that the term of a legislature should start on the first Tuesday in January after the election. We're repealing Section 53 that calls for the first meeting of the Legislature at twelve o'clock on the first Tuesday after the first Monday in January, and in place of those two we're putting the first Tuesday after the third of January. We're fixing a specific date. We're repealing Section 55, which says that the Legislature shall be a biennial session. We're actually putting that back in — a two-year session — and we're repealing Section 56, which says that the Legislature shall meet for sixty days, except in the case of impeachment, and the change is we're going to eighty days and we're making it clear that the eighty days need not be consecutive.

Now, your Committee on Legislative Functions, after a lot of work on this, feels that this is an important change in the legislative process. Instead of the Legislature being — now we're not telling the Legislature they have to meet in the odd year or in the even year; we're leaving it up to them. We're saying they start in January after election on the odd year. They could meet for eighty days consecutively, if they wanted to, or they could meet for sixty days; but they can't go beyond eighty natural days. They could break those days up, if they wanted to. It would be strictly up to them. We're leaving it as open as we can, so the Legislature itself — the two houses — can decide their own rules of procedure. We feel this has substantial advantage over our present system, because this would enable the Legislature, should it so desire, to organize in January of the odd year, work for, say, two weeks or three weeks to organize, to get their bills introduced; they could then adjourn, consider, act on some legislation, if they wanted to, such as appropriations; they could then adjourn, their committees could meet throughout the year at times they might specify, and the manner and place that they might specify. They would be working committees of the Legislature. The public could attend and be heard, and then they could, if they wanted to, come in on the even-numbered year, after having it a year — a year to have it studied and considered, and they could meet and take final action. But this, of course, is strictly up to them. We're not telling them they should do this. This would be a matter that they could decide as various legislatures meet after this Constitution is adopted.

We urge your support of this.

DELEGATE LONGMIRE: Mr. President.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I'd like to address a question to Delegate Kelsch or any other member of the Committee who may be able to answer it.

I notice in Section 56, which is the one that was repealed in favor of this new language, in referring to the days of the session, it does not use the word "natural". Will you explain what the import of the change is in regard to use of the word "natural"?

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The intent of the Committee was to set a limit of time and without modifying the word "day," we were concerned that there might be such confusion. Were we talking about a legislative day? Now the Legislature likes to operate and has operated with a legislative day, which, I think, starts at twelve o'clock on one day and goes until two o'clock the next day, and the purpose of that was to enable — it was a procedural thing to enable you to consider — to think about what you did over the nighttime and then reconsider the next day, without having to have a two-thirds vote.

Now, we don't — we aren't — we don't propose to tell the Legislature that they would not continue that practice. If they want to, that would be called a legislative day. What we wanted to do was to say "natural days," so what we're saying is that "You are not to meet more than 80 24-hour periods in plenary session," so there could be no confusion on it. That was the reason for the modification of days.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I'd just like to ask Delegate Kelsch what, if anything, this does to the pre-session conferences which have been quite successful for the last two sessions?

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Well, Delegate Longmire, I might mention that we, in the course of this particular proposal, we had it out, then back in, and then out and back in, and I think back out. The final decision — we recognize the great value of the organization session, because it allows you to organize and then take a break because of the Christmas holidays, and it was a good tool. But we felt that, because we're not requiring that you meet for sixty consecutive days or eighty consecutive days, that you can do the same thing — meet in

January for three days, organize, go home for a week, and allow bills to be introduced, and come back.

Now, we felt what tipped the scales in favor of us getting rid of the December meeting is that we felt that it's important that a new legislature have budgets presented to it by elected officials who are taking office, and if you meet in December, you really have carry-over elected officials, and we thought that was quite important and that, I think, although there was not unanimous agreement on this point in the Committee, that carried the majority of the Committee to suggest doing away with the December meeting in favor of just starting in January and allowing the Legislature to set up however they may want to.

PRESIDENT WENSTROM: The Chair will recognize Delegate O'Toole.

DELEGATE O'TOOLE: I'd like to direct a question again, to Mr. Kelsch or one of the Committee members.

It seems to me that — I wonder why they put a limiting number of days in there, because it seems to me that eighty is a pretty short number of days as time goes on, for the great number of bills that they have to consider.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If I may try to answer that.

The Committee, I think, felt that we did not want to propose — we were not going to propose a full-time Legislature. We felt the people would want some limit on the time that they would meet. Now, we recognize that some felt that maybe eighty days it too few; some feel it's too long; but we felt at the conclusion, that it would be long enough, in view of the fact that they can recess and the committees can work.

Now, in our present system, with the sixty consecutive days, the committees work all morning and the Legislature really is in plenary session a very limited part of the time — generally probably no more than half-a-day. Now, the committees would work in the interim, or in between times or at recess times. These will not count against the days. So there is additional time. But we are leaving it open to the Legislature. If they want to do this, they could stay on the same system or they could just be in plenary session for a whole eighty-day session and then the committees could meet during recess times.

DELEGATE RONEY: Mr. President.

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Knudson, if he wishes the floor. Do you wish the floor, Delegate Knudson?

DELEGATE KNUDSON: No. It was answered.

PRESIDENT WENSTROM: Then Delegate Hoffner, do you wish the floor?

DELEGATE HOFFNER: Yes. Mr. President and members of the Committee, I'd just like to follow up on the pre-organizational session. Now we, as a convention, are actually doing — we're allowed to do what we're asking for in this proposal. We had meetings throughout the summer — this summer. We had hearings, and right now we are in recessed sessions. Every Saturday we have a recess.

Now, I honestly feel it is proper, if there is a proper scheduling and a proper deadline set for introduction, that the Legislature will not in the next ten years even use sixty days for actual plenary days, and the ways this has been done — Delegate Kelsch has done a very good job of explaining the procedural part of it — the committees meet in the interim and the Legislature could come down, organize in January, and then recess for three weeks to allow introduction of bills, to allow a new administration to present their proposals — and, incidentally, the big bulk of proposals are department heads — department proposals — and with the proper deadline set for introduction of the proposals — bills — back to "proposals" and "bills"! — that the Legislature can then process any number they want to in, say, a short session, and any bills that are not processed in that time could be held over for the following year, and in that interim period could be processed, hearings could be held, but, also, the research part of it, and this is a very important part of it right now. Now, we spend many, many dollars

for research, and it is the research committees, and these are not the same committees that process bills, and quite often we lose very, very good research proposals that are defeated because the members that do the research are not on the committees that process the bills, and these would be the same committees doing the research that process the bills, and I think a very important part.

But with the proper flexibility here, the Legislature would not need, I'm sure, the sixty days even that — would never need the eighty days — probably not for ten years; but I think we should allow at least eighty days because maybe in twenty years they will need it.

PRESIDENT WENSTROM: The Chair will recognize Delegate Roney.

DELEGATE RONEY: Mr. President, I am not a legislator. I don't seek the office now or in the future. But one of the reasons I have never sought the office of a legislator is because I have felt I could never give the time to it. I think that the Legislature has created a body of so many committees, with so many meetings, that it makes it impossible for the man who has some other obligations to become a member of this body. I think that what you're opening up with this provision is that a plenary session of the Legislature could be held each Friday; the other four days of the week would be committee days, and you would have 80 Fridays, with a session — when the Legislature would be in session, and it would last indefinitely. It would be — the cost would be terrific, and you would have the professional legislator — the thing we have talked about eliminating.

I think that there better be some other bounds within this, or it is not very acceptable in the manner in which it is written.

DELEGATE JESTRAB: Mr. President.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh — or Delegate Jestrab.

DELEGATE JESTRAB: Mr. Chairman, I would ask — if this is a unicameral legislative body that we end up with, my question would be of no import; but if it is a two-house legislature, what determines whether or not both houses would have to meet at the same time, or could one be in session without the other one being in session?

PRESIDENT WENSTROM: Will someone answer the question? Delegate Kelsch.

DELEGATE KELSCH: Mr. President, to Delegate Jestrab's question: We tried with the last sentence that "No house of the legislature may recess or adjourn for more than three days without the consent of the other house." We felt that that would resolve the problem of one of them going home and the other one working and using up its time. By the way, that language is in the present Constitution, and that is the method by which the present Constitution keeps the Legislature working together as a simultaneous body under our present system.

Now, in response to Delegate Roney's question: I think, conceivably, you're right — they could do that. When we say "not consecutive," that leaves it open; but I would be very, very, very surprised if the Legislature — at least in the foreseeable future that I could see — would ever suggest such an idea, because they're — the legislators in North Dakota are not full-time legislators and they're going to want to get the work done and get home or set it up in a manner that's convenient to them. Our Committee felt we're writing a Constitution, we hope, for a number of years, and we felt that we just — we don't know how to limit it, other than to say that these are our elected representatives; if they horse around here for two years, meeting just on Friday and meeting in committees the other days, I don't think they will be in office very long. Of course they have the power to set their salaries. I would think that the — I would hope, anyway, the constant requirement of facing the electors in elections, the scrutiny of the public on their performance would be a sufficient check and balance on their work, rather than trying to define it in the Constitution.

PRESIDENT WENSTROM: The Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

I agree somewhat, at least, with Delegate Roney. It might not go to quite

the extreme that he mentions, but I feel that the Legislature doesn't need so many days.

Now, I know this will come as a surprise to some of you, but if we have an eighty-day session, I can assure you that we'll do most of the work the last two or three days and nights. All the tough bills, as many of you know — the appropriation bills that are a little bit tough — are held until late in the session. All the deals are made and everything.

Now, I think that sixty-three days would be a good limit. The preliminary session, you want to remember, was okayed by the people when we told them what a deal it was and how it would help us. Now we're eliminating it. Now you can have the days, but this was a good deal and it was one of the few things that we proposed to the people which they approved of. I think it should be retained, and the expenses are considerable, and I haven't had any great swelling from the grassroots telling me that you should meet more down there and you should get up to fifteen thousand a year. I really haven't had many people suggesting that, even though now we are paying expenses. There's some legislators in New York and lately in California, I understand, that have tried to upgrade our legislative pay and other things; but I think the limit — I'm not going to move an amendment, but I'm going to vote against it for the simple reason I think it's too liberal. I don't think the Legislature needs that much time or the people want them to have it.

PRESIDENT WENSTROM: The Chair will recognize Delegate Byrne.

DELEGATE BYRNE: I hate in a way, by inference, at least, to fix my age, because it's been 35 years ago when I was first in the House of Representatives. In fact, I would feel a little better about it by saying I was only twenty-one years old at the time I was elected. So I'm not as old as I first sound.

I think, in this measure, we are getting at the heart of the need of proper legislative procedure. I am a witness, personally, of the load that the present legislative assemblies in these last recent years are carrying, compared to, say, the 1937, '39 and '41 sessions. The work has quadrupled, at least, and we here as delegates should best appreciate the problem of dealing with approximately fifteen hundred measures in a short legislative period, when we are here meeting as a substantial number of, say, 125, and I think we all here can see mechanically the problems that we are faced with — the problems of study, the problems of research, the problems of judgment, the problems of acceptance by the people.

I personally feel that eighty days is probably a little too short period of time, but in the method of which they have it set up as far as committee work throughout the year, I feel this is very, very appealing. And to those who say that they cannot afford it, cannot spend the time in legislative work, I can appreciate that. I have heard over so many years criticism of the Legislature. I don't know of a group of people who have really sacrificed more for this State than the people who are members of the House and the Senate in the State of North Dakota. We have a pretty good idea insofar as the compensation that we are receiving as we meet here in this body. It's a great sacrifice insofar as time away from their offices, away from their work, and the primary thing is to give them time to properly make a judgment in the many pieces of legislation that are being presented in each session. I certainly hope that this bill receives our approval.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President.

My experience goes back, I guess, farther than anyone in the chamber in this legislative field. It was fifty years ago, the last session, that I started my first one, and I've seen a lot of change in that time. We had very little time taken up at that time by the public coming in to be heard and express themselves on matters before the Legislative Assembly. This was because of the difficulty of transportation. You could get from Fargo to Bismarck quite easily and from Beach to Bismarck; but other travel was slow and took quite a lot of time and, consequently, not too many people came. But in that fifty-year period of time, I've seen the good road development, and everything else, and you've got people coming in here and they want to be heard, and they should be; so I agree that there is a very — a great need for the length of the sessions to be stretched out

to take care of that factor, whether it's seventy-five or eighty days, I wouldn't even argue; but it does need some fifteen or twenty days of additional time to complete its labors.

But, on the other side of having this session recess and using up maybe a whole year or seven or eight months, you're going to preclude people that have to make a living from some other source from even serving in your Legislature. This Legislative Assembly can certainly do its work and get the session over with, except in the case of an emergency or an impeachment, in some seventy-five-to-eighty days. And even with the — and they talk about the additional workload! In 1923 or 5, along in there, we handled up to 800 items of bills and resolutions without all the equipment you've got here. We didn't have committee rooms in the old Capitol. So, with all this modern equipment, the Legislature can move along more rapidly and handle a little heavier volume of work, and probably some of it might never ought to get on the floor anyway.

Thank you.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I served five terms in the House of Representatives. Two of them were served at the five-dollar-a-day pay that the Constitution provides; yet I never considered that I was sacrificing any of myself in serving. I thought it was a privilege to serve, and I know that I gained more in education and knowledge in those five years, probably, than I would have in a college education in many ways.

I believe it's an honor and a privilege to serve in this Legislature, and I do believe that we are doing well — I do support the idea of an extended session. I believe we are doing well by including the eighty — providing an eighty-day session and telling the Legislature that they can use that eighty days in the biennium as they wish; but I do think that there are grave chances of misuse of the recess provision in this section.

In order that we may have a vote on that section, Mr. President — and I have not had an opportunity, of course, to present this amendment to the desk — but I do move that — there are no lines in the amendment, but I do move that the next-to-the-last sentence in the amendment be stricken. "The Legislative Assembly may authorize its committees to meet at any time during the biennium."

I move that those words be stricken, and I think that's explained and well-understood. The Legislature will still continue to have its research council and still have an opportunity to perform the studies and committee work on the legislation that it does now.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: We have a motion from Delegate Haugen to Committee Proposal No. 1-37; that it be amended. Do you have the amendment as requested there?

CHIEF CLERK GILBREATH: On line 18 of the engrossed bill, delete "The Legislative Assembly may authorize its committees".

In line 19, delete "to meet at any time during the biennium."

PRESIDENT WENSTROM: Now, do we have a second to the proposed amendment?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I hope the amendment does not prevail, because I feel that it is an integral part of the major improvement that I see in this proposed change.

Am I in order, Mr. President?

PRESIDENT WENSTROM: I'm sorry, Delegate Baker. Would you repeat your statement?

DELEGATE BAKER: I was wondering if I was out of order.

PRESIDENT WENSTROM: Well, what was your question?

DELEGATE BAKER: I'm speaking on the amendment just voiced by Delegate Haugen.

PRESIDENT WENSTROM: No. That's fine. That's in order.

DELEGATE BAKER: I'm in order.

I'll repeat then: I hope that the amendment does not prevail. I regard it as an integral part of what I regard as the best features of this proposed change in our Constitution.

One of the things that I've never been satisfied with since its inception in the North Dakota legislative process is the operation of what began as the Legislative Research Committee, and which is now known as the Legislative Council. I'm a little uncomfortable in the company I keep on that subject right now, but those of you who have been in that chamber for some years have heard me make expressions of opinion that were less than flattering about the way that system works, and I see that a very real improvement could be made with this sort of change. I don't know that I would have chosen eighty days. I like the idea of a definite number of 24-hour periods of time. I think that's good — excellent.

The Legislative Council operation, however, the way it is now, is operated under kind of a lame duck situation. A legislature meets, passes what legislation it can, refers questions that it can't resolve to the Legislative Council for study during the interim; the members of that Legislature become members of the study committee, spend a lot of time and a terribly large amount of taxpayers' money in the process, and may not return. It may be a brand new batch — it frequently is — of legislators. And even if a sizeable number of those legislators who work during the interim do come back, as has been pointed out, they quite frequently wind up on committees which are not considering the same material they worked on during the interim. So there's a terrible, terrible waste here. I can see that the operation of a system which would have just as good a theoretical foundation and, in my opinion, a much better chance for practical results, could be built with a recessed session, a session which would meet soon after the election of its members and which would transact the legislative business which needed attention at that time. Then appoint what study committees are needed for a recessed period, and do that committee work during that time. Reconvene even the next year. Why would that be so bad? And consider then in an orderly fashion the material that has been developed by its study committees and pass as a complete unit — that is, sitting as a complete unit — the same legislators who sat before and decided to send this matter for study in the first place — on the outcome of the study, and make the decision at that time. I think that would be a major possibility of improvement. No certainty that it would come about that way; but I would certainly hope so.

There are risks. Of course, there are risks — that that Delegate Roney mentioned being, I suppose, the most ridiculous extension that you could imagine. But, generally, legislators are responsible people. They wouldn't be in the Legislature in the first place if they weren't. And so I don't think there's going to be any great abuse in a change to a system like this. My only concern is that there can be strong enough arguments for a change — a worthwhile change, so that the people will be willing to accept it.

PRESIDENT WENSTROM: Delegate Trenbeath and Delegate Solberg and Delegate Sinner have requested the floor. Now, do your requests pertain to discussion of the amendments or are you on the main question?

DELEGATE TRENBEATH: No, Mr. President. No, Mr. President, my discussion wasn't on the amendment. But after this is disposed of, I would like to get the floor.

PRESIDENT WENSTROM: Thank you.

Now, is there any further discussion on the amendment as offered by Delegate Haugen?

Delegate Sinner.

DELEGATE SINNER: Mr. President, I want to assure the Convention that what Delegate Baker has just pointed out is the key to what the Committee is recommending. The basic philosophy of this proposal comes from, I think, probably several people; but certainly Delegate Hoffner, along with Representative Streibel and many others, have tried to think through some meaningful improvements for the legislative process.

The right of the Legislature to hold official committee meetings while they're not in plenary session, in an effort to replace the not-so-official hearings and consideration of the Legislative Council, is really what's at stake here, so that the committees can work on meaningful pieces of legislation, meaningful bills, actual bills, during the interim, and make their recommendations to the main body from those hearings. I hope that the amendment is defeated.

PRESIDENT WENSTROM: Any further discussion? Delegate Byrne.

DELEGATE BYRNE: I don't want to belabor the question, except for one comment.

I believe that if this amendment is adopted, that you will obviously take the heart out of the whole intent of the proposal. I want to point out to the delegates that there is an acute problem here, as an example of need, for this type of legislation. Every day we are discussing a matter here and in the committee in these areas on reorganization and a change in the Constitution, and the going word around here is that this is a matter that will be taken care of by legislative action. I want to warn you of the need of having the coming legislative sessions elastic enough so that they can do the things that this Convention itself is demanding to put the Constitution in proper shape, and I believe this is the proper method to do it.

I want to warn you, if we are kept the way that we are right now, that it's really a burden that you would be putting on as far as the Legislative Session is concerned.

PRESIDENT WENSTROM: The question is on the adoption of the amendments as offered by Delegate Haugen. In line 18 "The Legislative Assembly may authorize its committees", and then in line 19, "to meet at any time during the biennium." That is the question before the Convention.

As many as are in favor of the adoption of the amendment will say "aye;" opposed "no." The "noes" have it and the amendment lost.

Now we are back on the main question, and the Chair will recognize Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President and delegates to this Convention:

This is good discussion. I'm certainly not opposed to the theory of the design in our subject here today. I would point out, though, by changing the wording from the old Constitution from "the first Monday" to "the first Tuesday" and adding the words "the third day of January," we are delaying the beginning of the session to a later date. There will be some years, of course, that we won't be able to start until the tenth of January. When I say "we," that's for the State. I'm out.

But, anyhow, I suppose the reason they changed that to the third day was that we'd be — so that on some years you wouldn't have to meet the day after New Year's.

But what I'm getting at is it does prolong the session in that respect, somewhat. But I think the whole key, probably, in Delegate Roney's argument is in limiting the recess days. There is — I know that the businessman and the professional man are able to serve in the Legislative Session much easier if he can get home over the week-end. But there is one group in this State of North Dakota that pretty near has got to be back when it gets around the first of April, and you know who I'm speaking about. So I say that the whole key to this thing is to limit the recess days, just like we have in this Convention here.

So I'm going to offer an amendment, Mr. Chairman, in this regard:

At the end of this little amendment slip you have on your desk — and I don't know what number the lines are in your engrossed bill — but I would add these words, Secretary, and I can't give them to you in writing: After the word

“house” insert a comma and insert these words — add these words: “but the total recess days shall not exceed sixteen natural days while meeting in plenary session.”

CHIEF CLERK GILBREATH: “Sixteen”?

DELEGATE TRENBEATH: “Sixteen.” If I can get a second, why I would explain.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE STANTON: I’ll second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

DELEGATE TRENBEATH: I think, Mr. President, that this is probably understandable. I quickly arrived at the word “sixteen” thinking about how long a period of time they would probably be in session, considering holding Fridays out, of course, and — or Saturdays, rather — will take about eight-to-ten days, and then this would give them about six days after the end of the session — or after the organization, take three or four days in most cases. Now, this — maybe sixteen isn’t the right figure. Twenty seems to be a little long. But I arrived at the word “sixteen” in that respect, and I think, if you think about this, there should be a limitation on the recessed days of that plenary session; otherwise, there could be many, many circumstances where each session is going to run too long, and it would be a real hardship on many of the members that we would like to have in this legislature.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I speak against the amendment. The whole idea of 1-37 is to give the Legislature the tools — procedures to take care of the very thing that he’s — that Delegate Trenbeath is talking about. The Legislature can handle these — not the Constitutional Convention — and I would strongly urge a “no” vote on this amendment.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I now move that we recess until 1:45.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It’s been moved by Delegate Saugstad, and it has been seconded, that the Convention do now recess until 1 — did you say “45” or “25”?

DELEGATE SAUGSTAD: Forty-five.

PRESIDENT WENSTROM: 1:45.

You have heard the motion. As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and we’ll be in recess until 1:45.

Don’t forget the meeting that’s going on at the Town House, where many of the delegates are guests.

(The Session recessed at 12:08 P.M. until 1:45 P.M., the same day.)

AFTERNOON SESSION

(The following proceedings commenced at 2:00 P.M., the same day:)

PRESIDENT WENSTROM: The Convention will please come to order.

The question before the Convention is on the amendment as offered by Delegate Trenbeath and seconded by Delegate Stanton.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: At this time, if I could get agreement of my second, I would like to withdraw that amendment and offer a substitute amendment that would do exactly what I was trying to do. It would be much simpler.

PRESIDENT WENSTROM: Delegate Trenbeath has asked permission to withdraw the amendment. Do we have permission of his second?

DELEGATE STANTON: Yes.

PRESIDENT WENSTROM: We do. Is there any objection? Any objection from the delegates?

Hearing none, permission is granted.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I would ask that the amendment be read from the desk just as soon as it's typed up.

CHIEF CLERK GILBREATH: The amendment to Committee Proposal 1-37 is as follows:

In line 21 of the engrossed bill, after the period following the word "house" add the following:

"The Plenary Sessions shall be held during the months of December, January, February and March; except for impeachment proceedings or special sessions."

And renumber the lines accordingly.

DELEGATE TRENBEATH: Now, Mr. Chairman — Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath. Do we have a second to the motion?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Delegate Sanstead seconds the motion.

DELEGATE TRENBEATH: Mr. President, Delegates:

The way it was worded before, it did prove to be a problem whereby the Legislative Session could meet thirty days in January and recess and then come back into plenary session again, and that's what I was trying to get at. What I was trying to do was pinpoint the time of the plenary sessions, so at least a major segment of our economy and the representatives in North Dakota would — the plenary sessions would end at least by the end of March.

Now, this new amendment simply says the plenary sessions would have to meet at that time. It doesn't preclude that the interim committee staff be working. It doesn't refer to the special sessions, as referred to in the amendment; and, most important of all, it does not define any sixteen-day or twenty-day period for recess time — total time. So it just automatically says that the plenary sessions shall be held during that time — during this period.

PRESIDENT WENSTROM: Any further discussion? Any questions?

Delegate John Paulson.

DELEGATE PAULSON: Mr. President and Delegates:

I agree that the timetable that Mr. — or Delegate Trenbeath has proposed sounds logical to us today. We are writing for the next thirty, forty or maybe even eighty years; that is why the Committee decided that the Legislature has got to control the time to do the job.

Number one, within the next twenty or thirty years, I grant you there is going to be a farmer majority in the Legislature, and they will set the time, and they certainly won't be sitting here in April to handle the business that should have been done in February and March. They've got a job to do back home. I don't think that this does anything but tie the hands of the future, rather than improve the prospects of a good legislative session today. I urge that the original language be retained and the amendment be defeated.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Again, I will have to urge a "no" vote on this amendment, and I disagree with Delegate Trenbeath. We are, again, with this amendment, tying down the Legislature to a question of when they're going to meet. I realize the make-up of this State; but for that very reason I think that we can trust the legislators to handle this situation themselves, and I urge a "no" vote on the amendment.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President.

Delegate Trenbeath's amendment or proposed amendment starts out with December. Earlier we speak of the session starting in January. Does that mean, then, that we'd have January, February and March, and then they'd be in recess until the month of December? It appears to me that it would be. I'd have to go along with the Committee and ask that this be rejected.

DELEGATE TRENBEATH: No. Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: No, it does not mean that, Delegate Hoghaug, at all. It means the opportunity rests — that in the odd number — in every other year — in between the biennium — let's put it that way — in between the biennium they could, if they wish, meet in the month of December and, also, it could mean that they could meet in the month of December after they're elected to — or organized.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment to Committee Proposal No. 1-37 as offered and read from the desk.

Hearing no further discussion, as many as are in favor of the amendments will say "aye;" those opposed say "no." The "noes" have it and the amendment is defeated.

We are now back on Committee Proposal No. 1-37 as amended.

Delegate Hernet.

DELEGATE HERNETT: Mr. President, I just have a couple of questions that I'd like to ask some member of the Committee that bother me a little.

What do you mean by "natural day"? And if you define it as being twenty-four hours, then what is Saturday and Sunday? Are those counted as recess days then? If they are, what happens to your eighty-day session? I'm not satisfied in my mind. I would like to have some member of the Committee spell out exactly on the calendar what would happen and how long this eighty days would be.

I have one other question. If you are going to — if this session would last for an extended period of time over a biennium, I think that certainly, somehow or other, you should limit the type of bills that can be introduced in this session.

Down in South Dakota, they have an annual session. One of them is a shorter session and it's limited entirely to appropriation bills, and the other one is wide open for everything. I think, also, whenever the governor calls in a special session of the Legislature, he has to spell out what type of bills or what shall be up for consideration. I think, if you're going to open this up for a two-year continuous session, you could have — well, now, in the last session, we had about eleven hundred bills or so, with numerous resolutions introduced in that sixty-day period. If you're going to open this up for two years — and I don't think I'm exaggerating when I say that you could very well have a couple thousand bills introduced over a two-year period of time, because I know how a legislator's mind works, to some extent, and they'll think of something and there will be bills in continuously. These kind of limitations, I agree, could be spelled out by the Legislature, and I'm one of the first ones here, I think, to say that I trust the Legislature and I'd like to see them have more powers that they can do these things; but I still question whether you should give them the unlimited power to run the session for two years, which, I think, this is what this would be.

My one question now to somebody is: What is a "natural day" and what are you talking — what is a "recess day"?

PRESIDENT WENSTROM: The Chair will recognize Delegate Kelsch.

DELEGATE KELSCH: Mr. President. On what is a "natural day" and a "recessed day": We're not dealing with recessed days because we're saying that the eighty days need not be consecutive; so we're saying that they can meet no more than eighty natural days, meaning eighty 24-hour periods in a biennium. That's the outside limit. That's it. They don't have to be consecutive. They can recess for five days, and that doesn't count.

Now, I think you also asked, Delegate Hernett, if I could tell you how this would work, and we went through this whole process in the Committee and, frankly, I can't. What we're saying with this kind of proposal is that this is a matter that the Legislature should decide.

Now, I would assume that the Legislature would not allow bills to be introduced any time during a two-year period. I would think that they would probably set the initial period something like — like we do now. There is no constitutional statement in our present Constitution saying when bills can be introduced in the sixty days; but the Legislature adopts rules.

It was the feeling of the Committee that we purposely made it in this language so that we would leave the Legislature with a free hand to operate as they should see fit, and we well contemplated that they might operate in a certain manner for the next ten, twenty years. There might be a desire to change it, but our feeling was that this process is really in their domain and that we make a mistake if we address ourselves to specifics, like the old Constitution did.

I think what we're asking of this Convention is to say, "Do we trust the Legislature to act wisely for the people of this State in this regard?" We think there are enough other checks and balances on the abuse of broad power. We think they will act wisely. We're referring all kinds of serious problems to them in this Constitution — laws in this document that we are making here — and I think there's one other area here where we're saying, "Gentlemen, you are the elected representatives of this State. You run that legislature in the best interests of the State." The only limit we felt there — we felt we should put no limit, and we felt we could make a good case for that, but we did decide, as a compromise, that we would put an eighty-day limit, and we felt this was good in the long run.

We would urge that you would trust them to use their good judgment to operate properly within that period.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President.

Delegate Hernett also asked another question about limiting the subject matter to the first session. Now, a lot of the states have done this, and most of them are going back to having it wide open for introduction of bills, and the deadlines are set in the session.

Now, we talked about this earlier in our deliberations, to limit the subject matter to, say, finances and fiscal matters, and most states that have tried it are going back to the earlier method, and limits would have to be set for introduction. The states that have annual sessions have cut-off dates in their first session and after that they won't allow any bills to be introduced except through the Delayed Bills Committee, and anyone who has ever served knows this is a tough way to get a bill introduced.

PRESIDENT WENSTROM: The Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

Delegate Kelsch, how about the clock? Would you contemplate quitting at 4:10 in the morning of the seventh or eighth overtime day and calling it one day?

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: We went around on that problem, also. We don't know how you could stop any deliberative body from fooling itself and covering the clock. There's no way you could prohibit that.

Now, our hope would be, by extending the time to eighty days, allowing them to split this up so they could do interim work, there would never be a need to cover the clock. But there's always a possibility. I don't know how we could write in the Constitution, "You can't cover the clock." If we want to cover the clock, we may have to consider that problem in this body, and if it happens, I don't know how you could stop it. Who would make them uncover the clock? It's just one of those problems you live with, I guess.

PRESIDENT WENSTROM: Delegate John Paulson.

DELEGATE PAULSON: Mr. Chairman, I think the delegates should be advised that the existing limit on the legislative session is far broader than what

we propose. Section 56 now provides that each session of the Legislative Assembly shall not exceed sixty legislative days except in cases of impeachment, and then it goes on to provide for the organizational session.

Now, what has happened is that there has been a long string of opinions and court decisions that the sixty legislative days must run consecutively, and they finally eliminated Sundays. But there is no way in the world to prevent some future legislature from saying that Saturdays don't count; then holidays don't count; that each legislative day shall begin on Monday and continue for as long as the Legislature so desires.

So, under the existing system, under the existing provisions, the Legislature could stretch their sixty days into a hundred and twenty days, and we have established an eighty-natural-day limit, which is a lot firmer than what is actually in the Constitution today.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I had forgot to mention, Delegate: The present Constitution, Section 63, which relates to the reading of bills, says in the last sentence: "No legislative day shall be shorter than the natural day." And we're trying to — we are suggesting we repeal that part, because you get into this peculiar anomaly — "what is a legislative day?" So that's why we went to natural days. The purpose, apparently, of that idea was that you would relate to reading the bills, because you couldn't have a day that was ten minutes long and thereby cut off the right to reconsider. But we're trying to stay away from the term "legislative day" in the terms of limitation, because, as Delegate Paulson mentioned, in the old Constitution, "legislative day" could have been not shorter than one natural day; it could have been fifteen days long, and we're repealing that.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, one other thing that might be pointed out is that we're trying to provide the machinery whereby the Legislature, when it gets to an impasse, if it's either a bicameral or unicameral system, if it gets to a point where it can't come to a decision, if it's got to have a period to think through a situation and work it out, such as happened in Minnesota, that they can recess without sitting and charging the taxpayers a big bill for all the time that they're trying to negotiate a problem. And that's one of the reasons that we think this sort of straightforward freedom is a good thing for the Legislature and for the people.

PRESIDENT WENSTROM: Delegate Aubol, did you wish the floor?

DELEGATE AUBOL: Yes, Mr. President.

I am in general agreement with the provisions of Section 8 of 1-37; however, Delegate Sinner just mentioned something, and earlier Delegate Jestrab mentioned something, and I notice that a proposal of the Legislative Committee that we just passed awhile ago, and this one, also, contains reference to a two-house system. It seems strange to me that a committee that is locked ten-to-ten on unicameral-bicameral would draft its sections in two-house language. Now, as a member of the committee I'm on, I don't like to beat a dead horse; but if the people do accept a one-house system, who corrects the language of the proposals in force with reference to one house and two house?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: You're thinking! The Legislative Committee realized we were deadlocked, and decided to work up a unicameral draft and a bicameral draft. And when the delegates here voted for a bicameral, then all of the prepared proposals on each house were entered, and if this Convention should decide to submit the unicameral question to the people as an alternate, we also have, then, unicameral proposals that would do the same thing, except the reference to each house would not be in there and it would be just a mechanical deletion and insertion, depending upon how the people voted.

PRESIDENT WENSTROM: The question. The question before the Convention is on the first passage of Committee Proposal No. 1-37 as amended. Now, if there's no further discussion, those in favor of adoption will vote "yes;" those opposed will vote "no."

The Clerk will open the key. You may record your vote. Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The roll call discloses 78 "ayes," 7 "nays," 13 delegates absent and not voting. Committee Proposal No. 1-37 has passed.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. I'm through voting. You can take me off the board!

PRESIDENT WENSTROM: Thank you. (Laughter)

Next for consideration is Committee Proposal No. 1-53.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-53, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 23 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom to obtain employment.

SECTION 1. REPEAL.) Section 23 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"There shall be no discrimination against a qualified person's right to practice a trade or profession or to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade or labor organization or professional group."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE BURBIDGE: Mr. President.

PRESIDENT WENSTROM: Delegate Burbidge:

DELEGATE BURBIDGE: I believe I have some responsibility to the delegates in making a statement on the matter, because I was on the subcommittee or the committee that put the Minority Report on this thing.

Yesterday, or the day before, we expressed our deep views and considerable feelings on the proposition before us, and this is kind of the "morning after" a little bit, and this is something I was looking for for some time, as I was charged with the responsibility of doing something about this important and controversial issue.

We have before us today the proposition of deciding which proposal we think is the best to do the job that we want done here in preserving the freedoms that we think are important. I'm sure the goal of all of us is a better Constitution for the people of North Dakota, and we want something that people can approve and we want something that we, as delegates, can get together on after we're done.

And so, as I looked at this thing throughout the summer and the fall and have heard the testimony that's been before our Committee and have tried to think of some situation that we could develop here that would cause — that would not cause such a tremendous division between us and the people of the State, I decided that it may be better — that it was better, in fact — to take old Section 23 and do a little rewording on it, and I'd like to explain why this has been done, because I recognize that in the old language there is a certain familiarity. There have been some court decisions on it and there's a conflict in the things that have existed, and I took this into account as I thought of the problems before us. But, first, I recognized that you have before you the old Section 23 for comparison here. I recognized that, in the first place, it really needed kind of a style and drafting treatment, because I don't think, in this day and age, we would say what that says in the manner that it says it. The English and construction is a little different than we presently have. That's a minor matter, of course.

I think, however, that it talks in too harsh a tone. It talks about, for example, "maliciously interfering" — "a malicious intent." I don't think any of us are thinking about a malicious problem here, and you note in the last paragraph, the last phrase that is there — the last part of it — we judge the violation to be a crime. To be sure, it's a misdemeanor; but we're talking about, in old Section 23, a crime, "with malicious intent." It seems to me that our language is too harsh — our dialogue too harsh. We do what we want done. It seems to me, too, that it deals primarily in abuse of one section of our society and, as we heard the other day, great criticisms have developed because of this.

I couldn't help, as I heard discussion the other day, that each of the discussions was really against old Section 23. Much of the opposition — but I am sure that many feel very deeply about this, which I consider to be inclusive of all the power in Section 23, with some additional limit.

Furthermore, the criticism was made that it's legislative in style, and I think we'll have to agree that, to some degree, it is, when you have, for example, a crime on — a penalty for a crime considered as a part of the Constitution.

Furthermore, as I heard testimony all summer on this thing, I was concerned and I listened to what the opposition to Section 23 was saying. They said, "Why pick on us alone?" They said, "This thing isn't so much a matter of principle, if you're dealing only on one segment." So I couldn't help but think that we had some obligation to handle this thing as a matter of principle, and I believe that we have done this in the proposal — the new proposal that is before you. The sheets have been put out to you for some comparison on it.

Now, you will note on the new proposal that it deals with both Labor and Management. I would like to read the proposal that you have before you and, later, would like to move an amendment; but, first, the proposal that you have before you:

"There shall be no discrimination against a qualified person's right to practice a trade or profession or to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade or labor organization or professional group."

I have capitalized and underlined the words "because of" because I consider them to be key words here and words that I think you should consider in getting the true meaning of this thing. We don't want discrimination in a trade or profession or employment because of a certain race, because of a certain creed, because we belong to a certain church, because you may be a member of an organization. Let's not forget that. It protects the union member from the abuses of many; or, of course, "nonmembership in a trade or labor organization or professional group."

So I think we handle the matter as a matter of principle. We apply it across the board, and I think we can support it on that basis. I think this is important to us — that we have dignity and honesty in our deliberations, and all of us want this, and that is one of the big reasons that I decided that the language was better; that it was not as harsh; that it was more inclusive; that it involved more a matter of principle. And so I think we're talking in fairer, more meaningful terms. I think our tone is more in keeping with our present moods. I think, actually, we're talking about discrimination, really, and I recognize that the old term "right-to-work" sometimes — I don't think it confused the citizens very much, but I think that sometimes it confused the propagandists, if any, because it has — in some minds, the guarantee of work is the connotation. I don't think the citizens have this connotation, but some propagandists have. And, therefore, I feel, too, that the discrimination aspect of the thing is the way to handle it. But, most of all, I think this type of thing looks to the future, because we have seen around us the very faint outline of some fence-building that sometimes goes on in the trades and the professions, as well as in Labor, and we're concerned that eventually it could grow to be something a little more abusive than it is now.

I don't want to overstate the situation. I don't think it's a terribly big problem now; but we've got to look to the future. This Constitution, hopefully, will last for awhile, and I think we have a need for keeping government within the bounds of government.

Now, because of the suggestions that were made the other day on the floor debate and the suggestion that probably there was something meant here that wasn't said here, I can only make this statement:

This is a simple statement from a common delegate of this Convention. It is to speak in common terms to common people. It does not mean things that it does not say, and I wouldn't want it read into it that it means something that it doesn't say.

Now, we talked about the familiarity of court opinions on the old one, and there have been, I note in the book, three court opinions on it. Not a great case-load, really. I have this Attorney General's opinion on the present section (indicating). It deals with many aspects of it. I think I have researched it so that it says what we want it to say and does what we want it to do. I think it retains in full force and effect — the old Section 23 — and it applies it more uniformly across the board to all people involved in this type of problem.

So I would, however, in the — to make absolutely certain that there is no concern about this matter, I would move an amendment, which, I believe, is at the desk, and I would ask the Clerk to read it, please.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to 1-53 reads as follows:

On line 10 of engrossed Committee Proposal 1-53, after the word "qualified" insert the word "natural".

On line 11 of engrossed Committee Proposal 1-53, after the word "or" and before the word "to" insert the words "of a citizen".

And renumber the lines accordingly.

If amended, the suggested suggestion would read as follows:

"There shall be no discrimination against a qualified natural person's right to practice a trade or profession or of a citizen to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade or labor organization or professional group."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fallgatter.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: As you must know, the word "natural" is put there so that we are sure that this is a person, rather than a corporation, or something else. As an amateur, I never, never thought that it was possible that a "person" might mean something else than a live, human being, and the "citizen" was put in to more closely comply with the language of old Section 23, to give it a greater force.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I object to the amendment. I felt the other day, when it was presented, it should have been presented at time in toto, and it was thoroughly discussed, and I understand at that time that they had had professional assistance in preparing it. So, on general principles, I resist the amendment. But, at this time, I would like to ask a question which has to do with the amendment; but, also, with the section itself, and I don't know whether this is in order at this time, sir.

PRESIDENT WENSTROM: Delegate Peterson, if it is pertaining to the amendment, then your question is in order; however, if it is on the body of this proposal, then, if you would hold it until we are through with the disposal of the amendment, and then you may ask your question.

DELEGATE PETERSON: Yes, it is on the body.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: May I ask a question of Mr. Burbidge?

What about the non-citizen's right to obtain or hold employment because of race, color, sex, creed, and so forth?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: We can be, of course, in an endless straddle of words. The old section, as you note on the top of the sheet on your desk, talks about "every citizen." Now, perhaps we could have "every person." Maybe there are some other ways of expressing it. But we have court decisions on this word "every citizen," and I think it has a familiar application.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendments as offered by Delegate Burbidge and read at the desk.

No further discussion? As many as are in favor of adopting the amendments will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted.

Now we're back on the motion as — on the Proposal 1-53 as amended.

Now, Delegate Peterson, did you have a question at this time?

DELEGATE PETERSON: Yes, I did. First, though, I wanted to say, in regard to the discussion that Mr. Burbidge presented us with, that I would like to borrow a leaf from my neighbor, Delegate Pearce, and quote Shakespeare: "Methinks he protesteth too much."

But my question is: When we voted the other day — and this is not — does not only pertain to this one, but it probably pertains to the unicameral - bicameral, also, but particularly to this one — if this were going to be a set-aside on the ballots, so that the people can vote on it, also, would it be in three — would it be presented three ways, with Burbidge's, and then the original and then the possibility of deletion, or would the people only have the opportunity to vote either on Burbidge's or deletion, or would they — the people — vote on Burbidge's and the old Constitution? I think this is something that we haven't cleared up, and it isn't clear in my mind. I do feel very strongly that this is an issue that should be presented to the people and that they should have a vote on; but I don't know just how you would do it.

PRESIDENT WENSTROM: Delegate Peterson, if you are directing the question to me, then I would have to say it is something that ultimately will have to be decided by the delegates. But, at the present time, the committee on alternate proposals, to my knowledge, has not met, and this is one of the decisions that committee will have to make recommendations on, and then it will come back to the floor of the Convention, and then the Convention again will have to decide on whether there will be one or two — that they'll receive choices.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: We've gone over all the arguments relating to 1-53 before. I think that it should be said, however, at this time that while we are talking about it in terms of abstract principles, that we must admit that this principle is going to be applied primarily to one group of people, and when we insert the word "qualified," I suppose we are saying that we are going to impose a principle on those who are classed as unqualified, and place them in a class of their own so that we can impose on them restrictions and regulations affecting the effectiveness of their organizations. I don't think that this is going to hinder in any way any other profession or occupation in the State, except people who are trying to organize and belong to labor unions.

DELEGATE DOBSON: Mr. President.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President, this is a — this is a serious section that is before us. I don't understand all of the possible ramifications of it. I don't

understand, for instance, why the trade and labor terminology — terminologies are classified as “organizations.” The professional people are classified as a “group.” Now, I don’t know what that difference would be in calling trade and labor an “organization” and calling the professionals a “group,” and I also don’t know what the ramifications might be out of adding the word “natural” or adding the words “of a citizen,” and I think Delegate Omdahl brought up a good point about qualified persons and unqualified persons, and this is the last time we’re going to have a chance to work on this thing. I just wonder if it wouldn’t be in order to put it at the end of the calendar and give us more time, because the debate on the main question was really on the high arguments on both sides, one against the other, when Section 23 itself came into play. Now, we haven’t really debated or talked about the application of this language in the Section, and if I were in order, I would move that it be placed at the foot of the calendar.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol moves that Committee Proposal No. 1-53 be placed at the foot of the calendar. Do we have a second? Delegate Hildebrand seconds the motion.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I just wanted to mention to the Chair that we have amended this now, and it will have to be laid over one Convention day, unless we suspend the rules and put it on the calendar.

PRESIDENT WENSTROM: Nevertheless, we do have a motion before the Convention that it be placed at the foot of the calendar, and the motion has been seconded.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President, am I correct, then, that it will have to be laid over one Convention day, regardless of the motion to put it at the foot of the calendar?

PRESIDENT WENSTROM: Well, not necessarily, Delegate Aubol, because there could be a motion here that the rules be suspended, that this be deemed properly reengrossed, as that motion you’re familiar with; then it would be right back before the Convention for first passage.

DELEGATE AUBOL: Well, I think that the point that Delegate Trenbeath pointed out — it would be placed over —

PRESIDENT WENSTROM: Well, it’s well to address the question, if you are not sure; but you asked me if it would be laid over. It would be, on the normal basis; however, if they do move to suspend the rules and place it on the calendar, deem it properly re-engrossed, then, of course, it would be before the Convention.

DELEGATE AUBOL: I would then withdraw my motion and have it laid over in accordance with the prescribed rules.

PRESIDENT WENSTROM: Well, Delegate Aubol, I can’t guarantee you that that’s going to happen. You can withdraw your motion. That is perfectly all right, if the second will go along with it. Who seconded it?

DELEGATE HILDEBRAND: I did.

PRESIDENT WENSTROM: Delegate Hildebrand seconded your motion. So, if you people wish to withdraw your motion, that is fine; but I can’t guarantee that someone isn’t going to make another motion on the floor.

So now we’re back on discussion on Committee Proposal No. 1-53.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I have an amendment at the desk, if it’s in order at this time.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-53 is as follows:

Delete all of lines 1 through 14 of the engrossed proposal and insert in lieu thereof the following:

"That section 23 of the present constitution of the state of North Dakota, which pertains to freedom to obtain employment, be retained in its present form.

"SECTION 1.) Section 23 of the present constitution of the state of North Dakota is retained in its present form and reads as follows:

"Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor."

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Kwako. Is there any discussion?

Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, a substantial majority of this Convention has spoken on this issue. The majority wants to retain a right-to-work provision in the Constitution. We have crossed or passed that crossroad. Now we come to another crossroads — whether to retain present Section 23 or substitute the Burbidge proposal. I think we would be wise to stick with the well-defined path of Section 23, rather than go down the road of the Burbidge proposal, which, I fear, may be filled with pitfalls and briar patches.

Now, I have received many letters on this subject, as I'm sure all of you have. Most of the letters I have received have been in favor of a right-to-work provision. All of those letters, except one, said, "Keep Section 23." The exception was from our good friend Delegate Burbidge.

Secondly, I think that by retaining present Section 23, it would probably enhance the chances of ratification of the new Constitution. I think we probably all agree — most of us — that the right-to-work issue should be on the ballot as a separate question. It's quite an emotional issue for most people. The Burbidge proposal would affect far more organizations and people than present Section 23. So far there's only been discussion of the right-to-work aspect of it; but it has quite a broad sweep that hasn't been explored at all here. These organizations which, in their view, would be adversely affected may be inclined to campaign for a "no" vote on the main body of the Constitution. This would insure that they would retain their present status, even if the Burbidge proposal is carried or set aside. Whether we favor or oppose the right-to-work provision in the Constitution, I think nearly all of us agree we don't want this issue to wreck the work of the Convention.

Therefore, I think it would be prudent and practical to stick with the present Section 23.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, being on the same committee that Delegate Burbidge is, we received a lot of testimony during the summer, and one of the main objections that the people who appeared at our committee had was that it was a discriminatory section and they felt that it should include other people, such as the professions, if they were included.

Delegate Burbidge spent an awful lot of time — I think as you people know, in fact — and if it's being held over until next Monday or Tuesday, I wonder if he'll get any sleep this week-end, too. I think that the time that has been spent has been well spent, and you people that have listened to the talks by Delegate Burbidge realize the intent of it, and I think that down the road a long ways, which we have to look, I think it could have a lot of influence and it could

mean an awful lot to the people in all associations; that they wouldn't be restricted by a third party in their employment or in earning their livelihood.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman — Mr. President:

I didn't intend to speak today on the issue, one way or the other; but I do want to speak a couple minutes, probably.

Number one, I think it was yesterday or the day before, about 4:30 in the afternoon, the word was passed to me that an opinion had been obtained from the Attorney General, or a letter, whichever you want to call it, dated the twelfth day of January, 1972. It wanders through my mind why the delegates here were not advised of why this opinion or letter, whichever you want to call it, from the Attorney General's office was not distributed or at least let be known to the Convention delegates. I don't know what the reason was for it. I don't want to make any accusations. I don't want to, but it looks awful funny to me. Probably a lot of the other things do, too.

But, nevertheless, that letter of nine pages tries to spell out what would happen under the Burbidge proposal.

I am beginning to think today that probably, by going back to the old Section 23, or as close to it as Mr. Burbidge would like to come to it, would be something to cradle all organized labor to sleep on, and they probably say, "Well, we didn't make it. We'll buy this." I get serious doubts if the people of the State of North Dakota are going to buy legislation in the Constitution when we've been consistently talking "Let's not put legislation in the Constitution. Let's have a constitution. Leave the legislation to the Legislature." The Legislature has on the statute books a right-to-work law in this State. All we ask for is leave it to the Legislature and not put it in the Constitution.

I don't know how much more organized labor could ask for than to be treated equally. Leave the Legislature handle the matter. We say we trust the Legislature in many other issues. Why not trust them on this one?

Today we were talking about leaving the Legislature set their own time when to call themselves into session, when to retire from session. Regardless of how many trips they make, we're trusting them, aren't we? Let's trust them on this issue, too.

I plead with you again to please reconsider whichever way you voted the other day and vote on the issue here for the deletion completely of Section 23 from the Constitution.

Thank you.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment as offered by Delegate Dobson.

DELEGATE URDAHL: Mr. President. Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: As the delegates know, I'm troubled about this whole matter of Section 23 and the Burbidge proposal as well. I am particularly troubled about one word and that's the "qualified natural person's right" —

PRESIDENT WENSTROM: Delegate Urdahl —

DELEGATE URDAHL: Yes?

PRESIDENT WENSTROM: We have an amendment before the Convention that we are — that we are considering at this time, and I believe your — your question is in the way the amendment or the proposal now reads; so as soon as we dispose of this — of this proposed amendment, then you can have the floor.

DELEGATE URDAHL: Very good, sir. Very good.

DELEGATE BENSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: Mr. Chairman, I speak to the amendment, and I urge its defeat.

I think here that we are talking about a very fundamental right, and it says that nobody has to join any organization as a condition to practice a profession or to hold any type of employment. And for that reason I would say I'm going to vote to defeat this amendment, because we cannot have a constitutional issue which is purely discriminatory. Either it fits everybody or nobody.

PRESIDENT WENSTROM: The question? The question is on the adoption of the amendment as proposed by Delegate Dobson.

No further discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it and the amendment lost.

Now we're back on the question on the adoption of — we're back on the main motion as amended. That's Committee Proposal 1-53. And Delegate Urdahl.

DELEGATE URDAHL: Mr. President, I want to speak to the amendment of Dr. — of Arden Burbidge — Delegate Burbidge — and I say, as I said before, I'm really troubled about this whole matter, because I can see that it is in this convention hall really dividing people; and for that reason, I think it's unfortunate that it comes up again. But there's one word in this one that really bothers me, and that is the word "qualified."

Now I concede that for many of these groups there are those that determine the qualifications; but I'm thinking of a person who is probably labeled as a "common laborer." Who determines his qualifications? And the way I read it, it can't be anybody else than the employer. So he stands before one person to determine whether or not he is qualified.

Then let me — let me say, too, that I feel this is — I will agree with Burbidge, though, on one thing — that it does make the language a little nicer. It isn't quite as harsh, as he said, and I agree with him on that. But I think that it has every — every bit as much discrimination in it, if not more, than old Section 23, and I — I hope that we could resist this proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: What is the question before us at this point?

PRESIDENT WENSTROM: The question before the Convention at this time is on the first passage of Committee Proposal — no, it is not. We are still on the — this at the present time is right before the Convention, and in the event that nothing happens from here on, this will be on the tenth order of business on Monday.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Unless there's strong objection, I would ask that we suspend the rules so we can dispose of this, put it on the — have it re-engrossed and put it on the first passage as re-engrossed.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Delegate Kelsch moves that the rules be suspended, that Delegate Proposal No. 1-53 be deemed properly re-engrossed, that it be placed on the calendar for first passage as amended.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Am I not right now, it takes two-thirds vote to suspend the rules?

PRESIDENT WENSTROM: That is correct.

DELEGATE HOFFNER: And if two-thirds vote — if the motion does not receive two-thirds vote, then this proposal would be on the calendar on the tenth order tomorrow — or Monday?

PRESIDENT WENSTROM: That is correct.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Really, I'm a little scared right now. I'm afraid I'm going to upset something here. But there are things about this particular proposal that I said I haven't liked, and I think perhaps one is the fact that it's in the negative.

Now, I don't know if I can move this or not —

PRESIDENT WENSTROM: Delegate Hendrickson, I am going to have to rule you out of order.

DELEGATE HENDRICKSON: If I want to propose an amendment, would I be in order?

PRESIDENT WENSTROM: We have a motion to suspend the rules before the Convention at this time.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: May I speak on the motion?

PRESIDENT WENSTROM: You may speak on the motion — the motion to suspend the rules and to have the proposal re-engrossed and placed on the calendar for first passage.

DELEGATE HOFFNER: In view of the fact of the views expressed by Delegate Hendrickson — and I am sure there are many of us in this body that would like to take a closer look at this proposal — that I would hope the delegates resist the motion to suspend the rules.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question before the Convention is on the motion to suspend the rules; that the Committee Proposal be properly re-engrossed and placed on the calendar for first passage.

As many as are in favor of the motion will say "aye;" opposed "no."

I doubt very seriously that that had a two-thirds vote. I'm going to rule that the motion lost.

How many request a division? That is a sufficient number. We will have a division.

Now, those in favor of the motion to suspend the rules will vote "aye;" those opposed will vote "no."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

Delegate Sanstead, have you voted? Have you voted, Delegate Sanstead?

DELEGATE SANSTEAD: Yes, Mr. President, I have.

PRESIDENT WENSTROM: It doesn't light up here, but I guess that's the important board.

Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 42 "ayes" and 43 "nays," with 13 delegates absent. So the motion to suspend the rules failed and Committee Proposal No. 1-53 will be on the tenth order of business on Monday.

Now, fellow delegates, we have arrived at three o'clock and it was sort of a gentleman's agreement that we would call the Convention — we would adjourn the Convention at three o'clock.

Now, there is a question about how the highways are, for those of you that wish to travel.

Now, I do have a highway report here that has just been brought to my desk, and I'm going to ask the Clerk to read the report.

CHIEF CLERK GILBREATH: Road Report.

Very icy conditions due to freezing rain exist throughout the south and western parts of the State in the area south and west of the Missouri River and extending eastward to Interstate 94 to the Medina area. A new front is moving into the extreme northwestern corner of the State, in the Crosby-Bowbells area, bringing snow flurries and heavy drifting. This front is expected to move southeastward across the State and will bring strong, gusting winds and snow squalls as it does.

The severe blizzard conditions in the eastern part of the State have abated somewhat. Visibilities there now are in the one-mile range. Winds will pick up again there later in the evening when the new front reaches that area.

At the present time highways in the north central part of the State, roughly the Minot and Devils Lake districts, are in good driving condition.

PRESIDENT WENSTROM: How many of our delegates intend to journey? We better adjourn!

DELEGATE SAUGSTAD: Mr. Speaker.

PRESIDENT WENSTROM: Delegate Saugstad — or Delegate Hoffner?

DELEGATE SAUGSTAD: I would move that —

PRESIDENT WENSTROM: Delegate Hoffner, did you have a question?

DELEGATE HOFFNER: Mr. President, I talked to a number of members of the Legislative Functions Committee, and we're going to have a half-hour meeting after the adjournment here, and in that half-hour I think we could put out four committee reports, and it would really help for the Monday activities and give our Clerk a lot of work to do, and I don't know now, in view of your weather report, I don't know if that's going to be possible.

PRESIDENT WENSTROM: Well, what do you wish to do?

DELEGATE HOFFNER: I'll call a meeting five minutes after adjournment in the Large Hearing Room and promise not to keep you longer than a half-hour.

PRESIDENT WENSTROM: Delegate Saugstad moves that the absent delegates be excused, and Delegate Sondreal seconds the motion.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the absent delegates are excused.

Delegate Saugstad.

DELEGATE SAUGSTAD: I now move — is the desk clear?

PRESIDENT WENSTROM: The desk is clear.

DELEGATE SAUGSTAD: All right. I now move that we adjourn until 9:00 A.M., January 24th.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Saugstad moves that we adjourn until 9:00 A.M., January 24.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The Session is now adjourned.

(The Plenary Session adjourned at 3:02 P.M., Friday, January 21, 1972, until 9:00 A.M., Monday, January 24, 1972.)

VOLUME XVI
(January 24, 1972)

MORNING SESSION

(The sixteenth day of the Plenary Session commenced at 9:16 A.M., January 24, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is the Reverend Gerald Mertz with Faith Lutheran Church of Bismarck.

REV. GERALD MERTZ: Heavenly Father, we pray for the representatives of this Constitutional Convention. We are thankful for establishing in our midst law-making powers dedicated to upholding order and liberty. Bless this group of people who have been selected to perform these duties. Grant that they may be ever mindful of the welfare of all of the people in North Dakota. Endow them with such wisdom for their duties, that true purpose of government may prevail to the end that we may live soberly and uprightly in Your sight. May we never forget the great privileges that our State gives to its citizens. May we, its citizens, have high regard for all that goes on within these walls. We pray this in the name of Christ Our Lord. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call. The Clerk will open the key, you will record your presence.

Has every delegate recorded his presence? The key is closed.

Roll call discloses 93 present, five absent, a quorum is declared.

Be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 20th day of January, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Dobson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on the Revision and Correction of the Journal. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

Sixth order — we'll be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: A majority of your Committee on Judicial Functions and Political Subdivisions, to whom was referred Committee Proposal No. 1-11, has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegates Longmire, Roney, Engelter, Fallgatter, Gipp, Hartl, Hougen, Kessel, Kretschmar, Rundle, Wallin and Warner.

Delegate Longmire, Chairman.

Delegate Longmire moves that the report be adopted.

Mr. President: A minority of your Committee on Judicial Functions and Political Subdivisions, to whom was referred Committee Proposal No. 1-11, has had the same under consideration and recommends that the report of the majority be amended, and when so amended, recommends the same do pass.

Delegates Aubol, Bassingthwaite and Hoghaug.

Delegate Longmire, Chairman.

Delegate Aubol moves the report of the Minority be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the minority report, that it be amended to the majority report.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: As the President and the delegates will recall, we passed the motion on Friday in order to give the delegates an opportunity to study the different reports that are coming in so that this debate or this discussion on the two reports will be held tomorrow morning at ten o'clock.

Now if the President desires that I renew that motion, I will be very glad to do so. But the way the record stands now, we've already passed the motion.

PRESIDENT WENSTROM: Delegate Longmire, I believe there would be no reason for renewing the motion as I understand it.

CHIEF CLERK GILBREATH: Mr. President: A majority of your Committee on Education, Resources and Public Lands, to whom was referred Committee Proposal No. 1-16, has had the same under consideration and recommends that the same do pass.

Delegates Devine, Engstrom, Fritzell, Griffin, Jestrab, Larsen, Litten, Meidinger, Poulson, Sanstead and Sullivan.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report of the majority be adopted.

Mr. President: A minority of your Committee on Education, Resources and Public Lands, to whom was referred Committee Proposal No. 1-16, has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegates Billey, Christensen, Knudson, Lander and Peterson.

Delegate Meidinger, Chairman.

Delegate Lander moves that the report of the minority be substituted for the report of the majority.

PRESIDENT WENSTROM: The question is on the motion to substitute the report of the minority for that of the majority on Committee Proposal No. 1-16.

Delegate Fritzell.

DELEGATE FRITZELL: Mr. President and Fellow Delegates:

It's my turn. I am not an orator, but I hope I can communicate with you better than I did with the press when I tried to retract a statement and it came out worse than my original statement did.

Section 2 of Article VI I feel very strongly about. And I'll try to give you some reason why I feel this strongly.

Now we lifted Section 2 directly from the Illinois Constitution word for word. Now Illinois felt that this was on the same plane as the inalienable rights of life, liberty and the pursuit of happiness. And they felt that the class action is needed to insure the standing in court for those who would not otherwise have this right.

Now I think there's been a lot of confusion on what we mean by "class action", and I hesitate some getting up and trying to describe what class action is amongst all these lawyers because I might have to have some corrections. So I wrote down the particular requirements from Rule 23 of the Federal Rules of Civil Procedure, which I think will describe class action. And if you have any questions on it, I'll probably have some lawyer answer it rather than myself.

A class suit is a legal procedure which has been rapidly expanding in the last decade, so it's coming on fast. And I do have a lot of laws from the different states on the same type of thing. It allows an exception to the rule that everyone who is aggrieved must be named in the lawsuit papers as a suing party. It allows one or more persons to sue as representatives of a whole class of injured persons.

In the usual class suit, the court must first determine if there is a group of persons who have a common interest in some occurrence. It must then decide that the class is so numerous that naming all its members is impracticable. It must find that proceeding by a class action is better than other means for handling the dispute, and that the persons in whose name the suit is being brought will do a fair and adequate job of protecting the interests of the class.

Now, most states, or a lot of them, have similar provisions but not necessarily applying to the Environmental Protection Act. But some states do not have the class action rules and many courts are not willing to construe liberally the class action rules that are on the books.

Now, in fact, I picked up — I picked up my **Grand Forks Herald**, which they are kind enough to put on my desk, and it discusses this Duluth case. In reading it, it says: "The case also illustrates the discouragement and difficulty the government — meaning the EPA — and private citizens face as they try to clean up the nation's water." This is in regard to Reserve Mining's dumping of sixty-some thousand tons of tailings in Lake Superior.

But going on for reasons and some of the reasons why I so specifically would like to see Section 2 as a constitutional rather than a statutory thing, we have — we have good laws in — I don't mean perfect laws, but we have laws in North Dakota in regard to water and air pollution but they are not being enforced. There is such an overlap, and also they are not adequately funded or staffed. And you have on the different boards and commissions, you have a lot of people with vested interests that are so strong that the citizen doesn't or isn't able to take care of the things that upset him as far as the environmental situation things. So many people also have the relative connection of what we feel about environment. I mean they feel like you should leave the status quo. And I don't think — my feeling is that we've made a lot of studies on living things and their habitat. We know why certain species have become extinct. But we need a lot more study of man and his relation to organic and inorganic matter and how we as a species will survive on our planet earth.

There was — I don't know how many of you read this article by Professor Forester on this simulated computer study. And going the way we are going now, he doesn't give us much time; fifty years at the most until we have an environmental catastrophe.

Now as far as examples are concerned, I know there's a lot of fear of how this is working in other states. Constitutionally, we have Illinois, Virginia; and statutory laws are in Michigan, Connecticut, Massachusetts, Florida, Indiana; weaker laws, but a class action law nevertheless, in Minnesota. And there are about 25 in the coffers. I have quite a few of these laws here in case anyone is interested in seeing them.

Now in Michigan, which was the embryo where they first started class action suits specifically related to environmental protection, it started in the fall of 1970 but in one year they had less than two dozen suits, and half of those were made by governmental agencies because they found it a better tool than the laws they had. And very interestingly enough, they ranged all the way from drilling oil in forests to enforcement of the state agencies. And of course the Attorney General having to take the state's side in one case, ended up on both sides. First he'd be on one side and then on the other side. But as we would set it up, I don't think that the Legislature would have a lot of restrictions. Massachusetts, you have to file with the Attorney General, the legislative agency, you deposit \$500, the case has to be accepted by the courts. No case has gotten any further than the circuit court in Michigan.

Now I'm going to yield to my — isn't Delegate Sanstead here this morning? Oh! Because Delegate Sanstead and myself were the original — the Committee accepted our proposal, but we were both originally very interested in this type of thing. And I am disturbed that he is not here, because many of the things that he was going to bring out I could have brought out if I had known that he wouldn't be here. Now I'm not sure what to do about it in this case. I'll let it go at that.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President. I move that this be put at the foot of the calendar.

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: Delegate Jestrab, we do not have a calendar on the fifth order. However, you may move to lay over one Convention day if you would like to do that.

DELEGATE JESTRAB: May I lay it over until Delegate Sanstead is present, Mr. President?

PRESIDENT WENSTROM: You just so move, if you wish.

DELEGATE JESTRAB: I move that this proposal — Proposal No. 1-16 — be laid over until Delegate Sanstead is present.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Meidinger. Is there any discussion?

Delegate Lander.

DELEGATE LANDER: Mr. President. We who were in the minority do not object at all to laying this over for one day. We did want to point out, in case there was any confusion, that because of the excellent relationship which exists on our Committee we did allow the spokesmen for the Majority Report to go ahead first, although I guess traditionally in this kind of instance those who were in a minority position have spoken first. We will have our say tomorrow, however. Thank you.

PRESIDENT WENSTROM: The question is on the motion as offered by Delegate Jestrab; that the Report of the Committee on Proposal 1-16 be laid over until such time as Delegate Sanstead is here.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it, and the report will be laid over.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-38, has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-38, that it be given a do pass. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Proposal No. 1-38 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-44, has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-44, that it be given a do pass. Any discussion?

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. And Proposal No. 1-44 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation, to whom was referred Committee Proposal No. 1-116, has had the same under consideration and recommends the same do pass.

Delegate Haugen, Chairman.

Delegate Haugen moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-116, that it be given a do pass.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation, to whom was referred Committee Proposal No. 1-117, has had the same under consideration and recommends that the same be returned without recommendation.

Delegate Haugen, Chairman.

Delegate Haugen moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-117, that it be accepted without recommendation. Is there any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and this will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation, to whom was referred Delegate Proposal No. 2-17, has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-23.

Delegate Haugen, Chairman.

Delegate Haugen moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-17; that it be indefinitely postponed.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President. This Delegate Proposal was introduced by Delegate Tudor early in the Convention or even prior to the Convention itself. He submitted to us the wording of the model constitution regarding taxes. The Committee did consider it. And Dr. Tudor has agreed that it be indefinitely postponed.

PRESIDENT WENSTROM: Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Proposal No. 2-17 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands, to whom was referred Delegate Proposal No. 2-54, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-54; that the proposal be indefinitely postponed. Is there any discussion?

Delegate Knudson.

DELEGATE KNUDSON: Mr. President. This — this proposal was incorporated into Committee Proposal No. 1-20, isn't it? The one Delegate Fritzell was just speaking on.

DELEGATE LANDER: 16.

DELEGATE KNUDSON: 1-16.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question is on the indefinite postponement of Proposal No. 2-54.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands, to whom was referred Delegate Proposal No. 2-55, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report on Proposal No. 2-55; that the proposal be indefinitely postponed. Is there any discussion?

Delegate Knudson.

DELEGATE KNUDSON: Mr. President. It's the same — same story here. This Delegate Proposal is substantially the same as Committee Proposal 1-16.

PRESIDENT WENSTROM: Any further discussion? The question is on the indefinite postponement of Delegate Proposal No. 2-55.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the proposal is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Delegate Proposal No. 2-57, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-57, that the proposal be indefinitely postponed. Is there any discussion?

Delegate Solberg.

DELEGATE SOLBERG: Mr. President. The Legislative Functions Committee had a hearing on this. Delegate Hubrig appeared before us and agreed that this was legislative and not the Constitution's function, and therefore agreed with us that it should be indefinitely postponed.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Delegate Proposal No. 2-57 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands, to whom was referred Delegate Proposal No. 2-71, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-71; that the proposal be indefinitely postponed. Any discussion?

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. The Proposal 2-71 substantially has been incorporated in Committee Proposal 1-114 and Committee Proposal 1-115.

PRESIDENT WENSTROM: Any further discussion? The question is on the motion to indefinitely postpone Delegate Proposal No. 2-71.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the Proposal 2-71 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Judicial Functions and Political Subdivisions, to whom was referred Committee Proposal No. 1-12, has had the same under consideration and recommends that the same be amended and when so amended recommends that the same do pass.

Delegate Longmire, Chairman.

Delegate Longmire moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-12; that the proposal be amended and then be given a do pass.

As many as are — is there any discussion?

Hearing none, the question is on the adoption of the Committee Report. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-12 will be on the eighth order of business tomorrow.

We'll be on the sixth order of business, Amendments.

CHIEF CLERK GILBREATH: Delegate Longmire has moved that the amendments to Committee Proposal 1-14, as recommended by the majority of the Committee on Judicial Functions and Political Subdivisions and appearing on pages 203 and 204 of the Journal be adopted. The amendments are:

"NAME, BOUNDARIES, SEAL

"Section 1. Name and Boundaries.

"The name of this state is 'North Dakota'. The state of North Dakota shall consist of all the territory included within the following boundary, to-wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence southward up the main channel of the Red River of the North and the Bois de Sioux River to a point where the Bois de Sioux intersects the seventh standard parallel north approximately forty-five degrees fifty-six minutes north latitude); thence westward along said parallel to a point where it intersects twenty-seven degrees of longitude west of Washington (approximately one hundred four degrees three minutes west longitude); thence northward on said longitude to a point where it intersects the forty-

ninth degree of north latitude; thence eastward along said latitude to the place of beginning. The boundary on the ground is more exactly defined by astronomical measurements at points on the boundary and surveys between boundary markers."

On page 1 delete line 25 and insert in lieu thereof:

"Section 2. Seal.

"The following described seal is hereby declared to . . ."

Renumber the lines accordingly.

PRESIDENT WENSTROM: You heard the reading of the proposed amendments.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: We had a fair discussion on this proposal at the time we had the minority and the majority report, as you will recall, and you adopted the majority report.

These amendments merely change the old proposal as it came in to us to make it a little more exact, and to straighten out the border down in the southeastern corner of the state so that it was more accurate to present-day changes or present-day conditions in the boundary at that point.

We have taken no South Dakota land by these amendments, we've taken no Minnesota land, no Montana land, no Manitoba land. The boundaries by these amendments are still exactly the same as they were except that they are more accurate now and easier to understand and in modern-day language.

Our Committee hopes you adopt these amendments.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendments to Committee Proposal No. 1-14.

Hearing no further discussion, as many as are in favor of the adoption of the amendments will say "aye;" opposed "no." The "ayes" have it and the amendments are adopted.

CHIEF CLERK GILBREATH: Mr. President: Delegate Hoffner has moved that the amendments to Committee Proposal 1-29 as recommended by the Committee on Legislative Functions appearing on page 246 of the Journal be adopted.

The amendments are:

On line 1 delete the word "section" and insert the word "sections" and after the numeral "29" insert "and 35" and after the words "Article II" insert the words "and Section 214 of Article XVIII."

On line 4 delete the word "both" and insert the word "all".

On line 6 delete the second word "Section" and insert the word "Sections" and after the numeral "29" insert the words "and 35" and after the words "Article II" insert the words "and section 214 of Article XVIII".

On line 7 delete the word "is" and insert the word "are".

On line 17 delete the word "electors" and insert in lieu thereof the word "persons".

On line 21 after the word "large" insert the words "in single or combined senatorial districts".

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-29. Are there any — is there any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: These amendments are largely noncontroversial; I believe we had 52 percent of the Committee vote for them.

The first amendments are rather technical. Then we get down to the deleting the word "electors" and insert in lieu thereof the word "persons". We had quite a discussion on whether to use "electors entitled to representation" or "persons". As of now we are using "persons".

The other amendment would simply allow the at-large election of two representatives in a single senatorial district.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendments, Committee Proposal No. 1-29.

As many as are in favor of the motion will say "aye;" opposed "no." I believe the "noes" have it.

DELEGATE MCINTYRE: Division.

PRESIDENT WENSTROM: How many request division? Division will be granted. Those in favor of the adoption of the amendment will vote "yes;" and those opposed will vote "no." The key will be opened. We will record the vote. Not necessarily record it. Has every delegate indicated his choice? Any delegate wish to change? The vote is closed. 73 "ayes," 16 "nays," nine delegates absent and not voting. My hearing is terrible this morning.

Go on the tenth order of business. We'll be on the tenth order of business.

First for consideration is Committee Proposal No. 1-55.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-55, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 212 of the constitution of the state of North Dakota, which pertains to blacklists, be repealed.

"(SECTION 1. REPEAL.) Section 212 of the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Section 212 of the Constitution is involved in Committee Proposal 1-55. This is another of the provisions found in the 1889 Constitution that deals with management - labor relations. The Committee took the position that management - labor relations had no place in the Constitution. And it is therefore the recommendation of the Committee that Section 212 be deleted. It deals with an exchange of blacklists between corporations. This we feel is strictly legislative and should not be in a constitution.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, those in favor of the adoption will vote "yes;" those in favor of — opposed will vote "no." The key will be opened. We will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 89 "ayes," 2 "nays," seven delegates absent and not voting. Committee Proposal No. 1-55 has passed.

Next for consideration is Committee Proposal No. 1-71.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-71, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 6 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bail.

"(SECTION 1. REPEAL.) Section 6 of the constitution of the state of North Dakota is hereby repealed.

"(SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned."

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: I would like to move an amendment from the desk.

PRESIDENT WENSTROM: Will you read the amendment?

CHIEF CLERK GILBREATH: "Proposed amendment to 1-71 is as follows:

"On line 10, before the word 'Excessive', insert the following: "All persons shall be bailable.'"

And renumber the lines accordingly.

PRESIDENT WENSTROM: You've heard the reading of the amendment. Is there a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Who offered the second? Delegate Stanton.

Delegate Decker.

DELEGATE DECKER: Mr. President. This amendment, as you remember, about a week ago this proposal was put at the foot of the calendar. And it's been sitting there for quite awhile. And it was suggested that this amendment be put in to make it certain that there would be no chance somebody wouldn't be bailable. And that was the only objection to 1-71 at that time.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I would like to inquire in case of very severe or very bad crimes if this is desirable?

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: I believe that in those cases it can be handled with another section. The Committee Report, and the Committee felt that this is the way it should be. I think it's an understanding under our old Constitution the words were that they could be bailable. If you look at the old section that was repealed, Section 6, the first sentence starts out just to that effect, that all persons be bailable.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The old Constitution did allow that you could deny bail in a case of capital offenses where the proof is evident and a presumption great. The problem you have with that is that it tends to conflict with our more fundamental constitutional principle that each person is — legal principle that each person is assumed innocent until proven guilty beyond a reasonable doubt. So you have a doubt there. I don't know how you could define it to say that all persons are entitled to bail. And then you understand that the court does have the power to set the bail. And in serious or very extreme cases they will tend to set the bail quite high, if they feel the person is a threat or danger, pending his trial.

Now it's possible that the way we are writing this now is the present custom of not allowing bail on a murder would not intend. I think that they would be entitled to bail even on murder. But I imagine in that case the court would set it so high that most people would be unable to raise it. And it would be hard to buy bail or purchase a bond in a murder case, I believe. But I don't know how else you can do it, really. I don't know the solution other than to do it the way we're doing it.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. I'd like to inquire of Delegate Kelsch how you would determine excessive bail then.

DELEGATE KELSCH: The determination is a judicial question. And obviously if you were to require \$50,000 on a speeding ticket that would be excessive. Again, it's a matter of judgment. The purpose of bail is to assure that the person or the person charged is present at the time of his trial. If I'm charged with murder in the first degree and face a potential sentence of life imprisonment, there might be good reason for me not to want to be around when the trial came up so a court might then reasonably set the bail fairly high. If you were to put it at a million dollars I'm sure that the appeal court would say that was excessive. Again, it's a matter of judgment. And anybody — we're saying that the bail shall not be excessive. I guess that's about all we can say without going further than that, without trying to spell it out. But the purpose of the bail is to assure appearance, not from preventing him going out and committing another crime. I suppose we

just have to take that risk. Until a man is proven guilty and confined, we do have to take the risk he might go out and murder someone else or commit another crime while he is pending trial. It might encourage speedier public trials.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I don't think the problem of determining excessive bail would be any different than it is now since the Constitution now says, "excessive bail," but it doesn't define what "excessive bail" is. Now if you people hadn't wiped out habeas corpus a few days ago, and if you thought the bail was excessive, you could go to the Supreme Court and get a writ of habeas corpus.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: For the delegates' information, the first line is substantially the line that's contained in the Federal Constitution. And we added the word pertaining to "witnesses" only for their protection. So, therefore, we have all kinds of case law which would help our local judges make the decisions.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Well, I'm satisfied with the explanation, Delegate Kelsch's especially. I point out, though, that after he practices law and makes money under this Constitution like he is now he could stand a fifty or a hundred thousand dollars bail and escape.

PRESIDENT WENSTROM: The question is on the adoption of the amendment as offered by Delegate Decker. Any further discussion?

Hearing none, as many as are in favor of the motion to adopt — as many as are in favor of the motion to adopt will say "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, I would like to move that the Rules be suspended, that Proposal 1-71 be properly re-engrossed and placed on the tenth order for final passage — for first passage.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Solberg.

The question is on Delegate Decker's motion that the Rules be suspended, that Committee Proposal No. 1-71 be deemed properly re-engrossed, that it be placed on the calendar for first passage as amended.

As many as are in favor of the proposal will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-71 is again before the Convention as amended.

Is there any further discussion?

Delegate Decker.

DELEGATE DECKER: Mr. President. I think the issue as a whole has been discussed between a week ago and today. And I think I'll let the explanation go unless there are further questions.

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-71, as amended.

Those in favor will vote "aye;" and those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 92 "ayes," there were no "nays," there were six delegates absent and not voting. Committee Proposal No. 1-71 has passed.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: The other day we passed Committee Proposal 1-78 which is one sentence that says: "Death shall not be prescribed as a penalty for any crime." And it seems to me that Style and Drafting should consider the incorporation of that one sentence into 1-71 after "cruel or unusual punishments be inflicted". Because it seems that that would be most appropriate if it were incorporated in there.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business.

DELEGATE HOFFNER: I now move that Proposal 1-71 be laid over two Convention days. And if I get a second, I'll explain.

PRESIDENT WENSTROM: 1-71?

DELEGATE HOFFNER: 1-76. I'm sorry.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposal No. 1-76 be laid over one —

DELEGATE HOFFNER: Two.

PRESIDENT WENSTROM: — two Convention days. You've heard the motion —

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: — seconded by Delegate Chase.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I received a call from Delegate Paulson, John Paulson, from Fargo. And he's ill, has pneumonia. And he's been assigned this Proposal, and has very strong feelings about it. And I also notice that Delegate Butler is not here. And he's going to, I think, probably try to amend it. And so it's necessary that we have both of them here.

PRESIDENT WENSTROM: You've heard the motion. As many as are in favor of the motion to lay over two Convention days will say "aye;" opposed "no." The "ayes" have it. And the request is granted.

Next for consideration, Committee Proposal No. 1-77.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-77, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that sections 183 and 184 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to political subdivision debt.

"SECTION 1. REPEAL.) Sections 183 and 184 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Any political subdivision of the state may incur indebtedness of eight percent upon the assessed value of the taxable property therein. By a sixty percent vote of the electorate such debt limit may be increased an additional seven percent on such assessed value. The debt limits in this section shall not apply to debt incurred through the issuance of revenue bonds, or bonds financed from sources other than property taxes. For purposes of this section 'assessed value' shall be determined by such method or factors as determined by the legislative assembly.

"Any political subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the principal and interest thereon, and all laws or ordinances providing for the payment of the principal or interest of any debt shall be irrevocable until such debt be paid."

PRESIDENT WENSTROM: The question is on the first passage, Committee Proposal No. 1-77. Is there any discussion?

DELEGATE KETCHUM: Mr. President.

PRESIDENT WENSTROM: Delegate Ketchum.

DELEGATE KETCHUM: Committee Proposal 1-77 has to do with the political debt of political — I mean the debt of political subdivisions. It changes from five to eight percent the amount of debt, and then it changes from two-thirds to sixty percent vote and an additional debt limit of seven percent. The reasons are primarily because of the loss of personal property valuation.

The sixty percent has been upheld by the Supreme Court of the United States as a vote for the debt limit increase.

The last paragraph which is substantially the same as 184, or is the same, that deals with the taxes not being repealable.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lander.

DELEGATE LANDER: Yes, Mr. President. I have an amendment at the desk.

CHIEF CLERK GILBREATH: "The proposed amendment to Proposal 1-77 is as follows:

"On line 12 delete the word 'By' and insert in lieu thereof the following: 'A school district, by a majority vote, or any other political subdivision by'.

"And renumber the lines accordingly."

PRESIDENT WENSTROM: Now do we have a second?

DELEGATE LARSEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Larsen.

DELEGATE LANDER: Mr. President. If you will refer to the existing Section 183 in the Constitution you will see that at the present time school districts have had this same provision of the majority vote. I see that the Committee has decided to recommend that with other subdivisions the majority be reduced from two-thirds to sixty percent, whereas they are asking for an increase in the difficulty as far as school districts are concerned. And I don't — I don't know of instances where this has been abused in the past. I would like to put it on a course as far as the approval of any particular bond issue is concerned that will always still be on whatever majority the Legislature may determine from time to time. The actual authority for increasing the indebtedness would then remain with the simple majority.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McELROY: Mr. President.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: The Committee considered this quite carefully. It is true that under the present Constitution a majority vote would allow indebtedness up to five percent. A two-thirds vote is required to get an additional five percent. Now this provision allows an eight percent indebtedness on a majority and only a sixty percent — or rather a sixty percent vote to get another seven percent. In other words, the total indebtedness of the school district could go from ten percent up to fifteen percent. Part of this is due to the — our school aids recognize that our school districts require more financing and maybe a little easier financing. And we feel that this accomplishes that. Actually, I think most school districts are bumping their head against the limit, and a majority vote may be sort of a moot problem on the lower debt limits.

Now I went over this with my own school board people, and they all felt that simple majority of any kind — of any kind of school indebtedness — was probably a good thing, particularly in view of the fact that we reduced the voting age and because of the situation in the university cities where there's quite a heavy population of young people around that might be induced to vote for heavy indebtedness but might not be around at the time to help pay this off. I personally feel that this is a very reasonable provision, and I would speak against the amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE OMDAHL: Mr. President.

DELEGATE WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Over a period of about one year we compiled at the University the elections on bond issues and the simple majority problem. And we found that in the very small school districts its very easy to get as high as seventy-

five and eighty percent of the people voting in favor of a bond issue, but when you get into the bigger districts it becomes very difficult. And these are the districts in most cases that need it the most or where it is the most justified. I think it would be a mistake for the Convention to impose a new burden on school financing and bonded indebtedness. Generally, I favor a simple majority for indebtedness and so forth as long as we rely so heavily on the property tax. But I think that it is true what Delegate Lander has said, that the simple majority that is now required in the Constitution has not been abused around the state. And I don't think that the new members of the electorate are going to be participating in bond elections in the future.

I don't think that the Committee has really given very much new bonding capacity to school districts or political subdivisions by raising the five percent to the eight percent, because there are many school districts where the removal of personal property tax had that much impact. And so they are going to be exactly where they were before the repeal of personal property tax.

I think that rather than locking our larger school district into a continuing problem, that it would be wise to adopt Delegate Lander's amendment.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: Mr. President. I want to point out that the remaining property is going to have to carry an additional load due to the exemption of personal property. And we haven't determined yet how wide that's going to be. Your remaining property will probably have to carry really an exceptional burden to pay off some of the bonds we already got. So I think that the whole thing should be defeated.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Lander.

Would you read the amendment again, Mr. Clerk, so that we are aware of it?

CHIEF CLERK GILBREATH: "On line 12 delete the word 'By' and insert in lieu thereof the following: 'A school district, by a majority vote, or any other political subdivision by.'"

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question is on the adoption of the amendment. As many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it, and the amendment lost.

We are back on the Proposal 1-77. Is there any further discussion?

DELEGATE LANDER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Is it too late to ask for division?

PRESIDENT WENSTROM: No, it's not too late. If we have five people.

DELEGATE LANDER: I so request.

PRESIDENT WENSTROM: That's a sufficient number.

Those in favor of the adoption of the amendment now will vote "yes," those opposed will vote "no." The key will be opened, you will indicate your choice.

Has every delegate voted? Any delegate wish to change? Hearing none, the key is closed.

The vote indicates 40 "ayes," 54 "nays," four delegates absent and not voting. The amendment to Committee Proposal No. 1-77 failed.

Now we are on the proposal. Any discussion on the proposal itself?

Hearing none, those in favor of adopting will vote "yes," those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 89 "ayes," 5 "nays," four delegates absent and not voting. Committee Proposal No. 1-77 has passed.

Next for consideration is Committee Proposal No. 1-79.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-79, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to keep and bear arms, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"No law shall abridge the right of the citizens to keep arms for self defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the unlawful carrying of concealed weapons."

PRESIDENT WENSTROM: Any discussion?

Delegate Decker.

DELEGATE DECKER: Mr. President, Fellow Delegates:

1-79 is an amended version of the right to bear arms section that had been proposed originally. The section you have before you now is an amended version of the New Mexico amendment which was just adopted by their constitution just recently. The main addition to that was in the last line we added the word "unlawful" to the New Mexico definition.

We have heard considerable testimony in our Committee at different times on the right to bear arms section. And a lot of people feel it's a right that they all have. But the right to bear arms as originally proposed was a collective right, it isn't an individual right. And the New Mexico proposal probably defines what it is and the restrictions on it and what they are for in a lot better manner than just a right to bear arms section.

One thing I would like to mention is on your desk awhile back we had a letter from the Wildlife Federation. The Committee Report had been prepared before the Wildlife Federation letter came out. And the reason I would like to mention that is because there has been kind of a threat, mail threat — maybe it wasn't mail too much — about support or nonsupport of the Constitution in regard to — I believe that referred more to the registration of firearms. But it also is talking about the New Mexico proposal. And we did not take that into consideration at the time we made up this report. We feel that it's a fair report on its own merits and the proposal is real good the way it stands.

PRESIDENT WENSTROM: Any further discussion?

Delegate Nicholas.

DELEGATE NICHOLAS: Yes, I'd like to direct a question to Mr. Decker if he would yield. In our present Constitution there is nothing on this, and I'd like to know why we need something in the new Constitution.

DELEGATE DECKER: Mr. President —

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: — and Delegate Nicholas: The proposal had been brought to us several times. And I think there was a proposal by several groups that this be put in as an amendment to the Constitution at other times. And I think there has been some talk of it. And we considered it after — oh, we had quite a bit of discussion and testimony from several sides on it. And we felt that this was a fair proposal in the Constitution.

DELEGATE NICHOLAS: What groups were advocating?

DELEGATE DECKER: The people from the Wildlife Federation, the people from the National Rifle Association. On the other side we had Jim Sullivan, who is the Sports Editor of the *Minot Daily News*. And different things on gun registration and how it worked.

One thing I probably should have mentioned in this is that it does allow for the control of hand guns and registration, as far as having hand guns goes, and carrying concealed weapons. It would not prevent the law agencies from doing those things.

DELEGATE NICHOLAS: I'd have to speak in opposition —

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: I would have to speak in opposition to this proposal being an avid sportsman and hunter. I think this is just letting a foot in the door to eventually allow some type of gun registration, and it's a start. I think for this reason I think members of this body should oppose anything of this sort.

PRESIDENT WENSTROM: Any further discussion?

Delegate Thompson.

DELEGATE THOMPSON: I believe the way our Constitution is now, and the way the Federal Constitution is, that we would have the right whether or not we include it in our new Constitution. However, as all of you know, the right to bear arms has been under an extreme attack lately. A legislature in the future could withdraw the right to bear arms from the citizens. And this could be possible, because the U. S. Supreme Court has ruled that Article II of the U. S. Bill of Rights restricts the federal government but not the states. The greatest disagreement that we have on the right to bear arms seems to be whether or not it is collective. And this is a problem created by the Federal Constitution.

Both sides in this matter seem to quote from the same precedent and from the same constitution. I think right now that a majority of the citizens in the State of North Dakota feel that they have these rights, both for their individual defense, for hunting and for any other legitimate purpose.

There seems to be three reasons for this section in our Constitution:

One of them is that it's granted by the Federal Constitution without question, the maintenance of a militia.

The second one would be for the deterrence of oppression, which might seem far-fetched in our day and age because of the inability of the local people to have guns which would be adequate in nature to defend against any kind of an organized military unit. However, I think we must all agree that history is showing us now that some people who would be similar to the President of the United States are making bloodless coups in various countries. And it is the deciding factor I think throughout the world that I think the citizens of a state or a nation are armed does tend to divert this possibility.

The third reason, of course, is for self-defense. And I think we all agree that in our day and age self-defense is a matter that we all consider. And I think this is true of even the minorities. Thank you.

PRESIDENT WENSTROM: Any further discussion.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, the way I read this — maybe I'm looking at it wrong, but I'd like for the Committee to answer it if I am reading it wrong — it would seem to me that under this provision if you were carrying arms for defense you could wear a sword on the outside or a hand gun or anything else as long as you didn't conceal it. And then if you said, well, you were afraid somebody was going to attack and you were using this for defense it would seem that this provision, the last part, is really no restriction much at all as far as the carrying of arms is concerned. Maybe the Committee considered that, but if so, I'd like to hear it.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: I think there is some misunderstanding of my explanation. It isn't a restrictive section at all, it's a right section. It's in the bill of rights for that reason. But it doesn't restrict the carrying of — having of arms. The only thing it leaves for the law to do is to restrict the carrying of concealed weapons. I think that — Delegate Nicholas was worried about it — I think it's just the opposite. I think it's stated in the Constitution the right that people will have so it cannot be taken away from them. I think that's probably one thing that was missed on that.

PRESIDENT WENSTROM: The Chair will then recognize Delegate Dobson.

DELEGATE DOBSON: Mr. President: The second amendment to the U. S. Constitution provides "A well-regulated militia being necessary to the security of a free state, the right of people to keep and bear arms, shall not be infringed."

The reason our founding fathers put that in the U. S. Constitution is because they were afraid of a large standing army in peace time, as well they should have been following the experience with King George. But the right to keep and bear arms there is conditioned on a well-regulated militia. Of course, the idea nowadays, all able-bodied men between 18 and 45 are subject to call, is a little obsolete. We now have standing armies.

When the 1889 North Dakota Constitution was written those delegates did not put in any language about the right to bear arms. They were probably aware of Supreme Court decisions in 1876 and 1886 holding that this was not an individual right.

Now what is a gun? Its a piece of personal property. It would make about as much sense to put a provision in our Bill of Rights guaranteeing everyone the right to own and ride horses.

Finally, Mr. President, I object to rummaging through the Constitutions of other states to find something to put in here. We are writing a North Dakota Constitution. And I object to borrowing from New Mexico.

Although I didn't vote for Delegate Burbidge's proposal the other day, I commend him for at least coming up with something original.

I urge a "no" vote on this proposition.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I would like to ask Mr. Decker if I am correct in assuming that this is an effort to write and tag uncontrolled legislation into the Constitution?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: I believe it could be construed that way, that would be — anti-gun? No, I'm wong. It's to protect the people so that they may have guns for uses that are listed there.

DELEGATE VOGEL: Then I would like to know what is to be done? This is an effort, then, to prevent any legislation which would attempt to control the illicit traffic in machineguns, cheap imported guns, any kind of arms? Is that correct?

DELEGATE DECKER: Delegate Vogel, I imagine you could read it that way. But I don't see it that way. I don't think it could be. Because I don't believe that those guns are allowed for any of these purposes.

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell has asked for the floor, then Delegate Chase.

DELEGATE MAXWELL: Mr. President: I think the significant portion of this proposal is the first phrase: "The law — no law shall abridge the right of citizens to keep arms." And that's what the Committee is getting at. That is to guarantee the right that people shall be able to have in their possession, for legitimate purposes, arms of the types mentioned.

There was a news item on the radio this morning that in Istanbul over the weekend over 250,000 homes were entered by government and army personnel for the purpose of confiscating all of the arms of the people and other contraband that they might find. And along with it were orders to shoot down anyone who resisted this action by the government. I think that the proposal here today is to prevent that kind of authoritarian action. And I urge that we approve it in its present language.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President: Last week I wrote to several of the gun clubs and wildlife organizations in my area. And I spoke to several of them over the weekend. And as of now I have not received any objection to this proposal as it now stands. I think it's a good thing. And I think Delegate Nicholas is a little bit apprehensive on the thing. I urge that the Convention adopt the proposal.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President: I think one thing we're forgetting here, too, I think one reason why it's probably necessary to have something in the Constitution, is because the whole eastern part of the world have no conception of what we use guns for and how we train our people to use guns and how prevalent guns are in our state, where in the East the only knowledge they have of guns in the cities and in the congested areas is what they read about guns and the crime that is perpetrated by guns. So you have a large majority, I think, of the United States that would be tickled to death to do away with guns entirely. So

in order to protect our use of guns in North Dakota, I think something must be in here.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: Mr. President: I had quite a number of calls on this particular section. Somehow a misinterpretation had gotten to the press, and I think through the wildlife people, too, that we were writing a registration law. And when I talked to these different people that called me and explained to them and read to them what we did have in our proposal, they were all in agreement that this was what they preferred to see if there was any need for anything at all. Because this would be more or less guaranteeing their right to keep these weapons.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President: The way I understand this law, it is not for reasons for trying to get a gun registration. I talked to some people over the week-end on this, I was concerned about it, and they thought also that we were trying to make a gun registration. And one of the people I talked to this week-end said that if we had a gun registration, what — and he had a good argument I think — he said if everybody had their guns registered — just a few months ago President Nixon put a price - wage order out — what would happen if all the guns were registered and he said, "Tomorrow morning at ten o'clock you turn in your guns." If you don't, then what do you do? Going to defy the chief executive of the United States? But this isn't what this bill is intended for. I believe that we should go and pass this proposal before the Convention now.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hill.

DELEGATE HILL: Mr. President: I have perhaps more faith in the Legislature than justified, but I don't feel the Legislature is going to do anything that the citizens of North Dakota don't want. I think the Legislature is a good indicator of the public sentiment. But I want to express a couple things which I think may become problems if we adopt a section of this nature.

Pretend that you are a police officer in a patrol car driving around at night and you stop a car, for whatever reason, with three or four fellows in it, and you see several pistols and so forth laying on the back of it. And this is the way a lot of our burglars operate, of course. They are a little apprehensive about this. Or because you are called into a bar because a fellow just walked into the bar with a pistol in his belt, it is not concealed. Somebody asks him what he is doing with a pistol. He says, "I have a permit to carry it." You can see how the customers in that bar don't even bother to finish their drink before they leave. And the police officers are a little concerned about this, citizens that simply have a gun in their belt at all hours of the night for lawful recreational purposes. And I think the Legislature can adequately provide for some type of regulation in this area. I have no fear whatsoever that they are going to try to confiscate weapons and things of this nature. If the temper of our country is such that we are going to enact laws that totally abrogate the right of individuals I don't think a provision in the Constitution is going to be any guarantee at all if we have a total breakdown of law and order in any event. But I think there definitely is a need for some type of regulation to protect our citizens. And I think that this kind of language here would at least bring litigation over any regulation the Legislature might attempt to impose. And I have faith that the Legislature would provide reasonable legislation, not unreasonable regulation.

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE MAXWELL: Question.

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-79.

Those in favor of the adoption will vote "aye," and those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: My key doesn't want to say either "yea" or "nay" this morning, but I vote "yea". I hold it in place and it doesn't light up.

PRESIDENT WENSTROM: Does any delegate wish to change his vote? The vote is closed.

CHIEF CLERK GILBREATH: Hartl, he's absent. He's not registering either.

PRESIDENT WENSTROM: Roll call discloses 76 "ayes," 18 "nays," four delegates absent and not voting.

Committee Proposal No. 1-79 has passed.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President: Would the record please show that Delegate Sanstead is present? I would like to add that I teach a 6:45 in the morning Monday morning class to enforcement officials in the Minot area. And the subject of our class today was gun registration and the legislation which is appearing — which just passed this body. We had a very hot and vociferous discussion between proponents and opponents. There was some mis-information, I would have to say at least, with regard to what we were doing here. The roads also were a little difficult, so I didn't come back at the normal speed. For Delegate Fritzell's information, I am here and ready to go.

PRESIDENT WENSTROM: The Chair will declare a recess until eleven o'clock.

(The Session recessed from 10:43 A.M. until 11:00 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order? Will the Convention please come to order?

We will be on the fifth order of business — Committee Reports.

Fellow Delegates, I think you will recall that this morning we postponed receiving a committee report until such time as Delegate Sanstead would be here. The gentleman has been here for some time. I'm sure he has had time to recuperate from his Paul Revere's ride this morning. And I think we will now proceed with receiving Committee Report No. 1-16. Did the delegates request that the report be re-read? Hearing no request, we will proceed then with the discussion.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President. I think that it has been adequately pointed out, at least we hope, that the entire Education and Natural Resources Committee is in support of the first paragraph of this proposal which is the one that is our concern for the environment. And I hope that you understand that the Minority Report then is for the deletion of the second paragraph, which expands that in connection with the constitutional right for individual action. And I think that our concern is largely one of degree. In the testimony which we have had before us it was evident, at least to some of us, that there have been more than ample opportunities to work with the Legislature and through the Legislature up to date and will continue to be some room for improvement in this area. As the majority spokesman has already pointed out, there are some states which have handled this matter completely by statute. In other words, it does not have to be in the Constitution. If it is in the Constitution, it obviously gives some extra emphasis, but it would not have to be there.

We are concerned that if we have in this new document that we are going to prepare here the first paragraph, we have spoken our concern for the environment. We have asked the Legislature to work on that. And then hopefully those people who are greatly concerned will then proceed to work through the Legislature in order to accomplish what they have — what they want to have done. And then in the meantime we will then not unleash the enthusiastic, but somewhat inconsistent, efforts of the more — several of the more hardened environmentalists, many of whom desire to have all of the benefits of our society, but recognize — refuse to recognize some of the things that we have to have in order to pay for them. Thus, we urge that you adopt the Minority Report and delete Section 2 of the proposal.

PRESIDENT WENSTROM: Any further discussion? The question before the —

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE McELROY: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Were you going to speak to the Minority Report? I would decide to yield if you were going to speak to that.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: Well, I would certainly support Delegate Lander's position on this. I think this Section 2 expresses a complete lack of confidence in our law - making and law - enforcement abilities. I feel that this takes us back to some kind of a modern - day vigilante method of solving problems, and I'm opposed to this. Problems of the environment are they attract a great amount of emotion. And you can't solve these problems on an emotional basis. They take extremely scientific, careful analysis; otherwise we get some quickie solutions that may get us into worse trouble than we've been in before.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President: Speaking on behalf of the Majority Report as one of the sponsors of the original delegate proposal on this subject, I think of all the really crucial areas of public policy that we've dealt with. I think poverty, health, consumer protection, our Committee is still dealing certainly with education, that this issue is the most greatly influenced one by our time. And I think either the labor movement or the industrial people, the Federal Government or individual politicians, certainly anybody else that's concerned with the environment, would have to say that the hardest hitting element in our society today are those citizens that want to protect the environment and who want it placed on a high agenda in our nation.

I would submit that if we take Section 2 out of this proposal we are, in effect, doing what we accused the politicians of doing all the time; simply mouthing generalities and saying some nice platitudes about what we expect from people in regard to the environment. And the fact is that the appearance of action without substance would be here. And I think that would be a disgrace to this Convention. I think we are the ones who ought to write this kind of a proposal. And I again urge everybody to take a look at 1-16 and look at lines 17 and 18, the two most crucial lines. In fact, we've had three proposals before our Committee which have been much broader in scope, much more inconclusive, more liberal in the nature of what they would cover. And two of those, I understand Delegate Hubrig's 2-54 and 2-55, have already been killed by the Convention because of our proposal. And I know that Delegate Kelsch had a citizen suggestion about an expansion to historical sites and to other areas.

But our Committee here has acted, in my view, in a very conservative way by proposing in the Majority Report the adoption of the entire 1-16. And if you look at lines 17 and 18 in 1-16 you notice that it says, "to reasonable limitation and regulation as the legislative assembly may provide by law". We even thought about putting a "shall" in there "provide by law" just to make sure that everybody would be pleased. But I would suggest that certainly the legislative assembly in its discretion will make such regulations to make sure that the courts are not flooded by a host of cases, that a neighbor might not sue a neighbor and all of these kinds of things.

And I would suggest that in the present time I think we realize that pollution, environmental pollution, and conditions and circumstances are not uniform throughout this country. We're very fortunate here in North Dakota, and we know it, in that regard. But at the same time I think those of us in the majority believe that state government — state government should set the standard and the procedure appropriate to the local and state conditions which we face in protecting our environment. And so I'd say those people who are on the Majority Report are in effect states righters who are arguing in effect that the state's role in environmental protection is being superceded even now by federal action. And why is it being superceded? For the very reason that the federal government has seized the holding of so many other areas of our life, because of inaction, and because of platitudes at the state level.

We can today, I think, change that look toward Washington, D. C., that many of our environmentalists have. We can make the rules and the standards and the procedures here in North Dakota through legislative action that will protect our environment and at the same time realize that we're acting in an agricultural society in the State of North Dakota that needs reasonable limitations and reasonable protection.

If you read your North Dakota Law Review you know that on page 307 a whole section was devoted to constitutionalism and ecology; a masterpiece, in my view, of legal writing. And it takes every single element of our present law and dissects it in this constitutional law book and comes out saying, in effect, that we need more protection and that, in effect, that kind of protection — all the legal theories are not enough — that that kind of protection is now desired and needed by our citizens.

The author of this proposal — and I believe already that Delegate Fritzell has stated it is, in effect, an adoption of the Illinois document — Joseph Sax, the author, is the nation's leading authority on environmental rights, the two bills that have been talked about in statutes in other states, and he wrote the model article dealing with environmental protection.

And so I would simply argue that today we have a chance to put into the Constitution, and later then to allow the Legislature to decide what they want to do with it by statute, the kind of protections that our states need. And I would say that this is simply the best kind of state's rights movement, and it is the very best kind of a way to deal with any kind of environmental problem in North Dakota. And so if we are sincere, we will want to see both Section 1, with the nice platitudes, and with the wonderful statement of protection for the citizens of our state and our concern for the environment, but more importantly it will include Section 2 which will allow for — with legislative limitation and regulation — which will allow for going after some possible areas of legal entanglement by citizens in the state to protect their environment into the future.

And in that sense, I think this is a very defensible article after much hearing in our Committee, and after looking at all of the proposals presented to us in this area. I think we could do worse than to have the environmentalist protection people of the State of North Dakota really pleased with this Constitution, really pleased that we have taken step in action for them and for the future.

PRESIDENT WENSTROM: The Chair will recognize Delegate Knudson.

DELEGATE KNUDSON: Mr. President: I'm speaking for the minority. In response to what Delegate Sanstead has just said, I would point out that lines 12 and 13 direct the Legislature to provide for implementation of Section 1. This proposal has had a rather interesting history. It was brought in as a delegate proposal by Delegates Sanstead and Fritzell. It is part of our Committee's recommendation in the interim report. You will notice in that report that there were only three in the Minority when we voted on it at one of our meetings last fall. I was one of those original three. During this Plenary Session the more environmental — environmentalists our Committee heard from, the faster the minority grew until it was a very near thing to bringing this committee proposal out with a Majority Report. I think it's the very thing that Delegate McElroy was mentioning, the vigilante - type activity, that might be encouraged by the language in line 15, particularly, "Each person may enforce this right," that gradually frightened away members of our Committee.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I've been led to believe all through life that we had a government of the people, by the people and for the people. And I'm bewildered to know how we could bring a lawsuit to sue ourselves.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President and Fellow Delegates:

I think all of us can acknowledge that the question of what affects our health and environment and what does not as it relates to business activity or to other persons' actions is quite emotional and a rather timely and exciting matter. Traditionally, people had the one outlet, when they got excited about something, which

was to go to the government and to the legislature or to agencies or bureaus to get relief. Now what we'd be doing, if we accept the Majority Report, is to offer another outlet. And I feel that this is an important alternate or additional outlet to the concern of the people in a situation like this. Because sometimes bureaucracies or agencies do not function as fast or responsively as the people would like them to. And I think we do need outlets in these troubled times for legitimate, lawful use by the people when they feel aggrieved.

Now it's true when we do this we bring the courts into somewhat of an activist decision because the judges are then deciding in many cases or asked to decide policy things that really should be set by the Legislature through laws. But I'm afraid if we don't bring our state courts into these positions — this is happening in the federal courts — I'm afraid if we don't bring our state courts into this as Delegate Sanstead pointed out we will default this to the federal courts. Because they have taken this stand or this posture in this kind of area. So I would urge you to support the majority, to give the people a second outlet other than the Legislature, or agencies such as the health department, allow them to have the courts — the courts and the Legislature can put reasonable restrictions on the use of the class action. If we don't put them on it will be our own fault. I think we can use it, I think we can protect other persons. But I think it's good that we give this other outlet. I think that's exactly what Section 2 does. I urge you to vote for the Majority Report.

PRESIDENT WENSTROM: The Chair will recognize Delegate Peterson.

DELEGATE PETERSON: I'm a member of the minority. And I realize as a farmer's wife that I've got about ten counts against me because of the fact that I'm a farmer's wife and am against this second section.

I do want you to consider this carefully. And I have. I have checked it out, I have talked to many people. And I'm not taking my position lightly. I feel that definitely that the second section is legislative, not constitutional. And I know that there are statutes on the books dealing with air pollution and the public health. And I want to call your attention to the statement just made by Delegate Kelsch referring to the way that we can bring this reasonable limitations on. And then he said, "And if we don't put them on . . ." Now this is — that's the crux of the matter right there; "If we don't." Well, all right, if we don't what's going to happen? Therefore, that means that there's leeway there. And I want to say again as a farmer's wife I don't feel that I'm being unreasonable. We love the land, we love the animals on it, and the birds and everything about it. And we want it preserved, we want it kept as pure as possible, as clean as possible. And we do not want to keep our neighbors or people from coming and enjoying that which we have which they may not have. But I do not feel that we should open this wide open to class suit and invite those who may wish to be aggressive to come in and make trouble. And I have heard on good authority just recently that when this was made public, this Article VI, that an organization in the state did make a statement, "That if any person wants to bring suit at any time they can depend upon us to support their stand." Now that to me is a frightening thing.

PRESIDENT WENSTROM: The Chair will recognize Delegate Solberg.

DELEGATE SOLBERG: Mr. President: May I ask a question of Mr. Sanstead?

PRESIDENT WENSTROM: Delegate Sanstead, will you yield to a question?

DELEGATE SANSTEAD: Mr. President, I will.

DELEGATE SOLBERG: Am I correct, Delegate Sanstead, in the fact that the last legislative session passed provisions for a basic study in this whole area and that it was turned over to the health department and is now divided up between four state institutions to make specific studies in this environmental and pollution and ecology areas from noise pollution to air pollution and so on and make a definite recommendation to the legislative assembly convening in 1973? I'm wondering if I'm right on that, or if I read something that I shouldn't be believing in.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Delegate Solberg, you're correct in the sense that there have been hearings on pollution, particularly noise pollution, some on air pollution, underway. However, if you have read your North Dakota Law Review section you will note that the health department, which has been in charge of doing

something about the law, which was good air pollution law, which has been on the books two sessions in North Dakota, that that department has two individuals with which to operate. We seem to have a lack of aggressiveness on the part of all the state agencies to really get involved in the area. As a result of that, the mechanism to do something about it seems to be lacking here and there. There is a lot of study going on, but that's the usual kind of thing. I guess I don't need to tell you. And so as a result of that I think we are providing here a mechanism that goes beyond the studies phase and goes beyond any kind of state agency, which they all claim are under-funded and unable to deal with this kind of problem.

DELEGATE SOLBERG: Mr. President: I appreciate that excellent answer. Now may I ask another question? If we do have in the Legislature the power to create a study, and out of it shall come recommendations for statutes or action by the Legislature, then do we not have the authority at the present time to deal with this thing instead of putting it into the Constitution and spelling out the areas that probably are more legislative than functional in the area of constitutional provision? Do we have the authority in the Legislature to go as far as needs to be done, and therefore we don't need this piece of creation in the Constitution at all? I'm merely asking a question, sir.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Delegate Solberg, and members of the assembly:

I think it's already been proven here time and time again that there are a great number of people who are very suspicious of the actions of the legislative assembly, and particularly in areas of this kind in which they feel the legislative assembly is stacked against any kind of action. And I have a feeling those are the kind of people who want to go to Washington and who will turn to that direction to be able to attempt to get something done in our present environmental problems. And so in that sense I think the Majority Report, and those of us who listened to all the testimony, recognize that fact and thought that just because they are the people they have some right because they are the public. And those rights go beyond the representation of their representative or senator.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I appreciate those comments and the direct answer. But I again — and I am not against control of environment and these things, that is our obligation. But if we do have the power in the Legislature, I happen to be one of those individuals, then, may I steal a phrase from some of these other oldsters around here — a few of us, but not very many — I have followed every legislative session since 1933. And, golly, I think they are tremendous. And I have great hope in their future. And I think that they are going to do tremendous things and we don't have to spell it out in the Constitution for them. And so if I wanted to spell out something, you know, I would make the environmental laws so tremendously tough that I could pick the people who would live next to me because I wouldn't like their environment.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: One of the interesting duties which falls on me is to represent the State in an inter-governmental relations committee connected with the National Legislative Conference. And for the past three years I've been going to meetings I suppose four or five times a year in Washington. And I happen to be in the natural resources subcommittee of that organ of government. At this point and time the National Congress has not decided how far they want to go on insisting on compliance by the states on pollution control. There are at least twelve bills before the Congress at this time; some tough, some more lenient. And one of the big questions is whether or not they will accept a state's plan, its program, its present legislation, or whether they are going to require a tightening up or go as far as Delegates Fritzell's and Sanstead's proposal to permit class suits. It's a big battle.

I at this time am inclined to support the Minority Report for this reason: I think we are being a little premature. If the Federal Congress decides in its wisdom

that they can permit state plans to be accepted by the federal control, in other words, they can come and look at the North Dakota program on air pollution — we have good pollution law on both air and water — they can say fine. The state law might be agreeable. We will not impose additional federal restrictions on you. They don't know what they are going to do at this time. I doubt if they will find out until after the present congressional session is concluded, if then. And I think to write this into the Constitution at this point may be unwise. I do think that if they do come up with stricter requirements, that then it will be within the power of the Legislature to make this tightening. I think the Legislature could be embodied — could be authorized to pass legislation which would require action and would fund these present health agencies sufficiently so that they can do their job. I think we are jumping the gun a little bit. I'm not unsympathetic with the idea of class actions, but I think at this point we don't know if we are going to need them or not and I would therefore go along with the idea that we should not write into the Constitution the permission to bring a class action. I think it would be unadvisable.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President: I would differ, if I may, with Delegate Unruh. I don't believe we are being at all premature. I think if you will read the first line of Section 2 — and I want this right for my children and my grandchildren — that "Each person has the right to a healthful environment." I think it's imperative that we keep that statement in. And I would be perfectly willing to leave to the Legislature, which we strengthened the other day in one of our proposals, the right to control the situation. I would urge that you vote against the Minority Report.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President: As Delegate Sanstead stated, I did have two proposals in. I'm satisfied with the Majority Report as before us. I feel that they did a lot of work on it. I am satisfied with it. The argument about if we should put it in the Constitution or wait till the federal government does something, leave it to the Legislature, I think is pure argument.

A few years ago, a short time ago, I should say probably — time goes by in a hurry — there was a big explosion in the State of North Dakota about the federal meat inspection. What's the federal government going to tell the citizens of North Dakota to do something for? It's none of their business. We in North Dakota can take care of our own business. Now are we going to leave this proposition to the federal government and let them come in and tell us how to do it? Ask that question of ourselves. I think we ought to put it in the Constitution and not wait for the federal government to move in on us. We hear too many arguments the federal government's got no business telling North Dakota what to do. If this is our position, I would strongly urge you to vote for Proposal 1-16.

DELEGATE RUNDLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

Well, I support the Minority Report. I'm going to agree with Delegate Peterson, who is a farmer's wife. I would like to point out that about two, maybe four years ago, a measure came into the Legislature that would have prohibited a rancher or farmer from allowing his cows to even go near the river. Now no one explained at that time how you stopped wild animals — most of which you can't fence out — and so they would not be near the river. And I'm not going to ask Delegate Sanstead a question because that gives him a chance to make another speech. But I will explain to him the same language was used in the Legislature at one time by some wild cowboy. I don't remember quite who it was. But I would like Delegate Sanstead to demonstrate some day to me how you put diapers on a couple hundred wild cows.

DELEGATE POULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: I would like to speak — Fellow Delegates, I would like to speak in support of the Majority Report. As I read this, and as my Committee members know, I've had mixed thoughts as far as this particular section

is concerned. I find the wording of this section to provide the necessary protection that I think almost anyone thinks it should have. It says that each person may enforce this right through appropriate legal proceedings, which tells me that if some wild-eyed environmentalist decides that this or that is wrong, they must proceed at law and have their day in court perhaps before a judge, perhaps before a jury. But if I were that wild-eyed environmentalist, or the defendant in that case, I would much rather have my hearing under the law and the Constitution of my state than some federally imposed regulations.

I urge the adoption of the Majority Report.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. President.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: A few years ago I became aware of a situation when traveling in Washington State that may be of some interest to the delegates with reference to class actions and environmental matters. There was and has been for some time an extensive concord grape industry in the upper Columbia Basin; and industry had developed around there and so forth. A period came in which there was great decline in the vineyards, and finally many plants died. And it took awhile, but finally scientists determined the problem was the drift of 2-4-D which came from the wheat area of Washington about five miles away; much above them, too. Well, when this happened the grape growers were wondering what they could possibly do to protect themselves and there was no legal machinery in the State of Washington to do this. It finally got resolved, but after considerable time and considerable more loss to the grape people, by outlawing the use of a form of 2-4-D. But I think this is one of the illustrations of the need, perhaps, for some machinery for class action.

PRESIDENT WENSTROM: Any further discussion?

Delegate Miller.

DELEGATE MILLER: It would seem to me, Mr. President, that this is covered in Section 1 with the words "The legislative assembly shall provide by law". I see no reason for this second section. I want to remind all of you, and in line with what Delegate Peterson has said, that — and I think I appear before you as an expert witness in this matter — that cow manure is the by-product of a T-bone steak. So let's keep these things in perspective.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President: It seems to me that we really ought to know exactly what we are doing when we adopt Section 2. And I am in favor of the Minority Report for this reason: The Section 2 deals with an individual; has nothing to do with class actions. Each person. You can have class actions, but this is an individual right. It relates only to a healthful environment. And each individual's health is a thing of its own. He may have an allergy; some people are allergic to sunlight, some people are allergic to various berries, vegetables, things of all kinds. The right which the second sentence of Section 2 is to enforce is the individual's right to a healthful environment. It has nothing to do with seeking damages. The right apparently is to stop whatever the situation is that he says is unhealthy to him. Not necessarily the public. If we put this section in the Constitution we have given each such individual — and we don't know what they would be now — a right of action. That's the right to bring a lawsuit and sustain it, to enforce his own individual health situation.

Now environment is a very broad word. It may — the environment in one sense for me is my neighbors right around here; Delegate Rundle behind me, and Delegate Maxwell in front of me, Delegate Peters at my side. Eliminate my environment to the right this morning. The environment is also this chamber, this city, this state. Now it's perfectly conceivable and anyone who has not been aware really has no realization how ridiculous people can be over anything and everything. If we give this right we're setting up an extremely broad thing.

Now the Committee apparently recognizes this, too, because they don't really give this absolute right. Because line 17 says, "subject to reasonable limitation." Now what did we give them? Are we giving them an unlimited right or aren't we? In line 17 the Legislature can limit. And we're back to that good old handy

legal word "reasonable." Plaintiffs and defendants have been disagreeing over what's reasonable for the last thousand years. And "regulation." Bear in mind also that in this Constitution the things that we put in it limit the legislation, they do not grant power to the Legislature. The Legislature has in it no power that does violate some section of the Constitution. And for that reason to me Section 2 is unnecessary.

But we all know about Pandora's box. Very few people remember what was in the box. It was discord. And some people have said that's been the source of litigation ever since.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SULLIVAN: Mr. President.

PRESIDENT WENSTROM: Delegate Sullivan.

DELEGATE SULLIVAN: Fellow Delegates: I rise to support the position of the Majority. I beg if you are not inclined to support the Majority you put the Majority Report on the floor and kill it then. The Minority proposes to put a beautiful platitude in the Constitution, nothing more. We have enough of them in this new document already.

Section 1 is ineffective without Section 2. If you can't buy Section 2, kill the whole thing and let the new Constitution remain silent on environment. In our committee work we received considerable criticism from ecologists who claimed that we didn't go far enough. Our reply to all of them was, "We have all we can sell right here." The debate this morning indicates that our position was correct.

Last week you heard a lot on this floor about the importance of youth vote. These votes are very much interested in our environment, and you should speak out on the subject in the manner that Section 2 does if you're interested in their approval.

We have also heard that farmers will be suing their neighbors. This is not true. North Dakota has a population that is second to none neighboring this. And I am certain that these two sections will not upset this fine tradition. We are leaving it up to the Legislature to set the ground rules for these class action suits, and I'm certain that they will come up with guidelines to make this work effectively for the welfare of the state.

I ask the Report of the Majority be accepted.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the Committee Report of the Minority Report that on page 1 it would delete lines 14 through 18. No further discussion? The question is on the adoption of the amendment of the report — not of the adoption of the amendment, but on the adoption of the report.

As many as are in favor of the motion will say "aye," opposed "no." The Chair is in doubt. We will open the key. Those in favor of adopting the Minority Report will vote "yes," and those opposing will vote "no". The key will be opened, you will record your choice.

Has every delegate indicated his preference? Any delegate wish to change his vote? The vote is closed.

The tally indicates there were 43 "ayes," there were 51 "nays," there were four delegates absent and not voting. The Minority Report failed.

Before the Convention at this time is the acceptance of the Majority Report. Is there any discussion on that?

Hearing none, as many as are in favor of the motion to accept the Majority Report will say "aye," opposed "no." The "ayes" have it, and the report is adopted. It will be on the tenth order of business tomorrow.

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: May we be on the eighth order, please, Communications?

PRESIDENT WENSTROM: Without objection, we will be on the eighth order. Hearing no objection, we are on the eighth order.

DELEGATE SIMONSON: Thank you. I have a communication from my son, James Simonson to tell the delegates: "I sure was glad that they excused you and

let you come home." He had an emergency appendectomy about midnight on Tuesday shortly after I waltzed with George Longmire. He said the Lord might not look too kindly on that, but I didn't know that he would be so violently against it. However, James did come home Saturday. He's in great shape. I called him awhile ago and he made it to the phone on the second ring. So he's doing well.

However, yesterday we did put our sixteen-year-old daughter in the hospital with pneumonia. But I called this morning — and I didn't dance with George; you're clear on that one — but I did call the hospital this morning and she's coming along fine. And I thank you.

PRESIDENT WENSTROM: Thank you, Delegate Simonson.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: We are still on the eighth order of business?

PRESIDENT WENSTROM: We are on the eighth order.

DELEGATE PEARCE: May I utilize this opportunity? On each of your desks this morning there is a letter which has the typed letterhead "Higher Education Facilities Commission." It is dated January 19, 1972. And I would like all the delegates to read the letter. Because in a day or so I am going to make a motion that the Convention approve the action of the Budget Committee in authorizing an expenditure of \$5,000 as part of our statutory duty publicizing and explaining the new Constitution that we may come up with. The reason I'm not making the motion now is because Delegate Paulson, who is very familiar with this situation and has more information, is not here. I only ask that you don't discard this letter, and keep it in mind for the forthcoming motion.

PRESIDENT WENSTROM: While we are on the eighth order, Committee Chairmen, I would like to bring to your attention that today is the last day for introduction of Committee Proposals. Now before we recess for noon, do any of the committees, substantive committees, wish to meet so that you can bring in a Committee Proposal prior to adjournment today? Are there any proposals?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Any committees have any proposals they would like to bring?

Delegate Rundle.

DELEGATE RUNDLE: Chairman Maxwell just informed me a little while ago that his committee was going to meet.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I'm extremely sorry, Mr. President, I wasn't paying attention.

PRESIDENT WENSTROM: The question from the Chair is does your committee or any other of the substantive committees feel that they want to bring in additional Committee Proposals? Today is the last day. So we have to have those in before we adjourn today, you see. Do you feel that your committee wishes to bring in additional Committee Proposals?

DELEGATE MAXWELL: I regret to say that I'm a little unfamiliar with the procedure. Is this with some kind of a recommendation from the committee, you mean?

PRESIDENT WENSTROM: No. You see, we adopted a rule, Delegate Maxwell, last week limiting the introduction of Committee Proposals; the last ones have to come in today. And, of course, that means they'd have to come in before we recess or before we adjourn for today. So my question is do any of the committees that they are in the process of making an additional Committee Proposal that they would like to present to the Convention before we adjourn today? That's my question.

DELEGATE MAXWELL: My answer to that is yes, Mr. President.

PRESIDENT WENSTROM: You do have. Well, there is one then. And do we have any others, Delegate Hoffner or Chairman Hoffner, do you have any?

DELEGATE HOFFNER: Mr. President. No, we don't. And I was just going

to say is it possible for the Convention in that case, if the committee is really bound and has no proposal and needs one after today, they could suspend the Rules and I think would?

PRESIDENT WENSTROM: That is true.

DELEGATE HOFFNER: No, we don't. We have a couple extra that we could use.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President: I don't think, strictly speaking, we have a new proposal. But we do have a proposal to repeal another section. And we will have that in.

PRESIDENT WENSTROM: Will you have that in before — before we adjourn today? Do you need some time to do that?

DELEGATE MEIDINGER: We would need some time; yes.

PRESIDENT WENSTROM: How much time?

DELEGATE MEIDINGER: Just enough for the secretary to prepare the report.

PRESIDENT WENSTROM: Then why don't we, when we adjourn this noon, which isn't very — recess this noon, why doesn't the Convention stand in recess until, say, two o'clock. That would give you an hour, if we take an hour for lunch and an hour for committee meetings, and then start again at two o'clock, reconvene, and then work on the calendar.

Now does any committee chairman have committee meetings scheduled for this afternoon?

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Executive Functions expects to meet; yes.

PRESIDENT WENSTROM: At what time are you scheduled?

DELEGATE HERNETT: Well, not two o'clock, apparently, because we are going into session again. But when can we meet.

PRESIDENT WENSTROM: Well, can you meet at one?

DELEGATE HERNETT: Well, we will need more time than that to do everything we want to do this afternoon. What time do you expect to adjourn or recess today?

PRESIDENT WENSTROM: Well, the only question, you see we're just in a little bit of a bind here, Gail, in that we have some committees that want to come in with some Committee Proposals and today's the last day, so we can't adjourn until after we get those in. And it's ten minutes to twelve now.

DELEGATE HERNETT: Well, I would say that the Executive Functions Committee would probably meet at one-thirty. We could meet for half an hour then is about all that would be. And then we would like to meet again after —

PRESIDENT WENSTROM: After we recessed today, after we adjourn?

DELEGATE HERNETT: Yes.

PRESIDENT WENSTROM: Fine.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: I'll call a meeting of the Legislative Functions Committee at one o'clock, and it will meet until two. And then also about fifteen minutes after the adjournment. Because we've been grinding out reports.

PRESIDENT WENSTROM: Delegate Meidinger .

DELEGATE MEIDINGER: May we remain on the same order?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE MEIDINGER: The Committee on Education then will meet at one o'clock in G-1.

PRESIDENT WENSTROM: Thank you.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I will announce a meeting of the Bill of Rights Committee at one o'clock.

PRESIDENT WENSTROM: Thank you.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I'd like to call a meeting of the Judicial Committee at one for about five minutes to determine the order of the procedure tomorrow on the discussion on 1-11.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President. Might I suggest that you consider recessing until, say, three-thirty, and then the committees can work for a long enough time to get some things — I know our committee has a lot of work to do. Maybe all of them do. Maybe that would work better.

PRESIDENT WENSTROM: What is the wish of the Convention?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I've heard a lot of comment that was favorable to Delegate Sinner's suggestion. So I will move that we recess until three-thirty, if it is appropriate to make that motion at this time.

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: It's been moved and seconded that the Convention recess until three-thirty. Any further discussion? Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it.

Delegate Hernet.

DELEGATE HERNETT: Well, in that case I will shove up the Executive Functions Committee to one-fifteen.

PRESIDENT WENSTROM: Then we will be in recess until three-thirty.

(The Session recessed at 11:56 A.M. until 3:36 P.M., the same day.)

AFTERNOON SESSION

(The afternoon session of Monday, January 24, 1972, commenced as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: The women's luncheon for Tuesday, January 25th, has been cancelled because of the weather. Would you please inform your wives?

PRESIDENT WENSTROM: We'll be on the ninth order of business — Introduction and Referral of Proposals to Committees.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-120, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that two new sections to the constitution of the state of North Dakota, both of which pertain to the executive branch of government, be created."

PRESIDENT WENSTROM: Committee Proposal No. 1-120 is referred to the Committee on Executive Functions.

Any of the committees now have a further Committee Proposal that you would like to introduce?

The Chair would recognize Delegate Hartl.

DELEGATE HARTL: Mr. President: Let the record show that Delegate Hartl is present.

PRESIDENT WENSTROM: The record will show Delegate Hartl as present.

We will be on the tenth order of business.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-86, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to making all persons over eighteen years of age adults for all purposes, be created."

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Persons eighteen years of age or older are declared to be adults for all purposes."

PRESIDENT WENSTROM: The question is —

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: This has been recommended by my committee from a proposal presented to them by myself. I wish I could remember all of the arguments that were advanced the other day when we were considering the age of people who hold office, but I have forgotten some of them.

I have three young men in my family; two of which fall into the never-never land of eighteen to twenty-one and one just twenty-one. They are old enough to be subject to the draft, but not old enough to be considered an adult for all purposes. Of course, they can vote now, and they can contract as was provided in the last session of the Legislature, Chapter 14-10. And for the delegates' information, those of you that don't know what this first section says, let me read it to you:

"All persons eighteen years of age or older are declared to be adults."

I added the words to it "for all purposes."

I'm sure that three young men don't — does not make me as much of an expert as Mr. Hardmeyer in this matter, but I've had some additional experience in seeing them — that's not for the record — as a state's attorney in seeing young men in court, women, too, on charges which would not have been brought had they not been under twenty-one and over eighteen. I feel that they are as much an adult at eighteen as they would be at twenty-one.

I feel somewhat like Mr. Pearce when he made his statement yesterday that if we don't adopt something like this which would communicate to the Legislature that we feel eighteen-year-olds are as much an adult as — for all purposes, that they won't consider it, because they did adopt such a statement at their last legislative session and they still restricted in many cases the adulthood of an eighteen-year-old. And there is a possibility that unless we do we would be class constitutionalizing, if there's such a word.

I feel very strongly that if we are going to allow them the right to vote, we should also give them the responsibilities of adults in all other areas as well. Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

DELEGATE NETHING: Mr. President, Fellow Delegates:

There's two areas of legislation the Legislature passed the last session which were not touched. And it would be my opinion that passage of this proposal now, and eventually by the public, would eliminate those two areas.

The first is the statute which requires that a male under twenty-one years of age have permission to marry. And it was felt at that time that since we have — many of our high school seniors are of the age of eighteen that they did not — since they're living at home and for all practical purposes, of course, their support comes from their — that they didn't want to take that permission away from the parents.

And the second area that I think we would be removing is that in our liquor law which prohibits a person under twenty-one years of age purchasing beer and alcoholic beverages.

And I think those were the only two that were left untouched by the Legislature. And probably as we look at this this would eliminate those sections. And they really, truly, would be treated as adults for all purposes.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman. In Delegate — or Committee Proposal 1-86 we are actually being very arbitrary in setting the age of maturity. And I think if we address ourselves to maturity rather than many of these other arguments, pro and con, I think that we have really hit the nail on the head.

Now in my experience I have seen many eighteen-year-olds who have shown

much more maturity than many of their elders, and I have seen those that have been forty-three and also have not shown much maturity. But I think it is maturity that we are talking about. In the past we have been arbitrary in setting maturity at age twenty-one. I feel that when these young people are — especially the males — are able to go and defend their country, and can vote at the present time, they should be considered adults for all purposes. Females, of course, eighteen years old it has been seemingly the age of maturity in the past.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the first passage of Committee Proposal No. 1-86.

Those in favor of its passage will vote "aye;" those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 73 "ayes," 20 "nays," five delegates absent and not voting. Committee Proposal No. 1-86 has passed.

Next for consideration is Committee Proposal No. 1-89.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Committee Proposal No. 1-89, I am going to move that it be moved back for tomorrow's action. By word of explanation, I have asked permission from the one that was preparing the Committee Proposal on the floor. Now this section is a real serious, important section in our Bill of Rights. And I'm sure that the amendment that I am going to offer — I want to be very sure that it is absolutely correct. And for that reason I won't have it ready until tomorrow morning. You have an amendment of that proposal on your desk. This will be discarded and there will be a new amendment on your desk tomorrow, and I hope you all look at it. So with that, Mr. President, I move that Committee Proposal No. 1-89 be laid over one Convention day.

PRESIDENT WENSTROM: Delegate Trenbeath moves that Committee Proposal No. 1-89 be laid over one Convention day. Do I have a second?

DELEGATE SAUGSTAD: Second.

PRESIDENT WENSTROM: Seconded by Delegate Saugstad.

You heard the motion. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Delegate — Proposal No. 1-89 will be laid over one Convention day.

Next for consideration is Committee Proposal No. 1-92.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-92, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 19 of the present constitution of the state of North Dakota, which pertains to treason against the state, be retained.

"SECTION 1.) Section 19 of the present constitution of the state of North Dakota is retained in its present form to read as follows:

"Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid or comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE BENSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Bender.

DELEGATE BENDER: The Committee on Preamble, Bill of Rights and Suffrage, after duly reconsidering Section 19, which has to do with treason against the State of North Dakota, has brought back to the Convention floor the same wording of Section 19 as found in our present Constitution. Though it was the first thought of our committee that this section was no longer a necessary concern, we have bowed to the wishes of the Convention and asked that the original wording of Section 19 be approved and adopted by the Convention.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I had an amendment. I had hoped that it would be back from the secretaries so I could present it right now. But I might explain it to the Convention. What I propose to do would be delete the language of this section, repeal Section 19 as it presently exists, and then simply state the words: "There shall be no crime of treason against the state of North Dakota."

Now I'm suggesting this amendment for consideration because I think it gets at the problem. The Committee felt initially that we should not need a definition of treason in the Constitution — we should not need a definition of the crime of treason in the Constitution because — and I think this is true under our federal system — that it's hard for any of us to conceive of treason against the state. Treason against the state as an integral part of the Federal Union, as we learned in the Civil War, would be treason against the United States. We are all citizens of the United States.

Now the reason I think the original farmers put the reference to treason in the Constitution is because they did not want to leave such a political crime open to definition by the Legislature. Now you will note it not only defines the crime of treason, which is levying war against the state, which is a hard thing to conceive, but also refers to giving comfort to the enemies of the state. But the main part of the cause I think which was unique to me was the fact that it limited how the crime could be charged or proof of the crime; that is, that it required an overt act and it required two witnesses to prove that overt act.

So I think we've either got to stay with the old Section 19, which makes it a very difficult thing to prove, defines it and makes it a difficult thing to prove, or in the alternative simply state: "There shall be no crime of treason against the state of North Dakota."

Now I want to assure you as a suggested amendment I'm not advocating treason. But I do feel that by taking this approach we will remove the possibility of the Legislature of this state and future generations from ever defining political activity as treason against this state. Now it's certainly possible that persons in this state might engage in active anarchy or such that might be treasonous, but I think that if they did they would and could be prosecuted as treason against the United States rather than the State of North Dakota.

So I would move that amendment. And I think the Clerk now has the amendment.

PRESIDENT WENSTROM: Amendment has been moved by Delegate Kelsch. Do we have a second?

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lamb.

The Clerk will read the amendment.

CHIEF CLERK GILBREATH: "On page 1, delete all of lines 1 through 12 and insert in lieu thereof the following:

"That section 19 of the present constitution of the state of North Dakota, which pertains to treason against the state, be repealed, and that a new section be created.

"SECTION 1. REPEAL.) Section 19 of the present constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) There shall be no crime of treason against the state of North Dakota."

PRESIDENT WENSTROM: You've heard the reading of the proposed amendment. Is there any further discussion?

Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I can't see any reason for — if you're going to repeal this section, I can't see any reason for emphasizing the fact that we no longer have any crime of treason. I would certainly not object to repealing the whole section, but it seems to me you're just adding fuel to the fire by emphasizing the fact if there is a potential person who could create the crime of treason against the state, that there is no such crime in the state of North Dakota. I fail to see the need for pointing that out.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I recognize that I may be adding fuel to the fire in suggesting that, and that persons might misinterpret it. What I'm driving at, and if the Convention feels that way, I'd urge you to vote "no" on the proposed amendment and retain old Section 19 which is a limiting section. But I disagree that we — I feel we can't be silent to the subject, because if we're silent then the Legislature can define the crime of treason as a broader concept than is presently in our Constitution. And there's no guarantee that the Legislature would require that it constitute an overt act. It could be a thought or a statement or a conspiracy. If you don't have some restrictions in the Constitution, then they have a free hand to do as they will. And I am concerned about this particular type of crime, because it's a political crime.

Delegate Pearce mentioned in his conversation that more people have died for the crime of treason than probably any other crime. What we're doing, if we adopt this amendment, you're saying that this is one area the Legislature of this state, as a part of a union of fifty states, cannot speak to. In other words, we are just preempting to stay out of the field, treason will have to be dealt with on a national level.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President: I speak in favor of the amendment. I think it accomplishes both what the Committee intended to do and answers the objections raised on the floor.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Kelsch.

Hearing no further discussion, as many as are in favor of the amendment — adopting the amendment will say "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE KELSCH: If no one requests division, I would move that the proposal be re-engrossed and be passed on tenth order, first passage.

PRESIDENT WENSTROM: Delegate Kelsch moves that the Rules be suspended, that Committee Proposal No. 1-92 be deemed properly engrossed, that it be placed on the calendar for first passage as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The Committee Proposal No. 1-92 is before the Convention as amended.

Any further discussion?

Hearing none, the question is on the first passage of Committee Proposal No. 1-92 as amended. As many as — those in favor will vote "yes," those opposed will vote "no." The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll discloses 73 "ayes," 21 "nays," four delegates absent and not voting. Committee Proposal No. 1-92 has been passed.

Next for consideration is Committee Proposal No. 1-95.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-95, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 135 of the constitution of the state of North Dakota, which pertains to cumulative voting in corporations, be repealed.

"SECTION 1. REPEAL.) Section 135 of the constitution of the state of North Dakota is hereby repealed."

DELEGATE BILLEY: Mr. President.

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: Fellow Delegates:

I would refer you to Committee Proposal 1-20 to start with. Committee Proposal 1-95 is a repeal of Section 135 which was originally included in our Committee Proposal 1-20. However, at the time we considered 1-20 the question was

raised regarding this section. We took it back to Committee; held hearing. We had no one who came in and testified on it. And the Committee in their original interim report felt that this is a matter that should be left to the Legislature. Our Committee has re-inforced that feeling, and we again ask approval of repealing Section 135.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and members:

I originally asked that this 135 be taken out. I have since checked the statutes and feel that we are adequately covered and I have withdrawn my opposition to this repeal.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-95.

Those in favor of passage will vote "yes," those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 94 "ayes," there were no "nays," there were four delegates absent and not voting. Committee Proposal No. 1-95 has passed.

Next for consideration is Committee Proposal No. 1-97.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-97, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 176 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to tax uniformity and exemptions."

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: This is the section dealing with exemptions which was discussed by the Committee at length the other day. And with the consent of the Committee — some of the Committee — I now move an amendment — pardon me. I don't mean to imply it wasn't the Committee, but I'm explaining why I'm speaking first. I move the amendment at the desk.

PRESIDENT WENSTROM: Is the amendment at the desk, Delegate Sinner?

DELEGATE SINNER: Yes.

CHIEF CLERK GILBREATH: The proposed amendment to Proposal 1-97 is as follows:

"In line 14, delete the following: 'Property used exclusively for school, cemetery or'.

"In line 15, delete the following: 'religious purposes shall be exempt from taxation.'

"And renumber the lines accordingly."

PRESIDENT WENSTROM: You've heard the reading of the proposed amendment. Do I have a second?

DELEGATE McELROY: Second.

PRESIDENT WENSTROM: Seconded by Delegate McElroy.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: The other day when we discussed this matter members of the Committee said that they had received a large number of letters. And I wondered from whom the letters came. And it seems that most of them, as nearly as can be ascertained, were triggered by objections filed by one group of people.

It's my contention, and I think it's really the feeling of the majority of the members of the Committee, that if we are to sincerely protect legitimate exemptions from property tax in future times we must leave the Legislature the room to stop abuses of legitimate exemption. If we attempt to legislate, to pass for all time words that will affect all legitimate exemptions, we almost without question build in forever abuses to those exemptions.

And after we allow these exemptions, how many more will want to get in? Will it be hospitals and nursing homes and day care centers, educational theaters, and doctors' clinics and farm buildings and hospital parking lots and on and on and on? And any one of us could make a good case for a legitimate exemption in the Constitution, I suppose, for any of these. I'm sure that someone is going to tell us that this is very unpopular. That we might jeopardize the passage of the Constitution if we take out these exemptions. But I ask you who pays the taxes anyway? Is it not those of us who support the churches, who support the hospitals, who support the nursing homes and the day care centers? We pay the taxes anyway. Why must we then build in abuses to build more taxes for the rest of us?

Someone jokingly asked me the other day if I would be able to get absolution by supporting this amendment. I was going to tell him that what I was really trying to prove was that the church's kingdom really wasn't of this world anyway.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President: I, too, have presented an amendment on this. I don't know, is the proper procedure in acting on this amendment first and then propose the next amendment?

PRESIDENT WENSTROM: Delegate Hoghaug, not unless your amendment is an amendment to this one. Otherwise you would have to wait. You would be out of order. If your amendment is an amendment to this amendment, then you would be in order. Otherwise you would not be in order.

DELEGATE HOGHAUG: Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Burke.

DELEGATE BURKE: Mr. President: It is probably unfortunate that Mr. Sinner — Delegate Sinner was not a member of our Finance Committee. I, too, had the same view as he. But I was converted to the cause of leaving these exemptions in the Constitution. In the Constitution making a provision such as this I agree is for cosmetic effect only. And if it will allay the fears of many thousands of people, it would be my view that we leave the provision in the Committee Proposal and vote against the amendment.

PRESIDENT WENSTROM: Any further discussion?

Delegate Aubol.

DELEGATE AUBOL: Mr. President: Could we have the amendment read again, please?

PRESIDENT WENSTROM: Yes. The Clerk will read the amendment.

CHIEF CLERK GILBREATH: The proposed amendment to Proposal 1-97 is as follows:

"In line 14, delete the following: 'Property used exclusively for school, cemetery or'.

"In line 15, delete the following: 'religious purposes shall be exempt from taxation.'

"And renumber the lines accordingly."

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question is on the amendment as read from the desk. Those — as many as are in favor of adopting the amendment will say "aye;" opposed "no." The Chair is in doubt. We will open the key. Those in favor of adopting the amendment will vote "aye," will vote "yes;" those opposed will vote "no." The key will be opened.

Has every delegate voted? Does any delegate wish to change? The vote is closed.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: I was in error in voting. I want to change my vote from "nay" to "aye" on that measure.

PRESIDENT WENSTROM: From "nay" to "aye"?

DELEGATE NETHING: Yes.

PRESIDENT WENSTROM: The Clerk will so record.

Its about as close as they can get; 49 "ayes," 48 "nays," three absent. So the proposed amendment failed.

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President: I have a proposed amendment to 1-97 at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-97 is as follows:

"In line 14, following the word 'for' insert: 'non-profit hospitals, non-profit nursing homes, non-profit rest or retirement homes,'

"And renumber the lines accordingly."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE HAUGEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Haugen, Donnell Haugen.

Any discussion?

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, members of the assembly:

I have added "non-profit hospitals, non-profit nursing homes, non-profit rest or retirement homes." I think we've all had occasion to know the good work they are doing and how difficult it is for them to make both ends meet. I have personally served on the board of directors at a home at Devils Lake. It takes private solicitation and a lot of work to keep this home in the black. And I think they are serving a wonderful purpose. I think that the people that are dedicating so much of their time and effort to these worthwhile projects would feel encouraged to know that we have spoken that their work is recognized and it is appreciated and that they shall maintain the tax-exempt status.

A matter of welfare is involved in many of these homes. If these homes should have to pay taxes, then they'd have to turn around and we've have to increase the welfare load. And I believe that with these added provisions in 1-97 we will have very acceptable exemptions to the taxation problem.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

During the noon hour our Delegates Thompson and Tudor were listening and I was trying to call a man at Bowman. And they know I had a long, hard time getting him on the phone. It was the Sunset Home there. And he told me that sixteen of their 42 people living there were on welfare — pardon me — social services, we call them now. Sixteen of 42. They are having a hard time making it. I think he said eighteen churches are contributing now or they couldn't operate. And I very much support the amendment of Delegate Hoghaug.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, Delegates:

I would urge that you vote against the amendment and leave it up to the Legislature. I realize that these homes probably will never be taxed, but really are we talking about that or should we leave it to the Legislature? For instance, in a profit type home, who pays the tax? Doesn't a person living there or staying there or a person on welfare in that home pay a tax? I think we should leave it to the Legislature and let them decide.

I've been against tax exemptions whether it's non-profit or not. I always thought that tax exemptions should be according to the function performed. Any one, as far as I'm concerned, should have a tax exemption if they are operating a home for the aged and not because they are non-profit. Because the person staying in the home actually pays the tax.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I would agree in one sense with Delegate Decker, that the Legislature should have this authority. But I felt that way on a previous

amendment and was on the losing end. I think it's got to be one or the other. They are either all in or all out. So I'm going to support the amendment.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I did not speak on Delegate Sinner's proposed amendment because of the standing the Committee had taken in agreeing to go along with the exemptions that are listed in the proposal. But I certainly would hope for myself, and I think for practically all the members of the Committee, that this new amendment is defeated.

Delegate Burke indicated to you that we put in the cemeteries and schools and the religious purposes in our proposal. As "cosmetic," I think at Delegate Burke called it, and any idea that we wanted to change our philosophy was that exemptions have no place in the Constitution. We do amend this section giving the Legislature broad authority to define and except any and all property. We believe that this is a job that can be well done by the Legislature as conditions may change in the years that are coming. I think it's a job that should be done by the Legislature. To say that if we don't put these words in this present amendment in there does not automatically say that they will be classed; it simply says that then the Legislature shall have the power of determining exemptions. And I do hope that this amendment is defeated. If it is passed, it is just like Delegate Sinner says, it adds and it adds and it adds and it adds. It's got to come sometime, and I think the time to stop it is now.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: May I ask Delegate Hoghaug a question?

PRESIDENT WENSTROM: Will Delegate Hoghaug yield to a question?

DELEGATE HOGHAUG: Yes, sir.

DELEGATE UNRUH: Delegate Hoghaug, in your study as you drew up this amendment had you considered using the word "charitable" or did you feel it was too indefinite a term?

DELEGATE HOGHAUG: I really haven't given it that much thought, Delegate Unruh. But I think the word could very well be in there as long as they are a non-profit organization.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I would like to speak on behalf of Delegate Hoghaug's amendment. One of the old cliches that I am constantly spouting, of course, is John Marshall's retort: "The power of tax is the power to destroy." And while that doesn't apply in many instances, to me it applies very much in this situation.

We hear constantly about tax loopholes and that everybody should pay taxes. However, the reason why I think this exemption — these exemptions should be in the Constitution is because I want to see them embedded, firmly embedded, as much as possible — a person can always amend the Constitution — rather than to leave them to the areas of thought in the Legislature.

It seems to me that these are institutions that we have said to ourselves there are certain things that we do not believe properly need to contribute by taxes because they already contribute to enormous public good. As we by science prolong our lives, more and more of us will require first the hospital, and if we survive that, the rest home or the nursing home. Those institutions are struggling, and we know they are. If any such organization has the temerity to organize as a profit organization and they follow that line of the law, more power to them. If they can find enough patients to pay the bills, they can pay some taxes, too. We are seeking now — we are speaking now only of the non-profit. Now if any non-profit corporation is abusing its non-profit privilege, there are ways in the law, avenues in the law, to get rid of that.

The patients in so many hospitals, and particularly in nursing and rest homes, are now welfare patients. And if old enough, they will be called patients on relief. I have found some figures on these. The welfare patients in North Dakota nursing homes run all the way from 25 percent in a Fargo nursing home to 65 percent in a central Dakota nursing home. Most of the rest of them are around 45 to 50 per-

cent welfare. By recent publicity I understand our welfare funds are in a precarious situation. So if we tax them we must increase the welfare budgets. We're certainly not going to allow these people not to have any care.

When these institutions are built, by modern costs, it represents an enormous investment. And these are not public investments, they are really, in a sense, charitable investments. They are not certainly profit-making investments. And we know where the money comes from. There isn't anyone in this room that hasn't probably been asked on some drive to contribute to the construction costs of these things. We all pay the taxes. If we have to have more taxes, how can we go out and tax these things, the prime purpose of which is welfare? They contribute far more to the public good and the welfare of all of us than some arbitrary dollars that might be levied against them for taxes. And I think we have a difficult situation enough as it is now trying to take care of these people and let's not add to the load.

As to the argument, as I say, why it should be in the Constitution, because in order to know where you're going to stand for the years ahead before the investments necessary to be made, I think you need to be sure. We have been.

I might, while I wasn't asked, address myself to Delegate Unruh's question about "charitable." Charity, I always thought, was absolutely free. And so there is a question whether hospitals, nursing homes, are charity. Because you do have to pay. And so rather than engage in the debate about whether something is actually, by the definition, charitable, I would rather not see that word in. I prefer the word "non-profit".

I fully support Delegate Hoghaug's amendment. I think the people of the State of North Dakota would do so likewise.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Lerberg.

DELEGATE LERBERG: Mr. President, Fellow Delegates: I'm against these words "non-profit" because I don't think there is any definition of these. And I don't think they should be allowed to remain in the Constitution. If the Legislature wants to so provide and has the opportunity to look at these things, then fine. But to weld them into the Constitution I would be against the word "charitable" in the Constitution as well. I think "non-profit" is particularly unfortunate, because I think we have an awful lot of businesses today, including an awful lot of farms, which we might categorize as "non-profit" according to the popular concept of whether it makes a profit or not.

And I submit to you that there are an awful lot of edifices being built in North Dakota, multi-million-dollar establishments, which, if they are locked into this word "non-profit" are going to have a lot of our citizens wondering when they pay several hundred dollars and maybe into the thousands a year for real estate taxes on their modest homes why these edifices, because they are locked in the Constitution, should not bear any part of government. And I think we have to recognize that all people, all companies, all organizations owe something to the governmental unit where they reside and not the least of these would be the large non-profit organizations. And so I would be against locking this into the Constitution.

You might say, well, if they are not non-profit there are ways to handle it. But I'm not so sure there are. I've had a solicitation within the last few weeks from one of these large organizations. Our family has contributed in the past. I wrote a letter asking for some financial information; this has been weeks and weeks ago. It's not forthcoming. And you find many of these organizations in which they are very selective about giving out any information on their financial affairs. And I submit to you that the Legislature should have the discretion to look at these operations, and if many of the average people and voters in North Dakota could be aware of some of the expenses, some of the salary costs and so on, I doubt whether they would consider them to be non-profit organizations.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President: I rise to oppose the amendment. Delegate Pearce gave us a good reason why we should leave it up to the Legislature when he said that they were in financial straits. I'm sure that the Legislature is not going to give us — rule out the exemption for these particular institutions. There's also the possibility at some later date these institutions may become quite financially

well off. And at that time what profits they may have may be dribbled out to the employees or board of directors or people of this type.

I also would like you to look at an amendment that I proposed that I haven't had a chance to introduce yet which I think will probably clear up some of the problems that people are having with regard to these various institutions. And I hope that delegates oppose the amendment on the floor.

PRESIDENT WENSTROM: The Chair will recognize Delegate Peterson.

DELEGATE PETERSON: Well, there are several arguments here that are not quite valid. For instance, the remark that the people in the homes pay taxes, this is not true. The welfare — whatever you want to call it, social services — has set a certain amount only that they will pay. Therefore the non-profit nursing homes that take in welfare patients have a monthly loss on the welfare patients. And this is true. You can check it anywhere that you please.

And, too, someone mentioned that you can't get an answer back. Now as far as non-profit homes are concerned, they have to have their books open at all times. And this is not — this is something you cannot change. Whereas a profit home you cannot go in and check their books. But a non-profit home the books are open at all times. I know this because I'm a director of St. Luke's and also the one at Bowman which is — they are a corporation. So those — those points are not valid.

And then I want to remind you again, at the risk of being called a Pollyanna, that there is one word we do not take into account enough in this Constitution; we cannot say the same for the people that wrote it the first time, but I am afraid that we are a little bit embarrassed by our own feelings at times and we do not have enough compassion.

PRESIDENT WENSTROM: The Chair will recognize Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates:

I speak in opposition to the amendment. I, like Delegate Lerberg, have been solicited. I did see some financial statements. And I am convinced that we're looking at a situation where there's ninety-nine shades of gray. This particular statement I looked at I was surprised to find out that there was a parent corporation from which they made a large number of purchases. And it was a corporation. So we have many shades of gray on how these things are handled. And I feel it's a situation that can be best handled by the Legislature.

PRESIDENT WENSTROM: Delegate Fiedler.

DELEGATE FIEDLER: I'd like to corroborate what Delegate Peterson says I'm on the board of the Pembina County Memorial Hospital. And I don't know whether you are aware or not, but all that welfare proposes to pay is costs, all the Medicare proposes to pay is costs. And, consequently, with our inflationary rise over the period of years at the end of each year you will find that you haven't charged enough. Then its another year before you get them. I don't know any other way to justify this than to remove the danger of them being taxed. But its almost impossible to operate under the present situation.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I'm speaking in opposition to the amendment and also to the proposal. I think if you'd leave Section 176 strictly alone, which uses the word "exclusively" it gives the Legislature a chance then to check into these matters and set up proper statutes so that anything that is not operated as it should be can be put on the tax rolls.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: I don't know if my position is in opposition or not. I just wonder why we have used the word "non-profit" before hospitals, before nursing homes, before rest homes and retirement homes, but don't carry on to schools, cemetery or religious purposes?

PRESIDENT WENSTROM: Delegate Daniels, I do not believe your question is pertinent to the amendment. You may raise the question when we have — when we have either adopted or disposed of the proposed amendment.

Any further discussion?

Delegate Sinner.

DELEGATE SINNER: Mr. Chairman, just by way of helping me vote on this, I'd like to ask one of the Committee how many other such categories have been suggested and are apt to be brought up for amendment? Can one of the Committee answer that?

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: I believe that from what I have heard there will be others proposing that they reintroduce other categories of tax exemption into the proposal as it was in 176. I was going to speak on this but everybody got up with their amendments before me.

I would hope to talk about this for the Committee sometime later on, Mr. President, representing the Committee.

PRESIDENT WENSTROM: Delegate Haugen, did you have anything further to add?

DELEGATE HAUGEN: No.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Hoghaug.

Would the Clerk read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-97:

"In line 14, following the word 'for insert; 'non-profit hospitals, non-profit nursing homes, non-profit rest or retirement homes,'"

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President: In the last couple of days I've been asked by three of these institutions from Fargo that they're — if their tax-exempt status will be assured in this new Constitution. And all of them had worked to build these organizations. We have collected and distributed a considerable amount of money to them, and I can't see why we would turn around and ask them to pay taxes.

Now people on this Committee, I've talked to the Tax Committee a couple of times, at least to a half a dozen members on it, and they assure me in the Legislature these things will never be taxed. But yet I've heard right here on the floor fellows saying, "Well, I think an institution that doesn't pay taxes or a non-profit institution should pay the same taxes as one that does make a profit." In some instances I agree, but not when you go out in the community and raise funds for these things, then turn right around and build the things and after it is built, why we have a difference of opinion which might open these for taxes.

Now I don't see why the Legislature can't decide what a non-profit organization is. It would seem to me that that would be almost a prerequisite for the tax-exempt status to which — for which these people would be eligible.

We happen to be on the border between Minnesota and North Dakota. And I know that these kinds of factors are big factors in a company's deciding where it's going to locate. We have seen what happens with Sunday opening. The consequence of Sunday opening is an entity in Moorhead across the river, which had no economic justification at all, is today a very profitable organization, a very profitable group of stores. When we had a sales tax here and they had none over there, we saw what happened then, too. A great share of the business which would have been done in North Dakota and on which income taxes and so forth would have been paid went to Minnesota. This is just another reason if you decide to leave this outside the tax-exempt status when these people really merit tax exemption and the only difference is you have to decide in the Legislature which is a non-profit and which is not a non-profit organization. Then I think you're just adding one more encouragement to firms to build in Minnesota. And I'll tell you that there aren't too many reasons to build in Minnesota. If we just keep these to a minimum, we'll have the economic development over here for which we are looking instead of just adding one more reason why they should go to Minnesota.

And I would encourage or ask for your support of Delegate Hoghaug's amendment.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Hoghaug. As many

as are in favor of adopting the amendment will say "aye;" those opposed say "no." The "noes" have it, and the amendment lost.

DELEGATE STANTON: Division.

PRESIDENT WENSTROM: Division has been requested. Those that are in favor of adopting the amendment will vote "aye;" those opposed will vote "no." The "ayes" have it — the key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed. There were 51 "ayes," 44 "nays," three delegates absent and not voting. The amendment is adopted.

Now we are on the Committee Proposal No. 1-97 as amended.

Delegate Lamb.

DELEGATE LAMB: Mr. President: I have an amendment at the desk, but the problem is now it complicates the matter a little bit. So I move that we hold this over for one Convention day.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Delegate Lamb moves, and seconded by Delegate Lander, that the Committee Proposal No. 1-97 be laid over one Convention day. Any discussion?

Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman, might Delegate Lamb tell us what his amendment is? That might make some difference on how we vote on this.

PRESIDENT WENSTROM: I think the question is on his motion to lay it over one Convention day. If there is no discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it, and the motion lost.

We are back on the question. Committee Proposal 1-97 is before the Convention as amended.

Delegate Aas.

DELEGATE AAS: Well, Mr. President and Fellow Delegates:

I hope most of the amendments are in by this time. And I don't know exactly what we can say for the Committee, because this has changed it somewhat. However, I might say that we've had a lot of controversy within our Committee on this section, and one of the areas of controversy comes up on the first sentence. There are those who feel that the statement "Taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax" is too restrictive because it does not provide for, as an example, a graduated land tax if one desires that. However, it was the Committee's nearly unanimous feeling that we should leave that sentence as it is.

The second sentence is one that we discussed in the Minority Report, and it involves the personal property tax repeal and the classification of buildings and improvements and real estate or personal property. It was the Committee's majority feeling that we should change this language somewhat to conform at least with the existing statutory law as relates to personal property tax repeal and to be sure that our real estate will include improvements as it relates to city property at least.

As far as the third sentence is concerned, we did exclude the other non-profit, or non-charitable, organizations now. And, of course, we have placed back in by amendment the hospitals and the nursing home type of institutions. So I suppose we could say that any of the other non-profit organizations are going to find it necessary to justify their exemptions and to justify it to the Legislature.

Section 57-02-08 of the North Dakota Code does adequately provide for tax exemption for all non-profit and charitable type of institutions. And there are a number of institutions that come within these categories, and there are a number of classifications which are not necessarily non-profit or charitable that are also included in that same section.

The Committee worked long and hard on Section 176, and there was one time we did come out 11 to 3 for total elimination of tax exemption. We did come back and decide that — well, we did come back with a "no recommendation" vote as to this section and we left the whole thing out of our original proposal.

There are a large number of states that do not have constitutional exemption for churches or any other tax-exempt organizations. There are only sixteen that

have a mandatory tax exemption for churches; there are seventeen that have a permissive tax exemption for churches; thirteen make no mention; and two say the Legislature can exempt the churches if they choose; and others do not act for — there are two of them that I haven't accounted for in this category.

I might say that our neighbor state to the east has repealed their constitution limitation on tax exemption in all categories. They have not legislatively made any changes to this point.

The majority of the Committee feels that we should extend the tax exemption no further than we have at this point. I think there were some of them that had no objection to the removal or to the inclusion in the exemption of churches and — I mean of hospitals and the other health-related areas. I, myself, feel that the Legislature could have adequately taken care of this. But since it is the wish of the group here that we should exclude it, we will certainly hope that you can pass Section 1 — Committee Proposal 1-97 as we now have it. I think this will give us an opportunity to prevent discrimination in some of our organizations that now we know do discriminate in the State of North Dakota. Because if they are charitable or non-profit it will — and if they do not come under the categories which we have now profit it will — and if they do not come under the categories which we have now listed, they are going to have the necessity, I am sure somewhere down the road, to make an accounting to the people of North Dakota through legislative action.

We have finished it by including a provision in the last sentence that says that the tax exemptions in force shall remain in force until changed by the Legislature. We hope that you will accept the Committee's Report as it is now presented to you.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen. I'm sorry. Delegate Haugen.

DELEGATE HAUGEN: I had intended to offer a further amendment to this proposal, but it has been on the calendar now for — since last Wednesday. It has received considerable discussion, both on the Committee Report and today. I think that my amendment would probably be futile, if offered. And in those days that have passed since last Wednesday I have done some thinking and have consulted some legal authorities. And I am of the opinion that the second sentence which authorizes the Legislature to define the exemptions, any and all classes of property, will do anything that is permitted by the Fourteenth Amendment to the Constitution of our United States.

I was, of course, in respects myself opposed to the further amendment to the exemption statute. This seems to be the rule of the majority that we do enlarge upon it and keep it in the section, though the margin was paper thin. Yet I go along with that majority, and I hope that the Convention will see fit to adopt.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I think this will be the last time I'll get up and talk on this section. I hope so. But the way this has been worded you are going to increase the scope in which exemptions can be made. Because all property will be subject to classification and exemption. And we'll run into in the future more political turmoil over this very thing than we've ever seen in all the years gone by.

Now the present section is clear and specific on defining what is personal property and what is land. Land is the only thing that now is not subject to exemption. And I don't think we should use this Convention as a vehicle to correct errors made by the Legislature when they passed the exemption statute in 1969. So if you leave Section 176 alone, then you will have a clear, concise road to travel. And there would be no difficulty in understanding that language. It's clear and specific and mandatory and permissive in part. Only the permissive part is where they have the right to make exemptions or not. True, we have the constitutional exemptions which are to some degree going to be carried along with this.

So I hope that the proposal will fail.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, a point of inquiry. I was under the impression here we were on the sixth order, and that any discussion of the merits after that, except for amendment, was out of order at this time.

PRESIDENT WENSTROM: Delegate Longmire, we're on the tenth order, final — first passage of Committee Proposals.

DELEGATE LONGMIRE: If the Court — or if the President please, I understood the bill was amended or the proposal was amended on the floor. I heard no motion to suspend any rules or not. And if I understand correctly, that would carry it over until tomorrow for discussion on the tenth order.

PRESIDENT WENSTROM: Delegate Longmire, we are not voting on the bill. The bill is still open for amendment — or the proposal is still open for amendment and such discussion as the Convention may wish to make.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President: Everyone has had an opportunity to express themselves now. I think it's — it's almost unanimous, one vote over fifty percent. At this time, Mr. President, I move that the Rules be suspended, that Committee Proposal 1-97 be properly re-engrossed, and put on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Hoghaug moves that the Rules be suspended, that Committee Proposal No. 1-97 be deemed properly re-engrossed, be placed on the calendar for first passage as amended.

Do I have a second?

DELEGATE SCHEEL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Scheel.

Delegate Lamb.

DELEGATE LAMB: Mr. President: I don't think everybody's had a chance to be heard on this issue because I haven't had an opportunity to get my amendment in yet. So I would hope that the people will resist this so we can lay it over for the next day.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: I speak against the motion, too, because there are some obvious loopholes I think that haven't been discussed this afternoon. For example, as someone just briefly mentioned, there is no delineation of non-profit, whether it be non-profit defined by statute or constitutional non-profit language. There's no provision for that relating to schools, cemeteries. The word "religious" seems to be to be as broad as it is long; needs to be refined. The word "cemetery," someone asked me does it include pet cemeteries. And he was being facetious, but there are pet cemeteries in many states. And I think that we have to — we have to do some more work on the language. And if we're going to be forced to vote on it now, we'll have to vote "no," that's all.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I rise to a point of inquiry. When a proposal is on the tenth order isn't it proper to hear the report of the Committee before you start voting on amendments? This rather upset me, because I would like to have heard the complete report from the Committee that has studied this before the amendments came to the floor for voting.

PRESIDENT WENSTROM: Delegate Hendrickson, I believe we have had debate and had the Committee Report on this particular question a number of times in this Convention.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: About a week ago I had thought that since I hadn't ever submitted any delegate proposals that maybe I should submit one which would be about 25 pages of definitions, because we seem to be constantly worried about defining words. So I support the motion of Delegate Hoghaug to vote now. Certainly I don't believe that it should be laid over because of definitions, if we are

to enlarge this so that we have to define everything. The statute takes care of now, or certainly could take care of, definitions.. We have very explicit definitions of non-profit corporations in our statutes. If the Legislature sees fit to change them, they can, and very much so. And there can be no confusion legally between a corporation for profit and one organized for non-profit.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: Mr. President: Is it proper yet to ask a question in regards to the language in the Majority Report or do we have to speak just to the amendments?

PRESIDENT WENSTROM: You may ask a question on the Majority Report.

DELEGATE URDAHL: Well, in line 14, "property used exclusively for school". There's one thing that really bothers me somewhat in regards to this because there is a school in North Dakota that has, I believe, served the people well and has been of tremendous help to many children that couldn't receive school or education any other place, and that is the Crippled Children's School at Jamestown, North Dakota. And I would want to be very definitely sure that when we say that this school, or schools, is exempt that this school would be included in that category. And I would like to direct that to some member of the Committee, whether this has been mentioned.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President: I don't think we've ever discussed specifically the Jamestown School. We haven't discussed specifically any school except the profit schools. I think there is a serious question in the mind of a good number of the delegates whether — a good number of the Committee members whether or not any school could be prevented from receiving tax exemption under the present Constitution or under the one that we have here before us. And as far as I know there was no discussion on that particular point.

PRESIDENT WENSTROM: I think we will have the Clerk read the proposal as it now is before us.

CHIEF CLERK GILBREATH: It should now read, starting with Tax Uniformity and Exemptions: "Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly may by law define and exempt all classes of property. Property used exclusively for non-profit hospitals, non-profit nursing homes, non-profit rest or retirement homes, school, cemetery or religious purposes shall be exempt from taxation."

PRESIDENT WENSTROM: The question before the Convention is on Delegate Hoghaug's motion.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President: I may be mistaken, but I thought that Delegate Hoghaug put the amendments the non-profit, after the word "or" at the end of the sentence. I wonder if that could be cleared with Delegate Hoghaug, if that motion could be checked.

While it's being checked and I'm on the floor I have another question. I would urge that the Convention not suspend the Rules. I think this is significant enough. I think this is another reason we said to lay something over you have to have two-thirds vote to force it on. When we start to amend it is hard for other delegates who have other amendments to be considered to have the opportunity to bring them in. So if we let it go these amendments can be presented tomorrow. I think that's a fair circumstance.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: It seems to me it is a question for Style and Drafting and for a cleaner sentence. I would submit that the proposed amendment has too many words in it. I think we could do with one "non-profit" and list these other entities after that and eliminate about ten extra words. Now I suppose in Style and Drafting we could do this, because we are getting rid of redundant phrases and dup-

lications. But I think the thing is in such condition that I would recommend that we vote against Hoghaug's amendment and lay it over for a day so we can look at it some more.

PRESIDENT WENSTROM: His amendment has been adopted. The question is on the matter of suspending the Rules, deeming the proposal be properly re-engrossed, and placing it on the calendar for first passage as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it. The motion lost.

Committee Proposal No. 1-97 is still before the Convention.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I will soon be old enough to get in one of these homes, so I want to move that we lay it over one Convention day.

PRESIDENT WENSTROM: Delegate Rundle moves that Committee Proposal No. 1-97 be laid over one Convention day.

Do I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Any Discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be laid over one Convention day.

Next for consideration is Committee Proposal No. 1-98. 1-98.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-98, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 16 of the constitution of the state North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bills of attainder and ex post facto laws.

"SECTION 1. REPEAL.) Section 16 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"BILL OF ATTAINDER, EX POST FACTO. No law shall be passed which would pronounce a person guilty of an alleged crime without trial or conviction according to the recognized rules of procedure. No law shall be passed which makes an action, done before the passing of the law, and which was innocent when done, criminal, and punishes such action. No law shall be passed which would impair the obligations of contracts."

PRESIDENT WENSTROM: Is there any discussion?

Delegate Daniels.

DELEGATE DANIELS: I'm wondering if the Clerk read that correctly.

CHIEF CLERK GILBREATH: No, I didn't.

DELEGATE DANIELS: I think he read the amendment.

CHIEF CLERK GILBREATH: No, I'm sorry, I didn't.

PRESIDENT WENSTROM: 1-98.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-98, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 16 of the present constitution of the state of North Dakota, which pertains to bills of attainder, ex post facto laws and obligations of contracts, be retained.

"SECTION 1.) Section 16 of the present constitution of the state of North Dakota is retained in its present form and reads as follows:

"No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed."

DELEGATE DANIELS: Mr. President.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: As you know, earlier we presented a proposal that defined these terms. And having been defeated on the floor, we have brought back to you the original language from the old Constitution — from the present Constitution.

Now, Mr. President, I would like to offer an amendment. And the Clerk has it on his desk.

CHIEF CLERK GILBREATH: The proposed amendment to Committee Proposal 1-98 is as follows:

“Delete all of lines 1 through 9 and insert in lieu thereof the following:

“That section 16 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bills of attainder and ex post facto laws.

“SECTION 1. REPEAL.) Section 16 of the constitution of the state of North Dakota is hereby repealed.

“SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

“BILL OF ATTAINDER, EX POST FACTO. No law shall be passed which would pronounce a person guilty of an alleged crime without trial or conviction according to the recognized rules of procedure. No law shall be passed which makes an action, done before the passing of the law, and which was innocent when done, criminal, and punishes such action. No law shall be passed which would impair the obligations of contracts.’

“And renumber the lines accordingly.”

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE HAUGEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Haugen.

DELEGATE DANIELS: Mr. Chairman, I have been attempting to write this section in the language of the average citizen. The language of the Preamble, Bill of Rights and Suffrage Committee originally submitted has been changed only in the definition of “ex post facto”. And this now reads: “No shall shall be passed which makes an action, done before the passing of the law, and which was innocent when done, criminal, and punishes such action.” Although this still is not as clear as I would prefer, it represents a compromise with our lawyer friends who objected to our original definition. This definition also is from Black’s Law Dictionary.

I maintain that we are writing this Constitution for the average individual citizen, and therefore we must have language that they understand exactly what their rights are without referring to a dictionary. I have noticed that our Committee is apparently not the only one which has dealt with legal terms. If you will note Section 103 of the present Constitution and compare it with Judicial Functions Committee Proposal 1-11, Section 6, you will see that a number of these terms have been eliminated. Thank you.

PRESIDENT WENSTROM: Further discussion?

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: As a member of the Style and Drafting Committee, I’m disturbed about the definition of the term “ex post facto” which may be legal, but it seems to me to be very little less confusing than the Latin originally. Therefore, I have proposed the amendment to the amendment which is on your desk and which defines “ex post facto” law. Wait a minute. I have it somewhere. The definition would substitute for that second section that has to do with ex post facto laws. It would insert in lieu thereof that sentence this: “No law shall be passed declaring an action to be a crime and punishing the person who committed it if that action was not a crime at the time it was committed.” I believe that this says essentially the same thing as the definition from the dictionary. And to me, at least, it seems considerably more understandable.

PRESIDENT WENSTROM: The question — do we have a second to Delegate Vogel’s amendment to the amendment?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Litten seconds.

Now any discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President: I may be the lawyer or may not be the lawyer friend Delegate Daniels referred to. But assuming that I am, I would like to say that while we think of ex post facto as relating to criminal acts, it does not necessarily relate to criminal laws and can in some circumstances apply to civil laws, too. I don't believe that we should try to substitute definitions now for legal principles which have had the interpretation and support of the courts for hundreds of years. If we were to write everything now in so-called layman's language, if we were to require the chemical components of things sold to be expressed in non-chemists' terms, it would take some very long labels to define what those things are. Some words to me, of course, speak for themselves. I admit that for many, many years I've been using certain terms that, like every other attorney or profession, has its own vocabulary. And I'm not hard-nosed on this except that I believe that unless there is some clear reason for abandoning a term that has been fixed in the law, for as long as it has, I see no compelling reason for changing that. And again already we have two amendments right now, one an amendment to an amendment, in order to make things clearer. I thought ex post facto was clear.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Well, I just have a question on Delegate Vogel's amendment. You referred to the engrossed bill lines 13 and 14. And what have we before us? Now we don't have an engrossed bill with those numbers, do we? So I don't think we can accept that amendment at this time.

PRESIDENT WENSTROM: I believe, Delegate Hernet, that the lady said it was an amendment to the amendment. I don't have the engrossed bill in front of me either.

DELEGATE HERNETT: Well, it refers to deleting all of lines 13 and 14 in the engrossed bill. And we don't have that kind of a bill before us, do we?

DELEGATE VOGEL: I think you are right, Delegate. It occurs to me, too, that there is something wrong with the description, which is why I indicated that it was a substitute for the sentence defining ex post facto on the original amendment.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Will Delegate Vogel yield to a question then?

DELEGATE VOGEL: Yes.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Is it true at this time then that line 15 you are still advocating deleting and punishing such action as in the original amendment before you?

DELEGATE VOGEL: If you have the original amendment of the Committee in front of you I would want it to read: "No law shall be passed which would pronounce a person guilty of an alleged crime without trial and conviction according to recognized rules of procedure. No law shall be passed declaring an action to be a crime and punishing a person who committed it if that action was not a crime at the time it was committed. No law shall be passed which would impair the obligation of contracts." I believe there is some error in the lines inasmuch as we are amending an amendment which is not engrossed.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: I certainly wouldn't want to see us take out those words "in punishing such action." In my own classroom I think the most vivid example I've always used of ex post facto law is the case of Hungarian students in the 1956 uprising. Remember, they could not be accused — they could not be executed under Hungarian law because capital punishment was not for those under eighteen years of age. Yet they had a maneuver in Hungary; they took these youngsters and kept them in prison until they were eighteen years old and then

they were executed. And I would suggest that punishment for a crime was thus increased after the crime was committed as opposed to just the trial and the bringing of charges against them. And in that case I think that punishment very definitely remains a part of the ex post facto definition.

DELEGATE VOGEL: It is in the definition declaring an action to be a crime and punishing the person who committed it.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Two of our goals in constitution writing are brevity and legal preciseness. I oppose the amendment or the amendments as the case may be, because Delegate Daniels' amendment says in 65 somewhat unclear words what the Committee Proposal says in only 19 very precise words.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: In support of Delegate Dobson's desire for precision and terseness, I would suggest that we don't need this in the Constitution at all because I can't think of a bill of attainder or an ex post facto law or a law impairing the obligation of a contract which is not also contradictory to the equal protection clause which we have or the due process clause.

PRESIDENT WENSTROM: I wonder, Fellow Delegates, at this point if it wouldn't be a good thing to have the Clerk read the amendment as offered by Delegate Daniels, and then read it with the amendment to the amendment as offered by Delegate Vogel so we have some idea of just where we are.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I am confused. I wonder if we could hold this over until tomorrow and have it all in writing. I don't have the Daniels printing in front of me. I heard it read. There's another amendment to that. May we have it in writing before we vote on it as it's been amended?

PRESIDENT WENSTROM: Delegate Jestrab, if you so move and the Convention orders that, you will have it in writing before you vote on it.

DELEGATE JESTRAB: I so move.

PRESIDENT WENSTROM: Delegate Jestrab moves that the amendment be prepared and placed in writing, and that it be placed before the delegates before they vote.

DELEGATE BINEK: Second.

PRESIDENT WENSTROM: The motion was seconded by Delegate Binek.

DELEGATE DANIELS: Mr. President.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: I had these placed on the desk yesterday. There should be a copy.

PRESIDENT WENSTROM: Delegate Daniels informs the Chair that her amendments to Committee Proposal No. 1-98 were placed on the desks as of yesterday.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President: I haven't had a great deal of luck with motions, but it seems to me that this situation is similar to the bill that came from my committee which just ran into trouble. We don't exactly understand what the amendment situation is. I wonder how much support I would get on a motion that we delay action for one Convention day. I so move.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE QUAM: Second.

PRESIDENT WENSTROM: Seconded by Delegate Quam that we delay action on Committee Proposal No. 1-98.

We did have Delegate Jestrab's motion in front of us.

DELEGATE JESTRAB: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I would withdraw my motion and hope that Delegate Haugen's motion would be accepted. That is agreeable.

PRESIDENT WENSTROM: Delegate Jestrab withdraws her motion.

Are you agreeable, Delegate Binek?

DELEGATE BINEK: Yes.

PRESIDENT WENSTROM: He's agreeable.

The motion then before us is Delegate Haugen's motion that we delay further consideration of Committee Proposal No. 1-98; that it be laid over one Convention day.

As many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it, and Committee Proposal No. 1-98 is before the Convention.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President: I think that we've had a pretty thorough discussion of the general idea here. Even though I am sure it is true that there is considerable confusion. The argument of Delegate Pearce appeals strongly to me. So, therefore, I move the previous question.

DELEGATE DOBSON: Second.

DELEGATE NETHING: Need some seconds?

PRESIDENT WENSTROM: That is a sufficient number for seconds. We will take Kwako and Litten and Nething and Poulson and Stanton as the five-member Rule.

The question here we are on the amendment as offered by Delegate Vogel, the amendment to the amendment. The previous question has been moved, which is to vote immediately. Now it takes a two-thirds vote to adopt the previous question motion, so as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. We are on the question of adopting Delegate Vogel's motion to amend the amendment.

DELEGATE HOUGEN: Mr. Chairman or Mr. President.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: I don't know if this question is in order at this time or not. But Delegate Omdahl did make some comments that led me to believe that perhaps this isn't necessary at all.

PRESIDENT WENSTROM: Delegate Hougen, I'm afraid the Chair will have to rule you out of order. We are to vote immediately.

The question now is voting on the — adopting of the amendments of Delegate Vogel's, the amendment to the amendment.

As many as are in favor of the motion will say "aye;" opposed "no." And the amendment to the amendment lost.

Now we are on Delegate Daniels' amendment. Now that is open for discussion.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: I hope this is a proper time. Delegate Omdahl's made some comments that indicated to me that perhaps the entire section was not necessary. And if I could I would like to have Delegate Pearce comment on the comments that Delegate Omdahl made, if he still recalls what they were.

PRESIDENT WENSTROM: Does Delegate Pearce wish to comment on the question raised by Delegate Omdahl?

DELEGATE PEARCE: I'd be glad to.

This may be the only time in this whole Convention somebody wanted me to talk.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I recognize the basis for Delegate Omdahl's remarks. However, if we were to do that in every instance, why we might just adopt the Constitution of the United States by reference and eliminate all other guarantees. I feel that we are not doing that. As I understand it, we are preparing a document which we will submit to the people of North Dakota.

We've already left some things out of the Constitution that I didn't want left out; Section 1 of the Constitution, the right to acquire and possess and own property. I didn't want to leave that out. Because for one thing I can see people who do not want this new Constitution to pass going around reminding people of all the

things that we left out. And this is one of the kinds of things that I don't want to leave out because I don't want that kind of criticism of the Constitution.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Further discussion?

The question is on the adoption of Delegate Daniels' motion to amend.

As many as are in favor of its adoption will say "aye;" those opposed "no." The "noes" have it and the amendment failed.

We are now back on the amendment — or we are on the proposal, Committee Proposal No. 1-98 without any amendments as offered.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: We do have in the Bill of — in the Bill of Rights we do have an equal protection clause that will apply to North Dakota people in our own Constitution. It's an equal protection clause in reverse, but nevertheless it's been construed by our courts to be an equal protection clause. And we do have a due process clause coming through that I don't think has been acted on yet. So we do have those provisions to protect us from ex post facto laws, bills of attainder and laws impairing the obligations of contracts.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-98.

Those in favor of passage will vote "yes," those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 79 "ayes," 14 "nays," five delegates absent and not voting. Committee Proposal No. 1-98 has passed.

Fellow Delegates, how long do you want to work? Or do you want to call it a day? It's now a quarter after five.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I want to remind the people on the Style and Drafting that we're going to meet at eight tonight. I would appreciate it if we had time to eat.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Didn't we omit committee reports?

PRESIDENT WENSTROM: No, we can still take committee reports.

DELEGATE HERNETT: I thought that was the idea. We've got a few, I think.

PRESIDENT WENSTROM: We can take committee reports or we can —

DELEGATE HERNETT: I mean these new proposals.

PRESIDENT WENSTROM: We had but one; we took that.

DELEGATE HERNETT: That all you have?

PRESIDENT WENSTROM: That's all we had.

DELEGATE HERNETT: What committee was it from?

CHIEF CLERK GILBREATH: Executive Functions.

PRESIDENT WENSTROM: Executive Functions.

DELEGATE HERNETT: Okay. I missed it.

PRESIDENT WENSTROM: Let the record show that Delegate Hernet missed the committee report.

Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President, is it all right that I should move for a bill of attainder of some food?

PRESIDENT WENSTROM: No. I think we have to rule that out of order, Delegate Rundle.

Delegate Diehl moves, and Delegate Christensen seconds, the motion that the absent delegates be excused.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the absent delegates are excused.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: In view of all of the problems that we have just had in going through the Latin terms that some people want and some don't, for your consideration, sir, I might offer at this time that we would consider the adoption of a motto for this convention which, according to my counsel, Mr. Pearce, reads: *Nili illigitimati non carborendum*. Roughly translated, it means "Don't let the bastards wear you down."

PRESIDENT WENSTROM: Any further committee reports on the order of that recently presented by Delegate Miller?

Hearing none — Delegate Hoffner, did you have something?

DELEGATE HOFFNER: Mr. President: I was just going to announce to the membership that the Committee on Legislative Functions has ground out eleven committee reports this afternoon. And the calendar may look fairly short now, but I'm sure tomorrow it will look fairly long.

PRESIDENT WENSTROM: That is a good report.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: The Calendar Committee will meet at 8:40 A.M. tomorrow morning. President's office.

PRESIDENT WENSTROM: Any further announcements? We have the calendar here?

CHIEF CLERK GILBREATH: I believe the sixth order has one on it, 1-12. Under the tenth order of business I have Committee Proposals 1-38, 1-44, 1-116, 1-117, 1-14, 1-29, 1-16, 1-97 and 1-76, plus all that on your calendar starting with Delegate Proposal 2-2 and all the rest of them on the calendar.

DELEGATE AUBOL: Mr. President. Over here.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: This is more for Delegate Miller. But would the Clerk tell Delegate Miller what 2-2 is for tomorrow morning?

PRESIDENT WENSTROM: 2-2?

CHIEF CLERK GILBREATH: A new section to the Constitution of the state of North Dakota be created; both of which pertain to bill of attainder and ex post facto law.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: By action of the Convention you decided to take both the amendments that were offered by Delegate Daniels and the delegate proposal at the same time. Could you rule that, by the vote that was had on the delegate — Committee Proposal 2-2, it has been killed permanently and definitely?

PRESIDENT WENSTROM: I don't believe I could.

Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President: I move we adjourn.

PRESIDENT WENSTROM: Delegate Rundle moves we do now adjourn until nine o'clock tomorrow morning. Do we have a second to the motion?

DELEGATE PEARCE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Pearce.

As many as are in favor of the motion will say "aye;" opposed say "no." The "ayes" have it. We are adjourned until tomorrow morning at nine.

(The Plenary Session adjourned at 5:25 P.M., Monday, January 24, 1972, until 9:00 A.M., Tuesday, January 25, 1972.)

VOLUME XVII
(January 25, 1972)

MORNING SESSION

(The seventeenth day of the Plenary Session commenced at 9:15 A.M., January 25, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is David Knecht with the McCabe United Methodist Church of Bismarck, North Dakota.

REV. DAVID KNECHT: Let us pray.

We seek Your face, Almighty Father, at the beginning of a new day's labor, lest in its busyness, its frustrations, and its confusions we lose the meaning of our lives.

You hold in Your hands our past, our present, and our future. Keep us from being so enamored with the romance of yesterday that we miss the urgent claims of today and tomorrow. But keep us also from being so enthralled with newness and change that we sell for pottage the hard-earned birthright of our fathers.

We both confess, and rejoice in our humanness, but acknowledge our need of Thee, that You might equip our minds with stringent honesty, our hearts with reckless courage, and our souls with fervent sensitivity that we might, this day, offer up our fitting service, and celebrate life. Amen."

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call. The Clerk will open the key, you will record your presence.

Has every delegate recorded his presence? The key is closed.

Roll call discloses 93 present, five absent. A quorum is declared.

We will be on the fourth order — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 21st day of January, 1972, and recommends that the same be corrected as follows:

On page 244, in line 16, delete the word "Minority" and insert in lieu thereof the word "Majority".

On page 247, following line 8, insert the following:

"Committee on Preamble, Bill of Rights and Suffrage introduced;"

And when so corrected recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Revision and Correction of the Journal.

Any questions? Hearing none, as many as are in favor of the motion to adopt will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

DELEGATE KWAKO: Mr. President.

PRESIDENT WENSTROM: Delegate Kwako.

DELEGATE KWAKO: I'd like to move at this time to return Proposal No. 2-77 to the Convention from the Legislative Functions Committee and request the unanimous consent of the Convention to withdraw this proposal.

PRESIDENT WENSTROM: Delegate Kwako moves that Delegate Proposal No. 2-77 be returned to the Convention from the Committee on Executive Functions —

CHIEF CLERK GILBREATH: Legislative Functions.

PRESIDENT WENSTROM: — Legislative Functions Committee. Do we have a second to the motion?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: We have a second by Delegate Stanton.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Delegate Proposal No. 2-77 is before the Convention.

Delegate Kwako now requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-77. Hearing no objection, the request is granted.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Delegate Geelan asks for unanimous consent to withdraw Delegate Proposal 2-2.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Delegate Geelan asks unanimous consent of the Convention to withdraw Delegate Proposal No. 2-2. Is there any objection? Hearing none, unanimous consent is granted.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President: I can't ask the unanimous consent. I'll explain why. But I would like to appear on a matter of personal privilege.

PRESIDENT WENSTROM: State your privilege, Delegate Rundle.

DELEGATE RUNDLE: I ask that my short remarks be put in the Journal.

I'm asking that individual Proposal No. 3-21 — and don't look for it anywhere because it never had the dignity of becoming a regular proposal — but the reason it was introduced, it concerns the Supreme Court was going to reapportion under my plan. In the last session of the Legislature the Political Subdivisions Committee of the House, of which I was Chairman, worked on legislative reapportionment and passed a bill to the Senate. The Senate committee with Senator and now Delegate Hernet as Chairman passed the bill out. These plans were both rejected by the other body, and the conference committee worked on the matter for many hours. When it became apparent that no reapportionment bill would pass, I promised my committee that I would introduce a proposal at this Constitutional Convention which would have the Supreme Court of the State doing the actual reapportionment. The Proposal 3-21 was the result.

I thought I fought a good fight, and got beat in the Judiciary Committee by a one-vote margin. And this was also sent to the Legislative Functions Committee, which the subcommittee rejected it apparently, and sent me the "standard letter," I believe were the words used.

It became apparent that it wouldn't pass when several Justices of the Supreme Court said they did not want the job. The reasons given were three:

(1) We do not have the time nor the staff;

(2) We do not want to get the courts involved in politics;

(3) In case of litigation we would not be in position to finally rule because we had drawn the plan.

In this case, as some others, I cannot help but wonder if we were being more solicitous of the rights and wishes of the judges than we were of the rights and wishes of the other citizens of the State. However, the fact that the Supreme Court Justices did not want to involve themselves in more work, nor in ordinary politics, should exclude the involvement of judges of any kind in any reapportionment plan. Therefore, I ask that the Proposal 3-21 be given a decent burial in file 13. And I thank you.

PRESIDENT WENSTROM: Anything further then under the twelfth order? If not, we will go on the sixth order of business.

CHIEF CLERK GILBREATH: Delegate Longmire has moved that the amendments to Committee Proposal 1-12 as recommended by the Committee on Judicial Functions and Political Subdivisions as printed on pages 255, 256 and 257 of the Journal be adopted.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: In view of the fact that these amendments are quite lengthy, and the fact that we will try and explain the changes that we've made, I move at this time we dispense with the reading of the amendments.

PRESIDENT WENSTROM: Delegate Longmire moves we dispense with the reading of the amendments. Do I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Litten. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

We will dispense with the reading of the amendments.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: The delegates will notice in checking the report, that I hope is in all of your books at this time, that it would appear in the beginning that we are tearing Proposal 1-12 apart. That is not true, however. We felt that we could start with the main body of the Proposal and more or less rewrite it because it would be easier to understand and also it would all be before you as it will be in its final form if we pass it without minor amendments in some of the sections and rewriting of one or two sections.

The first five sections have little or no changes whatsoever from the old proposal or the original proposal that was introduced. We merely changed some words there; instead of referring to "general laws of the state" we used the phrase "provided by law" in order to make this uniform with other provisions or other statements in other sections of other proposals.

Going to Section 6, you will note that we have shortened that section considerably. We merely leave in one short sentence providing for home rule for counties and cities, and leave it to the Legislature to provide the details for providing for home rule and the procedures to be followed.

Going on to Section 7, optional forms of government, you will note in the amendments that beginning with the second sentence we have deleted all of that paragraph. We felt that that was not necessary, and that again the Legislature could provide the details without putting in too many guidelines on the operational form of government. As a matter of fact, in the laws at this time there are many statutes that provide for the optional forms of government for counties. The trouble is, of course, we aren't using them.

Then into Section 8. We do not list the county offices that we are referring to there by name; however, we shorten that and state that all elected county officials as of this time will continue to be elected until, of course, a change is made as we provide in another section, which is a new section, a referendum. You will note in there that we referred to the old review board, county review board. We didn't think it was necessary to have another board; that the county governing board could refer the matters to the people without having an additional board to do this. And we took that out and put in a new section, which is Section 9 of the amendments. I won't discuss the details of those at this time; they will be on tenth order. But Section 9 is a new section which pulled out some of the provisions out of the old Section 8 in the proposal. And those will be explained more in detail tomorrow.

Section 9 then in the old proposal became Section 10 without any change in the amendments. Section 10 became Section 11 in the amendments from the old proposal. And no changes were made there. You will note that throughout the amendments provided for putting a title to each section. We felt this would be of some benefit to the Style and Drafting Committee. So basically we have not changed radically by these amendments the original proposal. We have worked over our language many times, hoping to streamline it and cut out surplus language. We hope that the Convention will adopt these amendments, and then we will explain the proposal more in detail on tenth order.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendments.

DELEGATE WALLIN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Wallin.

DELEGATE WALLIN: I'll ask Delegate Longmire, did we include Section 150 in our repealing section?

DELEGATE LONGMIRE: No, we did not, Delegate Wallin. We have a little problem on that. That section, as you know, was assigned to the Education Committee. However, as you know, yesterday in our discussion in our committee we felt that Section 150 should be repealed. And we were going to work that out with

the other committee. And we cannot offer further amendments at this time. But when ours get to the tenth order, if the Education Committee hasn't taken care of 150, we will.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-12.

Hearing no further discussion, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the amendments are adopted. Committee Proposal No. 1-12 will be on the tenth order of business tomorrow.

We'll be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: A majority of your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-83, has had the same under consideration and recommends that the same do pass.

Delegates Maxwell, Bender, Daniels, Fiedler, Geelan, Hubrig, Huckle, Lamb, O'Toole, Schmit and Urdahl.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

MR. PRESIDENT: A minority of your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-83, has had the same under consideration and recommends that Committee Proposal 1-83 be amended as follows:

On line 11, after the comma and before the word "the" insert the following: "provide for no party registration of voters."

Delegates Burbidge, Decker, Thompson and Tudor.

Delegate Maxwell, Chairman.

Delegate Thompson moves the report of the minority be substituted for the majority.

The committee reports are on page 245 of your Journal.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Minority Report, the Minority Committee Report, that the Report of the Minority be an amendment to the Report of the Majority.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: In view of all my experiences of yesterday, I wanted to add something to the remarks I made again today relative to the amendment.

It is my opinion, at least, that if we amend it in this way and add "no party registration of voters" that we would then have a voter registration system which would increase uniformity in the conduct of our elections. It would prevent disqualified people from voting, it could and would discourage corruption in lawful voting, and it would insure qualified voters their right to vote. And again I urge the adoption of the Minority Report.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: This is the second time we've been up on this. And I would urge that the delegates support the Majority Report in this particular proposal. North Dakota is one of the top five states in the Union for voter participation. Registration by locking it into the Constitution is a form of restricting the voting of the people of this State. Under the present statutes right now the various political subdivisions, the municipalities, could establish a voter registration.

I think what the real question is is do we want to lock into the Constitution a deterrent to voting? I think that it's necessary that we, who in North Dakota have such a high participation, tell our people that they still can have an opportunity to vote. Now there is an argument that this would cut down the confusion that may result from the different residences of people. I don't think it will. I find it very hard to understand how any demanded registration is going to solve this problem.

Another thing is that this is referred to as a "no party" registration of voters. Maybe at some future time the people of this State may find that it is beneficial

to have a party registration. There is no opportunity if this is put in the Constitution.

You have to go on the provision — the idea that people are basically honest and that you're going to give them an opportunity to show their honesty by participating in an election in the proper way. You're not going to, by putting in a registration, get rid of any of the problems that arose in Grand Forks the last election. This is a problem that is relative to the conduct of the election, not to the registration. And I hope that the delegates support the majority on this proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I think voter registration is an unnecessary inconvenience on an elector. In North Dakota we're unique among the fifty American States in not invoking such a requirement on our voters. Voter registration tends to be a vote block and deterrent to voting, and very often it becomes the greatest deterrent for those who already have the poorest voting record. People with the greatest stake in social change need to be encouraged to exercise their franchise rather than to make it more difficult for them. We cannot be proud of the large numbers of our people that now don't bother to vote even in a presidential election. It seems also that the non-voting population is ever increasing. Where we are now concerned about the small turnout of electors that will be voting in the coming election that will decide the fate of the work we are doing at this Convention, voter registration will surely be the greatest obstacle to those who work for employers where registration offices would be open only during working hours.

Transportation costs alone may be an obstacle for those who are less affluent in our society. I've heard it said that we need voter registration to prevent fraud. Surely this is not a problem facing us in North Dakota. Fraud has certainly been at a minimum. And there is no evidence but what fraud has taken place would have been avoided by a voter registration. Let us now not use voter registration like poll taxes have been used in the past to discourage certain groups from exercising their franchise. And I urge fellow delegates to support the Majority Report.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, Fellow Delegates:

The Minority Report was put in primarily due to testimony that we had from the League of Women Voters. The testimony that they gave to us indicated that where voter registration — and they didn't divide whether it was no party or party — but where there was voter registration the participation was higher than states that didn't have it. Now that's one of the main reasons that the Minority Report is in. We feel that more voters should be out and should be given the chance. But voter registration kind of gives the people a chance to steam them up a couple times, get them ready for an election. That was the main reason I feel it would be advantageous to have it.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE TUDOR: Yes, Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I would like to rise to support the Minority Report — thank you — even though I am a little hoarse. It's surprising to me that the so-called liberal majority in our committee have now suddenly become very conservative and I believe the minority have become the liberals.

I do not believe that any of these arguments or suggestions advanced are valid. It seems to me, coming from a state, Minnesota, where we've always, to my knowledge, had voter registration, this is a simple way of establishing residence in the state. When you move to a state — when you move to our state now there is no actual formal way of establishing your residence. In my precinct — and I use this word "my" advisedly — when you have voters move in I call on you and in this way register them and help them to vote. But they don't actually go through a registration process.

If we had a registration when an individual became of voting age he would automatically go to register. This might be a year before an election or two years or four years. So that I actually can't believe that any of these arguments are valid. I don't believe it would prevent people from voting, I think it would encourage many of our people to vote.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I rise also to support the Minority Report. I know that voting is a privilege. But I feel that with every privilege we have also, though, some responsibility. It has been shown by the Municipal League Report in our last magazine that when there is voter registration the number that are registered comes out in larger percent. I would rather have a registration with knowledgeable voters, or at least voters that have followed the issues that will be at the polls, than to have last-minute emotions go to the polls to vote.

PRESIDENT WENSTROM: Any further discussion?

Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, Fellow Delegates:

I saw this one coming so I dug out some of my political science books over the week-end to take a look at them and decide what I was going to do about my position. And I might say that Professor V. O. Key from Harvard, who has studied in detail I think voter registration more than any other political scientist, ends up concluding several things in his study. And I think they might be rather important to those of us who are about to make this decision.

He says: "Underlying a system of periodic registration is the assumption that it would produce a clean list of voters; those who died since the last registration, those who moved from the precinct and others disqualified in other ways will not be included then in the new voter lists. This is not priority assumption, however, and is unsupported by evidence and experience. In fact, most cities which are notorious for registration in election frauds are those cities which use voter registration systems. The decentralized election frauds, the less responsible conduct of registration officials in the polling places throughout often big city precincts particularly facilitate the padding of such lists. There has even been bi-partisan arrangements between registration officials so they can both falsify their list together.

I don't think we want to interject this kind of system on the State of North Dakota. I think under our present system we have a very good system in the sense that you know the person who lives in your area; the party poll watchers know these people. If they don't they can ask them to sign an affidavit that they do, in effect, meet the qualifications as a voter. And in that sense we have probably the most open voter registration system — and it's not a registration system, it's simply signing a poll book — in the United States. And I think we can be proud of it. And we can say that it is — as I have said around the country — that it is because we all know each other out here, because we all trust each other out here, and we know that a good citizen votes. We encourage him to come in under this kind of a procedure, rather than a rigid formula registration system which prevents people from voting if they are not already registered.

And I would address a question as to the status of the League's report on this to ask whether persons wouldn't really be kept away from the polls if they had not registered by a certain number of days? And I can't believe that that system would do anything but discourage voters who had not made the thirty, the sixty, the ninety-day prior registration requirement that is in existence in so many other states.

PRESIDENT WENSTROM: Any further discussion?

Delegate Thompson.

DELEGATE THOMPSON: Mr. President: I would like to just clear up one thing about the facts that have been given here. In 1960 of the ten states with the best voter turn-out, North Dakota was one of the number. Of those ten that had the lowest turn-out, three — Alaska, Texas and Arkansas — did not have voter registration. And at the present time the only state remaining without voter registration is North Dakota, which I think stands in its own stead.

PRESIDENT WENSTROM: Further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I can't let this opportunity go by to agree with Delegate Sanstead because it might not happen again. Furthermore, I can now go home and boast I knew a famous person.

I do not favor voter registration, never have. In widely-separated areas where people live a long ways apart they are simply not going to make another trip to register. I think our present system has worked well and the rules as applied in New York do not necessarily apply here. I support the majority position.

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President: I think that Delegate Lamb made a statement that we should recall here. If we put this into the Constitution we are going to tie the hands of the Legislature on this thing in the future. Perhaps it will want party registration, perhaps they will want to change the registration form some way or other. I don't believe this belongs in the Constitution, even though I may be in favor of a registration of voters.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: Delegate Gipp wishes to announce his presence to the Convention.

PRESIDENT WENSTROM: Delegate Gipp announces his presence.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I think that for ninety percent, at least, of the precincts in this state voter registration would be pure errant nonsense for the reason that in the local precincts everyone knows everyone else and it never is a problem. And this would just be additional burden on the voters of that precinct.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I am from one of those precincts that Delegate Maxwell is discussing. I have lived there all my life. And the thing that's convinced me that voter registration has merit is the simplicity that could be possible with it. Because at twenty-one years old I could have registered and would not have had to register again because I have never moved from the precinct. I think the delegates should be aware that this does not have to be a complicated procedure repeated unless someone changes residence.

But now we are faced with a more transitory population, and with the eighteen-year-old vote, and a problem of them voting in their school areas or choosing not to, whichever they prefer, I think to make the matter more orderly and to give them a better chance to qualify it would be wise to have voter registration. It's a simple procedure, and I think the changing times now require it.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Minority Report.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: The Louisiana Reapportionment Plan was recently thrown out. And the court, as it is quoted in the **National Civic Review**, listed several reasons for throwing it out. And may I read:

"The plans which evolved from that session were patently defective on several counts, first, the population of the districts deviated considerably more than was necessary, to almost fifteen percent, with variances ranging to twenty-six percent; second, voter registration rather than population was used as a basis for districting in many areas, a procedure which tended to discriminate against black and sub-urban populations."

Mr. President, I think that in the cases that I have read this sort of evidence is becoming more and more clear and more and more classic in court pronouncements. And if anybody hasn't read "Boss", the story of what's happened in Chicago, with this sort of tactic used, as this article says, patently discriminates against people, I think you should. I don't see that this is going to happen in North Dakota necessarily in the foreseeable future, but with the courts time after time suggesting that this is not a basis for permission to vote, I don't think it's a time for us to be putting it in our Constitution.

PRESIDENT WENSTROM: The question is on the adoption of the Minority Report. Will the Clerk read the proposed amendment?

CHIEF CLERK GILBREATH: Minority Report recommends that Committee Proposal 1-83 be amended as follows:

On line 11, after the "comma" and before the word "the" insert the following: "provide for no party registration of voters."

PRESIDENT WENSTROM: Again the question's on the adoption of the Minority Report.

As many as are in favor of its adoption will say "aye;" those opposed say "no." The "noes" have it. The report lost. The Minority Report lost.

DELEGATE THOMPSON: Division.

PRESIDENT WENSTROM: Now we have division requested?

DELEGATE THOMPSON: Yes.

DELEGATE STANTON: Division.

PRESIDENT WENSTROM: Five. Sufficient number. Division is granted.

Those in favor of adopting the Minority Report will vote "yes," those opposed will vote "no." The key will be opened, you will vote — record your vote.

Has every delegate indicated his choice? Any delegate wish to change? The vote is closed.

DELEGATE SULLIVAN: Mr. President.

PRESIDENT WENSTROM: Delegate Sullivan.

DELEGATE SULLIVAN: Delegate Sullivan reports to the Convention.

PRESIDENT WENSTROM: The vote indicates 31 "yes" votes and 62 "no" votes, five delegates absent and not voting. So the Minority Report was not adopted.

And Delegate Sullivan reports present.

The question before the Convention now is the adoption of the Majority Report. Is there any discussion on that?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the Majority — Majority Report is adopted.

Fellow Delegates, we are scheduled to hear a debate on Committee Proposal 1-11 at ten o'clock. It's two minutes to now. So we will be at ease for about two minutes.

(The Session was in recess from 9:58 A.M. to 10:02 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. The Convention will come to order.

CHIEF CLERK GILBREATH: Mr. President: A majority of your Committee on Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-11 has had the same under consideration and recommends that the same be amended, and when so amended, recommends that the same do pass.

Delegates Longmire, Roney, Engelter, Fallgatter, Gipp, Hartl, Hougen, Kessel, Kretschmar, Rundle, Wallin and Warner.

Delegate Longmire, Chairman.

Delegate Longmire moved that the report be adopted.

Mr. President: A minority of your Committee on Judicial Functions and Political Subdivisions to whom was referred Committee Proposal No. 1-11 has had the same under consideration and recommends that the report of the minority be amended and when so amended recommends the same do pass.

Delegates Aubol, Bassingthwaite and Hoghaug.

Delegate Longmire, Chairman.

Delegate Aubol moves that the Report of the Minority be adopted.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Minority Report.

Now, Fellow Delegates, I think you will all recall that when this was discussed just a few days ago I believe it was — in fact, it was on Friday, January 21st — that we did set up special, may I say, ground rules for hearing this particular proposal. So at this time if you will turn to page 248 of the Journals you will find the rules under which we will proceed at this time.

The Chair at this time would recognize the Chairman of the Committee, Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: I was planning to suggest that the Secretary read the motion to remind the delegates of the procedure. However, you have referred the delegates to the place in the Journal where the motion is stated and perhaps that won't be necessary.

There has been a little misunderstanding, however, of the motion. And I think that was eliminated in our committee yesterday when we discussed it.

Our committee has assigned to various members of our committee certain sections of the proposal, if the Majority Report prevails, to explain to the Convention. I would like to alert the members who have received those assignments at this time that after looking at the motion again I believe we interpreted wrong. I think I told you yesterday that you would be speaking or making your explanations tomorrow. However, in checking the motion it looks like that we asked that the Rules be suspended and the motion passed, of course, and that we have it on tenth order today. So I hope that you committee members who were assigned various sections will be ready today. If not, I will be glad to offer a motion to carry it over. But if you are ready we certainly would like to finish it today.

Now, Mr. President, by way of just a brief explanation, the only difference in these two reports, the majority and the minority, is the manner of selecting judges. In other words, they differ only in Sections 7, 8 and 9. The Majority Report recommends that we continue to elect our judges, Supreme Court Judges and District Judges, with some additional changes in the manner and with the adoption of what was known as a Utah Plan for selecting a judge if he does not have opposition and if he was an incumbent. The minority, on the other hand, feel that judges should be appointed and no doubt will state to you their position and explain to you the procedures that are to be followed in that connection.

We have selected four people to speak from our committee for five minutes each, as you will note in the motion, and then of course we invite open floor discussion from anyone who can offer any light on the subject as to how we should do it. This is an important matter to come before the Convention naturally; it was important enough to people who voted on this issue twice in recent years. And so the people then that have been assigned will be Delegates Bassingthwaite and Aubol who will speak for the Minority Report, and then Delegates Kessel and Roney will represent the committee in speaking for the Majority Report.

So, Mr. President, I ask you then to recognize at this time Delegate Bassingthwaite, who will speak in favor of the Minority Report.

PRESIDENT WENSTROM: The Chair will recognize Delegate Bassingthwaite.

DELEGATE BASSINGTHWAITE: Mr. President, Fellow Delegates:

The reason for the Minority Report is to put forth the plan in consideration of this event with the hope that the plan will be submitted to the electorate for its approval at the special election. The Committee on Judicial Functions and Political Subdivisions received testimony from the North Dakota League of Women Voters favoring the merit system in selecting the judges, one of the Judges of the Supreme Court also testified before the Committee in favor of the merit selection of judges, some members of the Bar Association testified in favor of the merit plan. It appeared to be the feeling of the members of the Bar Association testifying in favor of the merit selection plan that they could not risk their private law practice by running for the office of justice or judge. If they were selected by a nominating commission and were appointed, they seemed to feel that they would more seriously consider accepting a position of judge or justice.

The merit selection plan is often called the Missouri Plan because that was the state which first implemented it. It is not an idea which was exclusive property of the State of Missouri, as it was first put forth by the American Judicature Society in 1914 and since that time twenty-one states have adopted some form of the merit selection system.

The merit system has three basic components: First, nomination of qualified judicial candidates by a non-partisan commission composed of members of the legal profession and of laymen. Second, appointment by the governor from the names submitted by the nominating commission. Third, the electors voting by non-political ballot on the approval or disapproval of judges.

Of the three basic components, the non-political nominating commission is perhaps the most important feature for it insures that only the best qualified men will be selected for judicial office.

The second section of the Minority Report calls for the appointment of judges. The Justices of the Supreme Court and Judges of the District Courts are to be appointed and hold their office until their successors are duly qualified and are to receive compensation as provided by law.

The Minority Report calls for the creation of a judicial nominating commission which is to select three nominees for appointment by the governor. The commission is to consist of a Chief Justice of the Supreme Court acting as chairman, one member of the legal profession from each of the Judicial Districts, and one citizen from each Judicial District.

It is possible in this way to have a geographic distribution of members of the commission to select judges. The system of divisions of the judges will be selected on the basis of merit and not on the basis of political affiliation. To insure this, members of the commission are not allowed to hold an elective office in the state or federal government and are not to hold an office in a political party. The nominating commission is to present the governor with a list of three qualified candidates for each office and the governor is to make the final selection from these three candidates.

The people will have a voice in the vote — a vote in the choice of who is to be judge even though the best have already been selected by the committee; that is, at the next general election after the expiration of three years from the date of appointment, and every ten years thereafter, the Judges of the Supreme Court are submitted to a vote of the electorate. And if the electorate votes a man out of office, the judicial nominating commission will make another investigation and select three nominees for the office, with the governor appointing from the list again. The same system applies to District Court Judges who are voted on every six years rather than every ten years as for Supreme Court Justices.

The Minority Report envisions that by creating the judicial nominating commission and having it screen the candidates for office of judge, only the best qualified men will even be considered for the office of judge; that is, only the best legal men will be recommended by the commission. In this way, the people of the state are assured of a competent and fair judiciary. The people are not deprived of a voice deciding who the judges are to be, because they can vote a justice or a judge out of office if he has not been performing his duties.

Judges are presently elected in this state, and there is no screening of candidates to insure that the judges are well qualified to hold office for which they are elected. This system — this system we propose so that the citizens of the state will have some assurance that they shall have the best possible judiciary.

Mr. President, I now yield to Delegate Aubol.

PRESIDENT WENSTROM: The Chair will recognize Delegate Aubol.

DELEGATE AUBOL: Mr. President, Fellow Delegates:

It's almost embarrassing for those of us in a Minority Report to oppose the Majority Report because we worked hard and long with the majority to present an article that is basically sound, a report that in many respects is a great improvement to the provisions of our present Constitution. We are in such general agreement, in fact, as Chairman Longmire pointed out, that our report is identical to that of the Majority Report on all points except one. And it is because we were in general agreement, it is for that reason, that the Minority Report which you received

yesterday contains only those three sections which represent our exceptions to the Majority Report.

And, Delegate Pearce, we are certain that you will appreciate our respect for the budget by not using more Xerox paper than was necessary. We are sorry, in fact, that we had to use any at all.

But we do feel that the Majority Report does have one deficiency; that deficiency touches on the key to a good system of justice in North Dakota. The Majority Report, for all its merit, does not speak fully to the question of judicial competence at the time a person enters the judicial branch of government. As Delegate Bassingthwaite has pointed out, our report calls for a judicial nominating commission to look over prospective judges, to interview them, to inquire as to their qualifications and temperaments — temperament and then recommend three names to the governor for appointment. Three years after the appointment, and periodically thereafter, the people render their judgment as to the competence of the judge.

We are concerned about three things: The qualifications of a judge at the time of his entry into the system, the right of the people to periodically pass judgment as to his continuing competence, and the assurance that some non-qualified appointees will not be allowed to out-politick him and cause his defeat. The Report of the Majority unfortunately does not touch fully on this critical point of entry.

If you will look at the Majority Report, you will note that the majority still calls for competition at the end of a judge's term only. Only if there is no challenge are the people given the opportunity to say "yes" or "no" on the question of retention. The Majority Report also allows the governor to fill the vacancy through election rather than through appointment. Both of these provisions of the Majority Report have to do with the question of qualification at the entry level. There is no assurance to give — there is no assurance given that only the most qualified persons will be given the opportunity to serve.

The report perpetuates an unnecessary game of chance in that branch of government that is too critical to the lives and to the welfare of too many people to be left to chance. Our report does not guarantee success in every instance, but it does take some of the gamble out of it. All we're asking is that this Convention offer to the people of this State a system of justice that will provide them the most qualified judges available. We ask only that the chance factor in justice be reduced.

Arguments have been advanced, and perhaps will be advanced again, that our state has fared pretty well under its present system of non-political election of judges; that we haven't been abused by judicial corruption that is found in some states. In no way are we attempting to discredit our present judiciary. We have fared pretty well; and we have, as far as I know, been free from corruption. But in this area we are not gamblers. In this area we do not think it should be necessary for years before a campaign can be mounted to resist judicial incompetence. We do not think that the people of this state should rest on the possibility that maybe he will quit, maybe he will resign, maybe Joe will oppose him in the election. In this area of "maybes" we are not gamblers.

The argument has been advanced in the past, and will perhaps be advanced again, that we are a small neighborly state; that we know our judges and their qualifications and we don't need any nominating commissions telling us who is or who is not qualified. To a part of this argument, we will agree. We are small and we are neighborly. But as was pointed out at the Highway Auditorium the other night, we aren't always acquainted with our judges. For those of you who weren't there last week, perhaps the story is worth repeating. A delegate to this Convention, a member of our committee, had the opportunity recently to speak to a local civic group; a group that is generally recognized as being interested in public affairs, a group that is generally recognized as being informed on the workings of government. And yet when that group of young men was asked to name a single one of the five Justices of the North Dakota Supreme Court, that group did not name one. Nor could one member of that group identify one of the District Court Judges serving in that area. And only one member of that group could name the Judge of the County Court of Increased Jurisdiction.

We submit that this is not an isolated case in our state or in any state. A recent survey in another state revealed that nearly all the people interviewed could remember the name of the gubernatorial candidate immediately after the election, but

that more than seventy-five percent of those who voted for a judge could not name one of the judicial candidates. And in one well-established rural area of that same state in this survey the percentage that could not remember the name of the judge shot up to ninety-five percent. Just how close are we to our judges?

Admittedly, our proposal will not cure this ill. It will, however, give some assurance that consideration will be given to the qualifications of an attorney before he is nominated, before he is appointed, before he gets a chance to enter the judicial system.

The argument has been advanced, and will perhaps be advanced again, that the proposal which we are offering has been submitted to the voters of this state in the past and has been defeated. There is no need to dispute this, for it's true. We suggest, however, that all of the decisions of this Convention cannot be based on the results of particular elections of the past; especially when the judicial question in those elections was not one of the primary issues on the ballot, especially when about one-fourth of the voters in those elections did not indicate their preference one way or the other on the question, especially when the abstracts of those elections show that in those areas where a concerted effort was made to explain the proposal, the proposal did, indeed, carry, and especially when in those same areas in 1968 more people voted on that question than voted for the incumbent Justice of the Supreme Court who was running on the polls. We have confidence that the people of this State will appreciate the merits of this plan, will appreciate the logic of the proposal if we are given the opportunity to hear the arguments pro and con, if a proportion of this Convention's publicity is put behind it, and if the choices are stated in a clear and a concise manner.

The argument has been advanced, and perhaps will be advanced again, that the merit system will take away from the people their voice in a branch of government. There might be some truth to that. It is true that we will not be able to run our favorite attorney for the office of District Court Judge; it is true that an incumbent judge will not be opposed by a candidate when his term is up. But it's also true that our present system has not been too successful in this effect, that of giving the people an effective choice. Of the nineteen judges now serving in District Courts, only one is there as a result of defeating an incumbent, and only two others have ever even been challenged as incumbents.

From what we gather, these three considerations will correct this situation: First, attorneys who would qualify as judges are generally reluctant to go to the expense and rigors of the campaign at a time they are establishing their law practice; secondly, an attorney's standing in court is often compromised if he opposes an incumbent judge and is not successful; and, thirdly, it does not appear to be the nature of those who are potentially qualified for judgeship to want to assume that office through the campaign trail. It has been said that a campaign is a test of strength, that it takes intestinal fortitude, stamina and courage. That might be true. It also seems that it might work to betray the system it professes to support.

The proposal we are offering does give the people a choice, and it does give the people a voice. It gives the people a voice when you get to the heart of the question; fair, competent, honest and responsive judges.

We have, Mr. President, talked for the good of many delegates of this Convention. With very few exceptions we have heard that the greatest competence can be had through the merit system. We feel that it is the responsibility of this Convention to offer the people of this State a system that will assure them the justice they expect and to which they are entitled. We hazard the opportunity to exercise the leadership and the foresight that the voters of this State expected and requested when they authorized the Convention in 1970.

Mr. President, I yield at this time to Delegate Kessel for the majority.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. President, Fellow Delegates:

When our committee met the first time in the early summer we all detected a slight leaning, I believe, toward the appointive system. However, as we got into the work and we studied the initial delegate proposal submitted by one of the delegates not a member of our committee, referring to the appointive system, we thought we better go into the merits of this particular proposal and have hearings from the public.

As we examined the proposal that was submitted to the electors in 1968, and also the one that was submitted in 1966, we immediately began to think a little bit seriously about the fact that the people had this explained to them on several occasions and that maybe we just better — we better at least consider the choice of the people. In November of 1966 82,000 voted against such a plan and 73,000 voted in favor of it.

Then much work was put in, mostly by the State Bar Association, trying to educate the people and more in favor of the Missouri Plan than the original. Again after a great amount of publicity, and after many of the lawyers all over the State went to their own communities and attempted to educate the people, they came back out and defeated the Missouri Plan proposal 58,230 to 45,926.

Our hearings continued. We had the members of the Supreme Court appear before us. Four of them appeared; three of them very strongly favored the election system, one of them favored the appointive system. The one that did not appear was contacted and he also very strongly supported the appointive system.

Then we had regional hearings all over the State. The question was presented to the people. How do you feel about the selection or appointing of judges? Approximately seventy percent of the people favored the elective system.

Newspaper polls were conducted all over the State, and many of the weekly newspapers carried these polls. And wherever they were carried approximately sixty-seven percent of the people wanted to continue the elective system.

We had a plan submitted to us by the State Bar Association. And, strange as it seemed to us, this plan provided for the election of judges.

We had several delegate proposals that came out of committee. These provided for the election system. This all up to this time sort of presented a mandate to our committee, at least the majority of it, that we do have to sell what we are going to propose to the people. And we did not have too many arguments what the people have felt should be considered.

We considered the make-up of the present courts. We found that from the nineteen District Court Judges eleven of them have already been appointed, eight of them have been elected. This again dimmed our view on this matter of forcing the appointment. We checked the Supreme Court Justices; we found that two of them were appointed and eight elected — two of them were appointed and three elected.

We discussed this quite thoroughly amongst our members, and we felt that there was some room for compromise. We therefore did, under our present section on the Majority Report, Section 14, provide that a judge who runs unopposed must run against his record. If the majority of the people feel that he has not qualified as a judge, then a vacancy occurs and the method of selecting a judge under the vacancy would then occur. We felt this is good; that any judge who is on the bench, if he cannot obtain the majority of the electors' votes in an election, that there should be a vacancy. We are satisfied, as I know you all are, that if the judge is so incompetent in his duties that the press of our state and the people of our state will bring this out and he will receive a "no" vote.

We then also compromised further in this matter and in the matter of the vacancy. Our Section 13 of the majority provides for the appointment by the governor from a nominating committee selected by the Legislature. The governor then must select a judge for the balance of the — not for the balance — up until the next election, and then the election system goes into effect again. Or the governor may, in his discretion, call a special election. We feel this is an improvement over the present section.

But, at any rate, after giving this all this thought and consideration it is quite interesting to find that of the fifteen members of our committee, seven of them were attorneys, eight of them were laymen, and that all but three are in favor of the elective system. This cannot speak too badly about our present system, and we urge your support of the Majority Report. Thank you.

I now yield to Delegate Roney.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Mr. President and members of this Convention.

I'd like to digress for a moment. I have been here for fifteen days sitting next to Chairman Longmire in committee meetings, and now on the seventeenth day of

Plenary Session, and I'd like to have him know that my name is Roney, it's not Rooney for you people who are in doubt. This Irishman came to Ireland by way of Scotland, and my Scotch ancestors took one of those "O's" out of there.

Mr. President, we are talking about something not so controversial; it's almost like having a cake and everyone wants a part of it except that some of us like chocolate cake and some of us like a light-colored cake.

When we talk about the appointment system or the merit system as proposed by the minority and that report submitted by the majority, we are really not too far apart. The only change that we have made in there is that in the event of a vacancy, in the event that the governor fills the vacancy, he is now given two choices; either he must appoint someone to fill this vacancy either to the Supreme Court or to the District Court from a list furnished to him by a nominating committee — this nominating committee we have left to the Legislature to provide, the Minority Report sets up how the nominating commission will perform — or under the present Constitution the governor may make an appointment from anyone in the District, in the case of a District Judge, or anyone to the Supreme Court to fill that vacancy. As a matter of course he has asked for a submission of names, and he may use those names or he may reject them. We are now saying that he must accept the list of names submitted to him or in the alternative he may call a special election.

We have found that the courts, because of illness of judges, the illness of justices, and the cases of affidavits of prejudice being filed against judges where they could not sit, have been adequately been able to take care of their caseloads even for prolonged periods of time in the event of a vacancy.

One of the things that we object to in the Minority Report is the submission of the negative vote to retain a man in office. Because he does not — the people do not know who they are voting for even though they are rejecting someone and they do create a vacancy. I know that this is true in part of the Majority Report, but we are hoping that someone will find opposition to the candidate.

Now, everyone has alluded to the last two elections whereby the people have rejected the so-called merit system. Now the first time they did it by a fifty-four percent of the vote and the second time by a fifty-six percent of the vote. The polls that were referred to, sixty-seven and a half percent of the people who answered the poll in eight county newspapers favored the election of judges. The two polls that were conducted in those regional meetings that we had, one of those favored the election of judges by seventy-seven percent and the other by seventy-eight percent.

Now there's one other thing that I think that we should look at. There are three branches to our government. And we are not proposing, nor have I heard anyone say, that we might get a better governor if we got a commission to appoint him. The people want to elect three things; they want to elect the people who represent them in the executive branch, in the judicial branch and in the legislative branch. They have expressed this desire time and time again. Why should we deprive them of the right to vote for the judiciary when we have not deprived them of that right under any other branch? I think that true democracy means that we will let the people elect our judges. And, therefore, I ask you to oppose the Minority Report.

PRESIDENT WENSTROM: Is there any further discussion?

We are now down to Item C on the Rules adopted, and that reads: "There be open discussion of both Minority and Majority Reports following the explanations under Section A and B hereof."

So if there is any discussion to be offered by the delegates of the Convention, now is your time to take the floor.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I want to say a few words in support of the Majority Report. Having lived in this State a long, long time and seeing its activities, I can only recall one instance where a District Judge was called to account for any conduct and that was not because of inability or any inefficiency except alcohol. That happened many, many years ago. And I was well acquainted with the presiding officer of that impeachment proceedings, and discussed this situation with him on several occasions. With that exception North Dakota has had one of the most out-

standing judicial systems in this Nation. And I would certainly very much regret to see that right taken away from the people to elect these judicial officers the same as all of the other officers.

You want to recall that our National Constitution, Article IV, Section 4, guarantees to every state in this Union a republican form of government or representative form of government. And when you start taking the right to elect away from your voters, you are taking away part of that right guaranteed by our National Constitution. So I urge the Minority — the Majority Report be sustained.

PRESIDENT WENSTROM: Further discussion?

DELEGATE FALLGATTER: Mr. President.

PRESIDENT WENSTROM: Delegate Fallgatter.

DELEGATE FALLGATTER: I speak in opposition to the Minority Report. In Section 9 of the Minority Report provision is made after the expiration of three years for the election of the Supreme Court and District Court Judges. It would appear to me that an electorate that is competent enough to make the decision to retain a judge in office is competent enough to make the initial selection of what judge they want in office. The electorate has repeatedly and emphatically expressed their desire to select and elect their officials in office in preference to the appointive system. It would seem prudent to me to leave this wish of the people.

Progress does not necessarily come about by changing our ways. Let us not be hasty about relinquishing a judicial system that has proven workable and effective for many years.

I would urge the delegates of this Convention to defeat the Minority Report and support the Majority Report on Proposal No. 1-11.

PRESIDENT WENSTROM: The Chair will recognize Delegate Pearce.

DELEGATE PEARCE: Mr. President. I don't think I really need to say anything; everything has been said. But as a lawyer I would feel that I were remiss as a delegate to this Constitutional Convention to not speak something in defense of our judicial system.

I would like to remind all the delegates, and I'm sure they have it in mind, that the judiciary is one of the three great branches of our government. It is one of the most necessary branches. And it is one of the real tests as to the success of our government, whether it can set up and maintain a system for the disputes not only between the citizens but between the citizens and its own government. And there are many. The test of any government is to provide an orderly means of settling all kinds of problems; civil disputes as well as criminal matters.

For a great many centuries in most parts of the world the judges were a part of the overall government which the people regarded as oppressive, and like many serious things, it becomes the subject of humor. As the man who said, "What's the use of suing the federal government; they've got their own judges?" There's a feeling in that. The federal system has been pointed to as an example of the appointment of judges being a feasible thing. I think it's the only way it could happen for a government as big as the United States of America. If we were to elect judges we would either have to elect them on a regional basis, in which situation at least they would not be truly federal, or we'd have to elect them nationwide, which would for all intents and purposes be an impossibility.

I have practiced law in North Dakota for almost thirty-eight years. And in that time I have known every Judge of the Supreme Court and every Judge of the District Court in North Dakota and some of the first ones I knew were survivors from much longer back than that. And I have known a great many of the Judges of the County Courts, and I've known Justices of the Peace. And I think I'm quite familiar with the judicial system of North Dakota. I have known the men who were appointed in the first instance or reelected, and I've known the men who were elected in the first instance. There has never been, as Delegate Cart said, a corrupt District Judge or a corrupt Supreme Court Judge in this state. Judge Cowan, who was the subject of the impeachment proceedings for imbibing perhaps too freely in the wrong circumstances, was acquitted. So I presume that he's innocent.

I feel that to remove this election of the judges from the people would add to what I think is a sad distrust of government that seems to be growing. The people are not trusting so many people in whom they have had no choice of selection.

They don't feel that they are theirs. I can recall one time when there was a proposal which went on the ballot in North Dakota that the governor of North Dakota shall appoint all the officials of all the cities and villages. And I can tell you the reason why that was proposed. It had nothing to do with this. But what a horrible situation that someone had given the powers and the wisdom of Solomon to take away from the people the right to appoint their own governors. I'm not even sure that Solomon was as wise as his reputation. My recollection is in the Bible his reputation for wisdom was based on one case in which he was to decide who was the real mother of a child. And I would suggest that that decision was based on psychology than it was based on law.

I feel quite strongly as a lawyer, as one who is experienced in dealing with the judiciary that we should continue to elect judges. I'm not surprised that many people can't name the judges. I would suspect we could find a great many people who couldn't name the delegates to this Constitutional Convention from our own districts. I want to keep on electing judges.

PRESIDENT WENSTROM: The Chair will recognize Delegate Vogel.

DELEGATE VOGEL: Mr. Chairman, I feel that I am indeed a brave woman to rise at this particular time to oppose so articulate a defense of our present system. But, nevertheless, I do feel that there are points with which I would like to take issue.

I think that one of the most widely held misconceptions today is that the people of the State of North Dakota play a very important part in deciding who their judges shall be. In the last twenty years only two of the District — of the Supreme Court Judges have been opposed when they ran for reelection as incumbents. And in one of those cases the incumbent had been in office for only a couple of months, so that he had not really achieved the status of an incumbent. In the years between 1960 and 1970 eighty percent of the District Court Judges ran without opposition. And I think that in an election in which there is no opposition, in which the voter has no choice except to vote for the one name in front of him or else not vote at all, is not really very much of a choice.

And it's understandable why there are so many unopposed cases. Because for a lawyer to run against an incumbent judge is, to some degree, to impugn the ability or the qualifications or the honesty of that judge. A judge is not like another candidate for office; he cannot say, "My policy is a different policy. I will administer justice in a different way from my predecessor." The case is a different one; and it is this very fact which perhaps results in our having so few candidates for judge. Because in many cases the very qualities which make a man a good judge are those qualities which make him a poor campaigner. A judge should not have to go out and ask for support; he should not have to go out and ask for money for his campaign; because these, in a sense, are opposed to the judicial code of ethics. He should not be responsible to some people or groups of people for his support. I think that since there is so rarely any opposition to an incumbent judge and the public is given no choice there, the crucial point is the selection of candidates. At the present time if there is a contest, the voter is faced by two people about whom he knows nothing and then he does not have the means to investigate the qualifications of those two people.

I think that one of the reasons people polled have opposed the appointive system is because they haven't been asked: "Do you support the election of judges or the appointment of judges?" The Missouri Plan which we have — are considering, the merit plan, is not an appointive system. It is an appointive-elective system under which the people would have more say in the selection of judges than they do at the present time. Because they would have the opportunity to vote "no" which they do not have at the present time.

Also at the present time the public has nothing at all to say about who shall be a candidate for judge; which is the crucial point. If, under a nominating system commission, when a vacancy exists, the nominating commission would so announce and it would be able to receive the names of those people who could be and would be good judges. And North Dakota has dozens of very highly qualified lawyers who would make fine judges and who would accept an appointment where they would not go out and campaign. A nominating commission has the opportunity to call upon these candidates rather than upon anyone who might chance to offer

himself without any screening process, without any recommendations, and all too frequently without any qualifications.

I would like to point out one more thing, that is the statistics which tell us that this plan has been twice defeated; first by 9,000, than by 13,000. It was defeated by 9,000 out of 150,000 voters. The next time the plan was submitted — and I think it had far less publicity than you have been told — it was defeated by 13,000, but the number of voters had fallen to about a hundred thousand. It was an election in which there was very little interest. And as someone else has said, in that area of the state where there has been considerable discussion of the merits, not of the appointing judges, but of an elective-appointive system, it carried. I think that with the explanation people are very interested in having a little bit more to say about their selection of judges than they have at the present time. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Jestrab.

DELEGATE JESTRAB: Mr. President: I find myself in a rather peculiar situation. Some years ago the State Bar Association approved the merit plan as being the way to get the best judges for North Dakota. And they convinced me that it was a good plan. I also at that time heard former Associate Justice of the Supreme Court Tom C. Clark speak to that plan. He travels all over the country — he's a very respected judge — and he travels all over the country explaining and speaking for an appointive system for the judiciary.

The remarks made by the lawyers this morning indicate that it might still be the best system, but that it is not acceptable to the people. Twenty-one states have adopted this plan. I suspect it will come to North Dakota; that we will join the twenty-one states. We will probably have to do it by constitutional amendment if we don't take some action now. If it gets us the best judges, then I am for it and I speak for the Minority Report.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

The main crux of the separation between the minority and the majority is with regard to the entrance of judges into the judicial system. Both systems can have, in essence, bad judges. North Dakota has been with the electorate system since statehood, and, in essence, our Constitution has been the same since that time. In our committee discussion, our committee proposals, in Section 8 we are proposing that the Legislature have extended powers in the area of qualifications of judges. This is one step forward in improvement of our elective system.

One argument that has been used extensively here is the question with regard to retaining or removal of a judge that has been in and served in office. Again our committee has stepped forward and proved our system. We provide Section 11 for removal of incompetent judges; those because of "physical or mental disability, for misconduct in office, for the willful failure to perform his duties or for incompetence in office."

One argument that hasn't been stressed very much is the argument with regard to the political nature involved in either the appointment or election of judges. Our State has had a non-partisan basis for the election of judges; non-partisan in the sense that the people have the choice. The appointive system, which the minority urges us to adopt, will put this power of selection in the hands of a few, a few numbers. Now they state that none of the members of this commission shall be involved in politics. But I dare to say that when you have such a small group that the political influence is much greater.

Now the states that have adopted the Missouri Plan in essence have been very densely populated states. In North Dakota we don't have the dense population that the other states have. One of the advantages to the appointive system is where the population is so dense that those attorneys running for an elective position would not be able to know the people. I think in our state this has not come about.

There is one thought that goes along with the entrance of judges in either an appointment or elective system to improve the quality of the individuals that will serve as our judges. There are three areas that we should be really concerned about, and I think is relevant to any attorney who would either accept an appoint-

ment or run for election; and that is in the area of retirement, the length of term in the sense that if any attorney has to run or be appointed for a short term he has to give up his business practice and if he isn't accepted by the people or again re-elected he would have to go back into private practice, and the last area is the area of compensation. I think many attorneys in the state that would be duly qualified to act under either system are probably making more money in private practice and would not wish to run or either be appointed to serve as judges if the compensation doesn't satisfy his — his activity and his manner of living. Thank you.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Fellow Delegates:

I signed the Minority Report. It takes courage to be in the minority in a committee that has seven attorneys in it. They had committee meetings all summer long. The majority — and I state this to the committee, they are all here — the majority of the committee favored in some form or other the appointive system. But the election group kept saying, "The people want to elect. The people want to elect." So I went along with the election theory. And the committee remembers we did have a No. 12 parked in our proposal at that time which called for strictly election; no appointing provided for at all. Then the judges really got excited. "There are going to be vacancies and then — there will be these terrible vacancies and the judges will have to be shifted around." And one judge even said, "Well, supposing three of the Supreme Court Justices are in a car accident and they are all killed?" Well, we provided for that. We had the governor — gave the governor power to call a special election.

But it seemed that the judges wanted an election when convenient, and appointment when convenient. So I couldn't help but go along with the minority and have one system — not two that we have at the present time. The courts, like the legislative branch and the executive branch, are here to serve the people. And our committee should not write a judicial proposal to please one justice, but try our best to give the people a choice. Give them the choice and they can pick the best system possible.

The League of Women Voters — and I support them — they have given more time and consideration to the items in the Constitution than any other group of people. And they are still in favor of an appointive system.

Now I'll bore you just a moment with a few figures on voting or lack of voting for judges:

In 1959 two judges of the Supreme Court assumed office by appointment. In 1960 they ran for election and there were at that election 78,300 people that did not vote at all. Twenty-eight percent of the people did not vote.

In 1962 two people ran for the office of the Supreme Court. 42,075 people didn't take time to mark their ballot.

In 1964 there were again two candidates. And again 41,348 people didn't bother to vote.

In 1966 there were two candidates for the office of Justice of the Supreme Court. Out of 204,000 votes cast, 28,400 voters did not vote.

In 1968 no contest. 67,900 people did not vote.

Again in 1970 only one candidate for office. And 65,000 or twenty-nine percent did not take the time or bother to vote.

Two of the present judges, including the Supreme Court's — the Chief Justice of the Supreme Court, first assumed his office by appointment and he has never run opposed since that time.

Just a few more figures on a local basis.

I pick three counties; Adams County because it's first on the official abstract of votes, Williams County because it's last, and Ramsey County because that's my county. In 1964 there were 1980 votes cast in Adams County; the Supreme Court Justice received 1661, District Judge only received 1486. Ramsey County, my county, 6328 votes were cast; 5421 voted for a Supreme Court Justice, 5239 for District Court Judge. Over a thousand people out of 6300 didn't take time to bother to cast a ballot. Williams County, 8699; 6500 voted.

In 1966 there was no contest in the Supreme Court. In Adams County out of 1684, 1418 voted. So that 270 people didn't bother to vote out of 1600. Ramsey County, the story is about the same; 49 to 4400 voted.

One of the interesting things was in 1968 in Williams County. For District Judge they had two offices available. There were 8,052 people voted in that election. And if they had each voted, if every voter had voted for two judges to which he was entitled to vote for, there would have been 16,000 votes cast. But the two candidates together only received 8433 votes, just slightly over half.

And in my own county of Ramsey County, 1970, when there was a hotly contested election, that is amongst the attorneys they thought it was, there were 5,467 people voted but in this hot contest for judge 4,890 people voted. 569 people didn't take time to vote in what was a real hot contested election.

Members of the assembly, I hope that the minority position will be given some real consideration in this proposal and that this important item can be put up to the voters as an alternate.

And at this time if the governor should want someone to serve on that commission I'll volunteer my services.

PRESIDENT WENSTROM: The Chair will recognize Delegate Schmit.

DELEGATE SCHMIT: Mr. President: Will Delegate Aubol yield to a question?

PRESIDENT WENSTROM: Will Delegate Aubol yield to a question?

DELEGATE AUBOL: Yes, Mr. President.

PRESIDENT WENSTROM: He yields.

DELEGATE SCHMIT: In the remarks given by Delegate Kessler and Delegate Rooney and during their traveling hearing committees, they have said that from seventy up to seventy-seven percent of those polled favored the election of judges. Now in your travel throughout the state on these hearing committees is this substantially what you found?

DELEGATE AUBOL: Delegate Schmit, I think you were referring to Delegate Roney, not Rooney.

No, Delegate Schmit, that is not right. Although we did not poll the hearings, but I did attend three of these traveling hearings, and in each — each one we explained the present system, we explained the merit system for selection of judges, we talked about the deficiencies of both. And in each of the three hearings that I attended the people were very receptive to a merit system for judicial selection.

DELEGATE SCHMIT: Thank you.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: I don't want to frighten any of you delegates. And I really don't think that I have the power to read minds, although I would strongly suspect that when I say the few short things that I intend to say that my fellow Delegate Hoghaug will say, "You don't even dare stand up for what you think is right." And maybe there's a certain amount of truth in this.

It might be a little bit shaky, but I would like to impress on Delegate Hoghaug that I also feel that I am realistic. I came down here feeling that the appointive system, if we could find a commission that would be non-political and completely fair, would be the best way of selecting our judges. I think I still feel much the same way. But I do have to keep in mind what I feel the voters of our state are ready to accept. And I don't think that they are ready for the appointive system. We are putting many new things before them; these things are good. But I think we should keep in mind that we don't want to change too much for fear of losing the entire package.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I am not going to repeat one thing that's been said. At least I'm trying not to. No figures. First, I think the four members that were appointed to do the job did an excellent job, all four of them; they covered everything.

And there are a couple of things that may have been missed. In the first place, I am not from Missouri. I see no reason to find that Missouri has a system any better than ours. I never have been able to.

In the second place, I want to tell you that the people that say this is a modern thing in the last few years should look back in the book that Delegate Knudson has, a historical book, and you will find that the vote was eight to seven in 1889 in the committee. Eight to seven in favor of electing them. Now it is twelve to three. So it's going backwards instead of improving.

One other thing, you cut your ballot down, I always thought the less choice, the less people you have to vote for, the fewer votes you may have. You get down to voting for no state officials, no judges, what's going to interest the people? Who's going to be out campaigning getting them to vote? This is one other thing. And we're urging everyone every election to vote; "Get out and vote." Well, we should leave them something to vote for, is the way I look at it.

One thing other I would like to point out, that the lawyers — this committee had seven attorneys on it, this is true. They didn't overpower us at all. If they did, I haven't discovered it. And I think you may have heard that I don't always agree with all the attorneys and all the judges. But the attorneys spoke on this majority side. I just want you to know that I wasn't overpowered by their arguments whatsoever. And they didn't name the — they didn't run the committee in an overpowering fashion whatsoever. Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Stanton.

DELEGATE STANTON: Mr. President: I came to the floor today on the fence, and I got knocked off a little while ago. This is a minor speech in support of the majority proposal. I think one of the important points to consider is the majority is not in here, it's really the rest of the people out there in the State of North Dakota. And I think it is to the credit of the majority proposal, both members of that committee, that they considered that already two votes had been taken on the Missouri Plan. This is not only our Constitution that we're talking about, this is the Constitution for all of the people in North Dakota. The people in North Dakota like voting for candidates, and so do I.

PRESIDENT WENSTROM: The Chair will recognize Delegate Simonson.

DELEGATE SIMONSON: Will Delegate Aubol yield to a question?

PRESIDENT WENSTROM: Delegate Aubol yield to a question?

DELEGATE AUBOL: Yes, Mr. President.

DELEGATE SIMONSON: Having served on the Executive Functions Committee, we heard often about the fears of the electors putting too much power possibly in the hands of the government. Has your Minority Report or your committee faced that problem, that perhaps we are giving too much power to the governor?

DELEGATE AUBOL: Delegate Simonson, I feel that our Minority Report gives far less power to the governor in appointment than does our present system. Of the thirty-six Supreme Court Judges we've had in this state, sixteen assumed office by appointment by the governor. Eleven of the nineteen District Court Judges we now have assumed office by appointment by the governor. In this case the governor was all alone, he had no nominating commission to go to, there was no one screening candidates, screening potential judges. All the power was in the governor to appoint.

I think that our present system leaves far more power to the governor than should be — than the judicial branch should have to rely on. And it opens up the way for far more political favoritism than the nominating commission screening idea.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I'll yield.

DELEGATE LARSEN: Mr. President.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: There just is one thing that sort of bothers me as far as this Majority or Minority Report. And I'm more or less concerned about the lawyer or attorney who as a candidate runs against an incumbent judge. The vote is very close, he loses by only a few votes. Then one of his clients comes up to him

and has him plead a case for him against that judge. I was just wondering, now, where there's been this very hot campaign race, whether or not there might be just a little bit of discrimination when it comes up to issuing a just and fair verdict. Now I don't know, I don't know whether that would affect it or not. But I am just a little bit skeptical. And for that way — matter and because that there may be, I'm going to go along and support the Minority Report. Thank you.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President and delegates to the Convention:

I suppose as chairman of this committee I ought to state briefly something of my position and more so to explain to about three other delegates who are seated on this floor as to why I join the majority in the committee.

Now, as Delegate Trenbeath knows, he and I have debated the merits and demerits of the appointment and elective systems for many sessions of the Legislature. It was my privilege back in '62 and '64 and '66 to serve as Chairman of the Legislative Research Committee. And back in '62 we did start a study consisting of legislators and laymen to revise our Constitution. You know now the outcome of the revision that was made or recommended when these revisions were submitted to the people. I, of course, at that time carried on the floor of the Senate the resolution for the appointment method of judges. It went to the people; you know the result. And then again in '68 when we referred it again to the people it was my privilege and duty at that time to carry the resolution on the floor of the Senate. And I know Senator Trenbeath spoke very much against the provisions of appointing judges. Again it went to the people; and you saw what happened.

Now I want to clear up the fact that no work or little work was done at that time to acquaint the people with the provisions of the appointment method. We had a citizens committee headed by Mr. Baldwin from Fargo who raised a certain amount of money; we put out publicity pamphlets. The Bar Association was split at the time. And, Delegate Jestrab, the Bar Association has never been able to get together on this. The Executive Committee of the Bar Association voted to support the appointive method the first time around, but the second time there they were split, although the Executive Committee did recommend. So we have never had a unanimity of opinion even among the judges and the attorneys with respect to this. And a lot of work was done by the Bar Association in an attempt to acquaint the people with the merits and demerits of the appointment method.

And I want to say that even at this time I am ready to agree that those who have proposed the appointment method their position has a great deal of merit. But, on the other hand, there is now and has always been a great deal of merit on the elective system, too. Those reasons have been pointed out here time and time again and I won't repeat them.

But as Delegate Pearce has said, we have been fortunate in having a good judiciary in our state. We are different from some of the larger states of the East and other places in that respect. Many people feel, and they vote that way because they feel, that if you have a good system and it's working, why change it and try a new system for something you don't know whether it will work properly or not? And I do not agree with those who say that the people are completely uninformed on the judges who are running or on their qualifications. Every election when judges are up I have numerous people call me to find out about some of the judges that are running or the judges that are on the ballot; their qualifications, how I feel in connection with them. I am sure that every attorney has the same experience. Because the attorneys are in a better position to know the qualifications of the judges. And I am sure they do not hesitate to tell people what their thinking is when they call them.

So leading up then to the deliberations of our committee, I felt that there was a great deal of merit on both sides. But in weighing the situation of the attitude of the people who had acted so recently in this respect twice, and in considering the polls and the other contacts that we had with the people when we were out having our hearings and so forth, it became obvious to me that at this time the people would not accept the appointive system as had been recommended or has been put to them before. And until that time comes, we can argue logic or anything else we want to here, as we did then. We are not going to be able to change that, in my opinion, in the near future. There may come a time when the attitude of the

people will change and maybe they will be convinced that there is more merit in the appointive system. But at this time our committee felt certainly that they had not reached that stage. And for that reason you have the Majority Report before you at this time.

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I did want to point out that it was only a few years ago —and Delegate Longmire pointed that out — that the Legislative Research Committee did such an excellent job of convincing those of us who are members of the League of Women Voters that this appointive-elective system called the merit system was the system we should have; that it was the best system. I am not sure I can buy that the vote has shown us enough to make me give up the convincing that I had at that time. And I must support the Minority Report.

DELEGATE SOLBERG: Question.

PRESIDENT WENSTROM: Further discussion?

Delegate Hartl.

DELEGATE HARTL: Mr. Chairman and members of the assembly:

I rise to support as a member of the committee the Majority Report. Granted, we are this morning discussing the merits of the appointive versus the elective system — a system which in our Federal Government and in our State government we recognize is a judicial system separate, distinct and therefore apart from the executive and the legislative branches; each a separate function of government. I submit that in the Majority Report we have done exactly this: We have left the choice to the people, first, by the election; second, if we need an appointment we have provided a fair, unbiased appointive procedure. If you will refer to the Majority Report, Section 13, the Judicial Committee is provided by the legislature. I submit that in the Minority Report, if you will refer to the same, Section 8 provides a lengthy, detailed nominating commission consisting first of the Chief Justice of the Supreme Court as chairman; admitting the fact that he may have been involved in the car accident and therefore not available to act as chairman. Second, one member of the legal profession from each judicial district. This is fine. This is the system we have used under the current system which a review made by a majority of the committee has indicated has worked satisfactorily under the appointment system we have used previously. Thus, I now call your attention to the third point of the judicial nominating commission proposed by the minority. One citizen not a member of the bar appointed by the governor. Delegate Aubol so aptly pointed out that no one perhaps other than lawyers and judges are knowledgeable about the candidacy and qualifications of those available for the judicial position. I would simply ask the delegates in the body to consider how well this member, not a member of the bar, knows the candidate.

Further, I would point out to you that we have six Districts at this time. Each District under the Minority Report would require a member not of the bar appointed by the governor. Whether it is one political party or another I would submit that under this system we would have a definite one-man political situation available on the board. The system, when the majority plan after careful review provided for by the Legislature, would hopefully prevent from occurring the same type of system in one unwritten plebescite which we currently use which has provided when the need for appointment existed a satisfactory judicial candidate.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Will Delegate Aubol yield to a question?

PRESIDENT WENSTROM: Delegate Aubol yield?

DELEGATE AUBOL: Yes, Mr. President.

DELEGATE LAMB: Delegate Aubol, what is the difference between your proposal's provision that calls for the confirmation by the people and the majority's proposal of voter approval?

DELEGATE AUBOL: Delegate Lamb, on the surface it doesn't appear that there is too much difference. But there is a difference in the two plans. We feel that the difference is very important. The Minority Report allows for the people always — allows for the people always to say "yes" or "no" on the question of retention. The Majority Report, however, does not answer that question when

it arises — when this question arises: “What will happen if we have an unqualified judge being opposed by an unqualified opponent?” When there is opposition there is no chance for the people to say “yes” or “no”. In those cases I wonder what our choice really is.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Fortunately for the delegates I have scratched out most of the comments that I had because at this stage of the game they have all usually been said. But I think that we need to back up and take a look at the forest a little bit and ask ourselves what the function of the courts is in a democratic society.

Yesterday we insisted upon adopting double protection against abuses of our rights. Not only do we want equal protection of the law, which we adopted, not only do we want due process of the law, which we are going to adopt, but we also like to have double indemnity by providing that they shall have no ex post facto laws and no bills of attainder and so forth. And so we are very jealous and worried about our rights. And as Delegate Pearce has reminded us on occasion, history tells us that there are plenty of reasons for concern over our rights. But it seems to me that it's the function of the courts to protect our rights. And that on many occasions we've seen where the only thing that has stood between an individual and the overwhelming majority in relation to a question of rights have been the courts. And so when Delegate Rundle asked over at the Highway Department the other night, “What is a good judge?” I say that a good judge is a person who is independent and whose devotion and dedication is solely to the law and the Constitution. Now how do we get independent judges who are able to adjudicate disputes and protect our rights? Because after all, our rights are only as safe as the courts will permit them to be. And if we do — if we have judges who must always have one ear to the electorate or must be concerned about what is popular, then we do not have an independent judiciary whose primary concern is the protection of our rights.

I suggest that we cannot vote on justice, we cannot vote on rights. And if we are electing judges who are going to determine what your rights are, our rights, I say, are in jeopardy.

Now as to the quality. I think the present electoral system, without a doubt, reduces the number of candidates that are available for consideration for appointment to the bench. Some do not have a fair chance on the ballot because if they have a funny political name they probably won't get on the bench unless they get there by default or without opposition. So maybe your son wants to be an attorney, but if you happen to have a funny name and you don't care to have it changed by one of your ancestors, as Mr. Rooney did, you are going to be stuck with a bad malady and you will never be a Justice of the Supreme Court of North Dakota. And some do not have a fair chance even though they may be qualified. They will never get to serve on the bench.

Then, as has been said, the political qualities are not necessarily good judicial qualities. And so the means of getting there are not necessarily the qualities you want on the bench. And I say that a reputable lawyer does not care to risk his professional reputation by putting his name on the ballot and being defeated and then having his clients go to some other attorney because their attorney has been rejected by the public. And the cost of a campaign also reduces the number of candidates who are able or willing to put out the money that it takes to risk the possibility of election. And then, of course, the office itself is very tenuous under election, because you never know what the whims of the public may be.

Now it has been said that there has been no scandal in our courts and I'll have to concur. But I think that what is in the past may not always be true in the future. I can just say generally speaking that the state courts have been — have been less than desirable in their ability to protect the rights of the people. And a good many of our rights have now been protected by the federal courts where the state courts have looked aside while our rights have been trampled upon.

A lot has been made of the fact that we have had two statewide elections on this question. And it has been pointed out that the margin was fifty-four percent and fifty-six percent. It is interesting that today this is a substantial margin, whereas

yesterday we thought it would require sixty percent to float a bond issue in a school district that was over a certain level.

I was involved in campaigning for the Missouri System in 1966 and 1968. And I can say that troops were decimated. There were very few around to carry the crusade to the public and explain. There was very little information. And I'll bet that if you walked down the streets of Bismarck this morning, you'd find very few people that ever knew what they had voted on such a question that was on the ballot. And I suggest that the legislators did not want to become involved in the campaign; I know that a few of them did. I know Senator Longmire made himself available and did some work on it. We hardly scratched the surface in either one of those cases. So I say what is an independent court worth? What are your rights worth? Are they worth going out and trying to change public opinion if that is required? I think that a Constitutional Convention is no place for timid people who are worried about some future election or who are worried that they are not going to be able to do what is popular. I think it is a leadership responsibility that every one of us, all 98, must assume. And we should do what is right and go out and convince the people that we did what is right. And I know that if the people are properly informed that they will support what we do if we were right.

We sort of think we're in a unique situation. This is no rare situation dealing with controversial questions day after day. You ought to go back and read Madison's notes on the original Constitutional Convention, which produced a document to which we all will give acclaim. But we are very timid about emulating, I might say. In the midst of the Constitutional Convention this same kind of discussion was coming up. And finally George Washington said: "It is, too, probable that no plan proposed will be adopted." See! How often have we thought that? "If to please the people we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair." And now I cannot — I cannot help but add one little scriptural quotation from my fellow Baptist — of which there is only one — Luke 11:52 — and note the fact that the seven attorneys on the committee have turned tail on this matter — "Woe unto you lawyers for ye have taken away the key of knowledge. Ye entered not in yourselves, and them that were entering in ye hinder."

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question. We have arrived at Rule 7 or Rule F. It says: "At the conclusion of the debate a vote be taken on the Minority Report."

The Minority Report is that the Report of the Majority — Minority be substituted for the Report of the Majority. As many as are in favor of adopting the Minority Report will say "aye;" those opposed will say "no." The "noes" have it.

DELEGATE STANTON: Division.

PRESIDENT WENSTROM: That is sufficient number to have division. Again the question is on the adoption of the Minority Report. Those in favor of adoption will vote "yes," those opposed will vote "no". The key will be opened, you will record your preference.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The vote indicates that there were 44 "yes" votes, there were 50 "no" votes, there were four delegates absent and not voting. The Minority Report did not pass.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: Do I understand now that we have before us on the tenth order the Majority Report of Proposal 1-11?

PRESIDENT WENSTROM: Well, we have a set of rules here that we are running by, and we are down to sixth. It says: "If the Minority Report receives less than a majority vote of the delegates the Majority Report is deemed properly engrossed and placed on tenth order for first passage." And that is the rule you adopted. You have suspended the Rules to adopt this rule.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I have an amendment at the desk. I would like to

offer this amendment. Copies are being distributed to the members of the Convention.

PRESIDENT WENSTROM: Delegate Hoffner offered an amendment to Committee Proposal No. 1-11. The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-11.

Delete Section 13 and insert in lieu thereof the following:

“Section 13. Whenever a vacancy occurs in the office of judge of any court of this state and whenever such office is open to election according to the intervals established in this article, such vacancy or office shall be filled in the following manner: the governor shall appoint, as candidate for the particular office of judge in question, one of three persons possessing the qualifications for such office, which three shall be nominated and whose names shall be submitted to the governor by a non-partisan judicial commission established and organized as provided by law. The name of the nominee appointed pursuant to this selection process shall be placed on the ballot and submitted at the next succeeding general election to the electors eligible to vote within the geographic jurisdictional limit of the court in question. Other candidates for the same office of judge may file declarations of candidacy for election thereto as provided by law, and their names shall be placed on the same ballot as that of the nominee.”

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do I have a second to the motion?

DELEGATE SCHEEL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Scheel.

Any discussion?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President and members of the Convention:

The debate has been very good this morning. And I believe that this is a compromise that all the members of the committee and the members of this Convention can live with. What we're asking in this amendment is that a nominating commission — non-partisan nominating commission be set up by law, — and, incidentally, this commission could be different for District and Supreme Court Judges — and three names be submitted, and that the governor then pick one name to go on a ballot — to go on the ballot at the next general election. And that any other name, any other individual, that's qualified to serve as a judge could also file in the normal manner and be on the same ballot for election. What we're saying there is the nominating commission, name picked from three, that person go on the ballot, and anyone else, and the people will make the confirmation. We've had debate on both sides and everyone agrees that the people should have a chance. And the minority had asked for a three-year delay; this makes the election immediately. The governor does not appoint, he just puts the name on the ballot. I hope that — we agree to this, and I hope the Convention approves this amendment.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I rise only for a question. I don't have the engrossed bill. I am assuming that the proposal is as printed on pages 200 and 201 of the Journal. And Section 12 on page 201 is retirement, and Section 13 is in relation to vacancies. And I wondered if there was a confusion there.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I have had amendments prepared for both a Minority and a Majority Report. And had the Minority Report been adopted the amendments would have been different. But we include the vacancy in the amendment and go on to say “whenever a vacancy occurs”. I thought that was taken care of. Now maybe it doesn't, I don't know.

PRESIDENT WENSTROM: Delegate Hoffner, I think the question that Delegate Pearce has is that possibly Section 12 has been eliminated on previous debate on this subject.

DELEGATE PEARCE: The question I had was if Delegate Hoffner's proposal is to delete Section 12 and insert a new one. Now on page 201 of the Journal Section 12 has to do with retirement and Section 13 has to do with vacancies. I assumed that the amendment should be to delete Section 13.

And while I'm on my feet, also on page 201, the title of Section 11 says, "Renewal." I thought it ought to be "Removal".

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: In reply to Delegate Pearce, the report of our committee is "Removal". And if there is any misspelling, it's in the Journal. And I hope the Committee on the Journal will correct it.

I believe that Delegate Hoffner may have overlooked the fact that even the Majority Report amended the original proposal. And we put Section 13 in instead of 12 to cover vacancies. That was a new section that we wrote. Now if Delegate Hoffner wants to still put that in for 13, that's perfectly agreeable with us. However, I believe that the majority of our committee would oppose his motion even if it did refer to the proper section because on Section 13 of our report we worked on this, oh, for several hours to try to come up with something that we thought would cover every situation with respect to the vacancy. And if you will check our Section 13, Delegate Hoffner, you will see that it does somewhat similar to what yours does. Ours goes further, however, than yours and says that the governor will fill the vacancy immediately. We, on our old proposal, that vacancy would remain until the next election. But testimony to our committee convinced us that we should not leave that office vacant until the next election; it might go as long as two years. Or if we go to the four-year election of most of our officials, it could go that long. So we felt that we should have some means in the meantime to fill that vacancy, which we did by a nominating commission. And our nominating commission, however, nominating committee, we left it to the Legislature to work out the details of that because we felt that we should lengthen the Constitution or this article by determining the details of how this commission would be set up and appointed.

And then, of course, if no one but the incumbent, in another section of the report, was on the ballot, then the question would be placed on the ballot: "Shall you accept Judge Smith? Yes or no." And if the majority voted "no", then you would start all over again and fill the vacancy in the same manner. So I believe, Delegate Hoffner, that most of what you were trying to get — add here is covered in our proposal and that it does — it is broader in that it will fill the vacancy immediately if one should develop.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: As I read Delegate Hoffner's proposed amendment it would be a special nomination by the governor on the ballot initially which differs, I think, from the way the Majority Report presents the matter. But I would like to inquire of Delegate Hoffner whether he contemplates that the nominee for judgeship who is nominated by the governor, whether that — that standing or that fact will show on the ballot? In other words, we did this in the case of election of delegates to this Constitutional Convention; they were designated as nominated delegates versus delegates running at large.

And the second question is under our present process you may recall placing the name in the general election, in other words, the candidate nominated by the governor at the general election — our present process calls for a primary election in which the two high judges, if there were more than running, would go on the ballot. And I wonder if you are going to do that would you contemplate just one other name would end up on the general election ballot? If that were the case, I think we would have to do a little further amending to eliminate the two high as you have it now.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: The main philosophy of the amendment is to use the merit system for the appointment to get a name on the ballot and then — and then go the regular election process. The delegates to this Convention, a number of them, were selected in this manner. And Delegate Kelsch brings up a very important point about the primary election. And the vacancy that Delegate

Longmire speaks of certainly could be taken care of in the same manner as the Majority Report. But I think the test here would be whether you agree with the philosophy of having a commission nominate and then placed on the ballot and the people approve that nominee or any other individual that is qualified to run for that office. And I see now there are quite a few things that need to be changed here. But I think at this time the delegates should have a test here of whether they like the philosophy of making this type of selection. And if they do, I'm sure that the committee, Judiciary Committee, as capable as they are, could take this back and put it in the proper form.

PRESIDENT WENSTROM: Delegate Hoffner, would you — in order that we get on the right section, would you request unanimous consent of the Convention to change — delete Section 13 and then insert — you want to delete Section 12, you want to change that to 13? Section 12, change that to 13?

DELEGATE HOFFNER: Mr. President: I ask unanimous consent to do that.

PRESIDENT WENSTROM: Is there any objection? Hearing none, then the record will show that we delete Section 13 and insert in lieu thereof the following Section 13 is the way the amendment will read.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Now someone requested the floor. I believe it was Engelter. Delegate Engelter, did you request the floor?

DELEGATE ENGELTER: No.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I only wanted to bring to the attention of Mr. Hoffner that — and I realize that predominantly this section deals with just the Supreme Court and the District Courts — however, in his amendment he refers to "any court of this state". And I wonder if that's what he wants.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: The intent was the Supreme Court and the District Courts.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, Fellow Delegates:

In the space of the last twenty-five years North Dakota has had fourteen Supreme Court Justices; three of these died in office and two resigned. Over the same period we've had fifty District Judges; twelve of these died in office, eight resigned for various reasons, and two resigned to accept Supreme Court appointments. In addition we've had a District Judge-elect die before taking office.

I cite those statistics so that you can see what our North Dakota judiciary would have been literally riddled with vacancies over the past quarter century if we had had in effect a provision such as the amendment we are now considering.

The Hoffner amendment would not allow the appointment of a judge to fill a vacancy; it would merely nominate a candidate to go on the ballot. I think the Judicial Functions Committee should be commended for coming up with its proposal on vacancies whereunder an appointee will occupy the office immediately and serve until the first general election when the office shall be filled by election. This will insure that our judiciary isn't riddled by vacancies.

I think that we have a good judiciary in North Dakota. It can perhaps be argued it is as a result of a blending of the appointive and elective system. I urge the Convention to stand by the Committee Proposal and reject the amendment.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

Our Committee discussed this question of vacancy extensively. One question that arises — arose in our minds was a question with regard to cost of holding special elections to fill vacancies. This is one of the reasons why we took a reverse stand from our interim report filling vacancies by election.

And the second reason, and I think a more important reason, is that we felt as a committee that a vacancy should not occur in a District Judge position or a Supreme Court Justice position where in essence the public needs the services. And

I think this is the most important fact. If a judge — or a vacancy occurs the services are lost to the people. And this is why we step backwards and try to fill that vacancy by appointment.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President: Maybe I'm the only one confused here on this thing, but it seems to me that Delegate Hoffner's Section 12, as has been pointed out, deals with Section 13, but also speaks to Section 5, the original selection of a judge. I think his idea has a certain amount of merit, and I'd like to see it discussed some more, although we've talked about this for almost two hours now. And I think that his idea again should be brought up to this — to this group properly molded in so we can see exactly what the deal is on it. So I reluctantly move that this be laid over for one day.

PRESIDENT WENSTROM: It's been moved that further consideration of Proposal No. 1-11 and the amendment be laid over for one Convention day. Do I have a second?

DELEGATE AUBOL: Mr. President.

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Jestrab.

Now Delegate Aubol.

DELEGATE AUBOL: I was going to second it in light of the vote that was just taken on the earlier question.

PRESIDENT WENSTROM: Delegate Hill, did you want to comment on this or do you want to speak on the prior?

DELEGATE HILL: Mr. President: I think the motion will take care of the proposal.

PRESIDENT WENSTROM: The question before the Convention is on the motion to defer further consideration of Committee Proposal No. 1-11 for one Convention day. As many as are in favor of the motion will say "aye," opposed "no." The "noes" have it. The motion lost.

Now Delegate Hill.

DELEGATE HILL: Mr. President: I think the basic idea set forth by Delegate Hoffner is to allow a nominating commission to put a qualified candidate on the ballot. And there's no doubt the past experience in North Dakota shows that a qualified candidate doesn't dare run against an incumbent judge, whether he's doing a good job or not. A nominating commission would have the ability to evaluate the performance of the District Judge, and if they didn't feel it was a superior performance, they then, of course, could put up a candidate. I think this is a compromise which would be accepted by the voters of North Dakota. It does not — the biggest objection to the Minority Plan, I think, by the committee — is that simply it does not provide an alternative satisfactory to the elector. They simply can vote "yes" or "no" on an appointed judge. This proposal allows any other candidate to be — who wishes to run against a person who is appointed by the governor from a list of nominees provided by the nominating commission. And I think this is essentially similar to what was known as the Simpson Plan which was advocated back in New York about 1915.

And I would like to ask a question of Delegate Longmire if he would provide an answer.

DELEGATE LONGMIRE: Yes.

DELEGATE HILL: I like the idea that they have set forth in Section 13 here. But did you consider using that same procedure for the regular election, not only the vacancies?

DELEGATE LONGMIRE: I'm sure that at one time or another we considered every angle that could possibly come out of this — grinding this vacancy section. However, we felt that we should not deprive anyone from running for this office if he chose to do so. Now you can readily see if you have some kind of — well, I answered your question. I'll speak on that later. I am taking your time. My apologies.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Well, my point is right now that we simply have no way of

getting a qualified opposition on the ballot because the facts of the matter are when you have an incumbent who is reasonably popular there is no way to beat him usually. And a nominating commission would be an excellent way to provide the voters with a choice. Now everyone here has said they want to give the voters a choice. Well, if we really look at the past history the voters haven't had that choice. A nominating commission to put the decent opposition on the ballot against an incumbent judge or against anyone else who wants to run for the position certainly would give the voters a choice. And if we feel the voters of North Dakota like to make a choice, I think we should devise a way in the Constitution that they can have a choice in more than name only. And if there are no amendments that are going to be adopted to this provision, I simply am going to vote "no" against the Majority Report. I do believe that Delegate Hoffner's idea is excellent, and I also believe it's not in shape to be adopted. I will vote "no" on his amendment also. I will defer the question.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I'll yield to the question.

DELEGATE VOGEL: Mr. President.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I would like to ask Mr. Longmire a question. I'm unclear about one thing. Does a vacancy occur if at the end of a term a judge decides not to run for reelection? If a vacancy would occur would this nominating commission provide a candidate for this type of natural vacancy or is it only a vacancy which occurs due to death or resignation during a term?

DELEGATE LONGMIRE: As I understand our proposal, it would — it does provide for a nominating commission for the governor either way for names to be presented to him. However, this particular section would relate more to a vacancy occurring while the person was in office. Now I assume if the judge did not plan to run again he would announce that long in advance so that other candidates who would be interested would be able to qualify and get on the ballot.

DELEGATE VOGEL: Thank you.

DELEGATE LONGMIRE: Mr. President: If I may, while I'm up, I have just one further comment on Delegate Hill's question.

The committee did study very thoroughly what you have in mind, Delegate Hill, and what Delegate Hoffner does. We felt, however, that it was putting another candidate who was not named by the commission in jeopardy to have some kind of preliminary committee put somebody on the ballot that would give any other candidate who wanted to run at that election an unfair advantage. As a matter of fact, that's why we left the old section the way it was at the beginning of just electing rather than having the governor appoint. Because certainly if the governor appointed somebody and then he came up at the next election to run before the people, the mere fact that the governor had appointed him would give him a disadvantage over any other qualified person who wanted to become a candidate. And I think this commission idea that you have would even go further than that. It might name one or more. And the people would get the idea, "Well, all the rest of these fellows who are running are not qualified because they haven't been screened." And it would give those an unfair advantage. I think it might work more in the opposite way from what you have in mind than it would if you left it as we have it.

I think the main weakness, however, of the amendment is the fact that you have no provision in there for filling this vacancy in the interim until you come to an election. And it was on the suggestion of Delegate Dobson that we reconsidered our old section and did provide for this vacancy which is included in our Section 13. So we hope this amendment does not pass.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Just one more comment, Mr. President. I hope the amendment does pass. I think by passing this amendment you will express the views of this commission idea and it can be placed in the proper position. I realize it's not in proper form right now. But I think the committee will want a consensus of feeling here, and I think by passing this amendment you will do that and then the time will be to send it back to committee. And I am sure the committee will put it in the right form.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: In response to Chairman Longmire's remarks, the committee did consider a proposal similar to this early in the game. However, the committee came out in favor of this report in standing. And that vote indicated in the committee — it was 12 to 3. Now, the vote here this morning was not quite that one-sided. And I do think that the Hoffner amendment has some merit to it. I do think the delegates to this Convention should have a chance to have those amendments placed in proper form.

Mr. Chairman, at this time I would move that this Convention recess until two o'clock.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: I'm sorry, Delegate Aubol, did you make a motion?

DELEGATE AUBOL: I would move that this Convention stand in recess until two o'clock.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Does that cut me off?

PRESIDENT WENSTROM: Normally it would, but I'm going to take whatever you have to say.

DELEGATE PEARCE: Well, this is argumentative. I was sitting here thinking that this procedure sounded very familiar. That's the way that nominees were appointed to run for office of delegates to the Constitutional Convention, by a commission which appointed nominees, and others could file if they wished.

PRESIDENT WENSTROM: The Chair will recognize Delegate Aubol's motion, that the Convention be now recessed until two o'clock. Do I have a second?

DELEGATE MILLER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Miller.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wonder why we are recessing until two o'clock. Are committees going to meet at one? It's only twelve o'clock; that's a two-hour lunch hour. I don't think we can afford a two-hour lunch hour.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I really have no objection to reconvening at one o'clock if Delegate Hoffner can put his proposal in final form by that time.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: It would seem an appropriate time to comment that Style and Drafting is going to give up its nightly attempts due to weather and many conditions: It's just a little too hard on the body to drag yourself in and out of these cold chambers and so forth. So it would be appreciated if our lunch hour was at least an hour and a half, then we'd get a chance to have about a one-hour meeting. Then we'll try to have one at the end of the session, too. So we'll try to work during the day.

PRESIDENT WENSTROM: Fellow Delegates, the Chair will ask your indulgence in making an announcement here prior to voting on this question.

THE DESK REPORTER: What's the time of the motion?

PRESIDENT WENSTROM: It's still two o'clock.

Before we vote on this, I'd like to have you read that announcement. Read that announcement, will you, Mr. Clerk?

CHIEF CLERK GILBREATH: The Committee on Alternate Proposals will be: From Legislative Functions: Jeannette Stanton, District 21, J. K. Benson, District 6; Preamble, Bill of Rights and Suffrage: Joseph S. Lamb, District 17, H. Jackson Fiedler, District 11; Executive Functions: Earl W. Chase, District 8, James R. Dawson, District 21; Finance and Taxation: Gary L. Lerberg, District 4, and John McElroy, District 29; Judicial Functions and Political Subdivisions: Theodore F. Kessel, District

27, Fred Hoghaug, District 15; Education, Resources and Public Lands: James O. Billey, District 28, Edward K. Lander, District 18; the Presidential Appointments are Allen McIntyre, District 39; Sylvan Hubrig, District 5, and LeRoy Erickson, District 26.

PRESIDENT WENSTROM: Now the people, the delegates, who were just named to this committee will bear in mind that Rule 18.1 requires that you meet and organize yourselves. And due to the fact that speed and time are in the essence — of the essence, if you do wish to meet during the noon hour my office will be available to you. So if you wish to meet during the noon hour, why, my office will be available.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Now I believe we are still on the motion of Delegate Aubol that we recess until two o'clock.

Delegate Stanton.

DELEGATE STANTON: Mr. President: May I rise to a point of personal privilege?

PRESIDENT WENSTROM: You may state your privilege.

DELEGATE STANTON: As long as you've mentioned a ballot committee, I would like to remind everyone here, and I'm sure there isn't anyone here who hasn't lost a few, — by that I mean you have lost a committee proposal, minority report, maybe a majority report — the purpose of the ballot committee is, of course, to undertake what alternates will appear on the ballot. And I would like to remind everyone here that it is his right, and that this is really his court of last resort, if he wants to get nineteen other people to sign with him he can ask us to consider any proposal to be placed as an alternate. And don't forget you still have this court of last resort even though you think you've gone down the drain. And I'm sure every committee here must have a couple proposals they would really like to see presented to the people. Thank you.

PRESIDENT WENSTROM: The question then is on the recess by — Delegate Byrne.

DELEGATE BYRNE: Mr. President: Maybe I missed part of your announcement with regard to the Committee on Alternate Proposals. In that section you named the ones from each committee. Were there also to be under that Rule 3 appointments of the body present?

PRESIDENT WENSTROM: Yes, those have been named.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Would it be in order to offer an amendment to the motion to recess for two hours, until two o'clock?

PRESIDENT WENSTROM: I took it from Delegate Aubol that he had no particular reason for saying two o'clock.

DELEGATE SAUGSTAD: I would offer the amendment, then, of one-thirty, that we recess until one-thirty. I noticed a number of hands second the motion; Delegate Roney as one. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

And the question now is on recessing until one-thirty. As many as are in favor of the motion to recess until one-thirty will say "aye;" opposed "no." The "ayes" have it. And we are in recess until one-thirty.

DELEGATE UNRUH: Style and Drafting at twelve-thirty, G-7.

(The Session recessed at 12:12 P.M. until 1:30 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:40 P.M., Tuesday, January 25, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: For the information of the delegates, on page 229 of the Journal under Revision and Correction of the Journal, the title of Section 11 has been corrected to be "Removal".

PRESIDENT WENSTROM: We will continue on the tenth order of business. Delegate Hoffner's motion, his amendment to Committee Proposal No. 1-11, is still before the Convention.

Delegate Longmire:

DELEGATE LONGMIRE: Mr. President: Before we recessed Delegate Vogel asked me a question and I don't believe I understood her question. I understood her question to say would the provisions we made in Section 13 cover any vacancy. By "any vacancy" I thought we meant one that occurred during the term. Our provision would not cover the situation where a judge is running — or I mean is in office and does not plan to run at that time. My apologies for the wrong answer to the question, but I think we were talking about two different things.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: Are we now discussing the amendment to 1-11?

PRESIDENT WENSTROM: Yes, sir. Your amendment, Delegate Hoffner.

DELEGATE HOFFNER: I would like to withdraw my amendment with the consent of the Convention. And I have a corrected version that I would like to introduce.

PRESIDENT WENSTROM: Delegate Hoffner, my record does not indicate who made the second.

DELEGATE SCHEEL: Yes.

PRESIDENT WENSTROM: Delegate Scheel agrees. So if it is agreeable with the Convention, we will grant Delegate Hoffner permission to withdraw the proposed amendment that was before the Convention at the time we recessed.

Delegate Hoffner, you may proceed.

DELEGATE HOFFNER: Mr. President: I'd like to now move an amendment to 1-11. I believe the Clerk has a copy.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-11. Delegate Section 14 and insert in lieu thereof the following:

"Section 14. Nomination for election to the office of justice of the Supreme Court or judge of the District Court of this state shall be made as follows: The governor shall nominate one of three persons submitted to the governor by a non-partisan judicial nominating commission established by law. If the commission recommends retention of the incumbent, the governor shall nominate such incumbent. The name of the governor's nominee shall automatically be placed on the ballot at the next succeeding general election with appropriate designation. At the general election the name of the nominee named by the governor and not more than one candidate nominated by law shall be placed on the ballot."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do I have a second to the proposed amendment?

DELEGATE HARTL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hartl.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: The copies that are on your desk have one sentence deleted; the second to the last sentence of the amendment.

Now I was just advised by Delegate Hartl, and I recognize, we should have been working on the Majority Report which is complete. What we're doing here is we're saying that the nominating commission submit three names to the governor, the governor then pick one name and that person's name will be placed on the November general election ballot. Any other candidate who wishes to run against this nominee will go through the regular process; primary election or any other method provided by law.

I feel this is a compromise between the Majority and the Minority Report. In the debate this morning I felt that this was definitely in the area of disagreement. And I think the vote, as close as it was, indicated that a compromise would be in order. I hope the Convention goes along with this amendment.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: I see some merit in what Delegate Hoffner is attempting to arrive at in connection with this amendment; however, it seems to me mechanically that part of the last part of it would raise some difficulties in the limiting of the people who would be on the ballot to the nominee for the governor and one other person. I can see that if two people have qualified in the primary, in the primary election, both of them of course would expect to go on the ballot. And which one of these or how are you going to get rid of the other one if you limit the number to two that would be on the general election ballot?

Now, offhand I don't know how you could do it. I know what Delegate Hoffner is trying to do is to try and be assured that at least one person on that ballot is going to be qualified as well as he can through this commission and through the governor's appointment. But it seems to me that would raise a great deal of confusion. And I don't just see from the practical standpoint how you can limit someone from being on there and running in the primary election. Our committee would be very glad to take this proposal and give it some further thought, but on the brief time that we had of checking it since it was handed to me about five minutes ago and since I checked with Delegate Hoffner, I don't see how mechanically it could work at this time.

PRESIDENT WENSTROM: Any further discussion?

Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman, Fellow Delegates:

I cannot conceive of anything happening, as it could be by this, that a man would be nominated by the governor and that would place him automatically on the general election. At the minimum he should be sent into the primary election, and if two other delegates — two other candidates would receive the majority of the vote they certainly should go to the general election. Can you imagine anybody running against this nominee if they were forced to run in the primary and then face someone who has been designated and placed on the general ballot without the opportunity of having been exposed or otherwise before the electorate? I move the defeat of this amendment.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hougen, Jim Hougen.

DELEGATE HOUGEN: Mr. Chairman: I can't see too much wrong with the old section. But one thing bothers me a great deal; and that is that the governor's nominee shall receive this "appropriate designation" on the ballot. I would feel this to be a tremendously unfair advantage for the nominee of the governor. I don't believe he should have the advantage of this, of this kind.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, Fellow Delegates:

If you will turn to Delegate — or Committee Proposal 1-18, you can see why some of the people who are supporting 1-118 wouldn't want to have this amendment. I believe this came from Delegate Omdahl's delegate proposal. And it would be a prejudicial part of the candidacy of someone running who wasn't nominated, 118, 118.

DELEGATE McINTYRE: 1-18?

DELEGATE DECKER: 118, 1-118. I'm sorry.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I have a question as to the — Mr. President: I have a question as to the amendment. There's a sentence that reads: "If the commission recommends retention of the incumbent, the governor shall nominate such incumbent." I'd like to know what this means. We have a review board on acting judges; do we have a commission that's going to put a stamp of approval or disapproval of someone sitting on the bench?

PRESIDENT WENSTROM: Delegate Dobson. Excuse me. Delegate Devine, did you direct a question to Delegate — did you direct —

DELEGATE DEVINE: I asked a question without directing it to — I'll direct it to Mr. Hoffner, Delegate Hoffner.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: My view of the language there is say a judge has been in office for six years and is up for reelection. That commission then would recommend — he is an incumbent — recommend his naming on the ballot. And then anyone else could go on the same — in the same manner as provided by law.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Would that be an automatic recommendation?

DELEGATE HOFFNER: Excuse me.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: The commission would submit one name to the governor, and that name would be on the ballot.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President: I'm still not clear. If there is an incumbent would it be an automatic recommendation?

PRESIDENT WENSTROM: Delegate Hoffner, can you answer the question?

DELEGATE HOFFNER: Mr. President: There is a possibility that if an incumbent has been in office for quite some length of time that the commission may want to submit three names to the governor and may want to leave out the incumbent.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I think that clears up my point. And basically what we are doing is providing the review board appointed by the governor, as I understand the proposal. And I would speak against the amendment.

PRESIDENT WENSTROM: Now Delegate Dobson.

DELEGATE DOBSON: Mr. President: What the amendment is seeking to do is give an advantage to one candidate in a judicial election. I'm not sure it would give an advantage to the candidate. The sponsors of this amendment apparently concede that it would. For example, the governor's candidate would not appear on the primary ballot; all of his opposition would. This would give them a head start in voter identification.

Secondly, the governor's candidate might be saddled with a rather unpopular governor. People may vote against the governor's candidate simply because he was nominated by the governor. This could even work to knock out good incumbents.

I oppose the amendment mainly because it's an attempt to rig the electoral system.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: Again, if the Convention adopts this amendment, there is nothing wrong with those of you who disagree with this method of the primary selection amending it further. And certainly I have no objections. But I feel that this is one method on selecting good judges; giving the people an opportunity to approve by a vote of the people. And by a nominating commission, three names, and the governor picking one name, I certainly have no objection that this name be placed on the primary ballot.

PRESIDENT WENSTROM: The Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

In case 23 of you wondered what this sheet is, I have just for fun made a list of the names of the delegates here who did not have the blessing of the governor. It pertains to this issue because the same thing is mentioned, same scheme is mentioned in this amendment, which I am opposing strongly.

Now I don't claim that anyone of these 24 is any better or any worse than any of the other delegates. I don't even say in some cases it was an advantage or disadvantage. But it does pertain, and it's experience how it works. In my case I thought it was a definite advantage not to have the nomination.

PRESIDENT WENSTROM: Question? The question before the Convention is on the proposed amendment as offered by —

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: — by Delegate Hoffner. Delegate Miller.

DELEGATE MILLER: Would someone — would Delegate Hoffner, I presume, explain to me the way you could justify having these words “with appropriate designation”? Would you give some remarks on the justification of this as well as the constitutionality of it?

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: I don't know what the Legislature would put on the ballot. I'm sure they wouldn't put on the ballot that Governor So-and-so recommended this name. I suppose they would put on the ballot that this commission had shown the process that this nominee has gone through to get that designation. And personally I see nothing wrong with it. This morning we heard all the arguments, and I think everyone agrees that we want to pick good judges. We want to use the best possible method to get good judges. Because these judges make decisions every day that affect people's lives. And this is all we're trying to do here.

PRESIDENT WENSTROM: Any further discussion?

Delegate Aubol.

DELEGATE AUBOL: Mr. President: Delegate Hoffner didn't answer the whole question of Delegate Miller. The constitutionality of it, I believe, would be assured by virtue of its being in the Constitution.

PRESIDENT WENSTROM: The question before the Convention is on the proposed amendment as offered by Delegate Hoffner. Those in favor of the adoption of the amendment will say “aye;” those opposed “no.” The “noes” have it, and the amendment lost.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Some of the delegates during the noon hour have talked with me about further amendments. And I think some of these amendments may be covered in some of the sections that we have brought forward in our report. I would suggest at this time that we proceed with the explanation of our five sections and then if there are further amendments to be offered, that we consider them at that time. I believe we'd save some time by that, because some of the amendments that are being proposed are already covered in some of the sections that we have.

PRESIDENT WENSTROM: We will proceed, Delegate Longmire, in the manner that you have suggested with the explanation of Committee Proposal No. 1-11.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I believe Delegate Hartl was assigned the first four sections. I'd like for you to recognize him at this time.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hartl.

DELEGATE HARTL: Thank you, Mr. President. Ladies and gentlemen of this assembly:

Section 1 entitled “Judicial Power” I would refer you either to the Minority Report for following or to your Journal, not what is printed in your daily book. I believe the Journal numbers would be pages 200 and 201, et cetera.

Commencing with Section 1, this is replacing sections in part 8 by 110, 112, 113 and 114. Section 85 of the Constitution as originally enacted deals with the judicial power of the State of North Dakota, establishing a Supreme Court, District Court, County Court, Justice of the Peace — which incidentally have been by constitutional amendment replaced — and such other courts as might be necessary in towns and villages.

Our proposal is to vest the power in —

PRESIDENT WENSTROM: Delegate Hartl, excuse me just one second. But you made reference to a place in the Journal; is that correct? However, I believe that this copy of the proposed amendments and as it is in the Journal is also on the desk of the delegates. So this is easier to follow. I think you have this. Now you may proceed.

DELEGATE HARTL: That is correct, Mr. President. That's what I originally referred to.

We referred to a unified judicial system consisting of a Supreme Court, District Court and such other courts as provided by law. It is anticipated that our Supreme Court as we currently know and recognize it to be would remain in substantially the same form as it presently operates. Our District Court, which we recognize on a local basis in each District, would also remain with virtually identical powers as it originally and currently operates under. The last phrase "and such other courts as provided by law" anticipates the legislative body providing for such courts as might be necessary; which, incidentally, under our Political Subdivisions article, would refer to the County Court system, which is the probate and guardianship court, so to speak, or court of increased jurisdiction handling items wherein the penalty can be up to \$1,000. This is lower than a felony. This particular provision would provide for the current court system as we now have it under the Legislature would provide a replacement or substitute court for the police magistrate court which we have in the larger towns, the county court which we have in each county, except where we have courts of increased jurisdiction — I believe there are twelve courts of increased jurisdiction — and a county justice system which we have in the counties which do not have increased jurisdiction.

For distinction of those who may be somewhat unfamiliar with the three lower court systems, I would just simply say that the police magistrate court normally would take care of the traffic violation and parking violation type situations as in my case in the City of Rugby. Most cases in the Cities of Grand Forks and Fargo, the County Court of Increased Jurisdiction in Benson County, for instance, would take care of the probate matters and the driving violations committed on the highway. Whereas in Pierce County, my county, the county court system would take care of only the probate and guardianship type matters, the county justice court system would take care of the highway violations and the lower misdemeanors of the court system.

Under Section 2 the "Supreme Court Jurisdiction", we cover Sections 86, 87, 89 and 88, 92 and 95 of the old Constitution. Primarily these sections dealt with jurisdiction, units of court, terms of court, the increase under Section 95 to five judges when our population attained 600,000 people, for terms of the Supreme Court at Grand Forks and Burleigh County which you will be aware of we now have Supreme Court Justices only at Bismarck, and for constitutionality of the five judges on the Supreme Court.

The Section 2 as proposed simply consolidates the articles into a concise jurisdictional statement as to the type of court; namely, the Supreme Court is to be the highest court, the type of jurisdiction it is to have. And, incidentally, in this particular portion on lines 3 and 4 the court has "the authority to issue, hear, determine and enforce such writs as may be necessary". We deleted the original writs as we referred to those earlier in the thing, such as habeas corpus, mandamus and quo warranto, believing that the original writs, as it is stated here, which they will still be interpreted as with the Latin terminology as far as court procedure, will be considered and it was not necessary to maintain their Latin terminology within the new Constitution.

The Supreme Court would continue to consist of five justices. We felt, after proper deliberation, that we had adequate reference to the workings of our court system, and that it would not be necessary at any time in the future to increase the staff to seven. We also, in accordance with procedure, designate one as Chief Justice. The Chief Justice then shall exercise general superintending control over all courts. The reason that we determined the Chief Justice should have this authority was the fact that we had to place the responsibility somewhere and it is logical that the Chief Justice should have this power.

With reference to the rules of government of all courts, again the Supreme Court having the general control of the court system, it was felt that it was proper to have the court make the rules.

With reference to Section 3, "Decisions in Writing," the current section which controls this is Section 101. For those of you who have your Constitution before you, the original Section 101 recites that when a judgment and decree is reversed or confirmed the Supreme Court shall fairly decide every point arising upon the record of the case and the reasons therefor shall be concisely stated in writing, signed by the judges, and filed. And any judges dissenting could give the reason in writing.

The system of publication of the Supreme Court decisions which we use makes

reference to the important cases — excuse me — the important points brought up in the case. And we felt after review of the particular article where the Supreme Court members and members of the committee that we had a repetitious and somewhat outmoded requirement in the Constitution at this point, since the Northwest Reporter issued by West Publishing Company does the work of the Supreme Court in this particular instance. We, therefore, deleted the specific requirement of the judge to discuss each concise point, and have indicated in Section 3 that the points “shall be concisely stated in writing, signed by the justices”.

PRESIDENT WENSTROM: Delegate Kretschmar.

DELEGATE KRETSCHMAR: Mr. President and Convention Delegates:

Section 4 of the Majority Report deals with “Appeals” to the Supreme Court, and is generally a rewritten version of Section 109 of the present Constitution; it allows appeals from the lower courts. We’ve changed the wording “district” in the old provision to “lower” so that appeals may be allowed to the Supreme Court from decisions of County Courts of Increased Jurisdiction, as presently is the case, and from any other courts that would be so provided by law or by Rules of the Supreme Court. The appeals would be set up under the statutes as they presently are, or under the Rules of the Supreme Court as Section 2 gives the Supreme Court power to promulgate.

Section 5 of the Majority Report is basically a rewritten version of Section 90 of the present Constitution as provides for ten-year terms as is currently the case for Justices of the Supreme Court. We have designated the Justices of the Supreme Court as “justices” rather than “judges” throughout the article, and use the term “judges” for the judges on the District Court. This is one slight change from the present Constitution.

Section 6 gets into the District Court Jurisdiction, and is basically a version of Section 103 of the present Constitution. We have made some changes in this section because we are designating the District Court as the court of original jurisdiction in all cases except as otherwise provided by law so that the Legislature could, in the future, providing the District Court would have jurisdiction to just about every case that would arise in this state, — right now some of the other courts have jurisdiction such as the probate courts and the justice courts and so forth — this would, I imagine, continue. But the Constitution now would allow it to be changed in the future if the Legislature saw fit.

Also the District Courts are given such power of jurisdiction as they would have under the Rules of the Supreme Court. And then again the Judges of the District Court would be — would have authority to issue these various writs which they have authority to issue now. And we have taken the Latin names out of this provision again as these writs are set up under the statute; most of them in Title 32 of the Century Code.

I believe that completes the explanation of Section 4, 5 and 6. And I would yield to Delegate Kessel.

DELEGATE KESSEL: Mr. President.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Fellow Delegates:

Section 7 of the proposal pretty much takes care of Section 104 and Section 105 of our old Constitution wherein it was provided that we shall have six judicial districts, and the names of the counties in each district are designated. We have taken these districts out and have provided that the district shall, in the future, be set up by the order of the Supreme Court. There was much discussion on that, whether that should be left with the Legislature, or whether that should be done by the Supreme Court. It was felt that the Supreme Court is in a better position to know the work load of the various districts, and that they are the ones that can determine how the districts should be altered in the future.

We left the same term of office for the District Court Judges at six. And they hold their offices as was provided under the old law.

Section 8 sets up the qualifications. And in this we have pretty much deleted Section 94 and Section 107 of the old Constitution so far as the age limit is concerned, in that it provided that they shall — the Supreme Court Justice shall be at least thirty years of age and have been in the state at least three years. In our

present Section 8 we leave that up to the Legislature. The same is true so far as District Court Judges are concerned; we changed the words "learned in the law" to be member of the bar and we again took out the age limit, leaving that up to the Legislature. Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Mr. President and members of the Convention:

We will now talk about Section 10, which is labeled "Disqualifications". This is old Section 100 in the old Constitution. And I'd like to tell you that this Committee Proposal 1-11 covers 34 sections of the old Constitution. And this happens to be the only one that we added anything to. We added and made it a little bit stronger because the old Section 100 only disqualified a judge in case he was interested in a cause that appeared before him. But now we have enlarged that that if he is unable to sit because he is "physically or mentally incapacitated", then the Supreme Court may "assign a judge or retired justice or judge to sit" in on the matter. And, of course, this also ties in with Section 2. We are hoping that the rules will allow for this to be set up.

I yield, Mr. President, to Delegate Engelter.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

Section 11 is a section on "Removal". It is a new section in our Constitution. Our committee felt that in the areas of impeachment with regard to judges that something additional should be provided. I think the section itself is self-explanatory. There is one point here that I want to point out. In the areas that we have covered we look at the question of service of a judge in the area that he's serving, whether or not he is doing the service, and whether or not some type of either temporary suspension or complete removal should take place and not allow him to sit and is disqualified for any of these reasons.

Section 12 is a new section; it refers to "Retirement." I think it's more a directive in nature to the Legislature to provide for retirement. Retirement, I think, is important because it's going to bring better qualified attorneys to seeking the position of judgeship. The area of retirement includes both age and retirement pension.

Section 13 is an area on "Vacancies." I think we discussed this a little bit earlier this morning. I want to point out that we felt that if a vacancy does occur, the vacancy should be filled as soon as possible.

Now in our provision it provides that a nominating commission can submit to the governor a list of nominees and the governor shall appoint — and I emphasize that point — he shall appoint from one of the nominees or he has an option that he might call a special election to fill that vacancy.

Section 14 is a new section that was introduced in our committee by Delegate Vogel in the early part of our studies. It wasn't given much consideration until late in our deliberations. It provides for the case where the incumbent is running or has no competition. And I think history will tell us that most judges when they rerun for election that they run unopposed. And, therefore, our committee felt that if this is the case that the public should be able to decide not by not voting at all, but by voting not to retain the judge.

At this time I'll yield to Delegate Kessel to discuss Section 10 — or 9, I think.

PRESIDENT WENSTROM: The Chair will recognize Delegate Kessel.

DELEGATE ENGELTER: I'm sorry, I didn't think 9 was discussed.

DELEGATE LONGMIRE: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: — 9 is a very short section. I thought I had that assigned to someone.

But this prevents, of course, a Judge of the — a Justice of the Supreme Court or a Judge of the District Court from engaging in the practice of law or holding any other public office, elective or appointive, other than the one that is judicial in na-

ture. And this, again, was of course a similar provision carried in one of the older sections.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BAKER: Question.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I am referring to Section 2, the third sentence — I'm looking at page 200 of the Journal — which says: "The chief justice shall exercise general superintending control over all courts." We do not have in either the Constitution or our statutes a definition of what is "general superintending control". And it is my feeling, and I believe the feeling of present members of the Supreme Court, that that exercise of general superintending control should be by the Supreme Court and not by the individual who happens to be Chief Justice. And for that reason I have an amendment at the desk. But don't read it just this instant.

The only other remark I would like to make is on Section 8, the qualifications, which applies both to Supreme Court and District Court. They must be "citizens of the United States and of this state, shall be admitted to the bar in this state, and shall possess any additional qualifications provided by law." Of course this is, as far as the Constitution is concerned, is carte blanche to a legislature to tailor qualifications which would not permit anyone to become a judge. And I'm worried about the broadness of that. It may be that the committee felt they were referring to age. But who knows what they referred to when they used the word "any"?

However, I am not proposing an amendment to Section 8. But I do propose, in essence, that the word "Chief Justice" in the sentence I referred to in Section 2 be replaced by the words "the Supreme Court". And I have such a motion at the desk.

CHIEF CLERK GILBREATH: The proposed amendment to Committee Proposal 1-11 is as follows:

In Section 2 of the Majority Committee amendments after the words "provided by law. The" delete the words "chief justice" and insert in lieu thereof the words "supreme court".

PRESIDENT WENSTROM: Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Now do we have any discussion?

DELEGATE LONGMIRE: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: — I'll tell you why the committee put it the "Chief Justice". You can decide the merit both ways. We discussed this at length, of course, and at first had in the whole Supreme Court. But the committee, after its deliberation, decided that spreading the authority around to generally supervise the courts, their activities and their procedures was really not placing responsibility at all, and that if we wanted to get the job done best we ought to place it in one person; namely, the Chief Justice. We felt in doing this that there would be closer supervision, we would be able to establish responsibility and authority for it, and with five different people working on it we felt that probably none of them would do it or would do it properly. And for that reason we designated the Chief Justice as the general supervising officer. Now, we felt that it had merit, and I think our committee still feels that it has merit. I think as a practical matter obviously the Chief Justice would be consulting with the other justices, and certainly with the District Judges, in following forth his duties in this supervision. It does not mean that he could make the rules or anything of that kind; that would still be left to the court. He would be responsible for carrying out the rules of the court as they were established, and in generally supervising the courts. For those reasons we designated him and not the court.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Since I made the motion, I think I should explain it. When you place the general supervising control of all of these lower courts, it seems to me the logical place for it is not in any individual but in the higher court. Each

individual who may be Chief Justice may vary the way he felt that he should exercise this rather undefined power that is placed in him. If he felt not, one man out of the Supreme Court might find himself in a position to do nothing although four other Justices of the Supreme Court felt something should be done. And since the Supreme Court is not individuals but it is a collective body and their actions always have to be by at least a majority, and on constitutional issues by simple majority, four out of five, that's the reason why I feel that that kind of power should not be placed or foisted upon one man and rather should be in the court itself.

And as Delegate Longmire said, he doesn't — the committee didn't mean that he should make the rules, but if he's the only one that has that power who else is going to make any rules for him? That's why I believe it should be the court itself.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Ladies and gentlemen:

I would resist this amendment. Facts have been stated the Supreme Court has the rules to make — power to make the rules. We thought there should be one individual in charge just as Chairman Longmire said. And at this point we may come to a little division where we are not going to stand to have the judges tell us everything. Maybe some judges didn't like this. And you might know that you learn something about courts, I'll bet I did around here. The Supreme Court sometimes has five good members, and sometimes about three, some inactive ones. And it seems quite unlikely the Chief Justice would be the lazy one. And I think that the original proposition we have — we had quite a fight over this, and I'm not going to agree easily anyway that we should turn around now because maybe one judge didn't like it.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I, too — I also resist the amendment and would urge its defeat. We feel that we do have enough confidence in the Supreme Court Justices and in the Chief Justice that we can count on him to enforce the rules of the court.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendment as offered by Delegate Pearce.

As many as are in favor of adopting the amendment will say "aye," those opposed say "no." The "noes" have it. The amendment lost.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I have a question on procedure. I wonder where we've been jumping around on these sections with various amendment attempts, and I'm wondering if we might not proceed section by section unless the delegates do not want to divide the question. Of course, one of us can demand that and it's going to be divided. I think we might save some time going 1, 2, 3, 4 right on down the line and taking amendments as we get to them. I wonder if the Chair would care to inquire whether or not there will be a demand to divide the question.

PRESIDENT WENSTROM: I would hate to make a request like that when I don't know what the amendments are going to be that are going to be offered. And I wouldn't want anyone to commit himself until the time that we were going to do the voting.

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: A point of information to Delegate Longmire. Will you point out to me where did Section 116 in the old Constitution go having to do with "Judges of the District Courts may hold court in other districts . . ."? I can't find it.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: 116 is not specifically covered in any of the other sections. It is being repealed, however. You want to know why, I'll have to get the copy of the Constitution here. Off-hand I'll have to check it here and see. Maybe one of the other members of the committee can answer it without checking it.

Okay. Section 116, as you will note in checking your Constitution, "Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law." The thinking of the committee was that the court should have the privilege, the Supreme Court, of setting up these rules and so forth, and that we no longer needed that particular provision. I believe we do have some statutes on when this can be done. But we just didn't feel it was sufficiently necessary. We thought it would properly be covered without specifically including that in the Constitution.

PRESIDENT WENSTROM: Delegate Wallin you asked for the floor a long time ago. Do you still wish to have it?

DELEGATE WALLIN: I was — Mr. President: I was going to discuss the repealing section. But I probably will delay that for the time being. But I can answer Mrs. Simonson's — Delegate Simonson's question probably that old Section 116 is covered by the unified court concept and new Sections 1 and 2.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President: I would like to ask one of the members of the Committee a question. I had been intrigued with the alternate idea of length of terms in the multiples of four in the original 1-11, and I would appreciate some explanation as to why you dropped that.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: I suppose the main reason that we dropped that was because the District Judges and the Supreme Court Justices and all that appeared before us were vitally opposed to it. They thought their terms had been set by tradition and the Constitution and statute for so many years that they violently opposed any change in changing it from eight to four or four to eight or something of that kind.

I might then state that the reason in our original proposal for putting them in was to take care of the situation if we should go to four years on our other elective officers. And we thought it was pretty good, but they let us know in a hurry that they didn't like the tampering of the length of their terms as they were expressed at the time.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: I am concerned with Section 11, as long as we're discussing the whole proposal. Section 11 provides for removal of judges. And it states, it is written: "The legislature shall provide by law for the removal of supreme court justices and district judges . . ." then goes on to set the grounds of physical or mental disability, misconduct, et cetera, and incompetence. And what concerns me about this is it's not clear from the wording whether the committee intends that the Legislature itself should be able to remove judges. And if they have that kind of power, I'd be concerned about separation of power between the judicial and legislative branches of the government. I think the committee's idea — and I talked to several of the members about it — they wanted the Legislature to at least spell out procedures for this to be done rather than actually doing the removing. However, I'm not certain that it states that as clearly as it should be said in this important area.

Now what we're attempting to do here is to set up another procedure for removing judges over and above the impeachment route, which of course is the one area where the Legislature is given the power by Constitution to remove judges. And so to more clearly state it, I'd like to suggest an amendment. And I think it's at the desk. And if the Clerk would read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment, Committee Proposal 1-11, is as follows:

Delete all of Section 11 and insert in lieu thereof the following:

"Section 11. The legislature shall establish by law a procedure for removal of

judges for misconduct in office, or inability to perform the duties of office, whether willful or because of physical or mental disability, or incompetency. The supreme court shall have original, exclusive and final jurisdiction in judicial removal proceedings. A supreme court justice proceeded against shall be disqualified from acting in such proceedings and a district judge selected by the remaining judges shall act in his stead."

DELEGATE KELSCH: Mr. President, Fellow Delegates.

PRESIDENT WENSTROM: Delegate Kelsch, may I have a second to this amendment?

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Omdahl.

Now you may proceed.

DELEGATE KELSCH: Thank you, Mr. President. My original impulse was to feel that the whole question of removal by the judiciary should be handled by the judiciary itself. And I was going to suggest an amendment and simply say, "The courts shall provide by rule for the removal of judges." But I can see that the committee's thinking that they felt that if they left it strictly to the judiciary they may not do it. And this proposed amendment, what it does is it allows the Legislature to establish by law for a procedure whereby judges may be removed. It sets out the specific grounds which are both willfulness, willful misconduct or willful to perform which would be the same grounds as you would have in impeachment proceedings, but it also sets out the grounds of inability to perform duties because of disability, mental or physical. It then requires that these proceedings be had, and the Supreme Court be the sole judge and with exclusive jurisdiction, so we do not have the Legislature itself determining the question finally.

And then it provides that if one of the Supreme Court Justices themselves are being proceeded against they couldn't act and shouldn't act. In that case the district judge would act.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Would the judicial removal, the way the amendment is worded, might not that be considered the impeachment proceedings also? And by no left-handed method do you want to cut that out.

DELEGATE KELSCH: We already have, I believe, passed the impeachment section. I am quite sure that covers judges; it's our intention that it did. Because that's a traditional way of removing judges through impeachment. Of course, that is strictly a legislative process. I think the Legislature should have that. It's very cumbersome and quite expensive. I think that should be had. This is an alternate or additional route. The Legislature could provide removal despite of impeachment.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Of course I haven't the amendment here, but I think your language is a little broad in that one if it says "all judicial removals".

PRESIDENT WENSTROM: Delegate Rundle, I believe you stated that you didn't have the amendment?

DELEGATE RUNDLE: I'm sorry. I see someone else looking at it.

PRESIDENT WENSTROM: It is my understanding that this amendment has been distributed; is that right?

DELEGATE KELSCH: Mr. President. I have not had time to have it distributed. It has not been distributed. If the delegates would like to have it read before they vote on it, maybe we could go on to other sections until it could be distributed.

PRESIDENT WENSTROM: I'm sorry. I think it would be well that we did distribute it so all the delegates knew. This is quite lengthy to be talking about without having it distributed.

DELEGATE LONGMIRE: Mr. President: Maybe I could speak briefly on the amendment while we're distributing it. Would you prefer to wait until they get it before I say anything?

PRESIDENT WENSTROM: I would prefer, Delegate Longmire, to move on to another section and come back to this section —

DELEGATE LONGMIRE: Okay.

PRESIDENT WENSTROM: — after the delegates have had time to read this.

DELEGATE LONGMIRE: Very well.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: While we are marking time here, I'd like to ask a question, if I could. Are you still figuring on recessing or adjourning at three-thirty?

PRESIDENT WENSTROM: At three-thirty? No. I don't know that I ever did say we would recess at three-thirty.

DELEGATE HERNETT: Well, are we going to keep going this afternoon then?

PRESIDENT WENSTROM: If I can keep the delegates together and no one has a prior commitment I intend to stay here until six o'clock.

DELEGATE HERNETT: Well, I thought this morning we talked once about having committee meetings this afternoon.

PRESIDENT WENSTROM: Well, if it's the will of the Convention that they recess and have committee meetings, why that's what we'll do. However, I think, Fellow Delegates, that you have to realize that we've spent this much of this day on practically one piece of — on one proposal. And let's never forget that we continuously work closer to the twenty-fourth hour of the thirtieth day.

DELEGATE HERNETT: Well, Mr. President, I asked a question. Are you going to accept the committee reports before we adjourn?

PRESIDENT WENSTROM: This one?

DELEGATE HERNETT: No, all of them. I mean the ones that —

PRESIDENT WENSTROM: I sincerely hope we will. But again we've been on this one since a few minutes after nine this morning — we started on this one at ten. And it's been committee reports. This is the first day in my time — we ever stayed on the fifth order this long.

DELEGATE HERNETT: Well, I was just thinking maybe — I would suggest that we interrupt this one and take the other committee reports. I have a few that I would like to see get on the calendar for action on Thursday. In fact, I think you know the one I'm talking about. We discussed it this morning.

PRESIDENT WENSTROM: Delegate Hernet, I'm not correct in my statement that we've been on the fifth — the fifth order of business all day; we haven't. But we have been — spent a considerable amount of time on the fifth order, and we immediately switched to the tenth order, which was on the same proposal. So it has been a long time on one proposal.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: It's true that we've been on this all this time. But our committee chose rather than to break our proposal down to bring it all to you in a bunch because these section are — most of them are all related to each other. So really if you compare it with some of these proposals that are broken down, we have considered fourteen proposals today and not just one. I think by way of explanation our committee would like that to be known.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I know that we've been on — this is a terribly important issue. I have served on this committee as well. But may we be on the eighth order for just a moment?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE GIPP: Mr. President, Fellow Delegates:

I would like to have recognized Senator Francis Barth, State Senator of North Dakota from District 35. In addition, we have some other guests in the gallery; Mrs. Eugene Martin and her group of students from Grand Forks, North Dakota. May I have them recognized, Mr. President?

PRESIDENT WENSTROM: Senator Barth, will you advance to the rail? And

will the delegates in the balcony please rise and be recognized by the Convention?
(Applause)

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: In our book here it says that by the eighteenth day — that's tomorrow — that all proposals have to be out of committee.

PRESIDENT WENSTROM: That is true.

DELEGATE LANDER: And so I would — I'm happy to stay here until midnight if we want to. I was just concerned about what is the plan for those of our committees that have proposals which we will have to report sometime before we adjourn tomorrow?

PRESIDENT WENSTROM: Delegate Lander, there isn't any question but what the committees are going to have to meet sometime between now and tomorrow. And if the committees want to meet at three o'clock, why of course the motion is in order for them to do that. If they want to meet at four, that's fine.

Has this proposal been presented now?

CHIEF CLERK GILBREATH: They are doing it right now.

PRESIDENT WENSTROM: They are doing it now.

The Chair will recognize Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: I've had an opportunity to look at Delegate Kelsch's motion, and I think it's a good amendment. I think that the committee had in mind that some similar procedure would be established by the Legislature as recommended or as proposed in this amendment. Certainly I think the Supreme Court would have final jurisdiction, naturally, without specifically saying so here. But it certainly would not necessarily have original or exclusive jurisdiction without saying so here. I haven't, obviously, had an opportunity to discuss it with the other members of the committee. But as far as I personally am concerned, I would have no objection to the amendment.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Delegate Kelsch, in line — about line 6 I still would like to have the words "in judicial removal proceedings" tied down to this section so that some future decision won't say this covers all judicial proceedings, such as impeachment. I want it tied down that it pertains to this section only and doesn't pertain to impeachment. Because the way — one famous writer said that, "We have constitutions; but the judges say what they mean."

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: I've been seized with a number of technical amendments. I don't think that response to Delegate — in response to Delegate Rundle's question, I don't think there is any problem because these two sections will stand by themselves; Committee Proposal 1-32, which has already been passed, provides for removal by impeachment of judicial officers and sets forth the grounds, and then this section, I have no objection to adding the word "judicial" in there, "judicial proceedings". Is that what you're asking, Delegate Rundle?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Delegate Kelsch, "judicial removal proceedings as set forth in this section." Something to that effect. So they can in no way, shape, form or manner be used to limit impeachment.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: In reply to my very competent, dedicated member of the Judiciary Committee, I see no problem with this section as limiting in any way the impeachment section which, of course, is a procedure for the Legislature itself to impeach a judge. And certainly this section here was not designed to limit in any way the proceedings under that section of the Constitution which has been passed, and I don't think it would ever be interpreted to do that even as it stands at the present time. We merely thought that in the judiciary article we should have a

further method because impeachment is not always positively — politics enters into that a little, too, depending who is in control of the Legislature, what party and so forth. We felt that there should be an independent method of removing that judge — judges who should be removed for these reasons we've indicated here. And, Delegate Rundle, I know I'm not your attorney, but I can see no problem that there would be any restriction in that impeachment section.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment —

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: — of the amendment as offered by Delegate Kelsch. Delegate Rundle.

DELEGATE RUNDLE: Mr. President: In reply to Delegate Longmire, I — he may not see any problem but I don't want to have it come to the point where there will ever be a problem. And I've seen some decisions that go around and around quite a ways what I thought about a straight line. And I insist that — I'm one vote, of course, I recognize that — but I would like to see this tied down so that no one can go to the other section and say that the Supreme Court shall have original, exclusive and final jurisdiction in all judicial removal proceedings. The "all" isn't in there, but they could rule it meant that. And I think, Delegate Longmire, if you'd go into your experience and join me in this argument, you'd find dozens of cases where they've used more than one section of the Constitution. And one of the recent — one of the recent judgments — decisions concerning wages of various people, and they used about six sections in this one. Now I don't think this is a very unreasonable request, two or three little words would do it, and then you'd never have a chance to prove that you were right and I was wrong.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I may be able to solve the problem by moving this additional — this amendment to the amendment on the fourth line after the word "incompetency." Insert the words "Except for impeachment proceedings" and then strike the capital "T" on the article "the".

DELEGATE STANTON: Second.

DELEGATE KELSCH: It would then read, "Except for impeachment proceedings the supreme court would have original . . ." Would that clear the problem, Delegate Rundle?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Thank you very much. I'm very happy.

PRESIDENT WENSTROM: This amendment to the amendment was seconded by Delegate Stanton.

Any further discussion?

DELEGATE KNUDSON: Question.

PRESIDENT WENSTROM: Hearing none, as many as are in favor of the motion of adopting the amendment will say "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

Now we are back on the amendment as offered by Delegate Kelsch with the amendment. Is there any discussion on that? Any further discussion?

Hearing none, as many as are in favor of the amendment will say "aye;" opposed "no." The "ayes" have it. And the amendment is adopted.

Now we are back on Proposal — Committee Proposal No. 1-11 with Section 11 amended. Now do we have further amendments to this particular proposal?

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I have a proposed amendment to Committee Proposal No. 1-11 creating a new section, Section 15. I believe a copy is at the desk.

PRESIDENT WENSTROM: Delegate Hill has a further amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-11.

Create new Section 15 as follows:

"Section 15. When the incumbent judge is not a candidate for re-election, nomination for election to the office of justice of the Supreme Court or judge of the District Court of this state shall be made as follows: the governor shall nominate one of three persons submitted to the governor by a nonpartisan judicial nominating commission established by law. The name of the governor's nominee shall automatically be placed on the ballot at the primary election with appropriate designation, with the consent of the nominee."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do I have a second?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Second by Delegate Aubol.

Do we have any discussion?

Delegate Hill.

DELEGATE HILL: Mr. President, Fellow Delegates:

This is basically the proposal which was advanced by Delegate Hoffner with the changes made which were, I believe, the most objected to by some of the delegates.

It still provides an opportunity to get the qualified candidates on the ballot who would not appear there under our present circumstances. I have left in the provisions that the name of the governor's nominee shall have the "appropriate designation" on the ballot for the reason that a non-Nordic name does not stand a decent chance against a Nordic name in North Dakota. And if you don't have any extra advantage on the ballot there is really no reason for having a nominating committee to make a nomination if the people are going to vote "no" such as has been done. And I think we've seen this in the case of our Supreme Court elections the last ten years two or three times. And I think it's true all over the state, of course. And I really feel nothing's wrong with letting people know that a commission that has been appointed by the governor as provided by law feels that this particular fellow is qualified. I know myself if I have no idea who the candidates are for a particular office, I would like to know who the governor or the nominating commission would feel to be the most qualified of the two if I had to make a choice. A blind choice has never enthralled me of something which I'm proud to have. I'd much rather have some direction whether I chose to follow that direction or not. And I think this is something that provides somewhat of a compromise between the elective and appointive systems.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: I don't mean this as a joke, but I would like to have Delegate Hill yield to a question. What if the governor's nominee was a man named Benson and a man named Hill was going to run against him without the governor's designation?

DELEGATE HILL: I suppose that's the problem that I would have in not being able to secure the nomination. But the point is right now the best qualified candidate for judge simply does not run for election in most cases. We can say all the good things we want about our present judiciary, and I think they have been good, but they are never so good that they couldn't be better. And I think that this basic proposal has been advanced by very distinguished commissions all over the country in various forms, and I simply am submitting it for the consideration of the delegates here again.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: Well, I just want to remind Delegate Hill although I'm only half Norwegian, but that in a very recent election a man by the name of O'Keefe beat an incumbent judge by the name of Swanson.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: It also took about seven or eight years before they could muster up their second election and so forth where they could beat him. And I'm

a hundred percent Norwegian but I've been thinking about changing my name to a little more Norwegian-sounding name, however.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Longmire if he wants the floor.

DELEGATE AUBOL: Mr. President: I haven't talked with other members of the Minority Report, but as far as I am concerned this does satisfy one of the big problems that we saw in the judicial system as we have now. And it does speak to the problem of getting qualified candidates at the entry level. And at this point I would support the introduction of the amendment of Section 15.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I'm not speaking for or against this amendment. But I think it's my duty to explain to the delegates that while we did not consider this particular proposal, we did consider many similar ideas about this. We finally concluded that it would be a disadvantage one way or the other to have anyone get on that ballot except through the regular channels of petition as is now provided by law. We felt that an appointment putting it on against someone who had not gotten an appointment would obviously give the person getting the appointment an advantage because right off people would interpret that as being the governor's candidate. And it would discourage other candidates, other qualified candidates, from becoming a candidate if they knew they had to run or if he knew he had to run under a disadvantage such as that.

Now Delegate Warner pointed out the advantage in reverse during the noon hour. He mentioned that all you'd have to do to beat that governor's candidate is to say, "Well, he's a candidate of the Bar Association and the governor and I am the people's candidate. And he's being pushed down your throat whether you like it or not. And if you want the people to have the voice, elect me." That was the thinking of the committee. We felt we ought to let them both go on that ballot with equal opportunity and without one having an advantage of any kind over the other.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President: Could I ask Delegate Hill a question? I notice in Section 13 we've used the words "judicial nominating committee" and in your amendment you used the words "nonpartisan judicial nominating commission". Now how can you find anyone that's nonpartisan politically?

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Well, this is the language that has been used in a number of states that have this type of commission. It's a question of fact whether you can do it or not, I suppose. But this indicates an attempt shall be made.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I have a matter of information. It's not pertaining to the issue, but I think of interest in regard to names. I would assume that Delegate Hills knows that his grandfather's name was Roykes Haugen when he came from the Old Country. Roykes Haugen means they came from the Smoky Hill. And his grandfather thought that was too long a name, so he changed it to Hill.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. President, Fellow Delegates:

The third line he states that nominations shall be made as follows: "the governor shall nominate . . ." Nothing is said in this amendment at all about how anybody else is to get on the ballot. It seems very exclusive and it couldn't work. I urge the defeat of this amendment.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I think it's clearly obvious from the other sections of this provision that candidates for election to the office of judge shall be as provided by

law. And there are simply other nominating provisions as they are applicable. If you say nothing about it, the other sections are controlling.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: It seems to me that this merely extends to the occasion when the incumbent is not a candidate the same procedure which is used for filling a vacancy. You will recall that the Majority Report provides for a nominating commission to provide nominees for filling a nomination. And that the man selected serves as judge until the next election, at which time he might be opposed, his name will go on the ballot and he will be opposed by anyone choosing to run against him. It seems to me that this extends the same practice to the situation in which the incumbent judge has chosen not to run; a nominee will be provided for the primary election and anyone else choosing to run may do so. I think that many people who are anxious to know something about the qualifications of people running for a judgeship would be very happy to have this information.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: How do we know when an incumbent judge is not a candidate for reelection? Presumably the incumbent judge could remain silent and simply not file. That would bring you up forty days before the primary election. Then the nominating commission would have quite a scramble to get some names to the governor. His nomination presumably would go on the ballot, but everyone else would be foreclosed from filing, it would be too late after the deadline.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention —

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: It seems to me that we're engaged in sort of a game of nitpicking here and have been for the last couple of hours. It seems to me that what Delegate Hill and Delegate Hoffner are trying to do is get the idea before the group that we have some rational basis for nominating judges. And it doesn't deprive anyone of the opportunity of running. It seems to me that it's a good proposal. It's a worthy proposal. We're talking about adopting a constitution that might last for fifty or sixty years. And it seems to me that we ought to consider every worthy idea that comes by. I don't like this language in here about "with appropriate designation". I don't think that there ought to be any designation on the ballot. But at least the voters ought to have a chance to vote for one qualified candidate for judge.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the proposal to create a new section, a Section 15, on Committee Proposal No. 1-11. Those in favor of adopting the amendment will say "aye;" those opposed will say "no." Let's do that over. As many as are in favor of the motion will say "aye;" those opposed say "no." The "noes" have it, and the amendment failed.

Looks like we have division. Those that are in favor of adopting the amendment now are going to vote "aye," are going to vote "yes," and those that are opposed will vote "no." The key will be opened and you will record your vote, your choice.

Has every delegate voted? Any delegate wish to change? Hearing none, the key is closed.

The vote indicates 46 "ayes" and 48 "nays," with four delegates absent. So the proposed amendment failed.

We're back on the Committee Proposal No. 1-11.

Any further discussion? Hearing none —

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Since we've had several amendments here, at least one that was passed, I suppose we should again suspend the rules. So for that

purpose I move that the Rules be temporarily suspended, that this proposal be deemed properly re-engrossed and placed on the calendar for first reading and passage.

PRESIDENT WENSTROM: It's been moved by Delegate Longmire that the Rules be suspended, that the Proposal No. 1-11 as amended be deemed properly re-engrossed, and it be placed on the calendar for first passage as amended.

Delegate Hill.

DELEGATE HILL: The purpose of the Rules, of course, was to provide un-complicated bills such as this — where there have been amendments and proposed amendments — is that the delegates have a day to think about them before they vote. And I would suggest that we follow the rules in this procedure, and I would resist the motion of Delegate Longmire.

PRESIDENT WENSTROM: I suppose I should have a second to that motion.

DELEGATE UNRUH: Second.

PRESIDENT WENSTROM: Delegate Unruh seconded the motion. Any further discussion?

The question is on the suspension of the Rules.

Delegate Scheel.

DELEGATE SCHEEL: Mr. President: I would also like to throw my two bits worth in here for resistance of the motion so we can think this over for another day. I think I heard a lot of discussion yesterday. We have gone pretty fast through one here on eighteen-year-olds, and now this is a lot more complicated than that.

PRESIDENT WENSTROM: Any further discussion?

The question is on the suspension of the Rules, that the Proposal No. 1-11 be deemed properly re-engrossed, placed on the calendar for first passage as amended.

Those in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it. The motion prevailed.

DELEGATE HILL: Mr. President: Doesn't that motion meet a two-thirds?

PRESIDENT WENSTROM: Yes, it does.

DELEGATE HILL: You ruled it had two-thirds?

PRESIDENT WENSTROM: I ruled it had two-thirds.

DELEGATE HILL: I request a division, please.

PRESIDENT WENSTROM: Division is requested. Those in favor of adopting the motion to suspend the Rules will vote "aye;" those opposed will vote "no." The Clerk will open the key. You will record your vote.

Does any delegate wish to change his vote? The vote is closed.

The vote indicates that there were 43 "ayes," there were 50 "nays," there were five delegates absent and not voting. So the motion to suspend the Rules was defeated and the Committee Proposal No. 1-11 as amended will be on the tenth order of business tomorrow.

I believe we have a number of committee reports to be received.

Should we go back on the fifth order, Mr. Clerk?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I was just going to suggest to Delegate Fritzell with all the litter we have on our desks this would be a good time to introduce an anti-pollution measure.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Is it possible that we could be in recess while these committee reports are read?

PRESIDENT WENSTROM: Delegate Unruh, from a fellow that has served in the Senate as long as you have, I can say, "Silly boy." You can just go out and get a drink.

DELEGATE UNRUH: Just thought I'd try.

PRESIDENT WENSTROM: We will proceed on the fifth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal 1-60, has had the same under consideration and recommends the same be amended and when amended recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-60; that it be amended. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-80, has had the same under consideration and recommends that the same be amended and when so amended recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-80; that it be amended. Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-80 will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-90, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-90; that it be indefinitely postponed. Is there any discussion? Hearing none, the question is on the adoption of the Committee Report that Committee Proposal No. 1-90 be indefinitely postponed. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Education, Resources and Public Lands, to whom was referred Committee Proposal No. 1-93, has had the same under consideration; recommends that the same do pass.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-93; that it be given a "do pass." As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the report is adopted. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-104, has had the same under consideration and recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the report on Committee Proposal No. 1-104; that it be given a "do pass." Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-104 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-105, has had the same under consideration and recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-105; that it be given a "do pass". Hearing no discussion, as

many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and it will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-106, has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-106; that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted, and it will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-107, has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-107; that it be given a "do pass". Hearing no discussion, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal 1-108, has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-108; that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-109, has had the same under consideration; recommends that the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of Proposal No. 1-109; that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-110, has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal No. 1-110; that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted. It will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-111, has had the same under consideration; recommends that the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal No. 1-111; that it be given a "do pass". As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative

Functions, to whom was referred Committee Proposal No. 1-112, has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-112; that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted, and 1-112 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-113, has had the same under consideration; recommends that the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-113; that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And it will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-99, has had the same under consideration; recommends that the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-99; that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-118, has had the same under consideration; recommends that the same be returned to the floor without recommendation.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-118; that it be returned to the floor without recommendation. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And it will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Committee Proposal No. 1-119, has had the same under consideration; recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-119; that it be given a "do pass". Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the proposal will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Delegate Proposal No. 2-9, has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-37.

Delegate Hoffner, Chairman.

Delegate Hoffner moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-9; that it be indefinitely postponed. Is there any discussion?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: This is the proposal I introduced. And it's been incorporated in the proposal of the frequency of session — length and frequency of sessions.

PRESIDENT WENSTROM: Being no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and the report is adopted. And Committee Proposal No. — no — Delegate Proposal No. 2-9 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Delegate Proposal No. 2-10, has had the same under consideration; recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-37.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 2-10; that the proposal be indefinitely postponed. Is there any discussion?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: 2-10 is the same as 2-9; it deals with the same subject matter and has been passed by the assembly.

PRESIDENT WENSTROM: As many as are in favor —

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President: Will Delegate Hoffner yield to a question?

DELEGATE HOFFNER: Yes.

PRESIDENT WENSTROM: Delegate Hoffner yields.

DELEGATE SANSTEAD: Mr. President, Delegate Hoffner: I notice that is a proposal of Delegate Paulson's. And inasmuch as he isn't here, I would wonder if he has agreed to committee action in advance?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Delegate Paulson is aware of the indefinite postponement. I wouldn't dare do it any other way.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report that Proposal No. 2-10 be indefinitely postponed. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. The report is adopted. 2-10 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-12, has had the same under consideration; recommends that the same be amended, and when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of Proposal No. 2-12; that the proposal be amended. Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. This will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-14, has had the same under consideration and recommends that the same do indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report of Proposal No. 2-14; that the proposal be indefinitely postponed.

Is there any discussion?

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I got into administrative trouble here. I had intended to handle this entirely differently, and I made arrangements

with Delegate Rundle to move it back to the floor so that he could withdraw it. Now I'm embarrassed by this present situation.

Delegate Rundle, my apologies.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I have no objection. It got pretty complicated. Committee met with me, or I met with them, and I'm happy.

PRESIDENT WENSTROM: The question is on the indefinite postponement of Delegate Proposal No. 2-14. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted. 2-14 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Delegate Proposal No. 2-34, has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-34.

Delegate Hoffner, Chairman.

Delegate Hoffner moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-34; that it be indefinitely postponed. Is there any discussion?

Delegate Omdahl.

DELEGATE OMDAHL: Mr. Chairman: We hashed over this matter when we talked about 1-34, which was a Committee Report. And we dealt with this matter at that time. And as you will recall, we extended discussion on the matter of conflict of interest among legislators, so I'm not going to rehash it all over again. Except just to say that my opinion of this proposal has not changed any. I still think it's a problem, still think we need it. And I guess that's all we can say for it when we bury it.

PRESIDENT WENSTROM: The question is on the adoption of the report; that Proposal No. 2-34 be indefinitely postponed. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and it's indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-64, has had the same under consideration; recommends that the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of Proposal No. 2-64; that it be given a "do pass."

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" — as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. And the report is adopted. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage, to whom was referred Delegate Proposal No. 2-74, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Maxwell, Chairman.

Delegate Maxwell moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 2-74; that it be indefinitely postponed.

Is there any discussion?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: This particular proposal died in committee and it might as well die here, too.

PRESIDENT WENSTROM: As many as are in favor of the motion will say

“aye;” opposed “no.” The “ayes” have it. Delegate Proposal No. 2-74 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions, to whom was referred Committee Proposal No. 1-9, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Hernet, Chairman.

Delegate Hernet moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-9; that it be indefinitely postponed.

Delegate Hernet.

DELEGATE HERNETT: Mr. President: Committee Proposal No. 1-9 was our original Committee Proposal. And everything in it now is broken down into separate proposals, and there was no need to keep this proposal alive. So we are recommending that it be indefinitely postponed.

PRESIDENT WENSTROM: The question is on the adoption of the report that Committee Proposal No. 1-9 be indefinitely postponed.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. 1-9 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions, to whom was referred Committee Proposal No. 1-91, has had the same under consideration; recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-91; that it be given a “do pass”.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. The report’s adopted. Committee Proposal No. 1-91 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions, to whom was referred Committee Proposal No. 1-100, has had the same under consideration; recommends that the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-100; that it be given a “do pass”.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President. Your Committee on Executive Functions, to whom was referred Committee Proposal No. 1-102, has had the same under consideration; recommends the same be amended, and when so amended recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-102; that it be amended.

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. It will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions, to whom was referred Delegate Proposal No. 2-30, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Hernet, Chairman.

Delegate Hernet moves that the report be adopted.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Committee Report on Proposal No. 2-30; that it be indefinitely postponed.

Delegate Hernet.

DELEGATE HERNETT: This Committee Report was kind of incorporated in our other proposals.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report on Proposal No. 2-30, that it be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It is indefinitely postponed.

Fellow Delegates, we have arrived at this point in our deliberations for the day. What do you choose to do? Do you wish to — we have two committees, I believe, that would like to have committee meetings, or do we have three?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I don't want to interfere with the normal process here, but I would like the permission of the Convention to withdraw 2-38, have it returned to the floor and withdraw it.

PRESIDENT WENSTROM: Delegate Omdahl, do you know what committee it is in?

DELEGATE OMDAHL: It is in Bill of Rights and Preamble.

PRESIDENT WENSTROM: 2-38?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

Delegate Omdahl has moved that Delegate Proposal No. 2-38 be returned to the Convention floor. Do we have a second?

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: It is from the Committee on Bill of Rights — Preamble, Bill of Rights and Suffrage.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The proposal is now before the Convention.

Delegate Maxwell? Delegate Omdahl.

DELEGATE OMDAHL: Since the content of this proposal — it came out of Committee as a Committee Proposal without recommendation and will be on the tenth order; there is no need to have a duplication here. And 2-38 is exactly the same. Therefore, I request unanimous consent of the Convention to withdraw 2-38.

PRESIDENT WENSTROM: Delegate Omdahl requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-38.

Hearing no objection, the request is granted.

Delegate Hoffner, did you rise to object?

DELEGATE HOFFNER: No.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I would now move that Delegate Proposal 2-40 be returned to the floor of the Convention from the Bill of Rights Committee.

PRESIDENT WENSTROM: Delegate Maxwell moves that Delegate Proposal No. 2-40 be returned to the Convention floor from the Bill of Rights Committee. Do I have a second?

DELEGATE McINTYRE: Second.

PRESIDENT WENSTROM: Seconded by Delegate McIntyre.

DELEGATE MAXWELL: Mr. President: I would now yield to Delegate Lamb.

PRESIDENT WENSTROM: As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the Delegate Proposal 2-40 is now before the Convention.

Delegate Lamb.

DELEGATE LAMB: Mr. President: I request permission to withdraw this.

PRESIDENT WENSTROM: Delegate Lamb requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-40.

Delegate Aubol.

DELEGATE AUBOL: Mr. President: Is this proposal incorporated somewhere else?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Well, this is incorporated in a committee proposal.

Mr. President, I have a series of these, if I may, please.

PRESIDENT WENSTROM: If we have no objection from the floor, then we will grant permission to Delegate Lamb to withdraw Committee Proposal No. 2-40.

Delegate Maxwell, you say you have a series of these, a number?

DELEGATE MAXWELL: Yes, Mr. President.

PRESIDENT WENSTROM: Then may I — now a little further; have each of these been incorporated in some other proposal?

DELEGATE MAXWELL: Not in every instance; in some of them.

PRESIDENT WENSTROM: Not in every instance. Then if you'd give me — give us the numbers, and then we'll take them all back at one time.

DELEGATE MAXWELL: 2-39.

PRESIDENT WENSTROM: 2-39.

DELEGATE MAXWELL: 2-24.

PRESIDENT WENSTROM: 2-24.

DELEGATE MAXWELL: 2-6.

PRESIDENT WENSTROM: 2-6.

DELEGATE MAXWELL: 2-61.

PRESIDENT WENSTROM: 2-61. Now those you'd like returned to the Convention Floor?

DELEGATE MAXWELL: Yes, Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell moves that Delegate Proposal No. 39, 24, 6 and 61 be returned to the Convention floor. Do I have a second?

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Second by Delegate Lamb.

Any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and 39, 24, 6 and 61 are now before the Convention.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I would now yield to Delegate Thompson with reference to 2-39.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I ask the unanimous consent of the delegates to remove it.

PRESIDENT WENSTROM: Delegate Thompson requests unanimous consent to withdraw Delegate Proposal No. 2-39. Hearing no objection, permission is granted.

DELEGATE MAXWELL: Mr. President: I would now yield to Delegate Hubrig in connection with 2-24.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: I request the unanimous consent of the Convention to withdraw 2-24.

PRESIDENT WENSTROM: Delegate Hubrig requests unanimous consent of the Convention to withdraw Proposal 2-24. Hearing no objection, permission is granted.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I would now yield to Delegate Tudor with reference to his Proposal 2-6.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Mr. President: I request that this proposal be withdrawn.

PRESIDENT WENSTROM: Delegate Tudor requests unanimous consent of the Convention to withdraw Proposal No. 2-6. Hearing no objection, permission is granted.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I would now yield to Delegate Trenbeath with reference to his Proposal 2-61.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President: Although I'd like to see 1-89 be considered before I would withdraw this, it apparently isn't going to be possible. So I'll be working under a handicap; and I've been used to that over the years. So I notice on this proposal there are four other delegates signers but it's all right with me if it's withdrawn if it's all right with them.

PRESIDENT WENSTROM: Delegate Trenbeath requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-61. Hearing no objection, permission is granted.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. I would now like to yield to Delegate Rundle. It was here that I had intended to move to bring back his Delegate Proposal 2-14 and he had previously informed me that he had a statement to make in connection with it.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President: I didn't want to leave the impression that I didn't think it was a good proposal or I wouldn't have introduced it. I still think it's a good proposal. But the committee treated me very fairly, and I have no objection.

PRESIDENT WENSTROM: Which proposal is it, Delegate Rundle? Have we already taken care of the proposal?

DELEGATE RUNDLE: Yes.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Yes, it has been disposed of.

PRESIDENT WENSTROM: Thank you.

The Chair will recognize Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: We have four delegate proposals that deal on initiative and referendum. And today, just a little while ago, the report that went in on initiative and referendum will be on the calendar. But it's not likely that we will complete the calendar tomorrow, and so I'm in sort of a peculiar situation where these proposals have all been indefinitely postponed. But we are in agreement to hold them until the subject matter has been dealt with. And so I would like to serve notice with Delegate Paulson on 2-71 — he isn't here, I guess — Delegate Rundle 2-51, and Delegate Cart 2-52, Delegate Hill 2-73. And when these reports go in tomorrow, if they want to hold them I suppose the motion will be to lay over the report. Would that be part of the committee action then?

PRESIDENT WENSTROM: Correct.

DELEGATE HOFFNER: And at this time could we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business.

DELEGATE HOFFNER: I'd like to move that Committee Proposal 1-29 be re-referred to the Committee on Legislative Functions.

CHIEF CLERK GILBREATH: Where is it?

DELEGATE HOFFNER: It's on the calendar.

PRESIDENT WENSTROM: Delegate Hoffner, 1-29?

DELEGATE HOFFNER: 1-29. If I get a second, I'll explain it.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: We have a second? Delegate Kwako seconds the motion.

The question then is on Delegate Hoffner's motion that Proposal No. 1-29 be referred to the Committee on Legislative Functions.

Now any further discussion?

DELEGATE HOFFNER: Mr. President: A couple of the members have asked that that be returned. They have some information that would be helpful to the committee, and I have granted this permission. And I hope the delegation goes along with it.

PRESIDENT WENSTROM: Let's see, that is on the calendar at the present time; is that right?

The question is on the motion to refer Committee Proposal No. 1-29 to the Committee on Legislative Functions.

Hearing no further discussion, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. 1-29 is referred to the Committee on Legislative Functions.

We are still on the twelfth order. We will be on the eighth order — Communications and Announcements.

Delegate Meidinger.

DELEGATE MEIDINGER: Is it your intention to recess or adjourn?

PRESIDENT WENSTROM: Yes.

DELEGATE MEIDINGER: Thank you, Mr. President. In that case I would like to announce that the Committee on Education, Resources and Public Lands will meet at four o'clock in G-1.

PRESIDENT WENSTROM: Any further announcements?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: Committee on Legislative Functions will meet at four o'clock.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Mr. President: The Executive Functions Committee will meet at four o'clock or a little earlier if the committee gets there.

PRESIDENT WENSTROM: Further announcements?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: While I realize there are some members on Style and Drafting on these committees, I don't think there are very many involved, So I'm going to call a meeting of Style and Drafting at four o'clock for about an hour.

PRESIDENT WENSTROM: Any further announcements?

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman: I believe there's a note at the desk for the meeting right after this one for the Ballot Committee.

PRESIDENT WENSTROM: That is correct. I have it.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: May we be on the thirteenth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the thirteenth order of business.

DELEGATE SAUGSTAD: I'd just like to call the attention of the delegates that we have, I believe, fifty-nine proposals left to act on within a six-day period; which means that on an average we'll have to dispose of not less than about ten proposals per day. We have acted on or disposed of sixty-one committee proposals. So numerically we're slightly over halfway home. But as you saw what happened today, I don't believe we made any progress on the calendar. So just a reminder that we have fifty-nine proposals left to act upon.

PRESIDENT WENSTROM: We will be back on the eighth order of business — Announcements.

Thank you, Delegate Hubrig, for calling it to my attention. But the members of the Committee on Ballot or on Alternate Proposals, I think they can meet in my office. Or would you rather meet in some other office somewhere else?

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Would you rather meet in the balcony?

DELEGATE HUBRIG: Dean Bard is here. He said the meeting is arranged for the east balcony — west balcony. West balcony.

PRESIDENT WENSTROM: Fine. So the Committee on Alternate Proposals or the Ballot Committee, whichever you prefer, will meet in the west balcony immediately following the adjournment here.

Now is the desk clear?

CHIEF CLERK GILBREATH: Want me to read the calendar?

PRESIDENT WENSTROM: Yes, read the calendar.

DELEGATE BINEK: Mr. President.

PRESIDENT WENSTROM: Delegate Binek.

DELEGATE BINEK: I'll move that the absent delegates be excused.

PRESIDENT WENSTROM: Delegate Binek moves that the absent delegates be excused. Anyone second?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Knudson.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the absent delegates are excused.

Now we will have the calendar for tomorrow read from the desk.

CHIEF CLERK GILBREATH: I have on the sixth order Delegate Proposal 1-60, 1-80, 2-12 and 1-102.

On the tenth order in addition to today's calendar I have Committee Proposals 1-12, 1-83, 1-11, 1-93, 1-104, 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112, 1-113, 1-99, 1-118, 1-119, 2-64, 1-91 and 1-100. Bingo.

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: Fellow Delegates, at the time that we adopted those Committee Reports you recall I said they would be on the tenth order of business tomorrow. However, I did not say that they would be taken off the tenth order tomorrow.

The desk is clear, Delegate Saugstad.

DELEGATE SAUGSTAD: I would now move that we adjourn until nine A.M., January 26th.

PRESIDENT WENSTROM: It's been moved that the Convention be now adjourned until nine A.M., January 26th. Do I have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

Everyone in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And we will be adjourned until tomorrow morning at nine.

(The Plenary Session adjourned at 3:50 o'clock P.M., Tuesday, January 25, 1972, until 9:00 A.M., Wednesday, January 26, 1972.)

V O L U M E XVIII
(January 26, 1972)

MORNING SESSION

(The eighteenth day of the Plenary Session commenced at 9:14 A.M., Wednesday, January 26, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is Father Mervin J. Klemmer of the Diocese of Bismarck, right here in Bismarck, North Dakota.

REV. F. MERVIN KLEMMER: O heavenly Father, the possessor of all wisdom and the maker of all law, we thank You for allowing us to see the beginning of another day. In Your goodness, please, may it be a good day in service of You.

Continue to share Your wisdom with us. You granted this favor to Your servant, King Solomon. Now as Your humble servants at this Constitutional Convention, we too, above all else ask this gift so that we may best serve You, this great State and its people.

We ask this favor in the name of Jesus, Your Son, who lives and reigns with You, Father, in union with the Holy Spirit, forever and ever. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — calling the roll.

The Clerk will open the key, you will record your presence.

Has every delegate recorded his presence? The key is closed. Roll call discloses 95 present, three absent. A quorum is declared.

We'll be on the fourth order — Revision of the Journal and Correction of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 24th day of January, 1972, and recommends the same be corrected as follows:

On Page 262, following line 13, insert the following: "which motion prevailed."

And when so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Revision and Correction of the Journal.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

We'll be on the sixth order of business — Amendments.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-60, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 275 of the Journal, be adopted. The amendments are:

"INDICTMENT OR INFORMATION. No person shall for a felony, be proceeded against criminally, otherwise than by indictment, or by information, except in cases arising in the military forces, when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system."

Renumber the lines accordingly.

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President: The amendment was to clean up the wording. It is the same content, however.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal 1-60.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-80, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 276 of the Journal, be adopted.

The amendments are: In line 2 of the Title, following the word "repealed" delete the "semi-colon" and insert in lieu thereof a "period" and delete the remainder of the line.

Delete all of lines 3 and 4.

Delete all of lines 8 through 18 of the proposal.

Renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal No. 1-80. Is there any discussion?

Delegate Aubol.

DELEGATE AUBOL: Mr. President: I'm not a member of this committee, but I was hoping that somebody from the committee would get up and tell us what is going on.

PRESIDENT WENSTROM: Any member of the committee wish to comment on the amendments to Committee Proposal No. 1-80?

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: I'm not on the committee either, Mr. President. Is it possible to move this to the bottom of the sixth order so the committee could get a subject to speak to this?

PRESIDENT WENSTROM: It is possible.

DELEGATE LITTEN: I'll so move.

PRESIDENT WENSTROM: It's been moved that Committee Proposal No. 1-80 be placed at the foot of the sixth order. Do I have a second?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Knudson.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. 1-80 is moved to the foot of the order.

CHIEF CLERK GILBREATH: Delegate Hernettt has moved that the amendments to Committee Proposal 1-102, as recommended by the Committee on Executive Functions and as printed on page 279 of the Journal, be adopted.

The amendments are: In line 11 after the word "governor" delete the comma. In line 22 after the comma delete "with" and insert in lieu thereof "within".

PRESIDENT WENSTROM: The question is on the amendments to Committee Proposal No. 1-102.

Delegate Hernettt.

DELEGATE HERNETT: Mr. President: We deleted a "comma" and added an "in". Tomorrow we'll explain the bill when it is on the tenth order of business.

PRESIDENT WENSTROM: Any further discussion?

As many as are in favor of the motion to adopt the amendments will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted. It will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Delegate Proposal 2-12, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 278 of the Journal, be adopted.

The amendments are: In line 7 delete the word "All" and insert in lieu thereof "The" and after "of" delete "public or" and insert in lieu thereof "all" and following the word "governmental" insert the words "and executive".

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Delegate Proposal No. 2-12. Is there any discussion?

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: I believe I explained these amendments rather in detail when they came in on the Committee Report. And unless there are further questions about the amendments, why we hope the Convention will adopt them so we can get them — well, no. Are you on 1-12 or 2-12?

PRESIDENT WENSTROM: We are on 2-12.

DELEGATE LONGMIRE: I'm out of order, Mr. President. I'm talking about 1-12.

PRESIDENT WENSTROM: Any discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: We have not changed anything in the substance of this proposal; it is merely a change in language. We had some discussions with Delegate Rundle in our committee meeting, and we've made what we think are some agreeable changes. And, as I say, the substance has not been affected by the changes.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Should we ask someone of the committee to explain how the word "executive" is being interpreted by them?

PRESIDENT WENSTROM: Would a member of the committee answer Delegate Lander's question?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I'm not on the committee, but I met with them and it was my proposal. And the changes met with my approval. The word "executive" was put in there to exclude the courts really. Now it doesn't include the judiciary or the courts, it includes other bodies, governmental bodies. But the courts are not in this.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee — to Delegate Proposal No. 2-12.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted. It will be on the tenth order tomorrow.

Next for consideration is Committee Proposal No. 1-80.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-80, as recommended by the Committee on Preamble, Bill of Rights and Suffrage and as printed on page 276 of the Journal be adopted.

The amendments are: In line 2 of the Title, following the word "repealed" delete the "semi-colon" and insert in lieu thereof a "period" and delete the remainder of the line.

Delete all of lines 3 and 4.

Delete all of lines 8 through 18 of the proposal.

Renumber the lines accordingly.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman: I guess I'm supposed to have this one. I didn't realize at first we started this morning. Sorry. Actually it was found in Section 208 of the 1889 Constitution which set forth the right to allow all debtors and also homestead exemptions for the heads of families. The committee has rewritten the language of 208 and has retained the substantive content of the section. So this was our reason for submitting it the way it is. It simply clarifies the question somebody raised here a few minutes ago. It was a matter of clarification of that section.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I think probably Delegate Aubol is going to ask the same question. But here, of course, in the amendment we delete the whole content of the proposal, we do not, when we delete lines 8 through 18? Now how do we carry forward then the basic content of the old one by deleting all the new one?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I think Delegate Scheel is right. In fact, I know he is. We are taking out all the language of old Section 208 because it was the feeling of the committee, after a great deal of discussion, that this was a legislative matter. And it has already been set down by the Code defining what heads of households are for the purposes of exemption from forced sale.

PRESIDENT WENSTROM: Delegate Baker, did you have a question?

DELEGATE BAKER: No.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-80.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the report is adopted, and it will be on the tenth order of business tomorrow.

We'll be on the fifth order of business — Reports of Substantive Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation, to whom was referred Committee Proposal No. 1-74, has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegate Haugen, Chairman.

Delegate Haugen moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report of Proposal 1-74; that it be amended, and when amended that it do pass. Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted. It will be on the sixth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-75 has had the same under consideration; recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-75; that it do pass. Is there any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-87 has had the same under consideration and recommends that the same do pass.

Delegate McElroy, Aas, Haugen, Burke, Binek, Ketchum, Lerberg, Miller, Nicholas, Quam and Saugstad.

Delegate Haugen, Chairman.

Delegate McElroy moved that the Majority Report be adopted.

Mr. President: A Minority of your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-87 has had the same under consideration and recommends that the same be amended, and when so amended recommends that the same do pass.

Delegates Trenbeath, Unruh, Erickson and Cart.

Delegate Haugen, Chairman.

Delegate Trenbeath moves the Report of the Minority be substituted for the Report of the Majority.

PRESIDENT WENSTROM: The question is on the adoption of the Minority Report —

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: — of Committee Proposal No. 1-87; that the Report of the Minority be substituted for the Report of the Majority.

Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President, Fellow Delegates:

This you have in your book, or your proposal book. Turn to the page of Proposal 1-87. All the Minority Report is deleting is the last sentence in that section.

Now there are three main points I believe that should be brought forward in just why a user's tax should not be considered in the ordinary light of being a dedicated fund. And this is what I wish to pertain my remarks to. And I think probably the three main points could be listed thusly:

Number one, we have to establish clearly in our mind just what a user's tax is.

Two, it is really an illusion that a two-thirds vote of the Legislature will be a barrier in preventing higher user's funds being used for other purposes.

And, three, just really the role, a good role to play in North Dakota, and why the funds should be dedicated towards these benefits.

Now in regard to point No. 1 — and I wish to start my remarks out by saying I want to quote from a study reference that was before our committee — and it reads thusly: "Justification for earmarking makes it possible to require those who receive the benefits of governmental service to pay for it. When the beneficiaries of a certain public service are a distinct group and one that pays a particular tax or a set of taxes, these taxes should be tied to the special use. Such application of the benefit principle appeals on grounds of fairness. Those who receive the special benefits should bear the costs, but they should not be required to pay for other services through that special tax."

Now I believe when you think about this for awhile, delegates, you can easily understand why these funds should be dedicated or you destroy the whole concept of the meaning of just what a user's tax is. The big cost of running state and local government, of course, is in the areas of education and welfare. We use property taxes and income taxes and sales taxes primarily to pay these costs. We do so because it is the responsibility of all the citizens of the state to pay these costs. Although students and welfare recipients are the beneficiaries of funds we couldn't expect students to absorb a user's tax — in other words a tuition fee — to pay for all costs of education. Nor could we expect welfare recipients to pay for all welfare costs, because this is just impossible. But when it comes to building and improving, maintaining roads, and providing for the safety thereon, we do have an opportunity to let the users pay for that facility that benefits him. The more he uses the facilities, the more he pays. If he doesn't use it, he pays nothing. The more gas you use, the more gas tax you pay. The heavier the vehicle or truck, the greater the license fee. This is the concept of a user's tax. The users themselves bear the burden of the tax; therefore, it should go to improve the facility used. It doesn't pass the burden on to anyone else. Thus the fund should be pledged, earmarked or dedicated, whatever label you wish to give it. It's a pay-as-you-go proposition, pay-as-you-use tax.

I suppose probably this concept got started thousands of years ago beginning with toll bridges, and that's on the toll highways. By the way, some of our better highways in the United States today are toll turnpike roads. There are many other use taxes in use today, both state and federal. For example, the Game and Fish Department user tax; buy hunting equipment and it is dedicated to be spent for the benefit of the user. Revenue bonds probably are another example. Your beef promoter-eater tax, the wheat commission, all these are in essence all dedicated user funds. It is the most equitable type of tax we have going for us, and it draws the least complaint from the taxpayers in avocation. It is unfortunate that we cannot apply the same kind of user's tax theory to all forms of taxes; however, it just cannot be applied in that way in the areas of taxation.

Now for point No. 2. We are just fooling when we say the Legislature is limited to any extent by the two-thirds vote. In the last two days of every session the Legislature is confronted with finding a few extra million dollars. So it just must be

asked here and now, are you going to raise taxes or are you going to enact a new tax or will it dip into the fifty-odd million dollar highway fund? The answer is certainly obvious. Our citizens do not want gas tax money spent or used for education or welfare or for any other stated purpose. When the time comes that our people think roads are getting too gold-plated in this state, they will as quickly see to it that the gas tax is lowered. But don't destroy the theory of the user's tax by tapping these money sources for other purposes. Remember the Legislature does have the full control of the money appropriation for the administration of the Highway Department presently. The North Dakota League of Cities, the county commissioners, the Township Officers Association and many other organizations came before our committee asking that these funds remain dedicated. Our counties and cities have pledged, elected representatives and they too, have made requests before them for the people in their areas to improve the road system. They are also trying to do their job. And good road planning must be done by looking ahead five to ten years. And this is dependent on the dedicated source of funds over the years for that planning.

And the last point, number 3. We can't discount the role good roads have played in North Dakota since the people adopted the constitutional amendment back in 1940 which dedicated these highway users funds. We were the eighth state in the Nation to do this at that time. Since then twenty more states have done the same, with Utah doing it as recently as 1963. We, in North Dakota, have a good road system. We can be proud of it. Our tourist industry has grown from practically nothing just ten short years ago to one of the biggest industries in the state; it's due to good roads. As an agricultural state, North Dakota is tremendously dependent upon good roads for truck transportation of our agricultural products at both the state and the county and local and city level. And we can be thankful that the expanding truck industry feels this way. This has been created every year by boxcar shortage and railroad strikes. This revolution has been a miracle and a lifesaver for our economy. All because of the good road system that developed from a dedicated user tax. For the good of North Dakota I certainly urge you to vote for the Minority Report.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I rise to speak for the Majority Report. And this is somewhat unusual in that the Majority Report and the Minority Report agree on every detail except the very last sentence of the Majority Report.

Frankly, the Majority Report was definitely the result of a compromise in the Finance and Taxation Committee. A few members of the committee initially reflected the views and opinions of constitution makers, students of government, that dedicated funds should not exist.

The committee also took into consideration a statement which Delegate Aubol made the other day that constitutions should not be made on a letter count sent in to any particular committee. However, as Delegate Trenbeath has pointed out, these various groups that appeared before our committee, such as the Association of County Commissioners, the Township Supervisors Association, the motor carriers, general contractors, Stockmen's Association, and many, many others, convinced the committee that this users tax provision was of great benefit to the State of North Dakota. And the Majority Report and the Minority Report both agree that it should be kept as a dedicated fund.

As Delegate Trenbeath has pointed out, this is a classic example of a user's tax. And as he has pointed out, too, twenty-eight states in the Nation have a similar fund. Now the provision that we're talking about is Article 56 in the old Constitution. And if you have your books handy, you can refer to Article 56 in the Constitution. Now certain slight changes were made in the language of Article 56 by the committee with the full approval of the Highway Department and other groups. You will notice that in 1-87 we have changed the language somewhat to specify that taxation, revenue from "gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways," you'll notice that language in particular. And this was put in with the full approval of the Highway Department to eliminate

the revenue from gasoline, fuels and the unclaimed gasoline refund. And this has met the approval, as I have stated, of the Highway Department and the Aeronautical Commission of North Dakota.

The uses for which the funds were established in old Article 56 were also expanded by providing that these funds should also be used for "enforcement of highway safety, drivers education, and tourist promotion". Some of these items are already being followed by the Highway Department and the dedicated fund.

The highway fund under Article 56 derives in the neighborhood of \$20 to \$30 million per year. And the Finance and Taxation Committee believed that we should not have the State of North Dakota face the future with such a large part of its revenue dedicated forever to a special purpose. Dedicated funds, as students of government will tell you, hampers the effective budgetary control. The Legislature should be able to review all programs in view of the terms of total sums available in the State of North Dakota. Dedicated funds often lead to a misallocation of funds, when it's dedicated for a long period of time, creating more money in one activity and a shortage in another.

Dedicated funds also do not permit adjustment to changing conditions of the future of North Dakota. Dedicated funds also tend to remain dedicated forever. The activities of the dedicated fund cannot be reviewed periodically by the governor and the Legislature. And dedicated funds, as we all know, tend to build a self-perpetuating lobby. And it was for this reason and so that this program could be reviewed in the future that the majority put on the provision at the end of the 1-87 that "By a two-thirds vote of the members-elect in each house of the legislative assembly such dedicated funds may be appropriated for other purposes." And I would call your attention particularly to the word "appropriated". Now this provision does not mean that these funds would be permanently undedicated. It merely means that any session of the Legislature could appropriate such amount as they determine from the fund. And this would be a one-session provision only. So we believe that this provision is wise for the future of North Dakota. It protects this very worthy fund. And we hope that the delegates here adopt the Majority Report and reject the Minority Report for that reason.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

I rise to support the Majority Report which we have before us.

At one time the State of North Dakota had mostly dedicated funds with which to operate. That was shortly after World War II or during the period in which we passed our dedicated funds for state highway purposes. As you will recall, the sales tax was divided on the seven-twelfths/five-twelfths basis for education and for welfare purposes. And, as you will recall, our first World War II bonus was paid by a cigarette dedicated fund. And we did have a one-mill levy for the Medical School.

We are now at the crossroads of changing the North Dakota Constitution by updating it. And certainly we should not have dedicated funds in a new Constitution. The philosophy of dedication is wrong because it does not give the Legislature or the current government an opportunity to operate in the manner in which they need to. Our dedicated funds in North Dakota for highway purposes have served us well. And they have been — provided us with an ability to build good roads. But how good do our roads need to be? Do we need gold paved highways? Do we need four-lane highways across the state from one end to the other in all directions? And I think that we should justify this in each instance when they are developed. We need to justify our four-lane roads if we develop them. We need to justify the high quality roads that we have. Dedicated funds tend to mean that we have expenditures unnecessarily. The Highway Department during the current biennium has approximately \$110 million dollars to spend and with which to build its programs. The North Dakota Legislature, after the pay-back formula for the sales tax, appropriated about \$190 million for the current biennium. They are almost as big a department, and they are almost as autocratic as the entire rest of the government of North Dakota. They are well over half beyond that. And it seems impossible for me to believe, or the majority of our committee, that we should be able to have one phase of government or one department of the executive with so much free hand and so much power that they can control a \$110 million dollar annual budget,

or biennial budget, rather, when others do not have that. Certainly someplace down the road we might need these funds for other purposes, we might need them for education, we might need them for welfare, or we might be able to reduce the tax. But if the Highway Department going to reduce the taxes if they have an opportunity, it's going to have to be taken away from them one way or the other by some other fashion before we are going to win this battle. And it seems to me that if we continue to let them have their empire, they are going to keep spending the money which they have. You know that if they get \$180 million dollars, three, four five bienniums down the road, they are going to spend it. And what are they going to spend it for? They'll spend it for overhead, they'll spend it for highways, for highways whether we need it or not, and certainly we should not let this continue in view of the fact that we are having trouble raising money for other — for other state support. We are going to need these funds for improvement of education, if the case may be, or improvement in other areas if the money becomes needed.

And I think that we should take a look at why we dedicate only for highway building. Our cars, our automobiles, and our vehicles are causing us many other problems. They are an ecology problem. Then we should also be dedicating funds to these ecology problems which we have. We have air problems that are developing out of our automobile fumes, we have noise problems, we have solid waste problems which are developing, and certainly some of these dedicated funds should be used in that direction. We have driver education; and so why not use some of it for education purposes? We have initial law enforcement costs, and we have additional court costs which come out of dedicated — or should come out of these dedicated funds. Because our vehicles are causing many of these problems.

We are bringing in many people into this state for recreational purposes and for various activities of that kind. Perhaps our highway fund should be used in a greater degree if they are dedicated for these purposes. We have numerous water activities and outboard motor vehicles and inboards and various other gas vehicles used on our waters. If these are dedicated funds, they should be used in that area. I know that in my own case I have numerous little small engines that are run by gasoline; I have an outboard motor, a small one, and snowmobile, power mower. I do not get my refunds. I suppose I'm entitled to them; but most people don't get them back. And certainly these are dedicated funds going to the Highway Department. Why should the Highway Department use these when they are not used on the highway in the first place if they are dedicated funds?

It seems that if we are going to dedicate these funds this way that there should be diversion made for the other purposes. And it's rather difficult when highway funds are constitutionally dedicated. Therefore, I would urge that we support the Majority Report so that we can have a realistic appraisal of what we are going with the gas tax money.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Thank you, Mr. President.

I guess I'm a dedicated highway user. I drive probably 50,000 miles a year all over the United States. I've seen what the user tax can do to build up the highways.

I'll admit that we are dealing with a large sum of money here. And it's very attractive. I can see the hot hands of the Legislature just delighted to pierce this entity at the end of the session when they need some money. It seems that every session we have this problem. Not too many years ago we forced the Highway Department expenditures on the Highway Department — I mean the Highway Patrol expenditures on the Highway Department. There are other things that we can do in this way. That department needs beefing up tremendously. How many of you have driven from here to Fargo and never have seen a patrol car, particularly in the evening? Most of you have. What happens if you break down? You are dependent on a Good Samaritan to help you out. There are all kinds of ways that we can increase the services to our people and benefit their safety without having to, by two-thirds vote, take money away from a department which is really developed out of the user; the person that drives the car and drives the truck. I think the whole attitude toward dedicated funds must be turned around to a point where you realize where that money is coming from. It is coming from the person that buys gasoline, diesel fuel, pays road taxes. I think this two-thirds vote would be not always easy to get, but I think it could be attained. And I certainly support the Minority opinion. I think we are playing with a fire here if we leave this last sentence on.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: Mr. President, Fellow Delegates:

I'd like to take you a little closer to home and talk about the county road program, the farm-to-market roads. Now it hasn't been said yet how these funds are divided up, but 63 percent of these are retained by the state and 37 percent go to the counties. Now the number of registered vehicles, of course, determines how much each county gets. And now in the cities they receive 27 percent out of the 37 percent that goes to the counties. And this is divided up on a per capita basis. Now to give you a little idea of what county roads we're talking about, the counties right now have 11,668 miles of farm and market roads, and there's about 1,793 that are hard surface. Now the counties received from state funds \$18 million dollars plus during the 70-71 state biennium. And then they received roughly about 5,000 — or \$5,347,000 of federal funds for matching funds. Now the cities received almost \$7 million dollars for the last two years and about \$710,000 of federal funds.

Now getting back to the county level. We have about 6600 miles that are not under federal program at all. But the county has seen fit to hard surface about 300 miles of these roads. Now 38 counties out of the 53 in this state do have a grading a bituminous program that ranges all the way from three mills up to ten mills. The total miles that the county has to consider and what they are maintaining is about 17,870 miles. I attended last December the southeastern five county commission district meeting, and they were asking about what the Constitutional Convention was going to do about dedicated funds. And I told them I hoped they retained it as they did in Article 56; although we did put in a few things like driver education and so forth. But their plans ranged from two to ten years, and they are hoping to have this retained so that they can be assured that their funds will be continuing to come in.

I think I might point out also on the state level that the Highway Patrol program, or the two-year program, cost the Highway Department roughly two and a half million dollars. And this comes out of our highway user's tax. Another thing that the general fund receives, and that's your driver's license, which amounts to probably, oh, a million and three-quarters, something like that. But they have got to pay the expenses of that, which is about — a little over three-quarters of a million dollars. So they are not receiving anything out of that.

So I'd urge you to support the Minority Report.

PRESIDENT WENSTROM: The Chair will recognize Delegate Baker.

DELEGATE BAKER: Mr. President: I want to support the Minority Report with the viewpoint of the local governments who are vitally interested in this matter. Not only the counties, but the cities, and particularly the counties of slight population and low valuation in the cities of small population and low valuation. This segment of our government organization has made very good use of the funds available through the dedication of the road users taxes over a number of years. And it's been pointed out they have plans that run far into the future, up to ten years at least, and in many cases farther into the future than that, for the improvement of local roads and streets and have built a structure of roads support through property taxation in many cases to fit into the program that can develop — be developed from the distribution of these funds back to the local subdivision.

The opinion among the local government officials is, I believe, unanimous; this is one section of the North Dakota Constitution which should not be disturbed in its practical application. And I do not believe, and no one has told me, that the changes that the committee has made would disturb the practical application except for that last sentence which the Minority Report would remove.

Remember, the Legislature by a simple majority and with approval from — by the governor can change the distribution. It can, if it wishes, if it decides that the State Highway Department has gotten all out of hand in building four-lane roads, the Legislature can by law, and with the governor's approval, change that distribution so to provide a larger amount for local subdivisions where I can assure you it can be very well used for non-gold-plated highways. Or it can change the distribution between counties and cities. And almost every session of the Legislature sees some effort to alter this distribution to some degree. There is competition for these funds from the local subdivisions, and between the local subdivisions and the State Highway Department. So there's very little likelihood that there's going

to be a disproportionate sharing that does not have the careful review of the legislative assembly every time it meets.

Furthermore, if this gets to be such a great, swollen slush fund that it cannot be borne any more by the people, the Legislature can, by a simple majority, and the governor's approval, reduce the taxes, as has been pointed out. I think there is no danger to us from the continued operation of this dedicated fund in the way that it has gone and ample remedy if there should be any share of it. I hope the Minority Report will prevail.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. President: I am attempting not to rise very often in this assembly, but today I find myself rising. And I think that most people that know me recognize the fact that I must speak in regard to highway development and highway programs and economic analyses that go with it.

I have yet to find, except in this assembly, any person in North Dakota who finds that the four-lane highways a detriment to our safety, a detriment to our progress, and a development of tourism in all of those things in the State of North Dakota.

I had the privilege in 1971 to speak for nine separate conventions in the City of Minot. At one of them I had 600 farmers. And I raised the question with them — among other things — how many of you could use better highways? And I didn't find a dissenting vote. Then I drove by the various places and the parking areas, and you know I didn't find any other convenience in the medium of transportation except that of the automobile being parked in those parking lots. I have made several surveys in the State of North Dakota, and I have found that the thing that that has caused the center city to deteriorate when we have such — I hate the word "deterioration" because I don't think we are — but the great problem is parking space for the automobiles.

Now if you want to solve the problem of the city, and you want to solve the parking problem, why then empty the stores of merchandise. Don't allow anyone to unload anything on the shelves of any of those stores and you've solved your parking problem and you can go on your merry way. But somebody else is going to find a media of transportation to move into other areas and find the things that they need.

And so some interesting things have been developed. I want to ask this question of all of the delegates here: What is a special tax? And the economic analysis of a special tax is one that is applied to a particular segment of the economy, the revenue of which shall be used for the development of the facility that shall serve the balance of the economy and all segments tied thereto. And so if the highway fund, the highway taxes, highway users taxes, are a special tax, then you see this is the way that they must be analyzed.

And then I raised the question also in North Dakota, I made a survey at Medora Park in Medora two years ago, three years ago this summer — maybe it's longer than that because at my age you have nothing in prospect and you have it all in retrospect and as a result you forget it — but it was the year of the World's Fair in Seattle and I made a survey, and I spent several days and nights there, and the question I asked was: "Why did you come through North Dakota on your way to the World's Fair in Seattle?" And every last one of them said: "In studying the thoroughfares and the highways that move from Chicago, Minneapolis and other cities to the east of us we found that the Interstate 94 gave us an uninterrupted media of travel, one that was safe and secure, where the highway traffic death was the least in the nation. We wanted to travel there for the sake of safety, and also convenience and the mobility that we secured there, too."

And as a result they traveled through, you see.

I spoke at the convocation at Bloomington, Indiana, very recently a couple of years ago. And I followed a lecture on ecology and pollution. And the fellow who met me at the gate there to let me into the parking lot — because I had to rent a car at the airport and go to the university — said, "You should have been here last night, was this place filled! We had 110 cars parked in here, and this morning you can have all the room you want." What was the meeting? It was on pollution and ecology. I said, "How many people attended?" He said, "About 150." "How many cars did you have parked in here?" "110." So it took 110 cars to bring 150 people? Where is the convenience of transportation in America and what does it do to the economy?

Let me call to your attention a study that I just completed a year ago, 1970, shows that 25 percent of every retail dollar spent in North Dakota goes — is spent because of highway transportation. Look at your cities, your towns and your communities and you will find that the retail gasoline place, the motels, and all of them are dependent upon these highways. So the economic results are there, the economic benefits are there. We need to recognize them.

Here is a fact that I found: It's not very long ago that virtually all industry was located in a town by a rail siding. This is no longer the case. Today new industry is moving out to the suburbs, to the small towns and to the rural areas and is using highway transportation as a media; fast and efficient transportation.

Not too long ago I made a survey, this was in 1968, I made a survey here in North Dakota and the findings of these studies — this study is available to you should you want it because I have copies of it, I have about ten left because in mimeographing we don't have much of a budget — the findings of this study demonstrate the great reliance that has been placed upon efficient and flexible service provided by highway transportation in North Dakota. Here is a fact: Proximity to good highways was listed as one of the five most important location factors by 66.7 percent of the plants now established in North Dakota. Another 16.6 percent of the firms responding, while not considering good highways as the most important factor, indicated that it was given prime consideration. Therefore, over 83 percent of the plants established in North Dakota in the last eight years have found that highway transportation and location to all-weather highways has been a primary factor in their location and one of the reasons why they located here.

Fact No. 2: Confirming the importance of highways in the location of these new factories in North Dakota, 60.7 percent are in small towns in North Dakota. And you look at them and you evaluate them and you determine their locations, and you'll find that highway transportation is the cause for them being there. These new plants in North Dakota use highway transportation extensively. This group, in total, said — and this is 91.7 percent of all new facilities established in North Dakota — showed that 91.7 percent of all of their inborn, inbound traffic came by highway transportation, and 71.7 percent used highways for all of their outbound type of transportation.

And so, you see, we are not talking about peanuts here, we are talking about the great industry in North Dakota. And when you stop and think of the cities and the small communities and these factories being located here, the highway transportation story is all evident.

Yes, we pay taxes into it. Let me show you what we did pay. In registration fees in 1970 we paid some over a hundred — some over \$15 million dollars; in miscellaneous fees we paid over \$2 million dollars; in motor fuel taxes we paid \$21 million; and in special taxes that we paid in North Dakota of other types it was a total of \$39,100 — \$39, — my gosh, I should be in Congress where I could say million \$39,199,000 paid in North Dakota in highway users taxes. Plus that, don't forget this, that you paid \$16,238,000 that went to the federal government. And the only way you can get that \$17,000,000 back is to have money in the treasury here in North Dakota to match it. And if you don't have the funds to match it from the other taxes that we levy against the highway users here, you lose that \$17 million that you paid in anyway. And so you think then that we want to lose these \$17 million dollars? Oh, I'm loaded this morning! Motor fuel tax, you see, over \$4 million dollars; excise taxes over \$3 million dollars; tires, tubes and retreads, over \$1 million dollars. They stayed here in North Dakota. Now don't kid yourselves, they weren't purchased in South Dakota, because if they had been, why Bosch over here at the registration department would go and collect the use tax on them and bring it back to North Dakota. And so all of these things are important.

Oh, then another thing that I think I should say; personal transportation in North Dakota amounts to 21,081 separate vehicles. Agriculture in North Dakota has registered to them 106,629 units that they use for delivery of their products to and from the farm. Every visible market in America is available to — through highway transportation to the farm industry of the State of North Dakota. And if you don't think it's important, we have in farms alone 75,000 panel trucks, we have 64,000 cattle trucks, we have 3,000 dump trucks, we have a thousand — 3,000 tank trucks, and we have all other kinds in the tune of 152,000 farm units registered in

North Dakota, not counting one single automobile. And we use that strictly for churches. And when I think of that, you see, this tax application, why here was the fellow who was brought before the judge for beating his wife. And the judge was mad at him and he fined him \$110. And he said, "I can understand the hundred, but what's the ten for?" And the judge said, "That's the amusement tax." And so we are dealing with amusement tax in the highway trust fund. We are dealing with actually use funds.

Now let's take a look at some of these other things. When you pay taxes upon your automobile — and that's what I'm talking about, because we pay \$29.49 average and that's from Cadillacs to those that blow off the highways that we call Volkswagens, all of them are included — we pay on an average of \$115.30 just to register the danged things in the State of North Dakota, you see, average. While on bigger units the average is \$3,364. And those are five-axle units. The passenger car in North Dakota pays \$115,000 — \$115 average, the farm pickup \$103 average, the single-unit truck \$416, three-axle combination \$1500, the four-axle combination \$2800, and the five-axle combination \$3664. And so Delegate Trenbeath has brought that out to the floor very well. And that is that they pay according to their use. And when we are going to talk about a use tax, we are talking about a special tax. And in all of the annals of economics in the field of analysis of the economics of taxation you must apply them in such a way that they return to the economy the amount that has been taken out of it and returned. And when you can multiply that, when you take out the tax that is spent for highway user taxes in North Dakota, and you put it back into the economy and it produces 25 percent of every retail dollar spent in North Dakota, I think we better take a good second look at it.

I didn't mean to bother you people with a talk of this type, but I give a hundred of them a year and I enjoy every bit of it. But I caution you, don't destroy North Dakota because here's the economic unit and here's the heart and the core of it. And not to belabor it any longer, lest we get into a session that we had on 1-11 yesterday, let's pass this Minority Report right now and get it over with, shall we?

PRESIDENT WENSTROM: The Chair will recognize Delegate Hardmeyer.

DELEGATE HARDMEYER: Mr. President, Fellow Delegates:

I rise to support the Report of the Minority. I thought that perhaps this Convention could share — I'd like to share with you my feelings in this matter of highway funds. The last few years the municipalities have been allowed to share in this revenue as Delegate Cart — not Delegate Cart — Baker mentioned. And it has meant a great deal to municipalities. We have been able to maintain our streets, purchase equipment, and actually build up our towns in good shape. And I don't know how we could do without these funds now. And besides this money we still have to take money from the general fund to maintain our streets. And we are also paid an eight-mill farm-to-market levy, plus a road and bridge levy in our county. So as long as the people from the municipalities still must assess their property to build roads I think that we have no concern to be thinking here about using highway money for other concerns. Because we have not yet been able to do all the things that we need to do to our roads with the money that we take from them now. So I certainly support the Report here of the Minority and hope that these funds remain intact and be used for our roads.

Municipalities are doing very well with them. We are now able to reseal some of our streets without going back to the special assessment and assessing our poor people and our retired farmers and widows who live in the towns, who very rarely use the streets but yet we make them pay for this kind of use which they should not. So I certainly hope that the Minority Report prevails. Thank you.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President: It's probably about time that the Majority Report have a little support again. I want to speak for the majority of the committee. We have no quarrel with the administration of the Highway Department, of the work that it's doing. The Highway Commissioner is a personal friend of mine, and I think that he will be even after my position on this matter is known.

We have no quarrel with the trucking industry. They've done a tremendous job in North Dakota. Farmers of North Dakota are indebted to them. But this is not a matter of support of the Highway Department or a matter of supporting the trucking industry. It's a matter of whether we should draw a constitution that's

consistent with present practices, with good constitutional procedures. I want to enlarge on that a little later on, but I want to say this; we have users tax that are certainly not — we have users tax that certainly is not used for the benefit of the people who paid them. I refer you, of course, to the cigarette tax. I think Delegate Hardmeyer's City of Mott gets a considerable revenue from that. It does not go back to the users of the cigarettes, but probably could find a good deal of use in trying to correct the health problems that are caused by excessive smoking. Yet it goes largely to the cities of our State and is used to help their financial situation. Liquor taxes and users tax, to which I contribute something — I don't contribute to cigarette tax — is not used particularly for my benefit. There are purposes for which it could be very well used for settling the damages that are caused by accidents from the use of liquor, for curing the people who are over excessive users of liquor. Maybe we should use this for those purposes, yet we don't. We use it for general state purposes. So there are, as I say, users taxes that are not used for the people who paid them.

Now I want to point out in this matter a couple of things that have come before our Convention. Our committee is trying to be consistent. In the matter of property tax, property taxes for state purposes, we are basically opposed to the state use of property tax, and we did believe and do believe that there are occasions that might arise when the state would need a property tax and we wanted to provide for that in that particular section. And you will recall that that was attacked from various aisles, it was too liberal and also too restrictive. And the matter of exemptions, basically in philosophy the committee did not feel that exemptions for charitable and other such property had any part in the new Constitution, yet we did provide the basic exemptions to school and religious purposes, and that was attacked from both sides, that was too much and not enough.

Now this matter of this tax I believe we are also being consistent. I think we will find before this question is settled that there are people who feel that there should be absolutely no dedication of highway funds. And in the matter of theory and constitutional philosophy this is right. There should be no dedication of any funds in the new Constitution. Yet we think it is necessary for approval of this Constitution that it be in there. Yet we believe also that here the legislative assembly should have a right of review. They have no right to presently review the program. The only thing they can approve or deal with is the administrative appropriation for the Highway Department. And this is basic. The Legislature should have the right to review any program that involves this much money. And we think that this is one way that it can be done consistent with what we have proposed in other matters. And I do hope that this Convention will seriously consider supporting the Majority Report.

PRESIDENT WENSTROM: The Chair will recognize Delegate Geelan.

DELEGATE GEELAN: Mr. President: I've had serious reservations about dedicated funds. And I think I could have supported the Majority Report if they had said very clearly, very honestly, "There will be no such a thing as dedicated funds. All money from these sources shall go into the general fund and shall be appropriated in the judgment of the legislative assembly for the Highway Department." I honestly think I could have supported it, but for this bill which seems to me to say, "We really don't believe in dedicated funds, but we're going to leave it in there and then we're going to make a sure decision that will get our hands on it by saying two-thirds of the assembly can then get it appropriated." I cannot support this kind of a bill. I will have to support the Minority Report.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I wish to report present and compliment the Highway Commissioner, the Legislature and the Report of the Majority.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

I quickly am going to support the majority. There have been several from small communities speaking on the other side. I defy one here to show where you have worse roads than I have in my area. A car lasts me just half as many miles as it should; all gravel roads and gumbo and so on, except for I-94. And we're not going to take the money away from the Highway Department. Now all through here we've gone and put so much confidence in the Legislature. I think personally

we're giving the Legislature far too much power. But here we say we're scared to give them a chance even with a two-thirds vote. And to show you how powerful a department can get — and I sincerely hope that the little ten miles of road I've been trying to get paved out our way for the last fifteen years — I hope this doesn't jeopardize my chances. Because they had a lot of power. And the Commissioner's a friend of mine at the moment, too, although I have fought the building very strongly. Now a two and a half story, two and a half million dollar Highway Buildings sits over here, the only department really that has such fine facilities. And this I didn't think was using dedicated funds for the purpose for which they were intended.

I don't think that between here and Dickinson we need rest stops or rest stations in which very few people rest, and this cold weather very few people stop. They are fancier than most houses. I happened to check one time, and the wiring of one of these rest stations cost more money than the average house. Now I'm not talking about — I think the figure was \$28,000, some such thing. I'm not talking about fancy houses. But there are a lot of houses in the state that didn't cost as much as wiring a couple of rest stations. And I think this might be a little guarantee that they would be a little more careful. I don't think the Legislature is going to cut down on good roads even with a majority vote. And I support the majority position.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President: My remarks will be very short. But I feel as a farmer I must rise in support of the Minority Report. I think this has caused more stir in my district than any other issue that has come up thus far. And the general consensus is, "Don't tamper with our highway fund." And so I strongly support the Minority Report.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Minority Report, that the Minority Report be substituted for the Report of the Majority. Any further discussion?

Hearing none, as many as are in favor of adopting the report will say "aye;" those opposed say "no." The "ayes" have it, and the report is adopted.

DELEGATE HAUGEN: Can we have a division, Mr. President?

PRESIDENT WENSTROM: Yes, you may have a division, one, two — that's sufficient number.

Those now that favor the adoption of the Minority Report will vote "aye;" those opposed will vote "no". The Clerk will open the key, you will record your vote. Does any delegate wish to change his vote? The vote is closed.

There were 63 "aye" votes, 32 "nay", three delegates absent and not voting. The Minority Report is adopted and will go on the sixth order for tomorrow.

Fellow Delegates, we're about to take a recess. But before we go into recess I would like to read this announcement. I think you're all aware, I'm sure you are, that we had photographs taken of the Convention on the opening day. And also, of course, at the start of the organizational session. Now it's still possible to order those pictures. But today is the last day that we will be taking orders here. Now if there are any of you that would like to order those pictures, will you contact my secretary before four o'clock today?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: I would like to announce a short subcommittee hearing, a joint subcommittee hearing of the Legislative Functions and Executive Functions, behind the rail in the Senate. The committee members know who they are.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: May we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE PEARCE: Mr. President: I would like to say to the Convention that the President and I had a short conversation this morning. So far no arrangements have been made to take a picture of the Convention, that is with each dele-

gate having his picture taken and arranged in a panorama such as used to hang on the eighteenth floor of the Capitol for every legislative session. We are in the process of finding out how much it would cost. And I just rise to say that when we have determined what it would cost we will probably be asking whether the delegates wish the budget committee to approve the expenditure to do that.

PRESIDENT WENSTROM: Delegate Nothing, how long will your committee need?

DELEGATE NOTHING: About fifteen minutes.

PRESIDENT WENSTROM: The Convention will be in recess until 10:45. It's now 10:30.

(The Session recessed at 10:32 A.M. until 10:55 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

DELEGATE TUDOR: Mr. President. Could we be on the eighth order for a second?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE TUDOR: With the indulgence of the Convention, I'd like to read this communication:

"Dear Dr. Tudor,

"We have received the two reprints of the proceedings of the Plenary Session of the North Dakota Constitutional Convention for January 5, 1972, which included your very lovely tribute to Professor James Bradley Thayer, the position he has held in American legal education, and his broader concerns as a constitutional lawyer and as a responsible citizen.

"Thank you for sending us these two copies of the Journal of your Convention. According with your wishes, I have placed one copy in the box with Mr. Thayer's original draft; the other copy will be mailed to Mr. Thayer's descendants. Several members of our faculty are assisting me in locating such descendants of J. B. Thayer.

"Thank you again for your courtesy."

And then this is signed by the Curator of Manuscripts and Archives at the Harvard Law School Library. Thank you.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order of business.

DELEGATE HOFFNER: I now move that the following proposals be returned to the Convention floor to be held at the desk. And I will name these proposals, and then I'd like to explain my reason. The proposals are: 1-31 — I believe the desk has a copy of this — 1-35, 1-41, 1-42, and 1-69.

PRESIDENT WENSTROM: Do we have a second to Delegate Hoffner's motion?

DELEGATE POULSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Poulson.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: The committee asked that I do this. These all deal with unicameral. And there is a proposal in the Ballot Committee right now asking that the alternate proposal be considered on unicameral. And we felt this was the best method of holding these, at the desk, and therefore disposing of them in our committee.

PRESIDENT WENSTROM: Delegate Hoffner's motion is to the effect that Committee Proposals — these are Committee Proposals, right — No. 1-31, 35, 41, 42 and 69 be returned to the Convention floor and be held at the desk awaiting further action at some later date.

As many as are in favor of the motion will say "aye"; opposed "no." The "ayes" have it, and we will receive them at the desk.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner, did you have something further on this?

DELEGATE HOFFNER: May we continue on the twelfth order?

PRESIDENT WENSTROM: Without objection —

DELEGATE HOFFNER: Unless Delegate Longmire had another motion on withdrawal.

I want to move that the following Delegate Proposals be returned to the Convention floor and be held at the desk. And I'll mention the proposals, and then I have an explanation for that after it has been seconded. It would be Delegate Proposal 2-7, 16, 51, 52, 73, 58, 59, 72, 2-8, 2-13 and 2-76. And if I get a second, I'll explain.

PRESIDENT WENSTROM: May we have a second?

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hendrickson.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: We felt as a committee — excuse me — as a committee that this would be a way of not indefinitely postponing the proposals. And since all the proposals that I've just mentioned the subject matter has not been dealt with; 2-7, 16, 51, 52 and 73 all deal in initiative and referendum. And 105, 113 are on the calendar, and I'm sure will not be heard today. And so after this matter has been disposed of I'm sure that these delegates will probably withdraw these proposals. Then 1-58 — 2-58, 2-59, 2-72 all deal in reapportionment. And that is the Committee Proposal 1-29 that has not been disposed of. And 2-8 is incorporated in 1-58 and has not been disposed of. 2-13 is incorporated in 1-76 and is the open meeting one and has not been disposed of. And 2-76 is the one on unicameral to put it on a ten-year ballot. And that has not been disposed of. And so to be fair to the individual delegates I thought it would be a good idea to hold those at the desk and since we have other Committee Proposals to be dealt with.

PRESIDENT WENSTROM: Is there any question? The question is on Delegate Hoffner's motion that Delegate Proposals No. 2-7, 16, 51, 52, 73, 58, 59, 72, 8, 13 and 76 be returned to the Convention floor and be held at the desk.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and these will be returned to the desk and held at the desk.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: One more motion. I would like to now move that 1-8 be returned to the Convention floor. And the reason we would like to withdraw is we've incorporated or split that one up on people's power.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposal No. 1-8 be returned to the Convention floor. Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Delegate Proposal No. 1-8 is now before the Convention.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: I now move that we get unanimous consent to withdraw Committee Proposal 1-8.

PRESIDENT WENSTROM: Delegate Hoffner requests unanimous consent of the Convention to withdraw Committee Proposal No. 1-8. Hearing no objection, permission is granted.

Now Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: May I inquire from the desk if the following Delegate Proposals are there on the committee report: 2-18, 2-37, 2-46 and 2-75?

CHIEF CLERK GILBREATH: Yes, they are here with the committee report.

DELEGATE LONGMIRE: Mr. President: I ask you to recognize Delegate Tudor at this time with respect to Proposal 2-18.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Mr. President: I would like the Convention's approval to withdraw Delegate Proposal 2-18.

PRESIDENT WENSTROM: Delegate Tudor requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-18. Hearing no objection, the request is granted.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Will you please recognize Delegate Hubrig in connection with 2-37?

PRESIDENT WENSTROM: The Chair will recognize Delegate Hubrig.

DELEGATE HUBRIG: Mr. President: I request that 2-37 be withdrawn.

PRESIDENT WENSTROM: Delegate Hubrig requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-37. Hearing no objection, the request is granted.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Will you recognize Delegate Dobson in connection with 2-46?

PRESIDENT WENSTROM: The Chair will recognize Delegate Dobson.

DELEGATE DOBSON: Mr. President: Delegate Proposal 2-46 has served its purpose. The time now arrives to lay it to rest, but this proposal should not be dispatched to its Valhalla without a eulogy. For this occasion I have chosen Matthew 25:23, "Well done, good and faithful servant." I now request unanimous consent to withdraw Delegate Proposal 2-46.

DELEGATE LONGMIRE: Amen.

PRESIDENT WENSTROM: Delegate Dobson requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-46.

Delegate Solberg.

DELEGATE SOLBERG: Mr. President: May I suggest that that particular eulogy be transcribed, and also that the transferral of this particular document and the burial be made on the second fjord north of Trondheim, Norway.

PRESIDENT WENSTROM: Hearing no objection to the withdrawal of the proposal, permission is granted.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: Will you recognize Delegate Omdahl in connection with 2-75? I assume he'll quote from Luke.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I have a quote here from Luke, but I am saving it for the lawyers at a later date.

2-75 was a proposal for a Missouri selection system. And I think it's served its purpose. And I would like unanimous consent of the Convention to withdraw 2-75.

PRESIDENT WENSTROM: Delegate Omdahl requests unanimous consent of the Senate — of the Convention to withdraw Delegate Proposal No. 2-75. Hearing no objection, the request is granted.

Delegate Hill.

DELEGATE HILL: Is Delegate Proposal 2-22 at the desk? Educational bill.

PRESIDENT WENSTROM: 2-22?

DELEGATE HILL: Yes. If not, I move that it be returned to the floor.

CHIEF CLERK GILBREATH: From the Committee on Education?

DELEGATE HILL: Yes.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Hill has moved, and it has been seconded by Delegate Litten, that Delegate Proposal No. 2-22 be returned to the Convention floor from the Committee on Education, Public Lands and Natural Resources.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the proposal is before the Convention.

Delegate Hill.

DELEGATE HILL: Mr. President: This proposal relates to a suggestion I made last summer to the committee to have a single department of education. And this matter will be discussed further as a Minority Report to a Committee Proposal coming up later. So at this time I request unanimous consent of the Convention to withdraw that Delegate Proposal.

PRESIDENT WENSTROM: Delegate Hill requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-22. Hearing no objection, the request is granted.

We will be on the fifth order of business — Committee Reports.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Committee Proposal No. 1-88, has had the same under consideration; recommends the same be amended, and when so amended recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-88; that it be amended.

CHIEF CLERK GILBREATH: 1-88.

PRESIDENT WENSTROM: I'm sorry. The Committee Proposal No. 1-88; that the proposal be amended. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the sixth order for tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-96 has had the same under consideration; recommends the same do pass.

Delegate Haugen, Chairman.

Delegate Haugen moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-96; that it be given a "do pass".

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Judicial Functions and Political Subdivisions to whom was referred Delegate Proposal No. 2-28 has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-11.

Delegate Longmire, Chairman.

Delegate Longmire moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-28; —

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: — that the proposal be indefinitely postponed.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: We have discussed this with the delegate, Delegate Warner, who introduced the proposal. He knows that our committee has made very good use of his proposal in our consideration of 1-11. And I understand he has no objections to the report of the committee.

DELEGATE WARNER: No objection.

PRESIDENT WENSTROM: As many as are in favor of the motion to indefinitely postpone Proposal No. 2-28 will say "aye;" opposed "no." The "ayes" have it. The report's adopted.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Delegate Proposal No. 2-41 has had the same under

consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-36.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-41; that the proposal be indefinitely postponed.

Is there any discussion? Is there any discussion? The question is on the adoption of the Committee Report that Proposal No. 2-41 be indefinitely postponed. As many as are in — Delegate Sinner.

DELEGATE SINNER: Mr. President: I'm sorry, I was sleeping at the switch. I have a statement that I would like put in the Journal. Delegate Proposal 2-41 has been — the substance of it has been included in Committee Proposal 1-36.

And may the Journal of the Convention show that the Legislative Functions Committee hereby expresses its gratitude to Delegate Lamb for the ideas presented in Delegate Proposal 2-41. We regret the final expression of this idea cannot bear his name, but the extensive implications in other areas made it imperative to place the idea in Committee Proposal 1-36.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Committee Report on Proposal No. 2-41; that the proposal be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the proposal is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Judicial Functions and Political Subdivisions to whom was referred Delegate Proposal No. 2-56 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Longmire, Chairman.

Delegate Longmire moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-56; that it be indefinitely postponed. Is there any discussion?

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: This proposal was introduced, as indicated, by Delegate Burke. He made a very elegant appeal to our — to the committee in connection with it. While we felt his proposal had a great deal of merit, we felt that to limit state officials or legislators or any of our officials to the service of twelve years and no more might be a disadvantage to the State of North Dakota. For that reason we are recommending indefinite postponement. The proposal would have put a twelve-year limit on service for elected officials.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the Committee Report that Delegate Proposal No. 2-56 be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the proposal is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Finance and Taxation to whom was referred Committee Proposal No. 1-21 has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposals No. 1-23, 1-74, 1-77, 1-87, and 1-96.

Delegate Haugen, Chairman.

Delegate Haugen moves the report be adopted.

PRESIDENT WENSTROM: The question of the adoption — the question is on the adoption of the Committee Report on Committee Proposal No. 1-22; that it be — 21; that it be indefinitely postponed.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President: As indicated by the report itself, the subject matter of this proposal has been included in several other proposals in order to break them down and expedite the work of the Convention. They are all in pro-

posals that are now either approved or before the Convention. And I hope that the Convention will indefinitely postpone it.

PRESIDENT WENSTROM: The question is on the adoption of the report; that Proposal No. 1-21 be indefinitely postponed. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. 1-21 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-103 has had the same under consideration; recommends that the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-103; that it be given a "do pass."

Is there any discussion? As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-103 will be on the tenth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Delegate Proposal No. 2-63 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 2-63; that it be indefinitely postponed. Is there any discussion?

Delegate Hernet.

DELEGATE HERNETT: Mr. President: This proposal has not been incorporated in any other proposal. I think at this time maybe Delegate Baker would like to say a few words.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President: I have no objection to the body indefinitely postponing Delegate Proposal 2-63 at this time. For those few number of this body who are interested in this idea yet, as I am, I can explain that a way has been found to condense the idea into an amendment which, if it seems like a good idea at the time, can be offered to one of the Committee Proposals dealing with the same subject.

PRESIDENT WENSTROM: The question then is on the adoption of the Committee Report on Delegate Proposal No. 2-63; that it be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. 2-63 is indefinitely postponed.

We will be on the tenth order of business. First for consideration, Committee Proposal No. 1-101.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that Committee Proposals 1-11 and 1-12 be placed at the head of the calendar.

PRESIDENT WENSTROM: Delegate Longmire moves that Committee Proposal 1-11 and Committee Proposal 1-12 be placed at the head of the calendar. Do we have a second?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fallgatter. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. And Proposals 1-11 and 1-12 are now at the head of the calendar.

For first consideration, Committee Proposal No. 1-11.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: The committee has nothing further to offer on this proposal. We had a five or ten-minute discussion yesterday, as the delegates will remember. Unless someone else has something, the committee is ready to vote.

PRESIDENT WENSTROM: The question is on the passage of —

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I would really like to inquire how many times Section 25 and 202 are going to be repealed? I've got about a dozen or more times counted up here.

PRESIDENT WENSTROM: Delegate Cart, how many did you say you have?

DELEGATE CART: About a dozen or more times it's been repealed.

PRESIDENT WENSTROM: Well, "about" is rather indefinite, but I —

DELEGATE CART: Well, at least twelve.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Will the delegate state what sections you're referring to again, please?

DELEGATE CART: 25 and 202.

DELEGATE HENDRICKSON: Mr. Chairman, Mr. President. I'm sorry.

DELEGATE LONGMIRE: Well, as far as Section 102 that section has been assigned to us throughout the Convention. If somebody else is repealing it, why they are helping us out. But we are repealing 102. We are not interested in 25.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I think Delegate Cart is on the wrong proposal, because 25 is an initiative and referendum and legislative one. We are not discussing that at this point.

DELEGATE CART: I confess error. I have 111 instead of 1-11.

PRESIDENT WENSTROM: The question then — Delegate Aubol.

DELEGATE AUBOL: Mr. President: We are now about to vote on 1-11. I would like at this time to state my vote. And I do intend to vote "no" against a very fine proposal only so that the record might indicate that there is substantial strength in this Convention for another system of selecting judges. And I would urge those who supported the Minority Report yesterday also vote "no".

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-11.

Those in favor of the adoption will vote "yes" and those opposed will vote "no." The Clerk will open the key, you will vote — record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 72 "ayes," 22 "nays," four delegates absent and not voting. Committee Proposal No. 1-11 has passed.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I move that 1-12 be moved to the foot of the calendar. We just received this yesterday, the report, and there are a number of amendments that I would like to make. But I looked at the calendar and so I didn't bother to prepare those last night because I thought we'd be at least three days before getting there. And so I think that we really need to take a good look at this article, and that we ought to have an opportunity to prepare the amendments that we think are necessary.

PRESIDENT WENSTROM: Delegate Omdahl moves that Committee Proposal No. 1-12 be placed at the foot of the calendar. Do I have a second?

DELEGATE LONGMIRE: I'll second his motion, Mr. President.

PRESIDENT WENSTROM: Seconded by Delegate Longmire.

DELEGATE LONGMIRE: By way of explanation of my previous motion, I felt that in the year's time that we've been studying this that Delegate Omdahl and others would have had an opportunity to look at it. But since he hasn't we certainly

do not want to cut off anybody in offering amendments to the proposal. And for that reason we certainly would not oppose his motion.

PRESIDENT WENSTROM: The question before the Convention is that Committee Proposal No. 1-12 be placed at the foot of the calendar.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. It will be — 1-12 will go to the foot of the calendar.

Next for consideration of the Convention is Committee Proposal No. 1-101.

Is there any discussion? Just a moment, the Clerk will read it.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-101, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 139 of the constitution of the state of North Dakota be repealed; and that Article XVII to the constitution of the state of North Dakota be created, both of which pertain to public utilities.

"SECTION 1. REPEAL.) Section 139 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Article XVII to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE XVII
"PUBLIC UTILITIES**

"Section 1. No law shall be passed by the legislative assembly granting the right to construct or operate any public utility or similar service within a city without requiring the consent of the governing body of that city."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates:

Committee Proposal 1-101 is the committee's version of an updated Section 139. And it is the same as Section 2 of Committee Proposal No. 1-20 prior to amendment. Committee Proposal No. 1-20 was the one dealing with corporations. And we amended it to remove any sections on which there were questions. And we have done so.

Basically Section 139 provides now that: "No law shall be passed by the legislative assembly pertaining to right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes." And a street railroad isn't too big of an issue any more. The committee decided to bring this section up to date and recognize modern technology. We have made several changes which I do not feel have changed the basic intent of the section. We have changed the enumerated public utilities to the general term "public utilities or similar service". It was our intent that this term would not only include telephone and telegraph but would include such things as natural gas systems, water systems, cable TV and other things that may not even be dealt with at this time.

We included the term "or similar service" so that the Legislature could not evade this section by calling the horse a different name.

We have also changed the term "local authority" having control of the street or highway which will be occupied for such purposes to the "governing body of that city". The intent of this change would be to clear up any problems pertaining to a section. What would be the significance when you have a street that runs through the city that is always a state highway or part of it, a county highway or farm-to-market road for part of it and the city street? To avoid this problem we have just amended the reference to local authority.

We also amended the reference to occupying streets and highways and just made reference to "within any city". At this time to occupy — to operate a public utility within a city you would ordinarily have to put poles on the streets. In the years ahead we don't know if this will necessarily be true; as witness a demonstration of a telephone in use on a TV show. Basically the committee looked at this

section as one that reserves the power to local cities, one that will give them the veto power over the operation of utilities within a city. We feel that this is an important right that should be reserved to them.

PRESIDENT WENSTROM: Any further discussion?

Delegate Peterson.

DELEGATE PETERSON: I have an amendment which I believe is at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-101.

On page 1, delete lines 12 through 15, inclusive, and insert in lieu thereof the following:

"Section 1. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Meidinger.

Any discussion?

DELEGATE PETERSON: I want to — Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: As you can see, the amendment is the original Section 139. And in order to bring this to the attention of the delegates, where they stand, of the Rural Electric Cooperatives to the attention of the delegates, I brought it in as an amendment. And I would like to read their position. They firmly believe that Proposal 1-101 does not belong to any state constitution and certainly not in the new constitution for North Dakota.

"We believe, and has so testified before the Committee on Land, Resources and Education, that the proposed language constitutes unnecessary and restrictive legislation. And delegates to this most important convention, legislation simply has no place in our new constitution. No significant reason has been offered to us why this language should be included. Conversely, if included, it would seem only to clutter and confuse our governing document and place a further burden upon our citizenry by virtue of a potential flood of litigation. Statute law now exists covering the concerns which were expressed by members of the committee. We all share in a common concern for the people's rights. It's our sincere belief that the proposal is not in the best interests of the people."

And then one more point, I want to call your attention to the LRC study of 1965 regarding 139. And they say:

"This is a needless restriction on the legislature because the legislature could not grant any right to utilities to build and operate in a city."

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Yes. I would rise to speak in opposition to the amendment, which then too, as you know, has been explained to replace the existing section with the one proposed here. I am a bit confused because we debated the whole issue for hours on end all through the summer and fall and again since we've been here as to whether there ought to be any in there at all. And one of the main reasons that we have anything in here was because Delegate Peterson's concern was shared by some of the rest of us that we really ought to maintain the veto power of the city.

We tried in reworking this to have a statement which would at least be relevant and relate to what is true today. It would seem to me that the most important choice here is between adopting 101 as proposed or simply repealing 139. If you do not desire to have any statement at all, please do not go back to the archaic old wording.

PRESIDENT WENSTROM: Any further discussion?

Delegate Kelsch.

DELEGATE KELSCH: I wonder if Delegate Peterson, who is suggesting the return of the old language, could point out where they differ?

DELEGATE PETERSON: Well, actually, as far as the REC's are concerned, they prefer deletion. And probably there is — in my estimation the only difference as far as I was concerned at the time that we worked on this was that I wanted the words "local authority" retained. And other than that I — I myself am not taking a specific position. I'm speaking mostly for the REC position.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: One more question. Do I understand that the Rural Electric Co-ops are opposed to cities having the power to decide whether or not — when and how their streets may be used?

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I read the statement that they gave. And I can give a copy to you if you want what I read.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: To answer Delegate Kelsch's question, I believe her statement was prepared before or without the realization that Section 139 was even in the constitution. Because when they came in with a prepared statement and we pointed out that Section 139 was there, they couldn't understand why we were addressing ourselves to this subject. They were seemingly unaware of Section 139.

To answer your specific question, I asked them that. They said, "No." They said the cities should have the franchise power.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Well, Mr. President, as a member of the committee also, I was a little dubious about this. And I would say that the REC's came back after the initial submission of this twice on occasion and said they were still opposed to the inclusion of this specific article, particularly from a point of view that the consent of the governing body in that city could well extend far beyond the streets and highways operation as the language was now worded. And I would just agree and say that the entire franchise thing — I disagree with Delegate Devine in the sense that I believe that we have extended over into the entire franchising possibilities in cities. And I realize that was the intent of the committee. But at the same time I think it might be leading to a great deal of struggle, and a great deal of difficulty outside of the realm of courts and maybe within the courts, particularly in regard to the fact that the governing body of that city shall make these decisions. And when you get into this kind of a struggle, which might be a struggle between a private utility and a cooperative, you know, of course, what could happen to that governing body. I can imagine all the luncheons, dinners, meals, trips and everything that could well be involved in the decision of a city governing body making this kind of a decision. And I think really legislating has been indicated in the Constitution by changing just the provisions proposed and cites to the franchise provision. And I, while not wanting to return certainly, Delegate Lander, to the archaic language which the committee dealt with, I am going to vote "no". Because I don't think we ought to interject ourselves into this kind of situation.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Peterson.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: This is kind of a unique question before the assembly. All that I can see that this new proposal by the committee does is to broaden the area from the few that were enumerated in the original Constitution. It takes in all public utilities.

I would like to comment further, though, in regard to what Delegate Peterson has said, that the REA or the Rural Electric Association or REC's are not public

utilities. They have a right under the statute as passed in 1937 to serve those who desire their services in the rural areas. And they have also the right by the management of the REC's to refuse service whenever they so desire. That has all been tested out in court in the **Williams County v. The Board of Railroad Commissioners, Public Service Commission**, way back in 1954-55, where the District Court pointed these things out. And it was affirmed on appeal to the Supreme Court. So you have a unique situation here where they are wanting to stop the cities from having control over their own streets and alleys, and the franchising of a public utility within the city. For what purpose, I'm just at a loss to understand.

PRESIDENT WENSTROM: Any further discussion?

Delegate Aubol.

DELEGATE AUBOL: Mr. President, I think that the proposal before us would include REC's. It says "public utility or similar service". Now I didn't appear before this committee and I haven't heard their arguments. But I think that one of the objections that the REC's have to this provision is that they think it is statutory to a certain degree. And also because in a recent court decision that has affected their operation in North Dakota. If I recall correctly this — what they are afraid of is that they can work in a rural area or around a town, outskirts, put up their lines and serve the area and this provision leaves it wide open for the city to go out and include them within the city limits by extending the city limits and then telling the REC that they cannot operate in that area that they have developed. And I think there was an occasion just recently that stemmed a concern of this section. But somebody on the committee knows more about this than I.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President: I don't know if I can clarify some of this a little. I was on the committee. And I certainly — I don't feel to strongly about including this one way or the other. But we were trying to rework 139. And I certainly hope you don't — I am against the amendment of going back to the archaic language. But we did have some legal advice on this, and they told us that there was nothing that would prevent the city from giving two franchises under this particular proposal. But the REC's definitely did come in and were definitely against the proposal. And as I see it now they would prefer to work under 139 which they didn't know was in the Constitution until — until during our committee meetings and then they would work under our present proposal 101. But, as I said, I have no strong feelings about leaving either one of them in the Constitution.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is —

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: — on the adoption of the amendment as offered by Delegate Peterson.

Delegate Devine.

DELEGATE DEVINE: Just a short statement. The League of Municipalities did appear. They are in favor of this. I feel that there is a basic right here. This is why I would like to see it personally included in the Constitution. Should we reserve this power to the cities? I believe that we should reserve as many powers to local government as is possible.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment as offered by Delegate Peterson.

Those that will favor it will vote "aye," and those that will oppose it will vote "no." As many as are in favor of the motion to adopt the amendment will say "aye," those opposed vote "no." The "noes" have it, and the amendment lost.

Now we are back on Committee Proposal No. 1-101.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I decided I'd be in order because I really want to address the thing before us rather than talk previously. I think we should understand the history of why this kind of a section is in a constitution written in 1889.

It was a custom back at that time in the latter part of the eighteen hundreds for legislatures to be wined and dined and sold on the idea of legalizing franchises for different public utilities within specific cities. And so we had a lot of special and local legislation.

Now we have before us the Report of the Constitutional Revision Commission that met in the sixties. And it recommended that 139 be repealed. And because, as Delegate Peterson said, this is a restriction on the Legislature. And it pointed out that in the legislative article there is language prohibiting special and local legislation. And this language is in Proposal 1-85, which if we have not passed already we will be passing in the near future. And so we will carry forward the prohibition against local and special laws.

Now since the REC's have decided that this is a matter of concern, and since the questions of territorial status of the private utilities and the REC's is in flux, I think that in view of the recommendation that this section be deleted by previous study, and in view of the fact that the REC's will feel that this is a legislative matter, and they feel it is a matter of concern to them now, I think the subject really should be left to the Legislature and let them fight out the battles between the private utilities and the REC's rather than us try to be the Legislature here. So I would urge the Convention to vote "no" and defeat this proposal.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If I could understand the reason for the concern I would go along with Delegate Omdahl. What bothered me about his argument is that he's urged on the one hand that the Legislature does not have the power to pass local or special laws relating to the city affairs, and yet you're urging that the matter should be left to the Legislature. Now either this is a question, it seems to me, of home rule of the cities or it isn't. Now I might want to agree with Delegate Omdahl it doesn't need to be in the Constitution if we have a home rule provision in our Constitution that does leave the matter of home rule to the cities. But I think the issue at stake here, as I think we've all probably decided, if we adopt the later section which we will come to, the Legislature shall not grant franchises to municipalities, the Legislature cannot pass local laws, then we are saying this is not a matter that should be left to the city. So if I could see a real reason — now it seems to me that either this — there is territorial rights or dual franchises or single franchises be granted, this is a problem that anybody that wants — has that problem is going to have to face in dealing with the city. And I don't think it should be a legislative question. I agree it shouldn't be a legislative question. But if I could see any real reason why I think it should be in the Constitution — I don't think it should be in there — if I could see any reason they fear its presence in the Constitution. I'm really at a loss to understand what their reasoning is.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: I think the real answer to the question raised by Delegate Kelsch is the fact that the recent Crosby case, which was a serious case as far as the REC's were concerned and which will be appealed very shortly as their spokesman told us, that very case left the decision more to the cities. And as a result of that the REC's would rather take their chances in the courts rather than have something like this specified within the framework of the Constitution. And I think that's very understandable from their point of view.

The whole question, as my colleague here has said, putting 76 is dynamite into the Constitution at this point. It reminds me a little bit of a recent play I saw in Chicago called "Hair". There's something in it to insult everybody. And I think we are getting pretty close to that in some of these kinds of decisions when, in effect, we could just as well leave it alone and do as other people recommended, leave this section out of the Constitution. Because it is not a serious question at the present time except the courts work a decision between the REC's who have worked into some city areas and who do have poles sticking into places like Bonanza here in Bismarck and other places. I think those places are essentially that kind of decision. And we ought not to specify it by including this new wording in the Constitution.

PRESIDENT WENSTROM: Any further discussion?

Delegate Diehl.

DELEGATE DIEHL: Mr. President, members of this assembly:

I have conferred with the REC's on this matter. But I am a little bit confused or a little bit concerned about the language here changing "to construct or operate". Originally it was "construct and operate". I'm concerned about those Rural Electric who are already in the cities. And this, as I understand it, would not allow them to continue to operate. So it puts them in kind of a precarious position. Maybe we wouldn't have any trouble, but in my particular co-op around Grand Forks we're in the city in areas. And we would run into some problems. Presently we're trying to get a franchise to continue to operate, which of course we will do, I believe. And this is not unusual to have more than one utility of one kind or another operating within one city. Twin Cities, I think, has at least six franchises to different utilities — the same kind of electric utilities. And that is my only concern about this. I really think it is a legislative matter myself and probably shouldn't be in the Constitution.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President: I would like to attempt to ask — answer a couple questions that have been raised on the floor.

First of all, I do not view this section as an REC versus public power proposition. I happen to be a member of a law firm that represents an REC, and I certainly don't view it as that type of situation.

The second proposition is a reference that's been made a couple times to a Williston case. The case I think that they are referring to is a proposition where the REC's were serving some people that were later annexed into the city. The court initially at this point and time has said that the city then has the right to control the service after the annexation. This particular case was not decided on Section 139. The case, as I understand it, did not refer to 139 as it now exists. It was decided on statutory law.

So I would like to see that particular case or particular problem held outside of the discussion of this section. Plain and simple question before the body is should the city have the right to control utility or similar type services within their boundaries.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President. It seems to me that most of the discussion has dealt in line with the REC position and that it should either be repealed or new language, as stated in 101, be adopted. Now we voted down the amendment to go back to the old section. But I don't understand why, if this is the question, why an amendment hasn't been made to repeal this section. Overtures from both the committee and from the floor here this morning have told us this. Now if we vote "no" on 101, we — and that prevails — we go back to the old language. So I have no alternative but to vote "yes".

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: I have to confess that I'm confused, I think with a lot of other people, but as I read this section what it really says is that the Legislature does not have power over the political subdivisions, particularly cities. In 1965, when we had the bitter, bitter territory fight in the Legislature, part of the language of that legislation granted electric cooperatives the right to continue to serve customers that they were serving in territory that was annexed to a city. For example: If a farmsite alongside of Grand Forks was served by an electric cooperative and industrial development developed along that area, all of which was served by a cooperative, this territory would be subsequently annexed to Grand Forks and the City of Grand Forks, the commission, voted to not allow that electric cooperative to continue to serve those customers and would force them to abandon all of their facilities because the City Commission voted that way, the Legislature by this language would be unable to protect that cooperative from that sort of action.

And, Mr. President, the political subdivisions are creatures of the state and they are to be governed by the policy board of the state. And are we to disinvolve the state with this kind of language and not let them govern the political subdivisions? I think, Mr. President, I think we should move, and I do move, that this be moved to the bottom of the calendar.

PRESIDENT WENSTROM: Delegate Sinner moves that Committee Proposal No. 1-101 be placed at the foot of the calendar.

Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Second by Delegate Kwako.

The question is on Delegate Sinner's motion that Committee Proposal No. 1-101 be placed at the foot of the calendar.

As many as are in favor of the motion say "aye;" those opposed "no." The "noes" have it and the motion lost.

Delegate Aubol.

DELEGATE AUBOL: Mr. President: May I inquire of possibly one of the committee members if they considered any amendment that might — it appears that the REC's have expressed their situation, and I'm sure it would also be expressed by a private utility if it were placed in the same situation that the REC's have found themselves in up in Crosby.

PRESIDENT WENSTROM: Will one of the committee members answer Delegate Aubol's question?

DELEGATE DEVINE: Delegate Aubol, one question raised was this particular problem. And I am referring to my notes at the time they appeared. And my question to them is what to do when the city annexes territory concerning an REC, because I was concerned that this may be an unfair type situation. Their answer was that they are protected. I don't know what the nature of the protection is. This was their plain and simple — their people, their attorney was there, and they told me they are protected. Because I was thinking of putting in a specific provision to protect REC's and this type of thing. So that they don't lose something that they have, their investment if nothing else, in serving an area that later was annexed. And they came back plain and simple with their explanation that they were protected.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: We may have a tempest in a teapot, I don't know. But I do think that in response to Delegate Sinner's question, the Legislature will always retain the power, and it does exercise the power, to specify how territory will be annexed to cities. It is a rather controversial problem in the Legislature, but they do have that power. I don't know if the present annexation laws govern that to protect a utility that's now serving an area. I think they should be. I don't think that their property should be forfeited. But I think that the basic issue is are we prepared to say that cities — that this is a question for cities to decide who will use their streets or not or should the Legislature get in the act? And I don't imagine the Legislature really cares to get in this act. But I do think that they have the power. I think all the Supreme Court said in that case, if I'm not mistaken, is the cities have the power to decide who should use the streets. It didn't say it couldn't grant 55 franchises if they want to. It is up to the city. You have got a problem of new territory if someone's already there. No reason why the city couldn't say you could stay in the new territory.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President: In partial answer to Delegate Aubol, these people did appear before us and objected to the language that we had. We then put off further consideration for four or five or six days and they again appeared before us. They offered no satisfactory amendments to the committee. And that was the result of it.

PRESIDENT WENSTROM: Delegate Sinner, did you wish the floor?

DELEGATE SINNER: Mr. President: After Delegate Kelsch's statement, I think that we prohibit the granting of franchises to electric cooperative in cities over 2500. And by that sort of combination of circumstances and combination of laws, the city could not grant that franchise. And this is all new to me, this whole discussion. But I was deeply involved in that other issue in '65 and I know that it's a very complex question. And I'd hate to see us by sheer oversight here do something that we didn't intend to do at all.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I have to agree with Delegate Kelsch. I think we do have a tempest in a teapot. And I don't think it was the intent of the committee to change the meaning of 139. I arrived at the conclusion that 139 was extraneous language without regard to the REC's. And I still think Section 139 is extraneous language. And I have an amendment at the desk which would leave the language in 1 and 2 that Section 139 of the Constitution of the State of North Dakota be repealed. And which would strike the rest of that title and leave Sections 6 and 7, which would merely repeal Section 139. I would like to move that amendment at this time.

PRESIDENT WENSTROM: It has been moved — Delegate Omdahl moves an amendment to Committee Proposal 1-101.

Would you read it from the desk?

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-101. In line 2, following the word "repealed" delete the balance of the line.

Delete lines 3 and 4.

Delete lines 8 through 15, inclusive.

And renumber the lines accordingly.

PRESIDENT WENSTROM: Now do we have a second?

DELEGATE PETERSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Peterson.

Now any discussion? Any discussion?

Hearing none, the question is on the adoption of the amendment as offered by Delegate Omdahl. As many as are in favor of the motion will say "aye," those opposed "no." The Chair is in doubt. Those that are in favor will vote "yes," those opposed will vote "no." The key will be opened, you will record your preference.

Has every delegate indicated his choice? Any wish to change? Hearing none, the vote is closed.

Roll call discloses 50 "ayes," 43 "nays," five delegates absent and not voting. The amendment is adopted.

Now we are back on Committee Proposal No. 1-101 as amended.

DELEGATE LONGMIRE: Question.

CHIEF CLERK GILBREATH: Suspend the rules and deem it properly engrossed.

PRESIDENT WENSTROM: Can't do it.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: If there is no further discussion — Delegate Haugen.

DELEGATE HAUGEN: I believe a motion to suspend the rule and consider it properly engrossed is in order, and I do so move.

PRESIDENT WENSTROM: Delegate Haugen moves that the rules be suspended; that Committee Proposal No. 1-101 be deemed properly re-engrossed; that it be placed on the calendar for first passage as amended. Do we have a second?

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Longmire.

Delegate Baker.

DELEGATE BAKER: I resist the motion to suspend the rules on the grounds that now we have a whole new ballgame. And I think we better check it out a little more.

PRESIDENT WENSTROM: Any further discussion?

The question is on the suspension of the rules; that the proposal be deemed properly re-engrossed; that it be placed on the calendar for first passage as amended.

As many as are in favor of the motion will say "aye," those opposed "no." The "noes" have it and Committee Proposal No. 1-101 will be on the tenth order of business tomorrow.

We will be on the eighth order of business — Announcements.

Delegate Haugen.

DELEGATE HAUGEN: Is it your intention to recess until approximately one-thirty?

PRESIDENT WENSTROM: It is.

DELEGATE HAUGEN: I would like to announce then that the Committee on Finance and Taxation will meet at one o'clock in the regular meeting room.

PRESIDENT WENSTROM: Any further announcements?

Delegate Hernet.

DELEGATE HERNETT: Mr. President: The Executive Functions Committee will meet immediately upon recess. And bring your lunch with you.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: There will be a picnic lunch in G-1.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: The Legislative Functions Committee will meet at one o'clock in the Large Hearing Room. We have one proposal to dispose of.

PRESIDENT WENSTROM: Any further announcements? Delegate Omdahl.

DELEGATE UNRUH: Final drafting will have a picnic lunch in G-7.

PRESIDENT WENSTROM: Any further announcements?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: At the Calendar Committee this morning it was pointed out that we have 43 items on the calendar. We now have 42 items disposed of. We have five days in which to clear the calendar. We have still a number of committee reports to be read from the desk this afternoon. There will be some controversial committee reports coming up; therefore, it is felt that it will be necessary, beginning today, to have an evening meeting. And because we have — we will have a tremendous amount of calendar work to get rid of. Are you ready for the motion?

PRESIDENT WENSTROM: I would only wish to remind the delegates once more that at four o'clock today there will be no further opportunities to order pictures in the event you want them.

That clears the desk.

DELEGATE SAUGSTAD: I then move we recess until one-thirty P.M.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Saugstad moves that we — the Convention is still in session — it has been moved and seconded that we do now recess until one-thirty. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And we will be in recess until one-thirty.

(The Session recessed at 12:07 P.M. until 1:30 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:42 P.M., Wednesday, January 26, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: May I ask for a personal privilege?

PRESIDENT WENSTROM: You may state your privilege.

DELEGATE THOMPSON: I would like the Convention to recognize Past State Senator Milt Kelly and Sybil Kelly.

PRESIDENT WENSTROM: Are they in the assembly?

DELEGATE THOMPSON: Yes. They are in the back of the room back behind me.

PRESIDENT WENSTROM: Will former Senator Kelly and Mrs. Kelly approach the rail and be recognized by the Convention? (Applause)

PRESIDENT WENSTROM: We'll continue on the eighth order.

CHIEF CLERK GILBREATH: There is a message from Delegate Paulson.

"Will not be able to make it today, but will be here tomorrow."

Delegate Fiedler would like to acknowledge the presence of William McIntyre, Harley Kingsbury, Oscar Knutson, Jack Bannerman from Grafton. (Applause)

PRESIDENT WENSTROM: Any further announcements?

We'll be on the twelfth order of business.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I sent a note to the desk yesterday. As I understood that was the way we were making introductions. We do have a representative from Grand Forks, Grace Stone, with us today.

PRESIDENT WENSTROM: Mrs. Stone, approach the rail and be recognized by the Convention. (Applause)

Delegate Unruh.

DELEGATE UNRUH: Mr. President, may we be on the twelfth order?

PRESIDENT WENSTROM: We are on the twelfth order, Delegate Unruh.

DELEGATE UNRUH: I should have done this this morning. But I would like to move that the letter from the Harvard Law School addressed to Dr. Tudor be inserted in the minutes.

PRESIDENT WENSTROM: Do I have a second?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: Second by Delegate Knudson. It's been moved and seconded that the letter that was read to the Convention this morning by Dr. Tudor be placed in the Journal.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and the letter will be incorporated in the Journal.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to move that Delegate Proposals 2-35, 2-42, 2-50, 2-60, 2-62, 2-66, 2-67 and 2-70 be returned to the floor of the Convention from the Committee on Finance and Taxation to be held at the desk for later action.

PRESIDENT WENSTROM: You have heard the motion of Delegate Haugen. Does someone have the numbers? That Delegate Proposal 2-35, 42, 47, 50, 60, 62, 66, 67 and 70 be returned to the Convention floor and held at the desk awaiting final disposal or use of the proposals. We need a second.

DELEGATE ERICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Erickson.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. And the proposals, Delegate Proposals, will be returned to the floor and held at the desk.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I move that Delegate Proposal 2-69 be returned from the Committee on Bill of Rights before the Convention and be held at the desk.

PRESIDENT WENSTROM: Delegate Maxwell moves that Delegate Proposal 2-69 be returned to the Convention floor, and that it be held at the desk of the Convention. Do we have a second?

DELEGATE THOMPSON: Second.

PRESIDENT WENSTROM: Second by Delegate Thompson. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and Delegate Proposal No. 2-69 is returned to the Convention floor and will be held at the desk.

We're still on the twelfth order.

CHIEF CLERK GILBREATH: Resolution No. D introduced by Committee on Resolutions, a resolution expressing sympathy to the family of Delegate Binek.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move the rules be suspended, that Resolution D be read in its entirety, placed in the Journal as a printed proposal, and placed as a final passage.

PRESIDENT WENSTROM: Delegate Scheel moves the rules be suspended, — what is the number?

CHIEF CLERK GILBREATH: D.

PRESIDENT WENSTROM: — that Resolution No. D be printed in the Journal, that it not be printed as a proposal, that it be placed on the calendar for final passage. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. Resolution D is before the Convention, and the Clerk will read the resolution.

CHIEF CLERK GILBREATH: Resolution No. D, introduced by Committee on Resolutions.

"A resolution expressing sympathy to the family of Delegate Binek.

"WHEREAS, God in His infinite wisdom has seen fit to summon from our midst Steve Binek, the brother of our colleague, Delegate A. L. Binek; and

"WHEREAS, Delegate Binek is held in high esteem by all members of this Constitutional Convention, who share with him his sorrow;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That we express our sorrow and extend our sincere sympathy and condolences to Delegate Binek and all members of his family; and

"BE IT FURTHER RESOLVED, that this resolution be entered in the Journal and the Clerk is hereby directed to present an enrolled copy to Delegate Binek and members of his family."

PRESIDENT WENSTROM: You've heard the reading of the resolution. In adopting this resolution will the members of the Convention please rise. The resolution is adopted.

DELEGATE BINEK: Mr. President.

PRESIDENT WENSTROM: Delegate Binek.

DELEGATE BINEK: Fellow Delegates: Thank you for your recognition and your kind words of sympathy. On behalf of my brother's wife and family, all of my brothers and sisters, your expressions are appreciated and they shall never be forgotten. Thank you so much.

PRESIDENT WENSTROM: Thank you, Delegate Binek.

We will be on the tenth order of business. First for consideration is Delegate Proposal No. 2-23 as amended.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-23, introduced by Delegate Thompson:

"Be it resolved by the North Dakota Constitutional Convention that a new section be created to the constitution of the state of North Dakota pertaining to a recognition of veterans' contributions to the state.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The people of North Dakota do herein declare that North Dakota service men and women may be given special considerations as determined by the legislative assembly."

PRESIDENT WENSTROM: You've heard the reading.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I don't intend to speak long on this because we did discuss it some time ago. And if the Convention looks at it, you will see that we

have reduced the size and removed all of the flowery words. When we had this last hearing on this matter Marvin Conrad from the DAV appeared as did Fred Jordan from the Veterans and Vernon Usseldinger from the American Legion. And they also agreed that we could reduce the size of this matter. And I earnestly support your consideration on that.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of Delegate Proposal No. 2-23. Those in favor of its adoption will vote "yes," those opposed will vote "no." The Clerk will open the key, you will communicate your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 85 "ayes," 9 "nays," four delegates absent and not voting.

Delegate Proposal No. 2-23 has been passed.

Next for consideration is Delegate Proposal No. 2-26.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-26, introduced by Delegate O'Toole:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota, which pertains to the establishment of an independent government agency which shall receive complaints against state agencies and officials, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created as follows:

"There shall be established by the legislature an independent government agency which shall receive complaints against state agencies and officials from aggrieved persons, investigate the same, and in cases of justified complaints, to offer recommendations for remedy."

PRESIDENT WENSTROM: Is there any discussion?

Delegate O'Toole.

DELEGATE O'TOOLE: Mr. President, fellow delegates:

I feel in a very different position today for a couple of reasons; one is that the bill finally got to the top of the calendar, and the other one is that much of my time is spent in counseling and guidance of people who have somewhat uncomfortable and unhappy experiences and many of these experiences come with governmental agencies, governmental subdivisions and this sort of thing. And, of course, the only way I can help them is in some way teach them and help them how to live with and adapt to the problems. Now I'm in a different position. I am in a position to help to change some of these stresses that are on the many individuals. And hopefully to help them from becoming emotionally upset.

Now this was brought out to me recently in a letter from my father who indicated in turning out many of his farm papers, he felt that the government was just trying to confuse everyone.

The purpose of this proposal is to create a "People's Advocate," an "Ombudsman," a "Citizen's Defender," "Citizen's Champion," "Defender of Civil Liberty" or whatever other name you might wish to call it. This proposal creates someone to whom any citizen may take complaints about actions of the people in the government service. He will listen, examine and try to obtain redress of an injustice, an apparent injustice, or amends for a grievance.

This is not a new and original idea. At least four states — Nebraska, Iowa, Oregon and Hawaii — have established just such an official. Other states and political subdivisions have also made use of this concept. Recently in an article in the **Fargo Forum**, I read where the federal government is trying to make use of the idea through the use of the government's service agencies. Many foreign countries have set up machinery for an ombudsman. First in Sweden in 1809, now in Great Britain and Australia.

I feel that we need this man for a number of reasons. Government and government services reach into almost every area of our lives from health, welfare employment, water control, farm subsidies, and I can go on and on and on. We have so little recourse to decisions of the government and most often do not even know where to turn or to whom to go to have our complaints heard. Most im-

portant, we are often shuttled to the very government agency with whom we have our complaint.

The post World War II growth of the welfare state in government grew in size and was given extensive powers. Protection is needed against the executive and administrative oversights or abuse of power. This goes hand in hand with President Nixon's call for curbing and putting controls on services. But not only that, it also establishes a man who will oversee that these agencies are truly helping the people.

The activities of the public administration have become so comprehensive and the power of the bureaucracy so great, that the legal status of an individual needs additional protection. This goes hand in hand with our Supreme Court in trying to guard our fundamental rights of freedom and individual liberty. Our government machine has become so great, so big, that bureaucracy seldom has time to help the common man. The common man, the man whom the government was set up to work for, to protect, is not protected and is not any longer in control of the government.

Thirdly, existing mechanisms, courts, legislatures, executive administrative courts, and administrative agencies, are not sufficient to cope with the grievances of the aggrieved and there is need for a supplementary institution. The ombudsman or the people's advocate will fill this need of the supplementary institution. He will be the defender of people's rights, this being his primary and only job.

The presence of the ombudsman has a psychological value. His office gives the citizens confidence that there exists a watchdog for the people who will hold the government accountable. Again, the ombudsman can be seen as the man that the people can go to in time of need to have their rights exercised. He gives the people a shortcut. He will no longer have to deal with the red tape and the bureaucracy of the government, because the government has put within itself a safety valve in the form of the People's Advocate.

The Legislature, traditionally concerned with the observance of laws and rulings of public officials, has at the same time extensively delegated powers to administrative authorities. The ombudsman can serve to aid the legislator in his function of supervising the executive and the administrator. The ombudsman can serve as a check and a balance, a safety valve, for the Legislature seeing to it that other agencies are carrying out the laws to the intent for which they were written by the Legislature.

The People's Advocate gives citizens an expert, an impartial agent without personal cost to the complainant, without delay, without attention of the adversary litigation, without requirements of counsel or the intervention of those highly placed. Thus he is everybody's defender. But more than anything, he is the representative of the poor, the people who cannot afford litigation in our courts because of lack of money. It is a quick step forward to getting their rights exercised without the delay of courts and the delay of administrative agencies. It will help to prevent the terrible conditions that Orwell described in his book "1984".

He is not a person bound by legalities, seeking to win a case, but an arbitrator who seeks to dispell erroneous notions on one side or the other by setting forth the truth.

Many people who have had grievances would find it difficult to go through procedures required in the regulations. They may not know where to start; they may not be able to pay the legal expenses, or their emergency may be of such a nature as to demand quick action. Then, too, a request for review addressed to a government department that may be referred to the officer originally involved, this is not in the nature of a real appeal.

Some of the strongest objections in states and Great Britain has come from legislators who feel that they are ombudsmen. I say they certainly are, but to a limited extent. The average legislator does not have the time to do much more than put in a phone call or write a letter on behalf of the complaining constituent.

To handle a complaint in the detailed way of the ombudsman's office requires an expenditure of time, and if the legislators spend time in following up complaints they are necessarily absent from their legislating duties that may demand their presence. It may even cause them to be absent from their primary occupation.

There is another point, one of great importance. When individual legislators handle complaints, the administration is deprived of the enlightenment given by the

accumulation of information about similar cases. What may appear to be a solitary complaint may be one of a large pattern which it would be important to recognize. A number of complaints of the same nature passing through the ombudsman's office would ring a warning bell, calling attention to a condition that needed investigation.

Under the pressures of new services and policies, the work of agencies expands, not only in volume but in new areas. Governmental administrators have become greatly concerned. I've had a number of them support the idea of the People's Advocate. Complaints are not always of some fault by a civil servant, but result from the confusion a citizen feels when caught up in the complexity of governmental structure necessary to supply services. In fact, Mr. Doi in Hawaii found that in 64 percent of the complaints the government was right. While making sure that the government agencies do not exceed their power or exercise it in an unreasonable way, the People's Advocate findings protect the agencies against unjustified complaints. In New Zealand, the civil service has come to regard the ombudsman as a defense against unjustified criticism rather than as an enemy.

If the People's Advocate makes a finding that is unfavorable to an agency, he does not then become a prosecutor or judge. He has no authority to reverse, alter or annul a decision. He cannot take any disciplinary action. He uses admonition and suggestion. He may recommend an appropriate change in the rule or laws that caused the complaint to be made. His weapons are in his report to the Legislature in which he brings the grievance to attention and recommends that it be redressed. Further, he may use the press or other news media to gain public support and hopefully correction of the difficulty.

As you can see in this proposal, I have left the machinery and the name for setting up the office of the People's Advocate entirely to the Legislature. There are many articles and suggestions by which the Legislature can proceed. They will need to define his independence, his responsibility, his status, investigative power, need for impartiality, the powers of recommendation, and notice to the complainant. Hawaii's system is outlined in the summer issue of the 1970 **State Government Magazine**.

What kind of a person is he, must he be? Dr. Randy Hamilton defined the ombudsman at a conference in San Francisco in May 1969 in this way:

"An ombudsman can be characterized briefly as a high level officer with adequate salary and status, free and independent of both the agencies he may criticize and the power that appoints him, with long tenure of office sufficient to immunize him from the natural pressures of seeking reappointment, with the power to investigate administrative practices on his own motion, and this, of course, is the most important. He is a unique officer, whose sole job is to receive and act upon complaints without charge to the complainant. He should have power to subpoena records. He operates informally and expeditiously. His principal weapons are publicity and persuasion, criticism and reporting. He does not have the power to punish maladministration or to reverse administrative decisions."

I see that his qualifications for his personal ability much like that of any other official for whom I vote. Some have suggested a respected, but retired, legislative leader, others have said young lawyers, others older administrators who are about to retire. I leave this to the Legislature. Some suggest a legislative appointment some executive appointment, some judicial appointment. I leave this to the Legislature.

In conclusion, the ombudsman's duty is not merely to act as a buffer between the individual and authority, but to be actively employed in promoting justice.

The welfare of the people is the supreme purpose of government. Grievance-handling machinery should be designed so as to provide easily accessible judicial review, flexible disposition of cases, and speedy judgment. But the ombudsman must not be so just that he forgets to be humane, nor can he be so generous that he neglects to be just. Those who appear to him should remember that he is not there to dispense favors, but to safeguard rights. He gives the feeling of security. He is a friend at court who will see that attention is given the complaint. He may advise the deletion of certain offices or the reduplication of offices in the government. The people will find it less necessary to parade and demonstrate to call attention to their grievances, instead they will come to the ombudsman.

The People's Advocate helps to keep the balance between the increasing encroachment of governmental administration and the citizen's rights.

I feel that this is so greatly important that it should be firmly in our Constitution. I strongly urge its support for this much needed office. Those of us that are close to government hear hundreds of complaints and searches for justice and/or misinterpretation of administrative decisions.

PRESIDENT WENSTROM: The Chair will recognize Delegate Warner.

DELEGATE WARNER: Mr. President, my fellow delegates:

I rise in support of the ombudsman, something I have read about, studied for years.

Not so long ago a political columnist said: "Instead of two political parties in this great nation we have three; we have the Republicans, we have the Democrats, and we have the Bureaucrats. And the Bureaucrats are the most popular."

As one who has served both in and out of bureaucracy, I have seen the Macedonian cry in the wilderness by the poor and the oppressed. And I have seen the form letters mimeographed and sent out to those that are brushed off so easily when they try to bring their complaints to the proper department. I sincerely believe that this could be one of the greatest steps forward that this Convention could make is to give the common people, the poor people, the people who have no other place to go, some office to go to and seek redress against their government.

I am going to be brief. The American Bar Association Administrative Law Section says in one brief paragraph exactly what I believe:

"The ombudsman system is one of the institutions essential to a society under the rule of law, a society in which fundamental rights and human dignities are affected. Human rights are not protected simply by a constitution or by legislation, by guarantees or by speeches, by proclamations or declarations, but primarily by the availability of remedies. The ombudsman system is one of the remedies which seeks to preserve human rights."

I sincerely and respectfully urge every delegate in this Convention to support the ombudsman.

PRESIDENT WENSTROM: Any further discussion?

Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President: I, too, rise in support of the principle embodied in Delegate Proposal 2-26. I do so for two reasons; one, having served as a state legislator for a number of years I found that very frequently I had citizens call on me to intercede on their behalf for some problem that we had with some state agency. Very often, of course, their problem — or the state agency I found was technically correct. It had been correct in their ruling. But these people found a great deal of satisfaction in the mere fact that they had someone that they could talk to, that there was someone that was sufficiently interested in their problem to intercede on their behalf.

The other part of the problem was simply this; that as a legislator, and like so many other people that served in the Legislature, I found it necessary to make a living. And I did not have the time to devote to this sort of thing that I would have liked to have given. In some instances I discovered that it would have — it did require a considerable amount of time pursuing these matters to some conclusion.

Therefore, I do believe that we have here a principle which I believe is good and one that I heartily endorse. Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: We've heard how this Delegate Proposal is idealistic, and it is great in theory, and I agree. And certainly nobody should be without ideals. But I also, as I listen to the proponents of this proposal, envision that one man could not possibly handle the jobs we have outlined for him here. I see another bureau, and I see another layer of government. And we certainly don't need either one of them.

I still regard my elected Representatives, my Senators, my City Commissioners, my County Commissioners, State's Attorneys, State Auditors, whoever has been

elected or appointed in the State, as my ombudsman. If I have a problem, if I have a question, they better well answer me and they better well answer anyone else in the State of North Dakota.

We talk about justified complaints in this proposal. I wonder who is going to determine what a justified complaint is. What determines that? I wonder how much power this man is going to have. Certainly the Legislature is not going to give him more power than they have.

I would also be very interested to know how great the need is. I would like to know how much it is going to cost the people of the State of North Dakota. Once again we are talking about that blank check we are willing to sign and the people of North Dakota are going to have to pay for it. I just cannot imagine that this is a matter for the Constitution, and I would urge that you defeat the proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHMIT: Mr. President.

PRESIDENT WENSTROM: Delegate Schmit.

DELEGATE SCHMIT: Mr. President:

I want to rise in support of 2-26. I think I'm right in saying that our committee unanimously endorsed this for a "do pass".

Mr. President, I believe by now it's common knowledge that the electorate has been searching for some political vehicle under either of the two national, the two major parties, to turn to. The ombudsman may be the answer to some of the shortcomings of both of our national political parties. I know you are going to say, as Mrs. Stanton did, that we don't need another government agency. But I think we are considering eliminating some — getting rid of some of the less effective ones and put one in that will really — really help the people, it will help bring the government back to the people. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

I'm going to talk for this and vote against it. I think it's a wonderful scheme. I'm not too hardhearted, and I congratulate Delegate O'Toole for the way he's handled it. I wish that I could vote for it. And I might consider it if the word was "may" instead of "shall". But I agree with Delegate Stanton and I have to be a little consistent, we're not going to establish another level of government. I shall have to vote "no" and rather hope it passes.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Government of all kinds, including state government, is constantly growing. And the larger it grows the more endangered the individual becomes. Eric Sevareid recently said: "Sophocles was right. Nothing that is vast enters into the affairs of mortals without a curse." And the curse of big government is the tendency to the abuse of power by large bureaus and agencies and services. The rights of the little guy are often abridged for the sake of official convenience. The ombudsman, as the "People's Advocate," is the answer to this. The ombudsman would help to rescue the individual from the red tape and the frustrations of government bureaucracy. I ask that you support the action of the committee and vote in favor of this proposal.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: Fellow delegates, the differences in the Bill of Rights Committee have been exposed to you, and on many things we differ. But on one concept I think there was almost unanimous agreement, and that's the concept of equal justice under law. I must confess when my friend Delegate O'Toole came in with this proposal I might have rejected out of habit had it not been for some personal attachment to Delegate O'Toole. I didn't think it was practical, and I wondered sometimes if we had always to be practical. And on that basis I've changed my mind. Sometimes my head tells me that we don't want an extension of gov-

ernment, but my heart tells me that somehow, as Delegate Peterson said the other day, that constitutions must also have a heart. And so I would urge the delegates to give favorable consideration to Delegate Proposal 2-26.

PRESIDENT WENSTROM: Further discussion?

Delegate Geelan.

DELEGATE GEELAN: Mr. President: I don't suppose we should ever measure services to people in terms of money. But I can see where it might be possible for an office like this to save money in some instances. I wonder if I can give you some figures from the Workmen's Compensation Bureau. The Bureau handles, receives, about, oh, all the way from twelve thousand to fifteen thousand new claims a year. And I think you can understand that out of those twelve to fifteen thousand we're going to have to deny some of them because they don't come under Workmen's Compensation. Then you can also understand of the thousands of claims we do accept some time or other there's going to come a point in most of the cases where we are going to have to tell them that benefits have to be stopped based on medical evidence. Now most claimants will accept our decision, but many of them don't like to take a decision from a bureau that's both judge and jury. So they don't feel that they've been given an honest hearing, they don't — they think sometimes, if I can use the expression, that maybe they've been given a run-around. So that if we cannot solve it, then we have to hold a formal hearing. Now formal hearings are expensive. Many of you lawyers here know, because you have at many times represented the claimants. We have to go to the county where the injury occurred, so that means the expense of a commissioner and the attorney. Then in most cases, if we can get a court reporter, we hire one. And usually the claimant has hired his own lawyer. Now we've had a debate the other day on whether you should pay for legal services for indigent persons. And it may be a surprise to you that the Workmen's Compensation pays for all attorneys' costs. We don't ask if the claimant is indigent, we pay for the attorney who represents him. So you can see these costs add up.

Now I can see if we had an ombudsman, if the ombudsman found out that the bureau isn't right, I can't conceive of a situation where the bureau wouldn't accept his findings. Many times when an attorney calls and says, "We think the claim is just," and he tells us, we accept it without a hearing. Again, on the other hand, if he finds that the bureau is right — and I noted from Delegate O'Toole's facts that in most cases they are right — I think in that case the claimant would be satisfied and a hearing wouldn't be necessary. Now if this is the case with one agency, I can really see where an ombudsman would create a better image for the bureau or the administrative agencies and we might save — take some money, maybe not too much — but we might save a lot of litigation. So I hope you support the principle of ombudsman.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: I, too, would like to rise in support of this proposal. I can see this ombudsman being a vehicle by which some of our citizens who are not particularly acquainted with the channels of government to turn to for help, particularly perhaps among our older people who are limited in funds and are perhaps seeking help in various areas and not knowing just which way to go, and amongst our younger citizens that are not yet acquainted with such things.

They can go to this ombudsman, telling him what they need, or perhaps writing to him, and he could direct them in whichever channels and perhaps advise them on various things.

I think also the agencies would be helped in this way in that many times complaints come in because of misunderstandings, and I think that an ombudsman could be a sort of a clearing house for this. I don't think that there would be a great deal of concentration of power in this office as I believe it would be an office to advise and to go about in this way in anything that it did. Even in seeing something wrong in an agency, it would have no more power than just to advise someone to take steps here.

PRESIDENT WENSTROM: Further discussion?

DELEGATE TUDOR: Mr. President. Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I would also like to rise to support Delegate O'Toole's Proposal No. 2-26.

I'd like to congratulate Delegate O'Toole's enthusiasm, his research, and the talk that he gave. Because he really has said it all.

I believe that this would be — that this "People's Advocate" would be a compassionate addition to our Declaration of Rights.

It's very easy for me or for others of you in this room to call any state official because most of us know all of them. And we have easy access to them. But there are hundreds of thousands of people in our state who cannot do this. And I feel very strongly, as does Delegate O'Toole, that the ombudsman concept would add a lot to our state government.

PRESIDENT WENSTROM: Any further discussion?

The question before the — Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President: This particular section, and Proposal No. 2-26, disturbs me somewhat in that first line when it says that, "There shall be established by the legislature an independent government agency . . ." And I'm wondering just how independent this ombudsman will be. His office is created by the Legislature, yet who is he really responsible to? He has essentially limited powers. And just what action is going to be taken and what follow-up will be taken by this particular man to alleviate a particular grievance? And isn't it possible that an ombudsman would fall into the same bureaucracy as the agencies themselves?

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the first passage of Delegate Proposal No. 2-26.

Those in favor will vote "yes," and those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 69 "ayes," 26 "nays," three delegates absent and not voting. Delegate Proposal No. 2-26 has passed.

Next for consideration is Committee Proposal No. 1-84.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-84, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to counsel for indigents in civil proceedings in which the state or its subdivisions are adverse parties, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"An indigent person shall have the right to counsel at public expense in administrative or court proceedings in which the state, its agency or subdivision is an adverse party."

PRESIDENT WENSTROM: Is there any discussion?

Delegate Lamb.

DELEGATE LAMB: Mr. President: I have an amendment at the desk I would move the Clerk would read.

CHIEF CLERK GILBREATH: Proposed amendments to Committee Proposal 1-84.

Delete all of lines 8 through 10 and insert in lieu thereof the following:

"Where a substantial personal right of an indigent person is involved, such person shall have the right to counsel at public expense in all court proceedings in which the state, its agency or subdivision is an adverse party."

Renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to the amendment?

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Maxwell.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President and Fellow Delegates:

This particular proposal has been down the drain once and back up again. And we are hoping that by this particular amended language we can answer some of the objections that were raised on the floor on January 20th. As you will notice, we have put in a sub — “where a substantial personal right of an indigent person . . .” — I’m sorry — and we have also taken out the “administrative . . .” proceedings.

This coming right after the debate on the ombudsman would carry the theory a little bit further. As you realize from the discussion on the ombudsman, it is just in regard to the administrative procedures. This is at the time where an individual is — has the possibility of losing a substantial amount of money in his particular worldly goods or things of this nature. He can then have the right to counsel at a court proceedings being brought by him or by the state in the particular question.

Now I’m going to ask Delegate Kelsch if he will define for you “substantial personal right”.

PRESIDENT WENSTROM: The Chair will recognize Delegate Kelsch.

DELEGATE KELSCH: Mr. President, Fellow Delegates:

Frankly, I’d have to say that I could not state to you exactly what “substantial personal right” is. But I want to assure you that I have no fear with those words in this particular proposal. I think we have advanced a long ways. This proposal as originally written had no limiting words and it almost passed. I think the Committee on Preamble has improved the proposal substantially, and I think that now as it is presented to you it should be accepted.

The reason I have no fear on the — what we are saying, first of all, is substantial — first of all, we are saying it is not an unimportant or frivolous right, it must be substantial. Secondly, we are asking it must be a personal right, that we take out questions involving property. I believe someone raised the point in an earlier debate that if the county was proceeding to take your land for taxes or there was a zoning ordinance dispute, that it — would this provide counsel for the indigent. We are eliminating the areas of property. So we are limiting it to “substantial personal rights”. Now exactly what those words may mean today or tomorrow or fifty years from now will be determined by what a court interprets them to mean. And they will be the final arbiters on what those words mean or when an indigent will be entitled to counsel. I don’t think we should have fear of words like that. I think they are defining words. When our founding fathers put “due process” in the Federal Constitution, what it meant to them at that time and what it means to us today certainly are different things; or the words “equal protection”. And I see nothing wrong or I don’t think we should be afraid of the words “substantial personal rights”. I think they are limiting words. And I have no fear that the courts in applying this will not — will not grant this unreasonably or frivolously in cases unless — unless something substantial is involved, unless it’s personal. And I would urge that you would adopt this as a far-reaching and broad concept in which we are stating that where substantial rights of indigents are involved in court actions where the state is an adversary, they shall have counsel, they shall be represented.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

I’m used to losing blood at these sessions, but I have never been in such a wonderful atmosphere as we have today. We just got through — and I know that the correct pronunciation is ombudsman — with that other one and now we’re going to help the poor people in every respect. But how about the poor taxpayer? Also this poor person pays taxes in this state. He pays, if nothing else, sales tax on every item he buys. And we are going to help him on one hand and raise his taxes on the other. I think it’s a little bit funny at the moment. We haven’t got our feet on the ground this afternoon, as I see it. And this coming on the heels of the other one may make it look worse, but we protect the poor person who’s criminally accused, he has free legal counsel. Or rather the state pays for it, forgive me for saying it is free, and the Legislature several different years lately has raised the rate per day for the attorneys on these cases. I don’t know exactly what it is now, but I know it was doubled a few years ago. And now we’re going to have them come in and get an attorney for any substantial right that’s being threatened.

And one delegate made the remark — I don’t think he meant it — but he said something about a “substantial amount.” If he’s broke, how could he be hurt for

a substantial amount? I realize the difference in the wording. But let's not just get so wild and pass everything that comes along. There are poor people who are making their own living and they can get lawyers if they have a pretty good case. Furthermore, we wouldn't want to take all the work away from the poor legislator. I wouldn't have the chance to represent some of the widows, for instance, in my area and things like this. I get about the same number of calls as the other members of the Legislature, and it doesn't keep me from making a living. And the calls to the state agency I might add just before appropriation time is probably more effective than a state paid attorney who is in the legislature. I hope we throw this one in the creek, so to speak.

PRESIDENT WENSTROM: The Chair will recognize Delegate Lander.

DELEGATE LANDER: Mr. President: I would like to ask the advocates of this proposal for two or three for-instances. I'm just a little confused as to what we are talking about. And I think if we're all for it it would help me at least if we could have at least a couple of examples of how this might work.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'll be happy to give you the example. However, I was not going to speak in favor of the proposal. I think Mr. Lander would find that where a person appeals from an appeal hearing in welfare this would be an instance, and that an appeal would be court, or — well, one instance that is going to be used in the event, as my committee is also proposing, we remove governmental immunity and the state starts having actions brought against it, the state is also going to have to provide the attorney for those actions. And I would be very remiss, as the only practicing attorney on this committee, if I didn't rise in protest. Because I don't want to be a part of setting up a situation where I can earn a living. The way this sets now, if they take out governmental immunity every time that someone runs into a bridge or breaks an axle or anything else and has a substantial whiplash, the state is going to have to provide an attorney to sue themselves. And I am very much against it. I do agree, incidentally, that there should be some privilege made somewhere for instance like the welfare department where you have a person that cannot possibly come up with the money to sue, because they are already on welfare.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President: I might say that I was the advocate of this proposal originally. It's been getting overhauled several times. We might run out of mechanics. But I still firmly believe that something should be done in here. I was advocating from the beginning, as I still advocate, that a person shall have the right to legal counsel if he cannot afford it. I was not talking about the appeals cases with the Welfare Board, I was talking about the state when it would go to the District Court on a dispute with an agency. I was not talking about the appeals part. And I still am strongly in favor of this type of proposal to be passed in some form. And I cannot answer, I'm not an attorney, but some of the words or questions that have arisen here now would amount to, how far reaching it would be the way it's been amended. But I absolutely want something, if at all possible, for the people that cannot afford to argue with a governmental agency when it comes to court.

And, Mr. President, could I further request the remarks of this discussion be entered in the Journal?

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Yes, your remarks will be recorded in the Journal. Delegate Kessel.

DELEGATE KESSEL: Mr. President and delegates:

I address this question to anyone that has the answer as a proponent. I recognize it is the state, its agency or subdivision. I am wondering whether this goes down to school districts and cities, if this is the intent? I do not believe that cities are subdivisions of the state, nor do I believe school districts are. But I'm wondering what the intent of this is so we can bring that out on the floor.

PRESIDENT WENSTROM: Will someone answer Delegate Kessel's question?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President, Delegate Kessel: It was intended that it would include political subdivisions. And if that — we are in error, maybe we could move it back to amend it again.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Thank you, Delegate Lamb. In that event, I can see thousands of litigations thundering right down on the small school districts and the small cities. And I certainly must speak against this proposal now.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates:

When this amendment was first brought to my desk I thought everything was just fine, I would have no problem at all supporting it. But I do feel that Delegate Thompson has raised an excellent question that really concerns me. I think the basic premise is good, but I'm concerned that we stay out of this civil area. I don't think there's any concern — there's no concern on my part of the criminal basis or even appeal basis from an administrative proceedings. But as Delegate Thompson proposed, that if this gets into the civil area I am very much concerned and would suggest that there be further amendment.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: I think we should keep in mind that the limiting words are this will have to be "court proceedings in which the state, its agency or subdivision is an adverse party" and there must be a "substantial personal right" involved.

Now someone asked for some examples. If I was a dependent mother, had dependent children, and there was a question of sufficiency of survival or support, I think that's a "substantial personal right".

Now I am speculating here, I'm speculating what a court would be doing if we pass this. So I can't tell you for sure what they would say. We are putting qualified words in the proposal, and I have trust in the judiciary in this state they are not going to be frivolous in the granting of counsel to the indigents.

Also remember we're talking just about indigents. If I were — if my driver's license were taken on an administrative proceeding and I wanted to go to court on it, if we have the concept at this particular time that driving's a privilege in this state, then I think a court would be sound in saying, "You will not be furnished counsel at state expense." If, on the other hand, at some later time we view the right to drive — driving as a right, it might well then say, "If your license has been taken you have a right to counsel in court on that question."

I would agree with Delegate Thompson if we do remove governmental immunity, a subject we have not come to, that it might well be contended in the case of the indigents, the indigent person, that the state would provide as additional damages, if it would be found liable, the attorneys' fees for that person. What we had been doing is taking attorneys' fees on top of the award for damages instead of having attorney's fees come out of the award for damages. I don't know if that's particularly bad or evil.

I would — I think that there are enough limiting words in here to allow courts in the future to define, as we go along with this, where and when an indigent will be provided counsel. I sympathize, as Delegate Rundle pointed out, the taxpayer, the fellow who is not indigent. We can't backtrack on that. We have a lot of other concepts that we have established and are important to those of us who are able to earn money to pay taxes so at least the indigent will stand on somewhat of an equal footing as the rest of us.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Could I ask Delegate Kelsch a question?

PRESIDENT WENSTROM: Delegate Kelsch yield to a question?

DELEGATE KELSCH: Yes.

DELEGATE STANTON: Would you define an "indigent person" for me?

DELEGATE KELSCH: This would be — the definition would have to be determined through the Legislature or through the courts. And that's a fact question.

And I can see that we might decide today that indigency is one thing, ten years from now it may be another thing, depending upon general prosperity. And I am not worried that the Legislature is going to be over generous in defining it, because there's taxpayer dollars involved. Unless the Legislature was unreasonable to make an indigent so poor that it didn't cover any class of people, I think their definition would stand. I don't think we can define a word "indigent" in the Constitution. I think the word has a meaning, and the people in the state at the time, at any particular future year, will apply a definition to it I would hope to be reasonable at that time.

PRESIDENT WENSTROM: The Chair will recognize Delegate Burke.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton, do you have a further question?

DELEGATE STANTON: Yes, I do. I would like to ask Delegate Kelsch if this excludes the word "poor"? Is that a fact?

DELEGATE KELSCH: I think the committee when it first debated this indicated they were thinking of the word "poor" as they mentioned it. They thought "indigent" was a more limiting word than "poor". "Poor" has a general, broader meaning than "indigent". "Indigent" meaning, I would presume, that you just couldn't — there was no way that you could come up with the money to pay counsel.

DELEGATE STANTON: Mr. President: Now I would like to say something else. I didn't get all the amendment. Is it presumed that the Legislature is going to set this whole system up? Is it in the amendment? I don't see it. I don't believe it's there. I just wondered who was going to —

PRESIDENT WENSTROM: Would you read the amendment?

We'll read the amendment again.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-84.

Delete all of lines 8 through 10 and insert in lieu thereof the following:

"Where a substantial personal right of an indigent person is involved, such person shall have the right to counsel at public expense in all court proceedings in which the state, its agency or subdivision in an adverse party."

DELEGATE STANTON: Then we really don't know who is to set this up according to this proposal.

Well, I would just like to say that I would like to see this proposal rejected as it was last Thursday by a substantial majority. The federal government has various agencies which do furnish poor people and indigent people with legal counsel. And I think it's up to the governor of the state to either recommend or adopt, or recommend and adoption. And there are many avenues, and this is just much too loosely written for me to accept.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I rise to speak against the amendment. As a constitution maker I speak against the amendment because I believe that it promises a substantial benefit without any promise of performance. And I would dislike to have in the Constitution the words unless they mean something. And I do not believe the amendment means much legally. As a practicing attorney I also speak against the amendment.

Now the amendment states that these expenses would be paid in court proceedings. Well, if any of you have had administrative procedure work you will know that when an appeal is taken from a board it is conducted strictly according to the Administrative Procedures Act. And the rights of the people are usually not protected in the appeal because the appeal is made on very narrow grounds; whether the board has exceeded its authority, whether it's been arbitrary. And actually the place for protection is in the original board hearing itself; which, of course, we rejected the other day. For those reasons I am against the amendment.

PRESIDENT WENSTROM: Further discussion?

Delegate Decker.

DELEGATE DECKER: Mr. President, Fellow Delegates:

I would like to speak for the amendment. I believe it is a much better proposal than the original proposal. And I think at this time, while we are talking about the amendment, I would urge you that you support the amendment for that reason.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: When this proposal was before this body the other day it suffered defeat by an 83 to 54 vote. And then the Convention sent it back to the committee, presumably for another look. We certainly didn't view the action of the body as a rebuke at that time, but rather a suggestion that we take a further look at it. And the debate at that time was principally directed against that portion of the proposal which would provide counsel in administrative hearings. So to accommodate what we thought the wishes of the Convention were, we deleted that and we made it far more restrictive.

Now maybe I misinterpreted the action the other day; perhaps it is the objective of the Convention to deny poor people access to courts because they cannot afford a lawyer to get in there. I don't think so. I think this body has a heart, as Delegate Burbidge a little while ago pointed out, and I think that this body will see to it that access to the courts of this State are not denied to people who can't get there because they cannot come up with the fee to pay a lawyer to get them there.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I have a question for the committee, and it's been touched on by Delegate Burke, and that is the record. Now where you take a transcript, bring it up for an administrative hearing, you sometimes have hundreds of pages. I'm wondering if the state is going to be put to the expense of the transcripts and court costs. You say here "right to counsel"; now does that mean also costs, bringing the record forward? It could be in many cases as much as what you'd pay a lawyer.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I didn't speak on the original proposal because I thought it was quite well covered. And I have a fear that some may think that the amendment cures all of the objections. It was said to me awhile ago that we lawyers are not particularly smart to talk against this because of the potential revenue it will create. And I guess if that was our main concern we probably would vote for it. However, I would like to point out something that a couple of days ago we passed a provision which says that eighteen-year-olds and over are now adults. And it occurs to me from the eighteen-year, nineteen-year, twenty-one-year-old people that I know, and merely college students or those right out of high school just getting started, would certainly fall in the category of being indigent. Because they no longer are going — parents will not be responsible to them since they are adults.

In our county one of the big problems that is there, as in other counties that have a number of small towns, are the traffic problems within these smaller communities and the law enforcement that exists. As you know, they are all cities now and they all have their own court system. However, there are no lawyers that live in these cities. And consequently when these people are brought into court they are either taken into the County Court or they have to have their city attorney come out from whichever town he's located in. In addition to that, we're asking — because I believe the "substantial personal right" would cover the potential jail sentence that goes along with most traffic violations, and what we would be doing in this particular case is forcing these cities to not only have a city attorney on their payroll at all times, but also to defend these indigent teenage drivers over eighteen because of the — they are certainly going to want to have this matter defended because the city will probably say, "Well, we can't afford both so we're going to drop it," and the situation is not going to improve.

The matter of school districts brought out an interesting example to mind. Recently in South Dakota there was a case brought on behalf of the individual's right to wear his hair as long as he wanted to. And the school district had a policy against this. And I know that in North Dakota we've had some of these particular problems. I don't think any of them have gotten to court yet. But I recall an incident up at

the public school system in Williston where the matter of the length of hair came up. And the question then is do you want the school district to pay for the lawyer that represents the student that objects to the policy of his wearing his hair the way he wants to? I'm afraid that the provision itself is mandatory, and that the Legislature must act inasmuch as they have got to set up the same procedures to defend a personal right as they do other things. And we are saying that we will provide — force the political subdivisions to provide legal counsel without giving any consideration to the subdivision's ability to pay. And I think all of you are aware that most of these funds for running our subdivisions come from the property owners there. And you have to resolve this question yourself as to how much more of a burden you want to place on these people in return for the good that's intended to come out of this provision. I'm going to have to vote against it.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President: I think we can all agree with the concept expressed by Delegate Burbidge that we're in favor of equal justice for all. And I don't think this proposal does that. It only speaks to a part of it. I'm not aware of any specific proposal we have that speaks about the right of indigents to have counsel in all cases where they need it. This is only for the state party. And I think a number of delegates have expressed some of the real problems involved here. I think that without help our Legislature in the next several sessions will be considering some kind of legal aid society. Because we would kill this proposal does not mean that we are opposed to poor people having full rights along with other citizens. But I see some problems with this particular proposal. And I hope if we kill it that the Legislature will in the future make appropriate provisions for legal aid to indigents.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If I may ask the indulgence of the Convention once more to stand on this, then I'll be quiet. But it seems to me that the hesitancy on the delegates is a concern or fear of the expense or cost this may involve. And I appreciate that as a very real thing. But for some time in our history we have had no concern when it comes to property rights.

Someone asked about the costs of proceedings or attorney's fees. If you will look at our present law, and I think it's been a law for some time, Section 32-15-32 — and this is in eminent domain where the state — I remind you that we are talking about the state in this matter, where the state proceeds to take your property, the court may award reasonable and actual — reasonable, actual or statutory costs, or both, which may include reasonable attorney's fees. So we have well accepted in this state, and no one questions the fact, that we will allow to a man where property is being taken by the state that the state shall also provide for the costs and the attorney's fees. Is it too much to ask then that where personal rights, which are considerably much more important than property rights, are involved and only in the case of indigents — is it too much to ask the state also bear that burden?

PRESIDENT WENSTROM: The question —

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I think on the question of this kind we have many, many reactions. I think the real issue that I have had to decide is do I believe that a person that has been declared an indigent has a right to be represented by counsel in court when the state is an adverse party? And I firmly believe that he has. And, therefore, I urge your support of this amendment.

DELEGATE SOLBERG: Question.

PRESIDENT WENSTROM: The question has been requested.

Delegate Aubol.

DELEGATE AUBOL: Mr. President, would Delegate Lamb yield to a question, please?

Delegate Kessel brought up the point awhile ago and you mentioned something about subdivisions. Now does this proposal include subdivisions, and does this pro-

posal include all state agencies or just agencies, and are you going to offer amendments to it?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I see that there is a couple of omissions in the language. And if this amendment passes, then I will offer the appropriate amendments.

DELEGATE STANTON: Question.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Lamb. Is there any further discussion?

Those in favor of the adoption will vote "yes," and those opposed will vote "no." As many as are in favor of the adoption of the amendment will say "aye;" opposed "no." The "noes" have it.

DELEGATE KELSCH: Division.

PRESIDENT WENSTROM: The amendment lost.

DELEGATE KELSCH: Division.

PRESIDENT WENSTROM: The question is on division. Division will be granted. Those in favor —

DELEGATE WARNER: Mr. President.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: I also ask that the division be recorded.

PRESIDENT WENSTROM: Will we have ten delegates stand? That is sufficient number.

Those in favor of adopting the amendment will vote "yes," those opposed to the amendment will vote "no." The Clerk will open the key. You will record your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 41 "ayes," 55 "nays," two delegates absent and not voting. The amendment as offered to Committee Proposal No. 1-84 has failed.

We are now on Committee Proposal No. 1-84 as it was at the start of the day. The question is on the first passage of Committee Proposal No. 1-84.

Those in favor of its passage will vote "yes," those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll discloses 28 "ayes," 68 "nays," two delegates absent and not voting. Committee Proposal No. 1-84 has been lost.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: May we be on the eighth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE HERNETT: At this time I would like to announce that I expect sometime before we adjourn tonight to move Delegate — or Committee Proposal 1-100 and 1-102 to the head of the calendar to be considered tomorrow morning. I thought I'd announce this now so that in case anybody wants to look at them why you'll have a chance to look at them this afternoon and this evening.

PRESIDENT WENSTROM: The numbers again, Delegate Hernet?

DELEGATE HERNETT: 1-100 and 1-102. I'm not moving them now, but I will before we adjourn tonight.

PRESIDENT WENSTROM: Thank you. Any further discussion? Anything further on the eighth order?

Delegate Hougen.

DELEGATE HOUGEN: I don't know, Mr. President, if this is on the eighth order or not. Being we are going to work tonight, could we know in advance when we are going to recess and when we are going to come back this evening?

PRESIDENT WENSTROM: Well, the Chair will rule that we will recess at five-thirty, we will come back at eight o'clock and go to work.

And while we're on the subject of recess, it's now a few minutes after three. Let's take a ten-minute break. And when we take a ten-minute break, let's try to make it for ten minutes and not make it for twenty minutes or half an hour.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: I'd like to announce there's going to be a meeting right over by Delegate Kelsch's desk of the subcommittee from the Legislative and Executive Functions Committees.

PRESIDENT WENSTROM: Thank you.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: A number of delegates have been talking about going straight through until six-thirty or seven and having no evening session and having a fairly long, probably a fifteen or twenty-minute break about four o'clock.

PRESIDENT WENSTROM: Well, Delegate Hoffner, I don't know whether you're trying to embarrass the Chair or what you are trying to do. But why didn't you make that announcement prior to my calling the time?

DELEGATE HOFFNER: Mr. President, I talked to Delegate Saugstad about it. And I thought maybe he was going to make the suggestion and get the feeling of the delegates.

PRESIDENT WENSTROM: The Chair rules that the Convention will be in recess until three-fifteen.

(The Session recessed from 3:05 P.M. until 3:18 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. The Convention will please come to order.

We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Representative and Mrs. Robert Grant of District Four are in the chambers.

PRESIDENT WENSTROM: Delegate Grant, Mrs. Grant, approach the rail and be recognized. (Applause)

Was there anything further under the eighth order?

We'll be on the twelfth order of business.

DELEGATE LITTEN: Are we on the twelfth order, Mr. President?

PRESIDENT WENSTROM: We are on the twelfth.

DELEGATE LITTEN: I would like to move that Delegate Proposals 2-49, 2-44 and 2-65 be returned to the Convention from the Committee on Education.

PRESIDENT WENSTROM: 2-44?

DELEGATE LITTEN: 2-49, 2-44 and 2-65. For the purpose of withdrawal.

PRESIDENT WENSTROM: Delegate Litten moves that Delegate Proposals No. 2-44, 2-49 and 2-65 be returned to the Convention floor. Do I have a second?

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: Motion seconded by Delegate Meidinger.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the proposals are before the Convention.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates:

The first one is Proposal 2-49, which was introduced by Delegate Peterson. The contents of this particular proposal have been incorporated in another committee proposal. We ask unanimous permission to withdraw it.

However, before that's done, Mr. President, and members of the Convention, I'd like to yield to Mrs. Peterson who would like to make a short statement for the record.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: Mr. President:

The first part of this is not for the record, the second part is. I just want to say that both of my proposals were dealing with the same subject matter. And since I'm on the Committee on Education, Resources and Public Lands, I was particularly concerned about education, children, and I had attempted to place the Schools for the Blind and the Deaf under the Department of Public Instruction rather than under the unrelated department where they are now. And this was the intent of my proposal. However, through the work in the committee we have arrived at a consensus, and that is what I wish to have put in the record. And I want to say, too, before we come to the consensus, I am aware there are two classes of people in this world; the appointed and the disappointed. And in this instance I am disappointed, but I hope that by entering this in the record I may clarify at least part of my stand.

The following represents the consensus of the Committee on Education, Resources and Public Lands:

It is the clear intent of the Committee on Education, Resources and Public Lands that the phrase "to provide for special education" of Committee Proposal 1-15, Part One, shall include the following:

1. Education of the handicapped.
2. Education of all visually impaired and audibly impaired educable residents of North Dakota.
3. Education of "all persons" who in future years may be classified as a type of handicapped, or impaired educable person.
4. Education of the gifted.

In other words, "special education" shall include everyone who cannot be educated in the normal classroom under the normal procedure of education.

It is also the consensus of the Committee on Education, Resources and Public Lands that the phrase "to prevent illiteracy" of Committee Proposal 1-15 shall be a directive for the Legislature to provide for library services.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President: I move the remarks of Delegate Peterson be printed in the Journal.

PRESIDENT WENSTROM: The lady has requested that.

DELEGATE SANSTEAD: Fine.

PRESIDENT WENSTROM: So that will be taken care of.

Then the unanimous consent request to withdraw 2-49, —

DELEGATE LITTEN: Right.

PRESIDENT WENSTROM: — the unanimous consent of the Senate — of the Convention is requested to withdraw Delegate Proposal 2-49. Hearing no objection, permission is granted.

DELEGATE BILLEY: Mr. President.

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: I ask unanimous consent to withdraw Delegate Proposal 2-44.

PRESIDENT WENSTROM: Delegate Billey requests unanimous consent of the Convention to withdraw Delegate Proposal 2-44.

DELEGATE BILLEY: This proposal has been used as an idea for drafting a minority report which will be introduced today, and it serves no purpose at all.

PRESIDENT WENSTROM: Hearing no objection, the request is granted.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: I would move unanimous consent to withdraw Delegate Proposal No. 2-65. That material has also been incorporated in the educational Proposal 1-15. I respectfully request that it be withdrawn.

PRESIDENT WENSTROM: Unanimous consent for the Convention is requested to withdraw Delegate Proposal No. 2-65. Hearing no objection, the request is granted.

We'll be on the tenth order of business. First for consideration is Committee Proposal No. 1-36.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-36, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 202 of Article II of the constitution of the state of North Dakota be repealed; and that section 25 and 26 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the manner in which the constitution may be altered.

"SECTION 1. REPEAL.) Section 202 of Article II of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Sections 25 and 26 of Article II to the constitution of the state of North Dakota are hereby created to read as follows:

"ARTICLE II

"Section 25. Any constitutional amendment may be proposed by the legislative assembly and, if the same shall be agreed upon by a roll call vote of two-thirds of the members elected to each house, it shall be submitted to the electors at the next general election. If a majority of votes cast thereon are affirmative, the amendment shall be effective thirty days after the election.

"Section 26. The legislative assembly may by law at any time submit for a vote of the people the question: 'Shall a constitutional convention be called?' If the question has not been submitted once in any thirty-year period, the secretary of state shall place it on the ballot at the next general election."

PRESIDENT WENSTROM: Is there any discussion?

Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. President: There is an amendment at the desk to this.

CHIEF CLERK GILBREATH: The proposed amendment to Proposal 1-36 is as follows:

In line 25 of the engrossed proposal following the word "election" add the following: If a majority of the votes cast thereon are affirmative, the legislative assembly shall provide for the election of delegates to, and the holding of, such convention."

PRESIDENT WENSTROM: Now is there a second? Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: You'll find those same words on the copy in your book on lines 21 through 24. They were omitted when the amendments were made.

PRESIDENT WENSTROM: Any further discussion? The question — Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman. I wonder about where we state after a "thirty-year period", I myself personally feel that thirty years is too long; that the time limit should probably be twenty years instead of thirty years.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: The committee's choice of thirty years obviously was arbitrary. But the point of the bill is that the Legislature could submit a call at any time. But if nothing else has been done and thirty years have gone by, nothing has happened through the Legislature, then that there's an automatic call for an election, people can have one or not as they please, for a convention.

DELEGATE HENRDICKSON: I rise to a point of order.

PRESIDENT WENSTROM: Fellow delegates, this question of time, I'm wondering, that isn't in the amendment, is it? I believe that's in the substance of the proposal itself.

DELEGATE KWAKO: Question.

DELEGATE SOLBERG: Question.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: The question before the body at this time is primarily — is only the amendment as now offered?

PRESIDENT WENSTROM: That is correct. The proposal as amended.

DELEGATE OMDAHL: And this language was inadvertently left off the amendment as adopted on the sixth order or when we had it on sixth order and so we are trying to put this sentence back on where it belongs. And I don't think that any other matter is before the Convention at this time.

PRESIDENT WENSTROM: That is correct. When we were talking about the years and so forth, that is not included in the amendment as I read it. The question before the Convention then is on the adoption of the amendment as offered by Delegate Hendrickson.

As many as are in favor of the motion to adopt will say "aye;" those opposed "no." The "ayes" have it. The amendment is adopted.

Now we are on the Proposal 1-36 as amended.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I move that the rules be temporarily suspended and that Proposal No. 1-36 be deemed properly engrossed and placed on the calendar for first reading and first passage.

PRESIDENT WENSTROM: Delegate Hendrickson moves the rules be suspended, that Committee Proposal No. 1-36 be deemed properly re-engrossed, and it be placed on the calendar for first — for first passage as amended. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

As many as are in favor of the motion will say "aye;" —

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: I'm sorry. Delegate Chase.

DELEGATE CHASE: I want to resist that motion, Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I have an amendment, and I think there is an important part of this thing that we should consider. Or am I out of order?

PRESIDENT WENSTROM: No, you are not out of order if you want to resist the motion.

DELEGATE CHASE: That's what I intended to do.

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I move to withdraw this proposal — motion. My motion to suspend I'm withdrawing.

PRESIDENT WENSTROM: Delegate Stanton seconded. Do you agree to withdraw the second?

DELEGATE STANTON: Yes.

PRESIDENT WENSTROM: And Mrs. — Delegate Hendrickson wishes to withdraw her motion to suspend the rules and deem the proposal properly re-engrossed. So we are back on the Proposal 1-36 as amended.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Now to explain the bill as amended. Section 25 of Bill 1-36, this section — first to mention what Delegate Cart brought up earlier

in the day about Sections 202 and 25; these two sections of the old Constitution do refer to more than one proposal that we have brought to the Convention floor because 25 has to do with initiative and referendum. So you will see this reference to repeal 25 quite often because it is referred to.

Section 25 deals with the matter of future amendments to the Constitution and has been revised in certain respects and subdivided. The portion we recommend amendment that may be proposed by initiative of election has been taken from this and has been put into the powers of the people. This particular part of constitutional amending has to do with the Legislature. And it has been changed from a majority vote to a two-thirds vote of the members elected to the house. This was changed to two-thirds with the idea that amendments to the Constitution should be given a little more thought and carry a little more weight in the voting assembly than those laws that we put into the statutes.

The second section, 26, as Delegate Sinner told you this morning, we give our thanks to Delegate Lamb for proposing the assurance we would have another election to decide whether or not there should be a constitutional convention. And it provides for the possibility of this being submitted to the electors.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I have an amendment. I don't know whether it's at the desk yet or not.

CHIEF CLERK GILBREATH: Not quite.

DELEGATE CHASE: Well, it's a very simple amendment. Maybe I could explain it, Mr. Chairman, if I may.

PRESIDENT WENSTROM: You may proceed while they are preparing it.

DELEGATE CHASE: Article II, Section 25, down on the third line where it says "if the same shall be" — no — "if the same shall be agreed upon by a roll call vote of two-thirds of the members elected", I would like to have that "two-thirds" deleted and made "three-fifths" or sixty percent. If I get a second, I'll explain.

DELEGATE CHRISTENSEN: Second.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Rundle.

DELEGATE CHASE: I rather think, fellow delegates, that a two-thirds vote of the legislative assembly to amend this document is too restrictive. Now I have the confidence that this body is going to write a good, acceptable document but not a perfect one. The rule of amendment by the Legislature should be left more open; perhaps restricted by more than a majority vote, but not restricted by a simple majority vote of two-thirds of both houses. I respectfully ask the delegates to consider this amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: As you know, it now takes a simple majority vote in both houses to submit a constitutional amendment. Does anyone know how many constitutional amendments the Legislature has submitted since statehood? The figure is 126. That's an average of three every biennial election. 71 one of those were adopted.

Now perhaps it all right to make it easy to amend a constitution when it is largely a statutory document. But we're writing a constitution in which we're endeavoring and largely succeeding, I think to keep statutory matter out of it. Therefore, we thought it should be a little more difficult to amend the Constitution. That's why the committee settled on the two-thirds figure, so we don't have a pouring in of amendments in the next few years, unnecessary amendments, by the way.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: Well, Mr. President, I'm certainly opposed to any increase from a simple majority to submit a constitutional amendment to the public. After all, they have the veto power whether the amendment should be adopted or not. And if we proceed along this line and make it more difficult, we are inviting the defeat of the entire work that we have done.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I'd like to support the amendment as offered by Delegate Chase. I wish I had my Scripture in hand, because of some vanity, you know, and I don't think we want to be so vain that we're going to write a perfect document. And I think the Legislature is going to have quite a job in keeping the Constitution relevant. And it doesn't bother me at all that the Legislature is able to propose amendments. I think that the Legislature ought to propose amendments. Perhaps if the Legislature had been able to present more amendments in the past we might not have had to have a Constitutional Convention.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: For the benefit of Delegate Omdahl, as the prophet said, "I have examined everything under the sun, and all that is vanity and vexation be stricken."

PRESIDENT WENSTROM: The Chair will recognize Delegate Vogel.

DELEGATE VOGEL: Mr. Chairman, I rise to support Delegate Chase. A great number of those amendments which the Legislature submitted during the half days two years ago, 126, were necessitated by all of the legislative material that was written into the Constitution. I think there were a dozen or more on public lands. And there were several other vexing, poorly written articles in the Constitution which necessitated all these technical amendments that we have to vote on so often. I think by taking this legislative material out of the Constitution will necessitate fewer amendments being submitted to us. But I see no reason for making it almost impossible to submit an amendment. And again and again we have been told that a two-thirds vote is so restrictive that it can seldom be obtained. I would therefore submit — support Delegate Chase's compromise of a reduction to sixty percent, which is still a super majority but not quite so super super.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the amendment to Committee Proposal 1-36 as offered by Delegate Chase whereby the "two-thirds vote" would be changed to a "three-fifths" or "sixty percent". Any further discussion?

All in favor of the adoption of the motion will say "aye;" those opposed say "no." The "ayes" have it, and the amendment carried.

Now we have Committee Proposal 1-36 before the Convention again as amended.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Further amendment to that.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-36 is as follows:

In line 23 of the engrossed proposal, following the words "called?" delete the balance of the line, and delete lines 24 and 25.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

Any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Over the summer and fall months we heard quite a bit of discussion among the delegates, largely criticism, of officials, institutions and agencies trying to perpetuate their own institution. The elected officials want to stay elected, the appointed officials want to stay appointed, county officials wanted their designation frozen into the Constitution, the folks in Kickapoo Township wanted to assure the constituents of their supervisory system, everybody that had a special provision or advantage in the Constitution wanted to keep it.

Now we see here with this provision an attempt by the Constitutional Convention to perpetuate itself as an institution. I don't think it's necessary or wise. The Legislature can call a Constitutional Convention at any time, submit the question to the people by statutory action. Simple majority vote, it's not necessary to submit a constitutional amendment. In Committee Proposal 1-105 the people can put the question on the ballot by initiative measure.

This thirty-year figure in the proposal is arbitrary, probably completely unrelated to any need for a future constitutional convention. As it now stands we would have a call on the ballot in the year 2002. Might be a few of us still left around to run for reelection. But I think one of these things in a lifetime is quite enough.

One final point, Mr. President, this Constitution we are writing may not be the greatest document ever struck off by the hand of man, but I think it might be good enough to last longer than thirty years.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Dobson. Hearing no further discussion — Delegate Sinner.

DELEGATE SINNER: Mr. President: Delegate Dobson is a member of the committee that considered this and placed the language that's before you in a proposal. This is the language, the idea that we talked about this morning in Delegate Lamb's proposal No. 2-41. The thinking of the committee was that it's quite obvious, we think, that the time lapse between the last Constitutional Convention and this one was far too long. And, secondly, that for the people to have a chance to vote on the matter in thirty years is not asking a great deal. And if the times change in the next thirty years as drastically as they have in the last ten, thirty years may not be any too soon.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lamb.

DELEGATE LAMB: Mr. President: I suppose I better get up because my name is being used in vain on several occasions with regard to this particular proposal.

Section 26 is quite a bit shorter than my proposal was; took out quite a bit of the things that I thought were important in this matter. But one thing I think should be said is that we hear so much about the right of the people to decide this and the right of the people to decide that, that we should always give the people the opportunity. What is our fear of letting the people have an opportunity to call a constitutional convention through a noncomplicated method?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: By fortuitous circumstance a quotation has just come to hand in a letter from Thomas Jefferson to Samuel Kercheval dated July 12, 1816, when he was discussing the advisability of revising the then forty-year-old Constitution of Virginia. And he said this:

"Each generation is as independent of the one preceding as that was of all which has gone before it. It has then, like them, a right to choose for itself the form of government it believes most promotive of its own habitants. Subsequently, to accommodate the circumstances in which it finds itself that receive from its predecessors, and it is but peace and good mankind that a solemn opportunity of doing this every nineteen or twenty years should be provided by the constitution so that it may be handed on with periodical repairs from generation to generation to the end of time, if anything human can so long endure."

With the greater longevity of life now I would say that thirty years would probably be about equivalent to nineteen or twenty years in Thomas Jefferson's day. I would support the thirty years.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Fellow delegates, I am not at all sure that the Legislature will be too eager to put the question before the people inasmuch as we — for

one reason we just give them an easier opportunity to put forth constitutional amendments themselves. Secondly, I'm not all that sure, as many of us are not, that the people will be accepting our work here. And I think that with these things in mind that we should defeat Delegate Dobson's amendment. I support the thirty years.

PRESIDENT WENSTROM: Further discussion?

DELEGATE LONGMIRE: Question.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Dobson.

Those that are in favor will vote "aye," those opposed will vote "no." As many as are in favor of the adoption of the amendment will say "aye," those opposed say "no." The "noes" have it, and the amendment lost.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I have an amendment at the desk. I'd like to — now that Delegate Chase has got this down to sixty percent, I'd like to get the "majority" back in there. I don't think that the Legislature has abused this opportunity in the past with a simple majority, and I really feel that it's going to be more important in the future than it has been in the past that we have a constitution that can stay relevant in one way to avoid expensive conventions to have it easy for the Legislature to propose amendments to the constitution. After all, the people in the final analysis will vote whether or not they want to add or subtract from the basic document. My amendment is at the desk, and I move it at this time.

DELEGATE HERNETT: Second.

PRESIDENT WENSTROM: Delegate Omdahl moves the amendment, it's been seconded by Delegate Hernet.

You will read it.

CHIEF CLERK GILBREATH: Proposed amendment to 1-36 is as follows:

In line 17 of the engrossed bill, after the words "vote of" delete the words "three-fifths" and insert in lieu thereof the words "a majority".

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: At the risk of having Delegate Omdahl quit reading Scriptures to me late in the evening, I am going to oppose this amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: One of the reasons the U. S. Constitution has survived in good shape over the years with only 26 amendments, including the original ten in the Bill of Rights, is it requires a two-thirds vote in both houses of Congress to submit ratification to the states. On the other hand, our state constitutions, which you can amend by a majority of the Legislature, are full of statutory, long, wordy superfluous amendments. I resist the motion.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment as offered by Delegate Omdahl, that the figure of "three-fifths" be stricken and — what is the phrase he used —

CHIEF CLERK GILBREATH: "A majority."

PRESIDENT WENSTROM: — and "a majority" be inserted in lieu thereof.

Those in favor of the adopting the amendment will vote "yes" and those opposed will vote "no." Those in favor of adopting the amendment say "aye," those opposed "no." The "noes" have it. The amendment lost.

DELEGATE DEVINE: Mr. President. I do not have an amendment at the desk, but I do have a question for the committee. I'm not sure what line it is, but it's the last sentence of Section 25. It now states that, "The amendment shall be effective thirty days after the election." I would like to know why the committee proposed this instead of just leaving it up to the amendment? The reason I made my inquiry

is I don't have anything in mind but possibly they wouldn't want an amendment to take effect for six months or something like that.

PRESIDENT WENSTROM: Can anyone answer the question as raised by Delegate Devine?

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I can't — I'm not sure I can give the answer to satisfy him. We did add the amendment in order for the machinery that it takes to put amendments into effect to start working instead of having it immediately. Now I don't know about the six months question you asked. I'd rather refer that to my committee chairman.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President: Possibly to make my inquiry more clear, I thought maybe certain amendments would want to carry a delay in the provision. And I suspect this would be part of this proposal.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE HENDRICKSON: Mr. Chairman, I have to yield to one of my committee members.

PRESIDENT WENSTROM: Delegate Sinner, can you answer the question?

DELEGATE SINNER: Mr. President: In a case like that I think the drafters of the amendment would do what the Legislature often does, they say right in the language of the amendment after such and such a date. And then technically the language goes into effect as required here. But the language in the amendment itself makes it clear when it becomes effective.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I think Delegate Devine has a real pertinent question. I don't think that should be in there. I can see where we might amend — have a constitutional amendment change a general election. And we would like to have the effective date probably the following July simply because it might require another legislative or statutory change to make the thing more effective. And I think it should be left open.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would agree with Delegate Sinner. We tried to set an effective date of thirty days after the adoption so we would avoid the confusion that occurs when an amendment is adopted at the election time. That's the way the old Constitution read. I would think that in most cases if it was important enough to amend the Constitution would want it to become effective immediately if it was that important. At least within thirty days. I think your change of election, that could be provided in the constitutional amendment itself that it would be effective due to a later election. I don't think it's necessary to add any further words.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: To throw a little further confusion, many of these sections that we will be passing need supplementary legislation. And if it's hanging in the balance for some time before then, why it could cause some confusion. I think a good time would be to become effective at the commencement of the following session of the Legislature, but I'm not going to offer any amendment to that effect.

DELEGATE McINTYRE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I see no reason why situations like this cannot be handled in the same way that an emergency measure is in the Legislature where you can tie it right down in the amendment itself. And therefore I would support the section as it is.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Now I don't think we should have this thirty days in here either. I don't have an amendment but we could consider an amendment which would say, "The amendment shall bear an effective date." Now I'm not sure whether somebody's going to shoot that down or whether it's that good. But it's an idea. I do think that we should delete this thirty days.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: If this proposal as has been amended and if the rules are suspended, it lays over one day; is that right?

PRESIDENT WENSTROM: That's right.

DELEGATE HOFFNER: I think it might at this point be a good thing, and we can further check. I think, however, that the amendments could state the effective date, the constitutional amendments could state the effective date. But since there is a question, I think it might be a good idea to have this take its normal process.

PRESIDENT WENSTROM: Any further discussion? Hearing none, Committee Proposal No. 1-36 will be on the tenth order tomorrow.

Next for consideration is Committee Proposal No. 1-45.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-45, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 28 of Article II of the constitution of the state of North Dakota be repealed; and that section 3 of Article II to the constitution of the state of North Dakota be created; all of which pertain to qualifications for legislative office.

"SECTION 1. REPEAL.) Section 28 and 34 of Article II of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Section 3 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 3. Each member of the legislative assembly shall, on the day of his election, be a qualified elector from the district in which he may be chosen."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE BENSON: Mr. President.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: Mr. Chairman: The sections that are being repealed are 28, which refers to the age requirement for a senator, Section 34 which pertains to the age of a legislator in our present Constitution.

This Section 3 which we are proposing simply says that each person we elect to the Legislature must be on the day of his election a qualified elector in the district from which he may be chosen. In effect, this means that anybody who is eighteen years or older will be considered qualified to sit in the legislative assembly.

The committee feels that we have to consider our young people, and that we simply cannot rule them out from political office simply because of age. We know that if we can get them interested in the legislative process and politics at this age that they very likely will maintain this interest and become, as a result, much better citizens.

We also feel that when you're electing people to the legislative assembly that if you feel that you have say a nineteen-year-old person who you think will make a good and effective legislator, that it should be your prerogative to elect this person to the Legislature. In other words, because the rest of us live in a different district we cannot, in effect, tell you that this nineteen-year-old just won't do. If you feel this is the kind of representation you want, we feel that you should be able to have it.

This question of age was discussed very thoroughly last Friday. And I urge the Convention to support this proposal as we have it. Thank you.

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: Mr. Chairman: There is an amendment before the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-45 is as follows:

"On line 14 of the engrossed proposal after the period insert the following language: "Each person shall at that time be at least twenty-one years old if a candidate for the house of representatives and at least twenty-one years old if a candidate for the senate.'"

DELEGATE BERG: Mr. Chairman.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Delegate Berg.

DELEGATE BERG: This came in as an amendment but it was originally a minority report. On this minority report we did have six signers, and I know there was one absent that day that would have signed it also. So there were seven in our committee that I know were definitely in favor of the twenty-one years of age. Although last week, if you will recall, we did have an amendment on this section leaving it exactly as it was in our old Constitution, twenty-one years of age for the house and twenty-five years of age for the senate. But since that time there have been some drastic changes made from this body of delegates lowering the age to twenty-one on state elected officials and making eighteen years old adults. After some consideration we decided to change this, amend it ourselves to twenty-one years of age. We definitely feel that they should have some knowledge and experience in this particular field to help make the right laws that we need. I don't think we are going to have to go through all this eighteen-year-old business as we did last week and the earlier part of this week, but I did check on some statistics from some other states which I have. But I might add this before I give you the quotations of these other states. I suppose if the federal government told the State of North Dakota or all the other states that you could age — that you could vote at an age of sixteen we would then qualify these people also to become eligible for our legislators. This seems to be the pattern that we're taking on this particular section.

But in some other states that I have reference to we have 23 states that are using the ages of twenty-one for the House of Representatives, three states using twenty-four and five states using twenty-five. We have 22 states using twenty-five for the Senate, one state using twenty-six, one state using twenty-seven, and seven states using thirty. At that time your adult was twenty-one years of age.

Now throughout this Convention all of our responsibilities and additional powers are being given to the legislators. That's all we're doing, we're passing the buck; we give them to the legislators or as prescribed by law. I think it's time to take a look at this document and think of the people that we will be electing to our Legislature. We, in our committee, are not opposed in any way to young people being interested in governmental affairs, I think it's good. But we do think that they should have some experience in this type of work. An eighteen-year-old will be campaigning at the age of seventeen years of age. What about your colleges? You can't kid me that a bunch of students at the universities, state colleges, whatever we have, if they unite they will carry a tremendous impact on any vote that they want to come out and really do it right and they can elect — I'm sure they can elect some of their own people in their own age limits. And I'm afraid they'll do so. We have seen that in two instances now already, we do have a couple of nineteen-year-old mayors. But I'm sure that if we look at this document, we want to give our people something good, the State of North Dakota, yet we have to have the right type of people in here to administer our laws. I therefore ask you people to support our amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Mr. Chairman. Mr. President. Right here.

PRESIDENT WENSTROM: Delegate Kwako.

DELEGATE KWAKO: Thank you. Fellow delegates:

At this time I would like to speak on behalf of this amendment. But I will not belabor you on the merits of this amendment. These past few weeks we have been increasing the work load of the legislative assembly. Therefore, in my opinion, we

must set standards and guidelines for the individuals who are seeking membership in the legislative assembly. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Gipp.

DELEGATE GIPP: I stand on the same-based argument that I gave the other day with respect to lowering the ages from twenty-three to twenty-one, except this time I am saying let us retain the article of the majority — the proposed article 1-45 — Proposal 1-45 before us. And let us leave it as it is. I speak against the amendment and again for the same basic reasons I gave the other day.

I think I at least tried to explain my views at that time. I do feel with respect to the comment on the fears of college youth overrunning and taking over local government, running for these offices, is in my opinion not a very good argument. I don't mean to demean that argument at all, but I don't agree with it. And I simply cannot see the reason in it. And I do believe it's a reflection of a fear. I don't think that it is a fear that is so based on all the rational arguments that they are always so necessary. I think that I will just fall back on my argument the other day.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I merely wanted to call the attention of the Convention to the simple fact that when the Federal Constitution was amended here recently lowering the voting age to eighteen years they did not lower the voting requirements — the eligibility requirements for a senator from thirty years or being a member of the lower house of Congress, the House of Representatives, from twenty-five. I do think that it's reasonable to have some little maturity to hold these offices.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE MCINTYRE: Let's not confuse the issue here with the age of an elected official or the age of a legislator. We are talking about two different things here. And I feel that the legislator, be he eighteen or be he fifty, has a right to run in a certain legislative district. The citizen in that political subdivision has the right to choose who he wishes. And I want to remind you, too, that we several days ago did agree for the most part that an adult — an eighteen-year-old would be classified as an adult for all purposes. And I think this purpose is one of the very most important ones. It may very well be that any of us in our own area would wish to elect an eighteen-year-old.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, Fellow Delegates:

I had occasion to spend a lot of time with a group of nineteen-year-olds this summer, and they were creative, innovative. At my age you tend to become stereotyped, you tend to become rather much of a conformist. And I feel that a little of this blood in the legislative assembly would be an excellent thing if they could get the party to support them and run for the legislative assembly.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I dislike people who vote against eighteen-year-olds; this is not what we are talking about at all. I think we all think a great deal of the young people in the State of North Dakota. All we are asking here is a little responsibility. At eighteen most people have just gotten out of high school. They really haven't even gotten out of the nest, and I don't think their responsibility starts to grow and mature. And you will find a great difference in your youngsters between the ages of eighteen and twenty-one. And all we are asking here is a little responsibility. And, as I have said before, I don't think the eighteen-year-old would resent this either. I realize we are on a youth kick here, but I think that we owe the people out there in the State of North Dakota a little more responsible action here. I think the other day we opened the door of all the bars in the state to eighteen-year-olds and we're going to have some repercussions there. And I think there would also be some repercussions here. All we are asking is that in order to run for the State Legislature that you be twenty-one years old. It's simple.

PRESIDENT WENSTROM: The Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

I like the amendment for a couple of reasons; one, that there is no reason why the senators should be older than the house members. I like that part of it. The idea of qualifications is now. And I would like to ask a staff member, perhaps the Chief Clerk quickly can answer me one little question — and I support the amendment that's been offered — what is the average age of this assembly?

PRESIDENT WENSTROM: Delegate Rundle, —

CHIEF CLERK GILBREATH: 51.9.

PRESIDENT WENSTROM: — it's been used here on the Convention floor. However, I do not recall the figure.

DELEGATE SANSTEAD: 51.9.

PRESIDENT WENSTROM: 51.9 years.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

I would support the amendment. It should not be unreasonable to establish a minimum qualification for holding office. And I think that the college community could have some problems. Maybe we're being a little bit worried about it, but there is a chance that we could have some real problem when we let that eighteen-year-old vote and if we are also going to let him run for office. There is a lot of responsibility being transferred to the Legislature. And we should consider that.

I did receive a letter this summer that's relating to our ages. And we're talking about the age of 51.9 years for the delegates here. This is the average. And I just would like to read part of this letter to you. This is from a young person who was writing to express her opinion on the Constitution.

"Dear Delegate Aas: I think a person should be a governor when he is eighteen years of age because if they can vote and they are eighteen years of age they should be able to be a governor. If you are responsible enough and the people want to vote for you, I think you should be able to run."

Then here is the real kicker: "I also think that the age should stop when they are fifty years of age because they can't think as well as before. And we want North Dakota to be the best."

(Laughter)

PRESIDENT WENSTROM: May we have order in the Convention?

DELEGATE AAS: There is a P.S., a postscript, on here. And I would like to read that, too. It says: "P.S. I started a petition and gave a speech and a lot of people are for it."

And so I think that the average age here is beyond the age of the idea of some people. And as Rundle said earlier, he thought at one time they should shoot them at age fifty. But we are going to stop them at age fifty. Well, my point is that we have all kinds of persons and all kinds of prejudices, but should we not establish a reasonable age at which we can hold office? And if twenty-one is compatible with the executive, why not the legislative?

PRESIDENT WENSTROM: The Chair will recognize Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. President: Before moving here to Bismarck for this Constitutional Convention most of my time was spent, and will be as soon as the Convention is over, with the college students as I work with the national office of one of the sororities. I spend a great deal of time on college campuses and I could speak at length for my admiration of college students. But I don't think that's the point. I think the point is that we want the responsibility, and where the responsibility should be. And I think we should give this to the people who are electing the delegates. And that's not those of us sitting here, but it's the delegates that live in the districts from which these — these legislators will come. And I speak in support of the majority.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: I just wanted to clarify a misunderstanding that I think came up on the floor the other day and was repeated here now. I thought the same thing was true. But when we made eighteen-year-olds adults for all purposes, Representative Hilleboe told me last night we didn't really let them into the bars because it's the statute that's controlling that specifies age. It

says nothing about whether they are adults or not. I just wanted to correct that misapprehension.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Question — Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President: In our district by selection we were, I think, proud in both political parties to have twenty-one-year-olds nominated by both of the major parties in the legislative house race. And I think it was a compliment to our political district that it happened, it was a compliment to both of the major political parties in our district that it happened. Neither one of them was elected, needless to say. But I might suggest that I think the right of those people to seek that office at that age and the fact young people have a say in both of the major political parties in our district had an impact in participation of young people and the attitude of young people toward the Minot community. And I think that that's all we're saying here. And as Delegate Hendrickson said it so well, the voters will make that ultimate decision but that the majority of the floor here which supports the right of the individual to seek the office at that age is the correct position for this kind of convention to take.

I came into this House of Representatives at a rather young age. I distinctly remember my first day in here because three of us under the age of thirty were elected. We sat right in the first three seats in this row. I sat in the seat now occupied by Delegate Rosendahl. And I can still remember the fellow coming up to the rail that had been in here many years, he had a \$150 hand-tooled cowboy leather outfit on and some cowboy boots, and he looked over the rail at us three and his face was the picture of disgust as he looked at us and said, "Would you guys like to know how to stay out of trouble when you're down here?" And we said, "Yes, sir." And he said, "Vote no on everything."

Now I might say that that is the philosophy reflected all too often by some of the legislators in this house and, indeed, across the aisle. And I think the fact of the matter is that we maybe do need, as somebody else has suggested, a little young blood to temper that once in awhile and maybe some progressive philosophy of that kind wouldn't exactly damage the State of North Dakota. That is provided the voter would elect that person at age eighteen in his own district. And that's the real serious question that we are facing here. And I think that should be left for that voter.

PRESIDENT WENSTROM: Delegate Diehl.

DELEGATE DIEHL: Mr. President, members of this Convention:

There has been a lot said, and perhaps it's a little late to come in on this, I hesitate to rise and talk on this subject lest I be misunderstood by the young people. And I love the young people. I've been a 4-H Club leader for fifteen years, served in Boy Scout work, and I've taught Sunday School a number of years. I know that the youth of today are very knowledgeable, but have they any more experience to draw from than the youth of yesteryear? I maintain that the place for young folks in the late teens and early twenties is in school preparing themselves for future leadership. I don't think they should be anxious in these things. Should we deny them the excitement of anticipation of what's coming? We've probably been a little too permissive in other things. As parents I know we have. Now we want to be permissive in this area. I think we are — we ought to take a second look at these things.

PRESIDENT WENSTROM: Any further discussion?

Delegate Simonson.

DELEGATE SIMONSON: I rise to support the amendment. And I hate to bring things always down to sub-basic issues. But we normally devote a great deal of time and money to campaigns. And I don't really think that I want to underwrite the expenses of an indigent candidate.

PRESIDENT WENSTROM: The Chair will recognize Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

A comment was made regarding the effect of the eighteen-year-old decision that was made earlier. And I do want to advise the Convention I have been in conference with the Attorney General's office. The distinction between regulating age groups under our current Constitution and under the proposal as passed is that our

current Constitution does not state that any particular age group classifies people as an adult. That's the reason that we have different ages established throughout the Constitution. Under the bill that we now have, the proposal that we have passed, then it is the feeling that all of these distinctions that have been made on an age over eighteen will be abolished; that including the liquor one.

There was a time we used to talk about if they are old enough to vote they are old enough to drink. And maybe if they are old enough to drink they are old enough to serve.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I was not going to speak on this, but I think we missed a very important point; and that is what is the attitude of the eighteen and nineteen-year-old toward these things? Last year I had the privilege to be invited to speak at convocations in twenty-seven universities and colleges in this country. And the question always arose, "What about the eighteen-year-old?" And I came away at the conclusion of the season feeling that the eighteen-year-old first wanted to be a youth. We're taking away from him an enjoyment and the fun of being young and saddling him with an adult responsibility perhaps before he may want to be. And I also find that in my twenty-eight years in the college classroom that the eighteen-year-old was not always the one who sought distinction; but when they get to twenty, yes, twenty-one, they were ready. And I felt that they were ready. I feel that probably we are being concerned about something here that we haven't counseled with the youth on across the board. Maybe we are like the mother who had her eighteen-year-old freshman enter college. And when he had gotten started nicely why one of the neighbors asked her, "Is your son studying to be a doctor?" And she immediately answered, "Right now I hope he is studying to be a sophomore." And maybe this has a little bit of correlation here. Let us let them be sophomores before we give them this tremendous responsibility of creating law and establishing the citizenry with all of the regulations and orders that we have to live by. And I have just read the rule on length of debate, and so help me I'm going to quit.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I wasn't going to get into this, but just a short comment. We'll have to remember that the Legislature more than any institution in our society reflects the people. And when we say twenty-one, we're leaving out the eighteen, nineteen and twenty-year-olds. These people have a right to also participate in the represented form of government. I hope the amendment is defeated.

DELEGATE ROSENDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President: I only want to say ready or not, we have a problem in the northern part of our state in regards to eighteen-year-olds. Remember they allow them to go into Canada and drink beer. And I live on Highway 83 and I see a lot of them going over. And I see them coming from miles. I only thought it might be of interest to the delegates.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'd like to yield to the expert, Mr. Hardmeyer.

PRESIDENT WENSTROM: Any comments from the expert?

DELEGATE HARDMEYER: Mr. President.

PRESIDENT WENSTROM: Delegate Hardmeyer.

DELEGATE HARDMEYER: In answer to Delegate Thompson, there is some difference in teenagers, those that are eighteen. But I would not be afraid to send one. I would make my judgment on each individual. But I have had some that I thought were qualified and I have some that I have my doubts about. But maybe I wasn't the right father in the right place all the time. But by and large I would

certainly think we would be doing the State of North Dakota the right thing by adopting the proposal to allow the eighteen-year-olds to serve in the Legislature.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BENSON: Mr. President.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: I started this out and I thought "Boy, here is something we don't have to spend much time on." I have learned so much I would like to be real brief and I hope wind us up. All our proposal does, it doesn't say we are going to have a Legislature composed of eighteen-year-olds or nineteen-year-olds or twenty-year-olds; it says let's make the eighteen and the nineteen and the twenty-year-olds eligible to serve. That's all it says. And I hope that the amendment is defeated.

PRESIDENT WENSTROM: Delegate Aubol, you wish the floor?

The question before the Convention is on the amendment as offered by Delegate Berg. Those in favor of the adoption of the amendment vote "aye," those opposed vote "no." The Chair is in doubt. We will open the key. Those in favor of adoption of the amendment will vote "yes," and those opposed will vote "no." The key will be opened, you will indicate your choice. Is the key open?

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

DELEGATE BERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: Maybe some of you don't know —

PRESIDENT WENSTROM: Just wait until the vote is announced.

DELEGATE BERG: I'm sorry.

PRESIDENT WENSTROM: Unless you are going to change your vote or something.

DELEGATE BERG: No.

PRESIDENT WENSTROM: The vote indicates 41 "yes" votes, 54 "no," three delegates absent and not voting. The amendment failed.

Now Delegate Berg.

DELEGATE BERG: Thank you, Mr. Chairman. Most of you probably don't know, but I happen to be a mortician. I was going to just announce a short funeral service for my amendment to 1-45. And the services will be conducted in Room 327 at the Town House Motel with burial in a non-profit cemetery.

PRESIDENT WENSTROM: We are still on the Delegate Proposal No. 1-45. The question before the Convention is on the first passage of Delegate Proposal No. 1-45. Hearing no further discussion, those that are in favor of first passage will vote "yes," those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 84 "ayes," 11 "nays," three delegates absent and not voting. Committee Proposal No. 1-45 has passed.

We will be on the —

CHIEF CLERK GILBREATH: Fifth.

PRESIDENT WENSTROM: — fifth order of business — committee reports.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-15 has had the same under consideration and recommends that the same be amended, and when so amended recommends the same do pass.

Delegates Devine, Engstrom, Fritzell, Jestrab, Lander, Larsen, Litten, Meidinger, Sanstead and Sullivan.

Delegate Meidinger, Chairman.

Delegate Meidinger moves the Majority Report be adopted.

Mr. President: A Minority of your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-15 has had the same

under consideration and recommends that the Majority Report be amended, and when so amended, recommends the same do pass.

Delegates Billey, Christensen, Griffin, Knudson, Peterson and Poulson.

Delegate Meidinger, Chairman.

Delegate Billey moves that the Report of the Minority be adopted.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Minority Report.

Delegate Lander.

DELEGATE LANDER: Mr. President: I would like to move that Proposal 1-15 be held at the desk for consideration until after the time of consideration of Committee Proposals 1-100 and 1-102 and that copies of the Majority and Minority Reports be placed on the delegates' desks.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: The second number was 1-

DELEGATE LANDER: 1-102. Has it been seconded?

PRESIDENT WENSTROM: It has been moved by Delegate Lander that the two reports — or that the Minority and Majority Reports of Proposal 1-15 be held at the desk until after such time as Committee Proposals 1-100 and 1-102 have been acted upon. The motion was seconded by Delegate Litten.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I would like to explain that we are doing this with the consent and approval of our entire committee. And the reason for it, hopefully, although we don't say too hopefully any more, that it will be saving of the Convention's time. Our proposal, both Majority and Minority, relate to the organization of education on a statewide level. We feel that although there is a little bit of chicken and egg involved, that it would be more helpful for the Convention if it could have its deliberations on the executive department first, and those are the ones which we are talking about, 1-100 and 1-102, those are the reports of the Executive Functions Committee, and we feel that you will be able to discuss our proposals more intelligently in the light of whatever you decide as a result of 1-100 and 1-102, and thus we ask that you do not ask us to defend our respective positions until after that time.

PRESIDENT WENSTROM: The question before the Convention is on Delegate Lander's motion that Committee Majority and Minority Reports on Committee Proposal No. 1-5 be held at the desk until after Convention action on Committee Proposal No. 1-100 and 1-102 have been given consideration.

DELEGATE BILLEY: Mr. President.

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: I am a part of the minority, and I just want to say that as far as we are concerned this procedure is perfectly acceptable.

PRESIDENT WENSTROM: Further discussion? The question before the Convention —

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: — is on the motion — Delegate Hernet.

DELEGATE HERNETT: I have no — this is fine with us. The only thing is I think you in your motion said Committee Reports 100 and 102. It's the proposals which are on the calendar.

CHIEF CLERK GILBREATH: It's all right. It's okay.

PRESIDENT WENSTROM: Any further discussion?

As many then as are in favor of adopting the motion as stated by Delegate Lander will say "aye;" those opposed "no." The "ayes" have it, and these reports will be held at the desk until after Proposals No. 1-100 and 1-102 have been considered by the Convention.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-25 has had the same

under consideration; recommends the same be amended, and when so amended recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal 1-25, that it be given a "do pass". Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-25 will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal 1-26 has had the same under consideration; recommends that the same be amended, and when so amended recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Committee Proposal 1-26 that it be amended and then given a "do pass". Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. This will be on the sixth order tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-29 has had the same under consideration; recommends the same be amended, and when so amended recommends the same do pass.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report of Proposal No. 1-29, that it be amended and then given a "do pass." As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report's adopted, and this will be on the sixth order of business tomorrow.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions to whom was referred Committee Proposal No. 1-81 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Hoffner, Chairman.

Delegate Hoffner moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-81, that the proposal be indefinitely postponed. Is there any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This is the proposal which would provide for cumulative voting for legislative candidates in multi members districts. The committee is recommending in its reapportionment proposal that no district elect more than two senators. And, therefore, we see no need for including this particular proposal in the Constitution.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the Committee Report on Committee Proposal No. 1-81; that it be indefinitely postponed. As many as are in favor of the motion say "aye;" those opposed "no." The "ayes" have it, and the proposal is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-120 has had the same under consideration; recommends the same be amended, and when so amended recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-120, that it be amended and then given a "do pass". Any discussion? Hearing none, as many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. This will be on the sixth order tomorrow.

Fellow delegates, we are happy to report that all proposals are out of committee.

We will proceed — we will be back on the tenth order of business. Next for consideration, Committee Proposal No. 1-53.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-53, introduced by Committee on Preamble, Bill of Rights and Suffrage:

“Be it resolved by the North Dakota Constitutional Convention that section 23 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom to obtain employment.

“SECTION 1. REPEAL.) Section 23 of the constitution of the state of North Dakota is hereby repealed.

“SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

“There shall be no discrimination against a qualified person’s right to practice a trade or profession or to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade or labor organization or professional group.”

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I doubt that there is a proposal before the Convention to receive such extensive discussion and debate. A week ago we talked at length on this, and you came to a conclusion that as a group you approve the concept. It then went on the sixth order, and last Friday some amendments were made and some discussion was held at that time as to the reason for the new language and so forth. I have no reason to belabor the thing further. I believe it’s been quite adequately pointed out to us, and I think our memories are good. If there are some questions involved that you would be interested in, I’m sure that members of the committee would be glad to answer them.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HUBRIG: Mr. Chairman: I have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-53.

Delete everything after line 9 and insert in lieu thereof the following:

“All citizens of this state shall have the right not to work.”

DELEGATE HUBRIG: Mr. Chairman.

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE HOUGEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hougen, Jim Hougen.

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman, I feel that this amendment is legislative as well as the Burbidge amendment or proposal. But I put it in for one reason, that the final end of discussion will be this as far as I’m concerned. We talk about the right to work in North Dakota. Certainly a few years ago when the court ordered the people, the workers in the City of Minot back to work, they didn’t have a right to work, they were ordered back by the court, denied a right to work. They were forced to work. I say they should have the right not to have to go back to work. The school teachers in the City of Minot were forced back to work by a court order, tried to be forced back to work by court order. Some of them went to jail to defy going back to work. Some of these people spent twenty-five years in that school system, they lost their jobs out of it, 122 of them. Were we worried about those 122 people? No, not very much. Then we are worried about somebody having the right to work in North Dakota under a false name, I say. I believe, myself, that this is wrong. Under the Burbidge proposal actually what we are talking about here is this:

In my estimation this is what would happen; all we do is — do is favor the big corporations from out of state and give them an opportunity to use cheap labor in North Dakota, at the same time making the big corporations bigger and eliminate the small corporations. I personally know how the big corporations operate as I

deal with several of them. Through my efforts, I have cost the large corporations doing business in North Dakota millions of dollars which they would have taken out of the State of North Dakota. But, through the efforts of organized labor, millions of dollars are returned to the workers and spent in the State of North Dakota.

The Burbidge proposal would only drain the millions of dollars out of the State of North Dakota into other states by the big corporations.

There were only two non-business people appearing before our committee in favor of the right-to-work provision. All other testimony came from the business world. The two that testified that were not business people may not have understood the law completely. I noticed in the press that GNDA favored the right-to-work. The GNDA is made up of businessmen, what else could you expect them to say? If labor would take a poll I am sure we could get the same type of poll in the reverse.

The press said a few days ago that the Republican Party favored the right-to-work. This may be the opinion of the press, but I do not believe that the complete Republican Party favors the right-to-work. I have talked to some Republicans high in office who feel that the Constitution should not contain the right-to-work provision. They feel this is legislative.

I know that there's a big majority of Republicans in this Convention who are supposed to be nonpartisan, and I would hope that the party politics would stay out of the Convention as well as favoritism.

The right-to-work law has never covered the employees working for the railroads or airlines as they are under federal law even living in North Dakota. The right-to-work is misleading. My own daughter graduated from Minot State College in May of 1970 with a BA Degree in sociology. She attempted to get a job as a social worker in the State of North Dakota. She was told she had to take the merit test. She attempted to take the merit test but was refused until December 1970. Therefore, she was technically denied a right-to-work because of the merit system in North Dakota.

We are not asking for a union shop; all we are asking for is the delegates to leave legislation in the Legislature and not include it in the Constitution.

Just a few years ago the employees of the City of Minot went on strike to try and better their working conditions and wages. They were ordered by the court to return to work. It is the right — is this a right to work or not to work? A few years ago the schoolteachers in Minot, North Dakota, went on strike to better their working conditions and wages. They were ordered to return to work. Some of them were jailed, 122 were fired because of the strike, not because they were not qualified to teach. Some of the teachers had worked in that school system for over twenty-five years.

I ask myself why were they denied the right to work? In the past private employers and public employers have used the courts as a vehicle, and the Constitution of the State of North Dakota, to deny their workers their rights to better working conditions and wages.

In closing, it is not too late for some of you to change your minds and vote against the Burbidge proposal.

I want to thank you for indulging on the time, and, Mr. Chairman, could I have my remarks, which are at the desk, printed in the Journal?

PRESIDENT WENSTROM: Without objection, they will be printed in the Journal.

The question before the Convention is on the amendment as offered by Delegate Hubrig.

DELEGATE OMDAHL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think that the majority in this Convention has very clearly made its will known. And I don't think it makes any sense to continue contesting an issue. However, I think when we vote on this — I thought about something as I was driving home last week-end — that I think the labor people probably feel that the new language is more restrictive than the old language. And so I am more concerned now about passing the Constitution which includes all the decisions of the Convention. And it seems to me that we're leaving them with a

motive to vote against the new Constitution because the language that's particularly of concern to them is more restrictive than the old Constitution; therefore, they would benefit from a defeat of the new Constitution and saving the old Constitution. And I think we ought to be aware of this. And I would hope that sometime before the Convention is over we might be able to resolve this problem in some manner.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendment as offered by Delegate Hubrig.

Delegate Hougen.

DELEGATE HOUGEN: Mr. President: I think the newspapers said at the time of the first discussion that some forty-three delegates talked on this issue. And I think when it was up the next time there must have been another twenty. So there have been thirty of us, something like that, that haven't said anything up to this point. I've been sitting here debating whether I should. But I do feel that it is important, it's really important. I was home — well, I go home each week-end. But last week-end this right-to-work section was on my mind, and I visited with some of my neighbors about it. And they are all farmers. And I find that not all farmers want this right to work in the Constitution. Some of them feel pretty strongly about it. I visited with three young fellows; they felt that the Legislature was contradicting what I had told them should be the purpose of a new Constitution, that was to keep legislation out of it and not to let the prejudices and the pressure of the present interfere with the document that's going to govern us in the future. They — and these were progressive young farmers. And I really think that on the basis of this one issue itself they might vote against it. They feel that — they feel — whether it's right or wrong — that the prosperity and welfare of farmers is bound up to the prosperity of labor in this state. And after that discussion I didn't feel too bad about the future of North Dakota, but I do feel that if we pass this section in its present form that I'm not very optimistic about the future of our new Constitution.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Hubrig. Those that are in favor of its adoption will vote "yes," and those opposed will vote "no." As many as are in favor of the — of adopting the amendment will say "aye;" — those in favor of adopting the amendment will vote "aye;" and those opposed will vote "no." The "noes" have it. And the amendment lost.

Now we are back on the proposal as before the Convention, 1-53.

Delegate Dobson.

DELEGATE DOBSON: I have a simple amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-53 is as follows:

On page 1 of the engrossed proposal delete lines 10 through 14 and insert in lieu thereof the following:

"Every citizen of this state shall be free to obtain employment wherever possible."

PRESIDENT WENSTROM: Do we have a second?

DELEGATE HARDMEYER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hardmeyer.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Last Friday I offered an amendment to retain present Section 23. And criticism was directed against the wording of the present section, and particularly the words "maliciously interfering or hindering" and the words "shall be deemed guilty of a misdemeanor". Nonetheless, many delegates and numerous citizens across the state have expressed a desire to retain the pertinent parts of present section 23 rather than adopt the proposal before us embodied in CP 1-53. This amendment is brief, simple, concise. It applies to everyone. It says simply, taking the words from old Section 23: "Every citizen of this state shall be free to obtain employment wherever possible . . ." Mr. President, this is the amendment that will save the new Constitution. I urge a favorable consideration. I request a record vote.

PRESIDENT WENSTROM: Any further discussion? A record vote has been requested. It requires ten delegates to rise. That is sufficient number.

Now those favoring the adoption of this amendment will vote "yes," and those opposed will vote "no." The key will be opened and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 39 "ayes," 56 "nays," three delegates absent and not voting. The amendment as offered failed.

The question before the Convention is on the first passage of Committee Proposal No. 1-53. Those in favor will vote "yes," and those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 66 "yes" votes, 28 "no" votes, four delegates absent and not voting. Committee Proposal No. 1-53 has passed.

Next for consideration is Committee Proposal 1-57.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-57, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to equal enjoyment of public accommodations, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any public accommodation, without discrimination or segregation on the ground of race, sex, color, religion or national origin."

PRESIDENT WENSTROM: Any discussion?

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I have an amendment to 1-57 at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-57.

On page 1, line 12, insert the following words:

"No public funds may be expended in support of any organization which unjustly discriminates solely on the basis of race, color or national origin."

PRESIDENT WENSTROM: Do I have a second?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Aubol.

Any discussion?

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: If I may explain the amendment, it is similar to the one that was proposed by the committee the other day. It differs in that some of the words were deleted out of that former committee amendment. And I have, instead, I have deleted the words out of that former amendment that was proposed in the selection of its membership. And I have included the words "unjustly" and "solely" in this amendment.

The language suggested here provides that unjust discriminations are illegal if based on race, color or national origin. The language strongly suggests to the use of the word "solely" that distinctions based on race, color or national origin are to be examined closely to determine whether they are unjust; and, if they are, they would thus violate this section.

The reasons for suggesting this amendment is that — are that the organizations which are based on race, color or national origin which are of cultural interest should not be harmed by a section such as this. And talk about such organizations as perhaps the Sons of Norway, whatnot, which are, in fact, organizations devoted to the preservation and development of the heritage, language and social aspects of those people of our ancestors from those — from that country of Norway. It is not meant

to detract or infer in any way to hinder these organizations. Yet I felt it was important to delineate some language with respect to the use of public funds, of how they shall be expended, expended on organizations which do, in fact, discriminate on the basis of race or color or in some cases in respect to national origin. Thus, I have stated or intend to state that public funds should not be used in a contributory way to those organizations that would solely distinguish along the lines of race or color or national origin. The public funds should not be donated or used in any manner for these kinds of organizations. Nor that payment in such, as far as my interpretation goes, should be used with respect to agencies, state officials, should not be — funds should not be expended along these lines to be used — to organizations that do discriminate unjustly, that do discriminate solely on the basis of national origin. That is why I have submitted the following amendment to you. I believe that the word “unjustly” and the word “solely” are extremely important to the proposed amendment here. I believe that they do — the word “justly” for example as far as I’m concerned does point out the fact that there is discrimination — that there is discrimination and that it can be unjust indeed. And it does make the distinction that there can be just discrimination in this country and in this state and among the organizations throughout this state.

I think that’s a very important distinction to remember, because I, myself, do believe in discrimination and I do say that along the lines of just discrimination that it can and should be held. And yet I think it is important to point it out here in the words that I have provided. I believe that the intent is to limit the use of public funds, to limit the use of public agencies, to limit the use of public officials from participating or to avoid delaying any fears that public funds would be used along these lines in support or in direct support of such organizations.

I am in no way proposing that state officials or state agencies, state officials, members of the state organizations, be restricted in belonging to any one or any kind of an organization, nor am I proposing in this amendment that any person be allowed into a particular organization merely because he exists. As I mentioned before, I think there is and there are forms of just discrimination. I think this is very important to remember as you consider this article or this amendment. So that is the basis on which I have provided this amendment. I also believe that it does provide some boundaries, very broad as they may be, for the previous paragraph that we have before us with respect to the use of public accommodations and equal enjoyment of these things.

I have, as you have noted or you may have noted, I have excluded the word “sex” and I have excluded the word “religion” because I believe these two words, whatnot, I think are going to be questions or would be questioned very seriously by a number of the delegates as well as by a good number of the people throughout the State of North Dakota if we were to include them in here. There are some who have recommended that I do include these in the amendment, but I felt that it would be not appropriate to include them here at this point in this amendment.

But, as I said, this article, this amendment, does not get totally at those organizations that do, indeed, discriminate solely on the basis of race. I think it only provides an indirect question to this kind of problem that we face. That is all that I have to say. Thank you.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I have a question in mind as to just who this particular amendment would affect. Now I happen to belong to the Benevolent and Protective Order of Elks. And in order to belong to that association it’s necessary that I be a male, that I be over twenty-one, that I believe in God, and that I be white. Now as I read this amendment it seems to me that unless this organization discriminates and requires me to be only white that they would not be affected; is the correct?

PRESIDENT WENSTROM: Is the question directed to Delegate Gipp?

DELEGATE NETHING: I guess I would have to do that. I think it is his proposal alone.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: Excuse me. I didn’t quite follow all of the question. May I request —

PRESIDENT WENSTROM: Would you rephrase the question, Delegate Nothing?

DELEGATE NOTHING: Could have the Court Reporter read it back.

My question is to who this affects, and I pointed out that the organization — one organization I belong to has four requirements, and then I enumerated the four. And then my question is if I understand this right so long as they don't discriminate — we have four discriminations in effect — now as long as we have more than one mentioned here apparently it would not apply to that organization.

DELEGATE GIPP: My interpretation would not be the same, I would say. But I would say you would have a point and it would be a point for the courts to settle. I don't know whether I could specifically answer your question. I will say that I have consulted with legal counsel and an official with the Attorney General's office. And I think that the base of this amendment does get at some of the questions that you just mentioned. And I think that it does bring it into light. That is my opinion.

DELEGATE NOTHING: It is my thought that the word "solely" as long as you discriminate on some basis in addition to what's here that it is satisfactory. I'm going to vote against the amendment for the reason that I think this very issue is going to be decided in the United States Supreme Court. There is a question there now regarding an organization — I don't happen to belong to that one, but they have similar requirements — as to whether or not these organizations may be licensed. And a decision is expected quite soon. And it would seem to me that this probably is a place where this decision should come from. And for that reason I'm going to vote against the amendment.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President: My instinct has told me all along that somehow or other we're trying to shoot at somebody in here. And at this point I think I have got it, by the process of elimination, figured out who we aren't shooting at any more. And I'd like someone to check me out to see if I've got that right and then maybe fill me in on who we are shooting at, if we are. I guess now that we're not shooting at the Norwegians, and we're not shooting at the Knights of Columbus, and we're not shooting at the YMCA or the YWCA, and maybe not at the Masons, and I take it for granted that we're no longer shooting at the Indians. Is there anybody else left that we're shooting at?

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I haven't the answer for that one but I would have a question for the desk. In my book there is an amendment that is after line 11 it says, "No public funds". It's a little different one than the one now. Has that been repealed or is it still in there?

PRESIDENT WENSTROM: Defeated that.

DELEGATE BUTLER: All right. Thank you.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: Yes. Mr. President: I don't know for sure, but it seems to me that there are a few members here that are trying to circumvent the question. I want to say that I second what Delegate Gipp has moved, and I don't want state funds, tax funds, ever to be used for an organization that would discriminate on the basis of race, color, or national origin. And I can't help but think everybody in this room should support this amendment.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: I think that Delegate Nothing brought up a good point. And I'm not sure that an amendment would help. But just to test it out, I will move that the word "solely" be stricken and the word "primarily" inserted in lieu thereof.

PRESIDENT WENSTROM: Delegate Aubol moves an amendment to the amendment. Do we have a second?

DELEGATE SONDRREAL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sondreal.

Did the desk get the amendment?

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Sometimes I have the feeling that some of the amendments we make are like water falling upon a stone; so often the drips sometimes wear a hole in the complete thought. And I think this is what we have done in this case by proposing a substitute word. And I would ask the delegates to defeat the amendment to the amendment. Delegate Gipp himself and others did review the revised proposition or proposal before this Convention floor and we believe it stands on its own merits.

PRESIDENT WENSTROM: Any further discussion?

The Clerk will read the amendment to the amendment as offered.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to 1-57. Following the word "discriminates" delete the word "solely" and insert in lieu thereof the word "primarily."

PRESIDENT WENSTROM: "Primarily"?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: The delegates are aware of the amendment to the amendment? No further discussion? The question is on the adoption of the amendment to the amendment. As many as are in favor of this adoption will say "aye;" those opposed "no." The "noes" have it and the amendment lost.

Now we are back on the amendment as offered by Delegate Gipp.

Delegate Devine.

DELEGATE DEVINE: Mr. President: Will Delegate Gipp yield to a question?

PRESIDENT WENSTROM: Will Delegate Gipp yield to a question?

DELEGATE GIPP: Yes, Mr. President.

DELEGATE DEVINE: Delegate Gipp, does the term "no public funds" imply that this may be indirect funds such as police protection or fire protection, this type of thing?

DELEGATE GIPP: As far as I know, I really couldn't answer your question on that. But I would interpret that it would not be. What I'm referring to is the use — the direct use of public funds in some manner, either contributory in nature or the use in terms of support of public officials in respect to these. I'm not referring to service oriented contracts, for example. And this would be the opinion.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I wonder if anyone of the other supporters would care to address themselves to this point. Because before I could vote for this I would want the record to be clear that we are not implying anything other than the direct expenditure of funds to the organization.

PRESIDENT WENSTROM: Does anyone wish to add further to Delegate Devine's question or answer it?

Delegate Gipp.

DELEGATE GIPP: My point of resources again unofficially is unofficial word from consultation with the Attorney General's office that we were not referring to services or service contracts.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: I'm in deep sympathy with what is trying to be accomplished here, but I'm bothered by the words "unjust discrimination". And I think if we would put the word in as a modifier to discrimination then we are saying there is just discrimination and unjust discrimination. And I really have a hard time to determine when one would be just and one unjust. And I — I just don't get that.

I wonder if, Delegate Gipp, you could expand that further? Isn't discrimination always obnoxious in public affairs? Of course we are progressing this to private affairs. I don't know how you get to the problem. On one hand you are saying the people have a right to organize and discriminate because of religious, race, cultural reasons, we want that, and again we don't want other organizations to exclude people. But I don't know how you can do both with this language because it serves no point.

I don't know what you would define as just discrimination in one case and unjust in the next.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President: I wonder who the Solomon is who is going to determine what organizations discriminate unjustly? The fact is that every private organization, every private club, every private fraternal order is perfectly justified in discriminating. It is not against the law. These are private clubs. The right of association is as old as this country. Now we may disagree with the basis on which to discriminate, but they are certainly justified in discriminating in these private clubs.

I don't know what this means about "No public funds may be expended in support". The Legislature doesn't appropriate funds in support of any private organization. I don't know of any state agency that expends private funds in support of any clubs downtown here. It was pointed out by Delegate Nething one rather large club or fraternal order, rather, in this state discriminates on the basis of race, that you have to be a male, twenty-one, believe in God, be caucasian and be a citizen. It does not discriminate solely on the basis of race. So with all due respect to our very good colleague, Delegate Gipp, I have to submit that this amendment is largely meaningless. I think if the Convention is of a mind to try to penalize any private organization under the Constitution, there are many paths they could follow to do that. This amendment, Mr. President, is meaningless. I urge its rejection.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: Fellow delegates: I can give us just a couple examples; Girl Scout organizations, for one thing, Boy Scout organizations for another thing. And I do believe there are private groups that do have the right to discriminate if they so please. And I might belong to some of these, and maybe I will want to in the future. But all this amendment says is simply that no public funds shall be used in support of any organization which discriminates because of basis of race, color or national origin. I think we are trying to make more of this than what it actually is.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and fellow delegates:

I would like to support this measure. And as I keep reading it I am finding some questions popping up here. And one question that I would have in mind is if we receive a per diem when we are here and we eat at the Elks Club, are we violating this constitutional privilege? And I think it's kind of a serious question. It seems to me that the idea originally was that we would not be spending any funds in any way in a public — any public funds in an institution that discriminates. And I'd like to eat an occasional meal at the Elks Club, and it seems to me that if I am reimbursed by the government I would be in violation of this constitutional right.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. Chairman, I think if we pass this amendment the City of Grand Forks Fire Department could not go and put out a fire in the Elks Club.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: I think that some of the — some of the questions that have been brought up here are well taken. I do think, though, that everyone in this assembly understands the heart of the matter. And I don't think we should reject an amendment because we on this floor at this point do not have all the answers to the deficiencies of the amendment. I would urge that all of you who do understand what the amendment is all about vote "yes". It will then be on the tenth order tomorrow for final passage. And in the meantime some of the objections and loopholes can be taken care of.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hernet.

DELEGATE HERNETT: Just for information, where does the amendment come from that is in our bill books? What is that one?

DELEGATE MAXWELL: It was defeated.

DELEGATE HERNETT: It was withdrawn, somebody said.

DELEGATE SINNER: No, it was defeated.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: That amendment was on the — was the committee report, and it was defeated by the body about four or five days ago, I think.

DELEGATE KNUDSON: January 21.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. Chairman — Mr. President, Fellow Delegates:

Delegate Gipp and various other members of the state staff worked diligently on this amendment. It was passed around to a number of us prior to its being introduced on the floor here. And we scraped over some of the questions which you fellow delegates have proposed at this time. We missed some of these. As a lawyer, as I look at this, as I previously looked at it in the original amendment, asking for its defeat, seeing now additional items I would recommend that we defeat the amendment due to the magnitude of the unanswered questions which we have developed at this time.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: Yes, I also would go along with Delegate Hartl in defeat of this amendment. I think that we should let common sense prevail here. As far as putting out fires at the Elks Club goes, I think we are getting a little carried away. And I would hope that this amendment be defeated.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I would just like to add some final words to this; whether it's defeated or not, so be it. That's fine. But I do think that this statement does have some merit. I do think that it addresses itself to a basic question. I do think that the example has been towards the Elks here. And let me quote their Section 144 of their constitution, at least the beginning words of that, which says: "No person shall be accepted as a member of this order unless he be a white male citizen of the United States of America, of sound mind, body," et cetera, et cetera. Now I do not address myself to that question, to that very direct question. But I do address myself to the question with respect to the use of public funds perhaps in that organization as it may have happened or as it might happen in the future. And my question really is that I think that there will always be Elks organizations with maybe these kinds of rules. Whether this rule is overturned by the courts themselves, whatever, I think the question that I have here is a basic one. I believe it has merit. And, as I say, I think there will always be organizations which discriminate along some of these lines. And I don't think we should always be questioned. And I think now is a chance, an opportunity, to provide at least a basic question with respect to our state itself and the use of public funds. Thank you.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment to Committee Proposal No. 1-57 as offered by Delegate Gipp. Hearing no further discussion, those in favor of its adoption will vote "yes," and those opposed will vote "no." As many as are in favor of adopting the amendment will say "yes;" those opposed "no." The "noes" have it. The amendment lost.

Delegate Gipp.

DELEGATE GIPP: May we have division?

PRESIDENT WENSTROM: Division has been requested. That is sufficient. Division will be granted.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: May it be a recorded division?

PRESIDENT WENSTROM: Recorded division has been requested. Will ten delegates requesting a recorded division please rise? That is one, two, three, four — that's sufficient. The recorded vote will be on the adoption of the amendment or the rejection. Those now in favor of adopting the amendment will vote "aye;" those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 43 "yes" votes, 51 "no" votes, four delegates absent and not voting. The amendment has failed.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would like the record to show that I voted "no" on that amendment because I do not understand the concept of "just" and "unjust" discrimination; distinction between the two.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I voted "no" on that for the reason that I just am not sure whether the question brought on by George Unruh, a public service, such as funds for fire protection and police protection, can be spent on these areas.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. Chairman. I voted "no" likewise at this time with the express intention that perhaps Delegate Gipp and others can obtain additional information for us. I would move that Committee Proposal No. 1-57 be laid over one additional day and placed on the bottom of the calendar on tenth order.

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Hartl and seconded by Delegate Trenbeath that Committee Proposal No. 1-57 be laid over one Convention day, and that it be placed at the foot of the calendar. As many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it. The motion lost.

We are back on — Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: I would request a division on this. I don't think this chamber has ever denied a delegate an opportunity to take another look.

DELEGATE KELSCH: Division.

PRESIDENT WENSTROM: Division has been requested. That is sufficient number. The motion was on Delegate Hartl's — the question is on Delegate Hartl's motion that Committee Proposal No. 1-57 be placed — be laid over one Convention day, and be placed at the foot of the calendar. Those in favor of that motion will vote "yes;" those opposed will vote "no." The key will be opened, you will record your vote.

Any delegate wish to change? The key is closed.

Roll call indicates there were 78 "aye" votes, there were 16 "nay," there were four delegates absent and not voting. So the Proposal 1-57 will be laid over one Convention day, and it will be placed at the foot of the calendar.

Delegates, it is now five-thirty. Are there any announcements —

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: — on eighth order.

Delegate Miller.

DELEGATE MILLER: In talking at coffee break time at three there were a number of delegates who expressed an interest in going on through until about seven, six-thirty, and not coming back later. I wonder if any of them would care to have a reconsideration of this issue. I submit, sir, that if we come back here at eight and work until say ten that we could accomplish as much in another hour now as we could at that time. I would move we reconsider this action and come back here at —

PRESIDENT WENSTROM: Delegate Miller, might I interrupt and say that it is not necessary to move to reconsider. The fact that we were going to meet at eight o'clock is because of former or other complications a number of delegates to the Con-

vention have themselves in. And it's not solely my idea that we have to postpone or wait till eight o'clock this evening. I am in full accord with your idea that we would continue if that would be the rule and wish of the Convention. However, because of previous commitments there would be about twenty of the delegates to my knowledge that wouldn't be here. And I hate to set a schedule so that they couldn't be here and participate in this assembly.

Does anyone wish to add or enlighten us further on the desire of the Convention?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I am — I am extremely sorry if my committee placed the President and some of the members at a disadvantage here or are embarrassed in any way. It happens that our committee has planned a party for tonight, and we had — we did this over a week ago with the idea that most of the wives would be here this week because of the doings. So then on Tuesday it was canceled. There are still most of them here. I suggested — I mentioned this to the committee chairman of the Calendar Committee when they met this morning. It was of a gentlemen's agreement that we would recess at about five-thirty and then come back at eight. It would give us time to have our little get-together and our supper. I'm not so sure, maybe we wouldn't be better off if we went and had a little refreshment and something to eat and came back for a couple hours. It's cold. But there's going to be cars that are going to have to be started out here now and they will probably run a couple hours again and come back. I hope that the members will bear with the committee. And we are the ones that caused the trouble. And I think that maybe Kelly over there is kind of a Benedict Arnold, because we discussed this at noon, Kelly, at our meeting right after dinner.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Well, I was going to rise a moment ago when our fearless leader, Delegate Haugen, apologized for some members of his committee. And I was wondering if he was aiming at me. You see, I think if we get right down to the nitty-gritty of this, Mr. President, our fearless leader has volunteered to purchase the refreshments. And if he could cut us off about a quarter to eight it would be more money left in his pocket, you see. So I kind of question his motives.

PRESIDENT WENSTROM: I believe, Fellow Delegates, that it was Shakespeare sometime in his writings said, "The truth will out."

Delegate Omdahl.

DELEGATE OMDAHL: Mr. President: I hope too many delegates aren't disappointed with a break. Frankly, I don't think we are writing the Church by-laws. And we ought to take a little time and we ought to be deliberative in our process. And I don't think we ought to start pushing stuff through to get done. I think we ought to take our time and move deliberately, and I think it's good to have a break every couple hours.

PRESIDENT WENSTROM: Thank you, Delegate Omdahl.

Any further comments?

Delegate Saugstad.

DELEGATE SAUGSTAD: I should like to reiterate what I said earlier on the floor today, that we have approximately — we did have as of this morning approximately 60 committee proposals left to consider. We have taken, I believe, five — we have acted on five today. And we must dispose of them at the rate of about twelve per day. We have, I believe, five more days besides today. And that means that we will have to get rid of these proposals, some of which will be lengthy and will create a great deal of debate. And I think it will be good for us to see what happens. I think it will be good experience for us to come back here this evening and work for a couple of hours.

And I now then would move that we recess until eight P.M.

PRESIDENT WENSTROM: It has been moved that we now recess until eight P.M. Do I have a second?

DELEGATE DAWSON: Second.

PRESIDENT WENSTROM: Delegate Dawson. As many as are in favor of

the motion will say "aye;" those opposed "no." The "ayes" have it. We will be in recess until eight P.M.

(The Session recessed at 5:34 P.M. until 8:00 P.M., the same day.)

EVENING SESSION

(The Plenary Session continued at 8:02 P.M., Wednesday, January 26, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order. The Convention will please come to order.

First for consideration, Committee Proposal No. 1-70. 1-70.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-70, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 31, 46, 47, 48, 49, 58, 63, 64 and 66 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 6, 11, 12, 13, 14, 16, 17, 18 and 19 of Article II to the constitution of the state of North Dakota be created, all of which pertain to matters of legislative procedure.

"SECTION 1. REPEAL.) Sections 31, 46, 47, 48, 49, 58, 63, 64 and 66 of Article II of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Sections 6, 11, 12, 13, 14, 16, 17, 18 and 19 of Article II to the constitution of the state of North Dakota are hereby created to read as follows:

"ARTICLE II

"Section 6. The senate and the house of representatives, at the beginning of each regular session, shall each elect one of its members presiding officer.

"Section 11. A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such a manner, and under such a penalty, as may be prescribed by law.

"Section 12. Each house shall be the judge of the election returns and the qualifications of its own members.

"Section 13. Each house shall have the power to determine the rules of procedure and punish its members or other persons for contempt or disorderly behavior in its presence and, with the concurrence of two-thirds of its members, to expel a member.

"Section 14. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one-sixth of those present. No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken of yeas and nays, and the names of those voting be entered on the journal.

"Section 16. No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its general subject matter. No bill shall embrace more than one subject, which shall be expressed in its title; but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed.

"Section 17. Every bill shall be read two separate times, but the first and second readings may not be upon the same day, and such readings may be by title of the bill only unless a reading at length is demanded by one-fifth of the members.

"Section 18. No bill shall be revised or amended nor the provisions thereof extended or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions, but so much thereof as is revised, amended or extended or so incorporated shall be reenacted and published at length.

"Section 19. The presiding officer of each house shall sign all bills and resolutions passed by the legislative assembly, and the fact of signing shall be entered at once on the journal."

Delegate Pearce: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: As a member of the Legislative Functions Committee I have been directed by our chairman to explain 1-70.

Also I have computed that if each of 95 delegates takes three minutes it takes four hours forty-five minutes to get around the horn. I will be very brief.

If you will look at the proposal in your book, Section — the new Section 6 combines old Sections 31 and 36. The marked change is that the lieutenant governor would not be the presiding officer of the Senate; the Senate would elect its own presiding officer as the House now does.

Section 11 is substantially the same as Section 46 of the Constitution, providing for a quorum and when they may recess.

Section 12 is the same as Section 47 of the present Constitution; that each house should be the judge of their qualifications of their own members.

Section 13 is Section 48 of the present Constitution; that each house may set up its own rules, may punish its members. It does leave out what we thought was a superfluous sentence.

Section 14 is a combination of old Sections 49 and 65 providing that each house shall keep a journal and the vote shall be requested.

Section 16 is a combination of Section 58 and 61; that no law shall be passed except by a bill adopted by both houses, that no bill shall be altered, amended on its passage as to change its general matter — something that we want to keep in mind — no bill shall embrace more than one subject or shall be expressed in the title.

Section 17 is a slight modification of Section 63. And it does make some change; provides that every bill shall be read two separate times but the first and second readings may not be upon the same day and such readings may be by title of the bill only unless a reading at length is demanded by one-fifth of the members. I'm sure you realize the Legislature would want a reading like we just had to keep them advised.

Section 18 is Section 64 of the old Constitution which provides that no bills shall be revised or amended, nor the provision thereof extended or incorporated in any other bill by reference to its title only. We have added the next phrase "except in case of definitions and procedural provisions". That's the only change.

Section 19 is Section 66 of the present Constitution. It makes one change only, and that is the necessity of reading the title before it is signed by the presiding officer.

So, in essence, there are some very slight procedural changes. The only one which might produce more than three minutes for everybody is that the lieutenant governor would no longer be the presiding officer of the Senate. Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE PEARCE: Excuse me, Mr. Chairman.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: This fell on the floor. It's necessary that I propose some minor amendments solely for the purpose of inserting some additional sections of the old Constitution which we overlooked when this was drawn in the title. I can just as well read them. We are adding on line 1 after the numeral "31" insert the numeral "36", after the numeral "58" insert the numeral "61", and after the numeral "64" insert the numeral "65". In line 8 you insert those same numerals; "36" after "31", "61" after "58", and "65" after "64". And renumber the lines accordingly. And I do move such amendments.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Pearce moves the amendment, and the motion has been seconded by Delegate Litten.

Any further discussion?

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: The question is on the adoption of the amendment as offered by Delegate Pearce. Being no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. And the amendments are adopted.

DELEGATE PEARCE: Mr. Chairman: May I now move a suspension of the rules, the proper re-engrossment of 1-70 and placing on the calendar?

PRESIDENT WENSTROM: Delegate Pearce moves that the rules be suspended,

that Committee Proposal No. 1-70 be deemed properly re-engrossed, and it be placed on the calendar for first passage as amended. Now do I have a second?

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kelsch.

Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-70 is before the Convention as amended.

Is there any further discussion?

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I have one question here. I suppose it's obvious, but in line 17 of page 2 it says, "Every bill shall be read two separate times . . ." I presume that's in each house, right, if we have a bicameral house?

PRESIDENT WENSTROM: Any further discussion?

DELEGATE AUBOL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I certainly appreciate the relaxed atmosphere the assembly is now in. I'm sure that the two-hour break has had its benefits. And I hate to speak against such a detailed and lengthy proposal, but I myself think it is far from being enlightening and I don't think the Constitution has to set out every step that the Legislature takes and I do intend to vote "no" on this motion.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question is on the first passage of Committee Proposal No. 1-70 as amended. Those in favor of its passage will vote "yes," and those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 89 "ayes," two "nays", and seven delegates absent and not voting. Committee Proposal No. 1-70 has passed.

Next for consideration is Committee Proposal No. 1-72.

CHIEF CLERK GILBREATH: Mr. President: Committee Proposal No. 1-72, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 22 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to courts being open as suits being brought against the state.

"SECTION 1. REPEAL.) Section 22 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without denial or delay."

PRESIDENT WENSTROM: Committee Proposal 1-72 is before the Convention. Is there any discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I have an amendment at the desk. The amendment calls for the placing of the word "privacy" after the word "person" on line 11. I would ask that the delegates favorably consider this request. I think that the matter of privacy is an important right that should be protected as well as goods, lands, persons and reputations.

PRESIDENT WENSTROM: You move the adoption of the amendment?

DELEGATE KELSCH: I move the adoption of that amendment; yes.

PRESIDENT WENSTROM: May I have a second?

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lamb. Any further discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: The one sentence proposal that we have submitted is merely the first sentence of old Section 22 with, I think, one word deleted. As to the amendment, speaking for myself, I have no particular objection to the inclusion of the word "privacy". I don't believe that members of the committee, either, would object too strenuously to that. And I would suggest that we approve the amendment.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Kelsch. As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it. The amendment is adopted.

Any further discussion?

DELEGATE MAXWELL: Question.

DELEGATE KELSCH: Mr. President: I would move that 1-72 be properly re-engrossed and placed on first passage.

PRESIDENT WENSTROM: Delegate Kelsch moves that the rules be suspended, that Committee Proposal 1-72 be deemed properly re-engrossed, and be placed on the calendar for first passage as amended.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President: I have a slip in my book that says that all of lines 14 and 15 are deleted. And I would ask the question, is this correct?

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: That is correct. Lines 14 and 15 have been deleted, and they are the subject of a brand new proposal which we'll be getting to later on this evening.

DELEGATE HAUGEN: What about the title? It says "as suits being brought against the state?"

DELEGATE MAXWELL: I think that that should be correct. I believe that point it well taken.

Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I would move an amendment to delete that portion of the title which indicates that "suits may be brought against the state".

CHIEF CLERK GILBREATH: There's a semicolon after which says "both of which pertain to courts being open and suits being brought against the state."

DELEGATE MAXWELL: Yes. If we may have just a second we will take care of that.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I move an amendment. On line 3 delete the words "both of which" and substitute — no, just delete the words "both of", delete the word "pertain" and substitute the word "pertains".

And on line 4 a period after "open" and delete the balance of the line.

It would now read: "which pertain to courts being open."

PRESIDENT WENSTROM: The Clerk will read the amendment as offered by Delegate Maxwell.

CHIEF CLERK GILBREATH: The proposed amendment to Proposal 1-72 is as follows:

In line 3 of the engrossed proposal after the "semicolon" delete the words "both of which pertain to" and insert in lieu thereof "which pertains to".

In line 4, delete "as suits being brought against the state."

PRESIDENT WENSTROM: Is that correct now, Delegate Maxwell?

DELEGATE MAXWELL: Mr. President, it is.

PRESIDENT WENSTROM: Thank you.

Any further discussion on the amendment?

DELEGATE KNUDSON: Question.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Maxwell. Hearing no further discussion, as many as are in favor of the adoption of the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I now move that the rules be suspended and that Proposal 1-72 be deemed to be properly re-engrossed and placed on the calendar for first reading and passage as amended.

PRESIDENT WENSTROM: Delegate Maxwell moves that the rules be suspended, that Committee Proposal 1-72 be deemed properly re-engrossed, and it be placed on the calendar for first passage as amended.

Do I have a second?

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Second by Delegate Kelsch.

Is there any further discussion? As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and the Proposal 1-72 is before the Convention for passage as amended.

Any further discussion? Hearing none, the question is on the first passage. Committee Proposal 1-72, as amended. Those in favor of the passage will vote "yes;" those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 94 "ayes," no "nays," four delegates absent and not voting. Committee Proposal No. 1-72 has passed.

Next for consideration is Committee Proposal No. 1-85. 1-85.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-85, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that sections 121, 122, 123, 124, 125, 126 and 128 of the constitution of the state of North Dakota and Articles 36 and 40 of the amendments to the constitution of the state of North Dakota be repealed; and that three new sections to the constitution of the state of North Dakota be created; all of which pertain to the elective franchise.

"SECTION 1. REPEAL.) Sections 121, 122, 123, 124, 125, 126 and 128 of the constitution of the state of North Dakota and Articles 36 and 40 of the amendments to the constitution of the state of North Dakota are hereby repealed.

SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Every citizen of the United States who has attained the age of eighteen and who shall have resided in the state ninety days and in the precinct thirty days preceding an election shall be a qualified elector at such election. Provided that where a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moved until he establishes residence in the precinct to which he moved.

"SECTION 3.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The general election of the state shall be held biennially as established by law.

"SECTION 4.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"No elector shall be deemed to have lost his residency in this state solely by reason of his absence."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, Fellow Delegates:

This is the first of a series of suffrage articles. The committee has proceeded with the belief that board participation is essential to the proper working of our

democracy; that only the most necessary requirements for limiting that participation can be justified, and that the burden of proof granting limitations rests heavily on those advocating them.

The committee's proposal is premised on the right to free and equal election. It specifies certain elements — elemental voting qualifications and disqualifications designed to insure the responsible exercise of that right. It calls for the enactment of laws designed to encourage the full and effective participation by all persons meeting these qualifications.

Now this amendment deals with all the suffrage articles and deletes the old suffrage articles 121, 122, 123, 124, 125, 126, 128 and then Articles 36 and 40 which were forgotten to be deleted when the Constitution was undated. But we happened to find that in our exploratory work on suffrage.

Section 127 and Section 129 are taken care of independently by independent articles. We used — we put these together because we felt these three sections dealt with essentially the same thing.

Now a little bit about the Section 2 and then I will yield to Delegate Fiedler.

Section 2 insures a person must be a citizen of the United States. This is presented in the present Constitution as it did in 1889. This follows the tradition of all the states except West Virginia which speaks of state citizenship. The voting age was set back — set, of course, by Article 26 of the U. S. Constitution, and we were very happy about this when it occurred in the Senate.

Residence: The Committee Proposal concerning residence departs significantly from the requirements of the 1889 Constitution. The committee recommends that a required period of state residence be reduced from one year to ninety days, that the ninety-day residence requirement be eliminated and the precinct requirement be thirty days.

In view of the decreased voter participation throughout the United States, the committee believes that the existing one-year state residence requirement is too long and had much discussion and debate on this. And the committee has settled for the ninety-day amendment.

The committee proposes that there be no mandatory county requirements for two reasons; first, a review of relevant political divisions in the state significant for voting purposes shows that the county is only one, perhaps not even the most significant subdivisions. Many senatorial districts are within the single county while there are counties or other parts of counties in other districts. Constitutional county residency requirements can serve the disenfranchised voters who move between counties even though they remain within the same political subdivision.

Second, insofar as the county is relevant to the county's officers in other elections, they are only relevant to those offices. The committee feels that the local residence requirement related to the election district serves the legitimate end of insuring the objectives of voter interest and the subject matter of local elections. Rigid constitutional election district requirements can also serve to disenfranchise unnecessarily these voters who move but nonetheless remain within the same political subdivision.

The committee proposes the maximum period of local residency to be thirty days. This is in line with the recommendation of the report of the President's Commission. Such a period has the advantage of the tested time being expressed in the Constitution since 1889. And the test of practice having been integrated into all the registration machinery in the state since that date.

It should be noted that the Commission on Uniform State Laws has proposed that new residents be permitted to vote in the presidential elections with no residency qualifications as such. As long as there is a time for election officials to process the administrative details and protect against fraudulent voting. Congress has also considered several proposals for amending the national Constitution to suspend state residence requirements for presidential elections and to provide voter qualifications for voting in all federal elections.

We, however, felt that under the present status and the way we have it written at the present time that it would be appropriate for our state and for the time.

And now I yield to Delegate Fiedler for the explanation of the rest of the deletions and additions.

PRESIDENT WENSTROM: The Chair will recognize Delegate Fiedler.

DELEGATE FIEDLER: Mr. President.

PRESIDENT WENSTROM: Delegate Fiedler.

DELEGATE FIEDLER: Delegates:

We have the following sections under consideration: 122, 23, 24, 25, 26 and 128.

And we made the following — proposed the following changes:

The Section 122, which deals with the further extension of suffrage, we deemed the language unnecessary and superfluous. We therefore deleted that section.

Section 123, which furthers the privilege from arrest while going to and from elections, we deleted that for the same reason.

124 I shall read to you: "The general election of the state shall be biennial, and shall be held on the first Tuesday after the first Monday in November; provided, that the first general election under this constitution shall be held on the first Tuesday after the first Monday in November, A.D. 1890." We deleted that section and simply stated that, "The general election of the state shall be held biennially . . ." Our idea being that the time and date was a prerogative of the Legislature.

Section 125 we —

PRESIDENT WENSTROM: Delegate Fiedler, I'm sorry to interrupt you but would you keep it a little closer to your mouth? I'm afraid the delegates aren't hearing you.

DELEGATE FIEDLER: Section 125 deals with electors who are deemed to have lost their residency. We deemed this language unnecessary and extraneous and we deleted that section.

128 deals with woman suffrage. We felt that women have been granted full suffrage, so we deleted that section also.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I have an amendment at the desk, and I'd like to have it read.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-85 is as follows:

On line 15 delete the words "ninety days" and insert in lieu thereof the words "six months".

PRESIDENT WENSTROM: Do I have a second to the proposed amendment?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE THOMPSON: Dr. O'Toole said "we"; of course that didn't include me. I consider the right to vote a very serious right. I also consider it a privilege. And I feel that it's one that should in some way be generated. At least there must be some proof of residence for these smaller localities where we are having a tremendous fluctuation of population. These people must at least admit or indicate in some way that they are willing to accept some of the problems that they are going to create in these small localities.

Mr. Berg may refer to the students in college, and I agree to a certain extent with him on this problem. I do also agree that these communities accept from those students all of the income that they are going to get. And I agree that if they live there for a period of time they should have the right to vote. But I think at least they should be somewhat permanent in that.

I'm sure you realize that this is a compromise with me, because I felt very strongly that it should remain one year, ninety days and thirty days. And I still feel that way. I agree also that the President's election should be voted on by everybody. I do not agree, however, that the reduction to ninety days from one year should be one that should be accepted by those areas in the State of North Dakota that are going to be involved. And I hope that those of you who represent those areas think about it.

PRESIDENT WENSTROM: Any further discussion?

Delegate Fiedler.

DELEGATE FIEDLER: Mr. President: I'm sorry. Before —

PRESIDENT WENSTROM: Delegate Fiedler, either you have a poor mike or you don't have the switch on or something. Try one of the others. The recorder — the Court Reporter here can't hear you.

DELEGATE FIEDLER: Mr. President.

PRESIDENT WENSTROM: That's better.

DELEGATE FIEDLER: I erred in my presentation. In Section 25 we deleted it and we have added a new section which will read as follows:

"No elector shall be deemed to have lost his residency in this state solely by reason of his absence."

I'm sorry for the error.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Thompson.

Delegate McElroy.

DELEGATE McELROY: Mr. President: I'd like to speak for the amendment. There's two kinds of voting we sometimes get mixed up on, I think; we vote for candidates for office, we also vote for issues, and particularly bond issues.

The other day we passed a provision that allows — provides for bonding your city, for example, up to fifteen percent of its — of its assessed valuation. You can put another fifteen percent of its assessed valuation on top of that for school purposes. Now where you do have a community with a rapidly fluctuating population, you're going to have people coming in who want a lot of services fast and they might not be around at a later date to help pay for them.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

The — I wish to support the amendment. I think perhaps there are some things we didn't figure here; the jumping around that would be possible with the low limit and no county — no county requirement. For instance, you may or may not have run into it, but there has been a lot of it, where people vote in town and in the country within the same county. And this has been the case in school elections a few times; they want to vote in town and also in the country. And for you flaming young people I might tell you that they did this to hold down the school elections where they were spending money. This was some of the older people once in a while moving around, now they can go thirty days, no registration, they can vote in town, move to the country, prove the day they got there, got their telephone hooked up, and vote in the country. And there are quite a few people that have shacks in the country and houses in town or vice versa. So this would make it very nice for the person who wanted to vote in various places.

Now I don't think that our requirements at the moment are too tough. But there may be a few of you — but there aren't too many — that have voted. I have voted in every general and primary election in the State of North Dakota since I was twenty-one. I can't remember whether it was the day — the day of the first election. So I've either voted in 86 or 88 general and primary elections. And I'm rather proud of this. And now under our rules a person my age would have voted in one more. So they can be proud. So I can't see that if we are going to make it wide open completely you don't have to live anywhere more than thirty days really if you're within the state. And I would support this amendment as helping some.

PRESIDENT WENSTROM: Would the Clerk read the amendment?

Delegate Lamb.

DELEGATE LAMB: I may be considered, Mr. President, one of those "flaming liberals," but I think tonight my flame has gone out. But I think that what you have to consider has nothing to do — the six months has nothing to do with the period in the precinct or the county of your residency in the state. I am not resisting the amendment, though.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: As Chairman of this committee I feel urged to rise and support the language suggested by the committee, although I am

inclined to admit that my humor is somewhat tainted by the mellow mood that prevails here tonight. And I do it in a very tepid fashion. I am not particularly opposed to this amendment; however, I think it should be pointed out, Mr. President, that in these days when we have rapid communication and mobility that three months is a long enough time for people to acquaint themselves with issues that may be presented at any election. It's during the campaign that issues are aired, and of course that rarely exceeds a three-month period. It's difficult enough, Mr. President, to get people to vote without disenfranchising them and hampering them in their elective process with long residence requirements. I think that too many people probably agree with Poet William Butler Yeats who said:

"A statesman is an easy man,
"He tells his lies by rote;
"A journalist makes up his lies,
"And takes you by the throat.
"So stay at home and drink your beer,
"And let the neighbors vote."

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: Mr. Chairman: I, too, support the amendment. In our own particular district we have the McClusky Canal. And I think that these people that come in on construction work, are there for only three months — and many of them are there only three months, four months — then they move on to another job, should not have the right to vote in our particular district or county, I should say, or city. Therefore, I support the amendment.

PRESIDENT WENSTROM: Further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I'm sympathetic to the idea of the six-month period, because I, too, share the feeling that our voters ought to be here for awhile and become informed and responsible. I think, however, we don't have complete jurisdiction over the problem. A three-judge court in Minnesota held that a six-months residence requirement in the State of Minnesota was a violation of the Equal Protection Clause of the Fourteenth Amendment on the groups that there was no compelling stated reason for such discrimination in residence. And I'm even hesitant to let this go through at ninety days as long as this is in flux. Now, I don't know if that case is being appealed or not, but this is one of the reasons that when they had the municipal elections in Minnesota earlier this year or earlier in '71 that there was no contesting the people who appeared to vote.

I know that this is basic — the voting right should be basic and in the Constitution. But we are dealing with a subject that is changing right now. And I would feel a lot better under the circumstances if this were left in the hands of the Legislature. If they want to have six months or a year, that would be fine with me. I hate to see us put something in the Constitution that's going to have to be changed by a federal court or amended out in the next couple of years. Because even though I don't have the confidence in this document that Delegate Dobson has where he doesn't want to amend it at all, I'm afraid we might be putting ourselves in the position where we are going to have to amend it.

One other consideration we have to deal with and that is the U. S. Congress. They are not done fooling around with this yet. And in the 1970 or '71 Voting Rights Act they provided that you can vote for President if you're in the state for thirty days. And this has required a special act of the Legislature in the last session to set up machinery by which we are going to let people vote for President but nothing else. I understand that Congress now wants to extend this privilege to the U. S. Senate and the U. S. Congressional races. And this is only thirty days. So you can see here that we are faced with another dilemma that's somewhat similar to the problem we have with the court cases relating to property taxes and education.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: As I recall, although I wasn't around, one of the rallying cries of the American Revolution was, "No taxation without representation."

Now the fellow that moves into North Dakota, he starts paying taxes the first day's groceries that he buys.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I would like to rise to support what Delegate Omdahl has said, though I never thought I would be able to do this. When my daughter was at the University she said she believed everything they told her. But actually this Committee Proposal is a compromise between men and a few others who felt that the minute you moved to this state you should be able to vote. And I have always felt that you are disenfranchised for the same reason as has been mentioned by Delegate Pearce, that there is no reason, no valid reason, that you could not vote the minute you move here. So this was a compromise between my side and the side who felt that because the people had moved into the area to work on a missile base or for some other reason, that they should stay there a year before they were able to vote. I felt that this was a satisfactory compromise. But it may be better to allow the Legislature to make the final decision; because I — I'm not only afraid, but I — I feel that the handwriting is on the wall that with our small population and with the way welfare recipients are moving around, and the way the federal courts have decided on their eligibility, that people will be allowed to vote no matter where they live the day that they establish residence.

PRESIDENT WENSTROM: Will the Clerk read the amendments? Will you read the amendments?

DELEGATE THOMPSON: While you are waiting for that, Mr. President, —

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: — apparently there were three compromises in my committee; this one I didn't know about. I still don't quite understand how these people that are paying sales tax, apparently is what Mr. Pearce is referring to, would immediately upon moving to the area be held to support the park district or drainage district or any other district that's in that area. And the special taxes that they can vote in become an extreme problem. And whether they pay sales tax or not is not the answer.

PRESIDENT WENSTROM: Would the Clerk read the proposed amendment?

CHIEF CLERK GILBREATH: Proposed amendments to Proposal 1-85:

On line 15 delete the words "ninety days" and insert in lieu thereof the words "six months".

PRESIDENT WENSTROM: You've heard the reading of the amendment. Is there any further discussion? The question — Delegate Fallgatter.

DELEGATE FALLGATTER: Mr. President: I rise to support the amendment. I, too, feel that anyone cannot familiarize himself sufficiently to the issues of the state in that short a time. And I'm reminded a bit of a joke that goes like this; tells about the fellow that went to the polls and voted for slum clearance and when he got home his house was gone.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Thompson and was just read at the desk.

Those in favor of the motion — those in favor of adopting the amendment will vote "yes" and those opposed will vote "no." As many as are in favor of adopting the amendment will vote "aye;" those opposed "no." The "ayes" have it. The amendment is adopted.

Any further discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: I have an amendment at the desk. Would the Clerk read it, please?

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-85 is as follows:

In line 20, following the word "moved" insert the following: "Provided further, that nothing in this section shall prohibit any person who has resided in this state for ninety days from voting in a general election on the presidential question."

PRESIDENT WENSTROM: Do I have a second?

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Chase.
Any discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Apparently a part of the exception to the committee's report was on having strangers come into an area and vote on a local question. I think as Delegate Thompson pointed out, he had no objection to people coming into the state and voting on a presidential question, on the office of President. And I think that this is part of the — was a part of the attempt of the committee in liberalizing — in liberalizing the residency requirements.

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman: As I understand that is already a federal law and it wouldn't necessarily need be in our Constitution.

One of the lawyers, if I'm wrong, please correct me.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lamb, did you have —

DELEGATE LAMB: Mr. Chairman: I'm not a lawyer, so I'm not going to correct him. But Mr. — Delegate Aubol, the federal law requires that every state let every person who has been a resident for thirty days in the state vote in elections as I understand it.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: The 1965 Legislature referred to the people a statutory measure on extension of elective franchise. This was not approved in November 1966. It permits new residents not qualified to vote in state — not yet qualified to vote in state elections to vote in presidential elections. Therefore, I would question the necessity of this amendment in the Constitution.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: With all these explanations I would have no objection to the amendment being defeated. In fact, I might not vote for it myself. I would request it be — that it be withdrawn.

PRESIDENT WENSTROM: Delegate Chase, will you yield? Delegate Chase, as the seconder of the proposed amendment, would you yield to the withdrawing of the motion — of the amendment?

DELEGATE CHASE: I'll take him off the hook.

PRESIDENT WENSTROM: You'll yield.

DELEGATE DAWSON: Reluctantly.

PRESIDENT WENSTROM: Delegate Aubol has requested that his proposed amendment be withdrawn and his second has agreed. The Chair will rule that the proposed amendment is withdrawn.

Delegate Nothing.

DELEGATE NOTHING: Mr. President, Fellow Delegates, and particularly the delegates on Preamble and Bill of Rights Committee:

I note that on page 2, at the bottom of page 1 and page 2, you have created a new section by reason of deleting some language. The old language was in Section 125 that said: "No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States." As I read the old provision it was to protect people in those four categories. And now it eliminates that. And the thing that bothers me, and I presume you've probably discussed it, is that in our statutes regarding the subject of residence there are seven rules recited, one of which, the last of which, says: "The residence can be changed only by the union of act and intent." And I'm somewhat at a loss to determine why you created the new section as you did. I wonder if somebody could explain to me the reasons.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman.

Delegate Nething, it was during the discussion it was brought up that many of these things have taken place and that they were all very well protected as far as we can understand or ferret out under federal statutes. And state statutes also. I can't quote them. But we felt that a broad statement would cover primarily what we — what the other two sections actually were trying to get at.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President: I'd like to offer an amendment. I think it's at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-85 is as follows:

In line 15 following the word "months" insert ", county ninety days".

DELEGATE THOMPSON: Second.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Ladies and gentlemen:

I believe this is the first amendment I have offered. Maybe I'm getting forgetful, but there haven't been many. I'm not doing it for the purpose of taking time —

PRESIDENT WENSTROM: Delegate Rundle, may I interrupt just long enough to say the motion was seconded by Delegate Thompson.

Now you may proceed.

DELEGATE RUNDLE: Sorry. To get back, I was a little bit off a while back in jumping inside the county. Now probably this is the time to mention that. But it is still true that we can vote within a county in different precincts each election. You could hop around. And as long as it's been cut down in the state six months, thirty days remains in the precinct, I think the county requirements should remain in there. And I would point out that this doesn't affect reorganized school districts because you can always vote in your school district. For instance, my school district has parts of one, two, three counties. So you have to go to a different place to vote in the school election anyway. You're always eligible there if you live in the district. I would ask your support in this amendment.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Rundle.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'm sure Mr. Rundle will welcome my support as an attorney. And I again want to urge upon this convention that one of the most important things in voting in a small community or any community in the State of North Dakota is some sentiments of permanency as far as residency is concerned and the acceptance of responsibility. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lamb.

DELEGATE LAMB: Mr. President: I think we have spent a lot of time talking about permanency. But the question is how about these people who come in here, buy a home, and still have to wait the six months, or in this case ninety days, and plan on permanency? You're disenfranchising them just as well.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: The question of residency as applied here is only one way in which people have been disenfranchised. We used to have a law in North Dakota that prohibited students from getting into our colleges and universities on in-state resident's fee until they had been here a year. And before the last session a family moved into my town, he was a minister from Minnesota, and his son wanted to study horticulture. And he thought, "How natural. Be right near NDSU." So

he went to the University and applied. And he was told at the Registrar's office that he couldn't get in-state tuition because he hadn't been here long enough. And they suggested that under the tri-college arrangement he go over to Moorhead State and take his freshman courses over there. So he went to Moorhead State and they said, "Where do you live?" He said, "I live in Casselton." They said, "I'm sorry, you are not a resident. You have to pay out-of-state residency tuition." And it was all very legal. He was a man without a state. And we do this time after time, after time, after time with people in one way after another. And for a state like North Dakota that welcomes people who come here to live, we must provide every kind of consideration that is in any way legitimate. And this certainly is a legitimate consideration.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman: Listening to the conversation here about voting rights, I wonder how many people stop to think about the amount of money spent in the State of North Dakota, the federal government, on the various federal projects we've had from the time of the Garrison Diversion, Garrison Dam, up through the Air Bases, the missile sites, now the Garrison Diversion going across North Dakota. I just wonder how many people would tell these people that come in who work on these projects to send their money back to Oklahoma or Tennessee, to spend it there and not in North Dakota, or bring their groceries from Tennessee up here to eat.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Rundle. Any further discussion.

Hearing none, those that are in favor of adopting the amendment will vote "yes," those opposed will vote "no." As many as are in favor of adopting the amendment vote "aye;" those opposed "no." The Chair is in doubt. We will open the — the Clerk will open the key. Now those that favor adopting the amendment will vote "yes," and those opposed will vote "no." The Clerk will open the key, you will record your choice.

Has every delegate indicated his preference? Does any delegate wish to change his vote? The vote is closed.

The vote indicates 51 "ayes," 44 "nays," three delegates absent and not voting. The amendment has been adopted.

Delegate Lander.

DELEGATE LANDER: Mr. President: I would like to go back to Section 4 and ask for a further explanation as to what we are trying to accomplish as it was asked by Delegate Nething. I did not understand the question. I'm sorry. I would like to ask someone to explain to me, please, what are we trying to do?

PRESIDENT WENSTROM: In Section 4.

DELEGATE DANIELS: Mr. President.

PRESIDENT WENSTROM: Delegate Daniels.

DELEGATE DANIELS: I'm not sure that I can explain it either. But I do understand it. I think what we're saying in this — and I'm not sure if this is quite what the question is about — but what we're trying to say here is just because someone has gone out of the state on election day does not make him lose his residency. Now this doesn't mean just election day, naturally, but if he has gone out of the state for some reason he doesn't lose his residency because of this. It goes just a little bit farther than the old section which stated that his absence on business of the United States or this state or military or naval service. And because this elector was not in state to vote for some reason or other, whether it was moving away for a very short time or whatever, he does not lose his residency.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President: I, too, am confused by Section 4. I've read it several times, and each time I read it I'm a little more confused. I wonder, we worked hard on the rest of this section, now if it wouldn't be a good idea to divide the issue. I'd hate to have to vote "no." But I'd hate to vote "yes" on the whole package not understanding what Section 4 says. Therefore, Mr. President, I move we divide the vote to vote separately on Section 4.

PRESIDENT WENSTROM: It has been requested that we vote separately on Section 4. The request is granted.

DELEGATE TRENBEATH: Now, Mr. President —

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: — I noticed — I don't recall that anybody explained the reason in Section 3. I thought that the general election was — this should be pretty well stabilized and established. And I just wonder if there's anybody in the committee can answer why it is left up to the legislative assembly. I for one certainly wasn't satisfied completely with what the Legislature did in moving our primary election around. I just wonder what the discussion of the committee was and the reason for their not stabilizing this general election date.

DELEGATE O'TOOLE: Mr. President.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: I'll try to answer Delegate Trenbeath's question because I think I know a little bit more about what he wants to know than I did on the other one. I was unsure of what the question was.

On this section it was similar to the Section 124 of the 1889 Constitution except that it's considerably shortened in providing the general elections in this state shall be held biennially as established by law. Now the 1889 Constitution went into much greater detail as to where and when the elections should be held. We did not feel that this was necessary. We felt that should times change, and which they do quite frequently, that the Legislature should be able to have the right to change that. We're perfectly willing — in fact, in one of our earlier drafts we left it that way — but we felt that it was extraneous material.

And the second half of the section, Section 124, it was — it was felt — the committee felt again it was extraneous and that it wasn't necessary.

Now I — I'm sorry, but I think that the Legislature, we've given them considerably more power recently, and I think they can establish when we have elections and change with the times as need be.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I share Delegate Trenbeath's concern on this. And I have an amendment prepared at the desk to put back in the language that existed in the 1889 Constitution at the desk. I'd move that at this time the desk read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-85 is as follows:

In line 24, page 1, delete "as established by law." and insert in lieu thereof the following: "On the first Tuesday after the first Monday in November of each even-numbered year."

DELEGATE TRENBEATH: Second the motion.

PRESIDENT WENSTROM: May I have a second? Delegate Trenbeath.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: The date of the elections in this country are about as fixed as the Ten Commandments, if they are fixed. And there is just no possibility that they are ever going to change this day. And I just feel that a constitution ought to say specifically, when there is no chance of ever changing it for the next hundred years, that we ought to state specifically what we mean.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I don't think the Ten Commandments are that absolute in this case. Because if you recall there are several other states that have elections on odd-numbered years. And even though in the last few years we seem to be having elections on both odd and even-numbered years, I think that we may have this possibility where at some time in the future, the Legislature should have this opportunity to put the general election on an even-numbered year.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'm a little shocked at the boys from the Bible and poetry bill, they are writing so much legislation in the Constitution.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Omdahl. Any further discussion?

Hearing none, as many as are in favor of adopting the motion of the amendment — the amendment, will say "aye;" those opposed say "no." Let's do it over. As many as are in favor of adopting the amendment will say "aye;" those opposed say "no." The Chair will not make a commitment. We will use the key. Those that are in favor of adopting the amendment will vote "aye;" those opposed will vote "no." The key will be opened, and you will indicate your preference.

Has every delegate indicated his preference? Any delegate wish to change? The vote is closed.

Roll call indicates that there were 45 "ayes," there were 49 "nays," there were four delegates absent. The amendment failed.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I would like to inquire from any member of the committee why Section 126 is being recommended for repeal. It seems to me that this section may be more useful in the current situation than it was in 1889.

PRESIDENT WENSTROM: Does a member of the committee wish to answer Delegate Dobson's inquiry?

Delegate Lamb.

DELEGATE LAMB: I think that the reasoning behind the committee's action in regard to this is that first of all this person who is stationed here in the military service would then have to declare his residency in North Dakota. And most of the present members of the military service that are stationed in this state do not wish to declare their residency in North Dakota primarily because they want to be residents in another state for the purpose of getting a cheaper automobile license and other reasons.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I am not familiar, of course, with the work of the committee. I'm trying to find — I was trying to find someplace in the proposal, anything dealing with secret ballots in Section 129 which is being repealed.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President: That's in another proposal that will be heard later.

PRESIDENT WENSTROM: Further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burke? Burbidge.

CHIEF CLERK GILBREATH: Burbidge.

DELEGATE BURBIDGE: We often are asked a question of why we need a new Constitution and why we should take this one. For your information, I'm going to read Section 128 which is being repealed here:

"Any woman having the qualifications enumerated in Section 121 of this article as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote for all school officers, and upon all questions pertaining solely to school matters, and be eligible to any school office."

Should anyone ask you about updating the Constitution, I think perhaps you have an answer. Should be fifty percent of the votes.

Now on Section 4, many questions have been asked about this, and perhaps I can shed a bit of light on it. You notice in Section 2 it says: "Provided that where a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moved until he establishes residence

in the precinct to which he moved." Essentially, we are giving the same rights then to a person who is moving outside of the state. And until he establishes residency it will be the same as if he moved within the state. So I think this perhaps is additional explanation.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

That's what bothers me. Because that's what the law is currently. Until someone acquires a new residence he retains his old. When somebody moves out, until he has a new one acquired, why he keeps it. Now this language — I suppose we could save it until we get to Section 4 — but the language that we had protected the people from the four classifications there that left the state by reasons of absence on business of the United States, on business of the state, the military service or in the naval service. That was the whole intent of that particular article was to protect those four classifications of people. Now Section 4, the matter of residency is not only important in voting, it's also important in many other things such as acquiring a fishing license or acquiring a right to run for office, or a marriage license, or obtaining a divorce. All of these things are — there's much case law on the subject as to what's necessary in residence. There's two things: You've got to have an intent to have a new residence, and it must be accompanied by an act to have a new residence. This is what our case law says, and this is what the Attorney General has ruled in many, many isolated occasions and whenever they get to court. Therefore, I can't at this point, see why we are keeping any part of 125 or deleting any part of it. If we are going to do anything, let's keep it all.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I see no problem with Section 4. All we're saying is the mere absence from the state. In other words, that by itself does not disenfranchise the elector.

Now the old Constitution gave several reasons; business of the United States, this state, and military and naval service. We are broadening it. You may go out on business other than the United States. But we are saying someone can leave the state without the intention of fixing his residence somewhere will not lose his residency here simply by reason of his absence. If he elects to buy a fishing license in Minnesota, then he'll lose his residency. If he votes in the other state, he will lose his residency. We are simply saying that mere absence is not intent to make residence elsewhere and will not deprive him of his residency in North Dakota. And for a state that's concerned about people I think it's a fair provision.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: I would urge a "no" vote on Section 4. And as Delegate Nething said, simply on the basis of this comparison I have a question as to the amount of revenue the state or the separate states may lose on the basis of taxation. If I attend to personal items in the State of South Dakota for the next year, that state having no current income tax, I therefore pay no tax to the State of North Dakota taxwise, yet I would then come back and vote in North Dakota. It doesn't quite add up at this point and time. And for that reason I urge a "no" vote until a better explanation is given.

PRESIDENT WENSTROM: Any further discussion?

Delegate Haugen.

DELEGATE HAUGEN: Mr. President: Mrs. Hendrickson has found for me a section of the proposal that provides secrecy in voting; 1-83. And I'm very serious. I wonder why we need 1-85 in lieu of the language in 1-83 which says that: "The legislature shall by law define residency for voting . . ." And we are here — here we have said the Legislature shall define residency, and in 1-85 we're setting up the residency. I think there's a basic conflict.

I did not vote for the amendments limiting the right to vote. I think it's a mistake in this Constitution. I actually, and I cannot see, as I actually can see no need for 1-85 if we pass 1-83.

PRESIDENT WENSTROM: Any further discussion?

Hearing no further discussion, I understand that Delegate Hoghaug has requested that we divide the question and that we vote on Section 4 separately. Right?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I believe that there was an amendment adopted to — yes — Committee Proposal 1-85 some time ago. I am not — or maybe two amendments. I am not aware that the motion was ever made that the rules be suspended and it be considered properly re-engrossed.

PRESIDENT WENSTROM: There has not been.

DELEGATE SAUGSTAD: Well, then to speed matters up, then I at this point, I shall move that the rules be suspended and that Committee Proposal 1-85 be deemed properly re-engrossed so that it may be placed at the head of the calendar.

PRESIDENT WENSTROM: Delegate Saugstad moves that the rules be suspended, that Delegate Proposal No. 1-85 be deemed properly re-engrossed, that it be placed on the calendar for first passage as amended.

Delegate Rundle.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: The motion is seconded by Delegate Rundle. Any discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think Delegate Haugen has a good point. And it would solve the problem of residency that the Legislature could adjust it as the Supreme Court ruled on the matter. And I don't think we need any of 1-85 except for the repealers.

PRESIDENT WENSTROM: The question before the Convention is on the motion as offered by Delegate Saugstad.

Do you have a question?

DELEGATE SAUGSTAD: I would like to speak on the motion. That I would ask that the assembly approve the motion so that we can have it on the calendar, and then I believe that a motion would be in order to move it down so that we could act on 83 prior to acting on 1-85.

PRESIDENT WENSTROM: Are you ready for the question? The question is on the motion that the rules be suspended, that Delegate — Committee Proposal No. 1-85 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it. And the proposal is now before you for passage.

DELEGATE SAUGSTAD: Now I do not recall specifically where Committee Proposal 1-83 is on the calendar, but I would now move at this time that Committee Proposal 1-85 be moved to a point just below — immediately below Committee Proposal 1-83.

PRESIDENT WENSTROM: Delegate Saugstad moves that Committee Proposal No. 1-85 be now moved to a position on the calendar directly below Committee Proposal No. 1-83. Do I have a second?

DELEGATE HAUGEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Haugen.

Is there any discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Might I suggest we move 1-83 up ahead of 1-85?

DELEGATE SAUGSTAD: That was going to be my next motion.

PRESIDENT WENSTROM: You've heard the motion.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I would — I would support the motion of Delegate Saugstad, but I would hope we do not have a motion to move 1-83 back up. Because I think that the committee might want to take some time to look at leaving it out.

PRESIDENT WENSTROM: The question before the Convention is on the motion offered by Delegate Saugstad that 1-85 be placed immediately below 1-83.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and 85 — 1-85 is moved down.

DELEGATE SAUGSTAD: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Now I would certainly defer to the Chairman of the Committee on Preamble, Bill of Rights and Suffrage as to whether or not we should move Committee Proposal 1-83 and Committee Proposal 1-85 to the head of the calendar. I will offer that as a motion, but only if it meets with the approval of the Chairman of that committee. All right. Then I so move. I now move that Committee Proposal 1-83 and 1-85 be moved to the head of the calendar.

PRESIDENT WENSTROM: It's been moved that Committee Proposal No. 1-83 and 1-85 be placed at the head of the calendar. Do I have a second?

DELEGATE BINEK: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Binek. Any discussion?

Hearing none, as many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it, and the two proposals, 1-83 being first — 1-83 and then 1-85 at the head of the calendar.

Next for consideration is Committee Proposal No. 1-83.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-83 proposed by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 129 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to duties of the legislature with regard to elections.

"SECTION 1. REPEAL.) Section 129 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The legislature shall by law define residency for voting, insure secrecy in voting, provide for absentee voting, the administration of elections and the nomination of candidates."

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Section 1-83 deals with the provisions that the Legislature can establish the methods of voting, and includes absentee voting and things of this nature. And we discussed prior 1-85 which had to do with residency and various other measures regarding the elective franchise.

I think one of the things you should consider when you're discussing this is when you're talking about residency for voting it does not necessarily mean that if Section 1-83 is passed that you can eliminate Section 1-85 except for the repealers. Because there is, as you recall, Section 3 which sets up: "The general election of the state shall be held biennially as established by law." So this is relatively a different proposal altogether. The residency for voting, the Legislature will set that up; what it requires to be a resident. And at that point when you are — fulfill the obligations of what it is to be a resident, then you have to be there six months, ninety days and thirty days. Insures secrecy in voting so that everybody has the opportunity of a secret ballot.

The Legislature can also establish what an absentee ballot is and the method in which absentee ballots are to be handled and the administration of elections. They will set up the laws for how the election is to be handled, and also how the nomination of candidates is to be placed on the primary ballot.

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question before the Convention is on the first passage of Committee Proposal No. 1-83.

Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, it seems to me that we could amend on 1-83 which would take care of 1-85 if we wanted to do it. We could, after the "voting" or after "the" on line 11 put the word "the holding and administration of elections" and then I think we would have everything after — or in that that we would need and we could get rid of 1-85.

Since we do have these here together, I think it might be in order to discuss them both together. My colleague, Delegate Nething, stated the law a little wrong, I think, on this residence business. The law previously and the interpretation of the Supreme Court of this state has been to the effect that you do hold your residence in the State of North Dakota as long as you stay in the state until you establish your residence or your voting right in the new place where you move. But our Supreme Court has held that if you do leave the State of North Dakota even for one day with the intent to establish a residence elsewhere you lose your voting right. And that affects that Section 4 that we have, and it would seem to me that the Legislature could do a better job with a little more time to give study to this if we did leave all of these problems to them and put the amendment on 1-83 which would take care of everything that is covered in 1-85.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I just can't quite go along on the fact that the last four letters on line 10 — or the last four words on line 10 which say "define residency for voting" would not be in direct conflict with 1-85, Section 2. And if the delegates want what we have been discussing the last hour under Section 2 of 1-85, a passage of 1-83 would definitely repeal that thinking. And I don't think it means something altogether different if I read that the way it looks. Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I don't believe these two are necessarily in conflict. 1-83 is for the most part establishing procedures; 1-85 is the rights of voters. It would seem to me that the rights of voters would be a constitutional right. It should not be materially changed by the Legislature. But that the procedure for determining this sort of thing would, of course, be a legislative matter. So I don't think they are necessarily in conflict.

PRESIDENT WENSTROM: Further discussion?

DELEGATE KESSEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I just ask the delegates to read that just in good common, ordinary English and see if you define the residency for voting if you're not knocking out the next section on 1-85. There can hardly be any other interpretation.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Well, Mr. President, I sort of hesitate to pursue this further. But I do believe that there is a basic conflict. And the questions that have been raised here should have a better answer, a better determination. I would certainly hope that we can defer this action — action on this until we do understand just what we are doing. I would — I would like to move that it be re-referred to the committee. But I don't suppose the committee wants it. But I think we should take another look at it. I would move that it be re-referred to the committee, both of them, yes, 1-83 and 1-85.

DELEGATE KELSCH: Second.

DELEGATE HERNETT: Second.

PRESIDENT WENSTROM: It has been moved by Delegate Haugen, and a second by Delegate Hernet, that Committee Proposals No. 1-83 and 1-85 be re-referred to the committee of origination. Is there any discussion?

Hearing no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and the two proposals will go back to the Committee on Preamble, Bill of Rights and Suffrage.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: Now when we give consideration to

these proposals that have been re-referred to us I would appreciate it that if those who do have some confusion in their minds as to what is meant here would appear before the committee, and we'd be glad to discuss it with them. Sometimes I find that what appears crystal clear to me is vague to others, and vice versa.

PRESIDENT WENSTROM: Next for discussion — next for consideration is Committee Proposal No. 1-82.

DELEGATE THOMPSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: May I ask the Convention's permission to have Delegate Proposal 2-69 considered at the same time?

PRESIDENT WENSTROM: 2-59, Delegate Thompson?

DELEGATE THOMPSON: 69.

PRESIDENT WENSTROM: 69? I don't believe, Delegate Thompson, that that 2-69 is on the calendar, is it?

DELEGATE THOMPSON: It was on the calendar.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Mr. President, if I remember Mr. Lander's motion at the time I asked that it be considered at the same time. And I believe he so moved. But I might be wrong. That's some days ago.

PRESIDENT WENSTROM: The only question I have is I was only checking to see whose requests we are holding at the desk. We just don't want to — question, Delegate Maxwell.

DELEGATE MAXWELL: We moved it out of committee to be held at the desk.

PRESIDENT WENSTROM: Until such time as the committee wished to consider it. So if the committee doesn't object, we will consider the question. Delegate Maxwell is on 69, 2-69 and 1-82. Delegate Thompson has requested that they both be considered at the same time.

DELEGATE MAXWELL: What would you like me to do, Mr. President?

PRESIDENT WENSTROM: Well, you have no objection? If you have no objection, I'm sure that's what we can do.

DELEGATE MAXWELL: No, certainly not. No objection. Did you wish me to move to have them —

PRESIDENT WENSTROM: No, you need not move. My only question is if there is objection to it.

Now, Delegate Thompson, is there some particular phase of 1 — or 2-69 that you wish to consider at the same time?

DELEGATE THOMPSON: Well, very simply I want the Convention to adopt the Delegate Proposal and defeat the Committee Proposal 1-82.

PRESIDENT WENSTROM: Well, Delegate Thompson, I'm afraid that we can't do that and that the Convention body has never actually received this. This is in safe-keeping with us. The only way we could do it would be to adopt it on the committee report and then suspend the rules and then have it before us.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: On page 175 of the Journal, about halfway down, the following motion was made: "Delegate Kelsch moved that the Committee Report on Delegate Proposal 2-69 be laid over until such time as the Committee Proposal dealing with the same subject be acted upon, which motion prevailed."

PRESIDENT WENSTROM: Delegate Burbidge, what page?

DELEGATE BURBIDGE: 175.

PRESIDENT WENSTROM: There seems to be a mis-interpretation or a difference of interpretation of what this motion at the time we received 2 — was it 69 — 2-69 at the desk. And our interpretation of the motion was that 2-69 was to be held at the desk until such time as Delegate Proposal No. 1-82 was acted upon. And then in the event 1-82 was passed, there would be no further need for Delegate Proposal 2-69 and at that time this would be indefinitely postponed or it would be asked to be withdrawn. Now that was the interpretation of the motion at the desk. If we misinterpreted the intention, then we have to stand to be corrected.

Delegate Thompson.

DELEGATE THOMPSON: If I understand you correctly, Mr. President, I agree with your interpretation.

PRESIDENT WENSTROM: Well, then I think the procedure then, Delegate Thompson, that we'd have to follow would be to continue to act on Delegate — or Committee Proposal No. 1-82, and then in the event that this is adopted or if it is defeated then I presume we would have to go back and take your Proposal.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Could I suggest to Delegate Thompson if he wishes consideration of his proposal he could offer it as an amendment now to 1-82?

PRESIDENT WENSTROM: 1-82 is before the Convention. And if he wishes to amend it, why he certainly can amend it.

DELEGATE THOMPSON: Thank you for the help.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I now move to amend 1-82 and substitute therefor 2-69.

PRESIDENT WENSTROM: Delegate Thompson moves an amendment to Committee Proposal No. 1-82.

CHIEF CLERK GILBREATH: Want me to read it?

PRESIDENT WENSTROM: Well, I wonder, do you just want to substitute or strike everything after — what is your amendment?

DELEGATE THOMPSON: The amendment is just as it reads, Mr. President. I set out the fact that Section 27 would be repealed and that a new section would be established.

PRESIDENT WENSTROM: Read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-82.

Delete lines 1 through 13, inclusive, and insert in lieu thereof the following:

“That section 127 of the constitution of the state of North Dakota is hereby repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to voting disqualifications.

“SECTION 1. REPEAL.) Section 127 of the constitution of the state of North Dakota is hereby repealed.

“SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

“No person who is incompetent, or insane shall be qualified to vote in any election; nor shall any person convicted of a felony unless restored to civil rights.”

PRESIDENT WENSTROM: Now may I have a second to the motion — second to the amendment?

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: Second by Delegate Hendrickson.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: If the delegates would refer to both Section 127 and the Constitution, you will find that there are a number of words deleted in my amendment, such as “guardianship,” “non compos mentis” and then you jump down to again “the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting or refusing to vote at any general election.”

I violently disagreed with Committee Proposal No. 1-82 during its inception and creation. I feel that if our founding fathers back when this original Constitution was established could interpret the word “incompetent” “insane”, we certainly ought to be able to do so now. And if it is indicated that we can't, apparently then all of our sciences have taken a step backward.

Secondly, I'm very firm in my belief that people who have been convicted of felonies, even though they are going through a method or a process of rehabilitation,

should bear this one cross because, as I said before, it's not only a right but it is a privilege.

If you will look at the committee proposal you will see that even though I have been sentenced to life imprisonment and was released after, say, ten years, the minute I walked out I would be entitled to vote, I'd be a qualified elector, and be entitled to hold office without my civil rights being restored. Now what I'm asking is what is presently on the books now and the present way civil rights are restored and all it takes is that an application be made by the criminal that he be somewhat investigated, and that a decision be made as to whether or not this person has now rehabilitated himself enough so that he is capable of being returned to civil life and capable of becoming a member of our society. And that is the reason for my amendment to the committee proposal.

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman: In the first place, I disagree very violently with Delegate Thompson that — that it is a privilege to vote. I think it's a duty. And in our Declaration of Independence it states: "Governments are instituted among men deriving their just powers from the consent of the governed." And that is a mandate to the people — for the people to vote.

And I would try to explain some of the thinking of the committee when they drew up this voter disqualification. And I'm talking about Committee Proposal No. 1-82. The committee's proposal mandates the Legislature to exclude the right of voting from certain convicted criminals. This section is different from Section 127 and Article V of the 1889 Constitution. This concept does not hold for those people who wish to hold office. The committee felt that those qualifications of disqualifications would be better handled in other articles dealing with the offices. However, unlike the 1889 Constitution, the committee's proposal also contains self-executing language which implies the right to vote shall be restored automatically upon the completion of the confinement.

It is true that the perpetrators of certain crimes have by their criminal acts exhibited disrespect for the law, and a lack of responsibility which should become a right to vote. In addition, which incarcerated they are potentially susceptible to undue influences in coercion, and their physical confinement itself creates difficult problems if they were permitted to vote.

I like to think that we are working on rehabilitation in helping these people. I like to feel that we are encouraging these people to fight in the streets — or right in the ballot box and not in the streets; just on the floors of conventions and places like that. And we want them in the ballot box, and we want them to vote as soon as they can.

Restoration of this right is subject to petition at the current time. Restoration of the right to vote is a very complicated, cumbersome procedure. The committee found that in almost all cases, or a great percentage of cases discharged from parole, petitions for restoration of rights are granted. However, in many instances such positions — petitions were never filed. These people may unwittingly vote or even run or get elected to office without formally having any restoration. And this has occurred periodically to our knowledge. At the present time they have to make an affidavit to the Pardon Board. The Pardon Board then has — they have to have three other affidavits of people in the community, they have to have an investigation by a parole agent, the Pardon Board sits in council and reviews the matters and then restores their rights.

The committee addressed itself to the irregularity, of having — of voting when they had not been granted this right. It took notice of the opinions of the criminologists that restoration of rights was extremely important to the rehabilitation of criminals in the belief that once a person has completed his sentence he has paid in full his debt to society. It also took notice of the recommendations of the Model Penal Code which withdraws the right only so long as a person is committed under a sentence of imprisonment and the uniform active status of convicted persons which withdraws the right during a term of sentence but allows voting during the period of suspension of the sentence and parole.

Based on the information before it, the committee felt that insofar as the restoration of rights is concerned, the effective date should be the completion of con-

finement. And at such time restoration should be automatic. This would preclude the Legislature from providing any earlier restorations or allowing voting while in confinement. The committee considered but rejected as inadvisable any constitutional language excluding the right of voting by persons who are mentally incapacitated.

Now let — let me present to you some facts. One out of seven people in the United States at the present time has been under some shape of mental illness. This affects one out of every three families. I can see in our old Constitution a very ambiguous word with varying interpretations, it involves an area in which the law and medicine overlap. Insanity is likewise another Latin word meaning “non sanus” and it means mad, foolish or wild. Now that could include many of us at times.

North Dakota law has specifically avoided defining the term “incompetency”. But the term is used occasionally in the Century Code. In 29-20-02 incompetency to stand trial in North Dakota is defined as a person who “is unable to understand the proceedings against him or to assist in his defense.” While using the term incompetency, the Code in 14-01-03 uses the synonym “incapacity,” which it states that an insane person cannot contract. “After his incapacity has been determined judicially upon application for the appointment of a guardian, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right until his restoration to capacity is determined judicially.”

It seems that the appointment of a guardian is tantamount to a declaration of incompetency or incapacity. For guardianship is closely related to incompetency. The North Dakota Constitution, the old Constitution, refers to it in Section 3, Article IV. The North Dakota Century Code in 30-10-02 defines a guardian: “The county court may appoint a guardian, if the jurisdictional facts exist, of the person or estate, or both of a person residing in this state who is: (1) A minor who has no guardian legally appointed by will or deed; (2) an habitual drunkard who is incompetent to manage his own property — here it’s using that word “incompetent again — (3) a spendthrift; or (4) a person who is of unsound mind, or from any cause mentally or otherwise incompetent to manage his own property.”

Now in getting declarations of incompetency a petition has to be filed by a relative or person asking the court for appointment of a guardian. And such petitions must have jurisdictional facts and circumstances making the appointment of a guardian necessary. Then there’s a citation that’s served, and then there’s a big hearing. And at this time it’s found that — the court has found it necessary that a guardian be appointed.

It has been evident from reports that many physicians and lawyers believe that commitment to the State Hospital is the same as declaration of incompetency and necessitates the appointment of a guardian. This impression is completely erroneous. North Dakota State Law 25-03-20 states: It preserves all civil rights of a hospital patient unless adjudicated — we are going back to “incompetent” again — incompetent by the court.

So in coming to some of these conclusions and looking over the things, it seems that you’re placing a nondeterminable, unanswerable burden on the physicians and the psychiatrists. The test — and other states have seemed to use it — would probably be about the same as that of the validity of a will on the grounds that the testator is not of sound mind when it is executed. And on that, if he knew enough to understand the nature of his acts, and if he understood what he was doing, that was probably sufficient.

Now I have no question in my mind that there are certain people that are not competent to vote. How to define it is a problem that I’m presenting to you. And I don’t think it has been presented in Delegate Proposal 2-69, nor has it been proposed in the old Constitution, for I couldn’t find any case law relating to that.

Now the burden of proof is on the person who would declare another person incompetent. He must be shown that the subject has a mental disorder, that the mental disorder must be the cause of his impairment of judgment, and it must be shown that the defect in judgment causes specific incapacity in reference to the question — the matter in question.

Now what I say to you, ladies and gentlemen, is that if we leave that type of

wording in there without any definitions anyplace else, we're asking for trouble. We're asking for the elected judges to make all sorts of decisions and run the elections to their own way by saying a person is a spendthrift, he's incompetent for some reason or another. Incompetent for what? There's many different — I'm incompetent to walk if I have my leg in a cast, a broken leg.

I say to you that the very act of voting and giving your name as you walk into the voting booth and tell the individual who you are, where you are from, that falls in the first criterion under the validity of wills. Secondly, if you can go into the voting booth with the paper, read the paper, understand what it is and put your mark in that square without getting it kicked out, I say that you have passed the laws of defining your competency to vote.

Further, in going into the election machines, into the booths, these are very complicated and very difficult, and they have taken many hours of teaching. If the individual cannot do this he certainly is incompetent. And you're asking me as a psychiatrist and a physician some day maybe to say whether a person is incompetent to vote or not or you're going to leave it up to some vagary so that anybody can say that there's an incompetency. I think we can run around hunting witches if we want to. That's all. Thank you.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lamb.

DELEGATE LAMB: Mr. President: I'm going to leave the question of incompetency, insanity to Delegate O'Toole. But I think one issue in Delegate Proposal 2-69 that should be covered — two issues, in fact — that should be covered more thoroughly is the point of the restoration of the voting right of the convicted felon. We had in testimony before the committee the state parole officer who testified that there was an individual who had been convicted to the North Dakota Penitentiary — sentenced to the North Dakota Penitentiary back in the days of prohibition for doing something that I don't understand what it is, but anyway it was revolving around prohibition, and recently he was appointed by the Governor of Florida to a position in Florida. He could not take that position because of the fact that his civil rights were not restored in North Dakota. And they were not automatically restored upon the completion of his sentence. And so they had to go through this long and complicated process before Florida could have this fellow serve them, this former citizen of North Dakota. And this is the same thing that happens to many of the convicted felons in the state now, but unfortunately very few of the election officials know that these people are convicted felons. So they go right on merrily voting. What we are doing in committee proposal — the Committee Proposal 1-82 is saying that upon the completion of their sentence these people then be eligible to vote.

There is another point in Committee Proposal 1-82 that is not covered in Delegate Proposal 2-69; and that is that if an individual is convicted of any crime and is serving in a jail or penitentiary in this state he cannot vote at that time. And under the present Constitution, and under Delegate Proposal 2-69, all the people at the State Farm, everybody that is in the county jail for thirty days or more, can vote. They have the opportunity to vote. And what we are saying here is that if you have been convicted of this crime you cannot vote while you are in jail. And so this is why — one of the reasons why I think that we should defeat the amendment and pass Committee Proposal 1-82.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President: I would like to speak to Delegate Thompson's proposal. I am in favor of half of it, and I'm opposed to half of it. And if it's proper, I would like to divide the question. Is that possible at this time?

PRESIDENT WENSTROM: I don't have the proposal before me. But one of the rules of dividing the question is that the section which you are taking out must make sense. It has to be something that can be interpreted.

DELEGATE DEVINE: The point that I want to divide the question on is line 11 at the semicolon. The one section would read: "No person who is incompetent or insane shall be qualified to vote at any election." The second section, which I feel is separate: "Nor shall any person convicted of a felony, unless restored to civil rights."

PRESIDENT WENSTROM: You would like in line 11 to take the "nor shall any person convicted of a felony, unless restored to civil rights," you would like to have that out of there?

DELEGATE DEVINE: That's correct.

PRESIDENT WENSTROM: I'm afraid — I'm afraid that that does not leave a section that would be intelligible by itself; and, therefore, I would have to rule that it could not be separated. Excuse me one moment, Delegate Devine.

Stan, I'm afraid you're going to have to take over.

VICE PRESIDENT SAUGSTAD: Delegate Devine, I believe you have the floor.

DELEGATE DEVINE: Mr. President: I would like to move an amendment to the amendment that's before the Convention. On line 11 delete the semicolon following the word "election". In lieu thereof insert a period. Delete the remainder of line 11 and all of line 12.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE HENDRICKSON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Hendrickson.

DELEGATE DEVINE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Devine.

DELEGATE DEVINE: Speaking to the amendment to the amendment as I proposed it, I feel that these are two distinct and separate questions and I would like them further to be limited in this way. Personally, I feel that the amendment as it is before the Convention now is a good amendment. Section 127 of the present Constitution provides: "No person who is under guardianship, non compos mentis, or insane, shall be qualified to vote in any election . . ."

Section 16-01-04 of the North Dakota Century Code essentially provides the same thing.

I would eventually prefer to stay with the existing language, but I thought we would run into too much flak on the Latin term "non compos mentis". I feel that the provision is good. We heard the long discussion on this by Delegate O'Toole and why it shouldn't be there. In Nelson County, North Dakota — and this is for the purpose of illustration — we have four rest homes. Anywhere from 25 to 50 percent of the residents of these homes would be under guardianship, non compos mentis, or insane. A fair percentage of these people are former inmates of the State Hospital at Jamestown or from the school at Grafton.

Now Delegate O'Toole suggested that if these people can go and tell their name and make a mark on paper they should be entitled to vote. We don't have voting machines in Nelson County.

However, there is another provision that sometimes is abused, and I know has been abused in the past, and that's the absent voter ballot. Somebody loads up with these things, takes them around, gets the signatures and proceeds to help them vote. Now whether this is right or wrong, it's done. I know what the provision is on an absent voter; they can get around this thing without too much difficulty.

So I suggest that a large number of these people, 25, 50 percent, are not competent to vote. But by leaving this section in we are going to discourage any organized effort to get out the vote of this type of person.

Now I don't believe anybody has been prosecuted or I'm certain that there's no Supreme Court cases on individual efforts, but if this section is retained in the constitution I am convinced that it will discourage the organized effort. And that's the purpose of the amendment.

VICE PRESIDENT SAUGSTAD: At this time the Clerk will read the proposed amendment to the amendment.

CHIEF CLERK GILBREATH: In Section 2 of the amendment, following the words "vote at any election" delete the following: "; nor shall any person convicted of a felony, unless restored to civil rights."

DELEGATE THOMPSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: Delegate Devine yield to a question?

VICE PRESIDENT SAUGSTAD: Delegate Devine, will you yield to a question?

DELEGATE DEVINE: Yes, Mr. President.

DELEGATE THOMPSON: Did you indicate then that you want to delete the rest of it, or do you want to divide the question?

DELEGATE DEVINE: I am in effect dividing the question. They wouldn't let me do it the other way. To vote on these issues separately I had to amend.

DELEGATE THOMPSON: And of course you must understand then we have reached the point now in the rules as I understand it that there is no possible way to put the rest of it back in if your amendment passes. There can be no committee proposals or no delegate proposals at this point.

VICE PRESIDENT SAUGSTAD: Delegate Thompson, I believe that you are getting slightly out of order. The first proposition is that we must vote on Delegate Devine's amendment to your amendment. Following either the adoption or the rejection of that amendment, then it is open to further amendment.

DELEGATE DEVINE: Thank you, Mr. President.

VICE PRESIDENT SAUGSTAD: Is there any further discussion? All right. The question now is on the adoption of Delegate Devine's amendment to the original amendment. All in favor signify by saying "aye," opposed "no." The Chair will rule that the "noes" prevailed, and that the motion loses.

So that now we are back on the motion, the original motion, of Delegate Thompson.

DELEGATE THOMPSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: Just so there isn't any misconception in the minds of the delegates that have been listening, if you look at Committee Proposal No. 1-82 it does not say "completion of sentence," it indicates "release from incarceration". And as I tried to indicate through my original proposal, I can still have ninety years left of my sentence, the minute I walk out of jail my civil rights would be restored. And I don't think that's anywhere near reasonable.

DELEGATE O'TOOLE: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman: In this day and age in the prisons we've been fighting a tough battle. We have to be very rigid in many ways, and we want to be. We want to rehabilitate these people. And we want to have them developed. But we've got to make them some promises to help them look forward to something. And if they have nothing to look forward to, they have no reason for rehabilitation. And we're just giving them one little area of voting, which really was their right in the first place. And if you remember the reasons for imprisonment and punishment, it was because of punishment, detention, and to rectify what is done wrong. How can we promise people in a prison that they are going to have something to look forward to without some complicated mess and going to all the people that have put them in there in the first place?

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

We are now on the main motion of Delegate Thompson that Delegate Proposal 2-69 — in essence what it amounts to is that the material in Delegate Proposal 2-69 be substituted for that in Committee Proposal 1-82.

All those in favor signify by saying "aye," opposed "no." The Chair rules that the "ayes" have it unless a division is called for.

All right. Division is granted. Now you're voting on the main motion. If you vote "aye" you're voting for Delegate Thompson's proposal. The board will be opened and you may signify your vote. Saugstad votes "ayes".

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed, and the Clerk will take the record.

The roll call discloses 52 "ayes," 42 "nays," four absent and not voting. Therefore, Committee Proposal 1-82 as amended has passed. The amendment has been adopted.

Is there any further discussion?

DELEGATE SOLBERG: Question.

DELEGATE THOMPSON: I move that the rules be suspended, and that the proposal be properly re-engrossed and placed at the head of the calendar.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE SOLBERG: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Solberg.

We are now on the motion of Delegate Thompson that the rules be suspended, that Committee Proposal 1-82 be deemed properly re-engrossed and be placed on first passage. All in favor signify by saying "aye;" opposed "nay." I believe because this will require a two-thirds vote that we will open the board. If you vote "aye" you're voting to suspend the rules so that we may take an immediate vote on 1-82. The board will be opened, you may record your vote.

Has everyone voted? Saugstad votes "aye". Has everyone voted?

PRESIDENT WENSTROM: I vote "aye".

VICE PRESIDENT SAUGSTAD: Does anyone wish to change their vote? If not, the board will be closed. The Clerk will take the record.

The record shows 68 "ayes," 26 "nays," four absent and not voting. Therefore, the motion to suspend the rules has passed, and Committee Proposal 1-82 is now at the head of the calendar as amended.

DELEGATE O'TOOLE: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate O'Toole.

DELEGATE O'TOOLE: I have an amendment to this. I think it probably will be a compromise amendment. Now I don't have it completely written up right at the present time. But after "felony" on line 12 strike "unless restored to civil rights" and include "which rights shall be restored not later than upon completion of his sentence".

VICE PRESIDENT SAUGSTAD: Is there a copy of this amendment at the desk?

DELEGATE O'TOOLE: No, I haven't got that written yet.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: Speaking indirectly on this motion, I personally feel that some amendments need to be made to 1-82 now. I think it's in a mess the way it is. I have an amendment that I wanted to offer, but I don't have it written down. It will take time. I would move that we lay this over one Convention day so that Delegate O'Toole can get his amendment ready; so that I could get one ready. Because I am very unhappy to vote on 1-82 as it is before us at this time.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE KELSCH: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Kelsch. Is there any further discussion? Hearing none, then we are on the main motion of Delegate Longmire that further consideration to Committee Proposal 1-82 be held over one Convention day. All those in favor signify by saying "aye;" opposed "no." The "ayes" have it. The motion carries, and further consideration of Committee — on Committee Proposal 1-82 will be held over one Convention day.

DELEGATE THOMPSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: Apparently now that Delegate Proposal 2-69 lays up there on the desk, I would like the Convention's unanimous approval to withdraw it so I can be its pallbearer to its resting place.

VICE PRESIDENT SAUGSTAD: Delegate Thompson has requested unanimous approval to withdraw Delegate Proposal 2-69. Is there any objection?

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Delegate Berg said this afternoon that he was going to have a burial for his, but he didn't say what time. Now, Delegate Thompson, I'd like to know where and what time.

VICE PRESIDENT SAUGSTAD: Hearing no objection, Delegate Thompson's request is granted, and Delegate Proposal 2-69 is withdrawn.

We'll be on the eighth order for announcements.

DELEGATE HERNETT: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hernet.

DELEGATE HERNETT: May we be on the twelfth order?

VICE PRESIDENT SAUGSTAD: We are on the twelfth order without objection.

DELEGATE HERNETT: At this time I would like to move that Committee Proposal No. 1-100 be placed at the head of the calendar, and 1-102 immediately following it on the calendar for tomorrow's business on the tenth order.

DELEGATE NETHING: Second.

VICE PRESIDENT SAUGSTAD: All right. It has been moved by Delegate Hernet that Committee Proposals 1-100 and 1-102 be placed at the head of the calendar. Any discussion? Delegate Nething seconds the motion. Hearing none, all in favor signify by saying "aye;" opposed "no." The motion carries. Committee Proposals 1-100 and 1-102 are now at the head of the calendar.

We are now back on the eighth order. Any further announcements?

Delegate Kelsch.

DELEGATE KELSCH: I move we adjourn until nine o'clock. Ready for that?

VICE PRESIDENT SAUGSTAD: Not quite.

DELEGATE KELSCH: I move the absent members be excused.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch moves that the absent members be excused.

DELEGATE DECKER: Second.

VICE PRESIDENT SAUGSTAD: Delegate Decker seconds the motion. All in favor signify by saying "aye;" opposed "no." Motion carried.

DELEGATE SOLBERG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Solberg.

DELEGATE SOLBERG: Personal privilege please.

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE SOLBERG: May I suggest that everyone now before they go to bed read carefully the first two paragraphs of Rule 27.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Is the desk clear?

VICE PRESIDENT SAUGSTAD: The desk is clear.

DELEGATE RUNDLE: I move we adjourn until nine o'clock tomorrow morning.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE NICHOLAS: Second.

VICE PRESIDENT SAUGSTAD: Second by Nicholas.

You heard the motion. All in favor signify by saying "aye;" opposed "no." We are now adjourned.

(The Plenary Session adjourned at 10:27 P.M., Wednesday, January 26, 1972, until 9:00 A.M., Thursday, January 27, 1972.)

VOLUME XIX

(January 27, 1972)

MORNING SESSION

(The nineteenth day of the Plenary Session commenced at 9:12 A.M., Thursday, January 27, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

We'll be on the second order of business, the invocation. Our Chaplain for this morning is David P. Kremmer with the Good Shepherd Lutheran Church of Bismarck.

REV. DAVID P. KREMMER: Let us pray.

Heavenly Father, we come to You asking the gift of Your Holy Spirit and Your grace upon this body. We are constantly and painfully aware that without those gifts and guidance no woman or man present here is qualified or worthy to make the decisions they have been called upon to make. As imperfect representatives of an imperfect people, they are called upon to decide issues which require perfect judgment and much courage. We ask that judgment, wisdom and courage of You, Lord. Make us all humble as we face the tasks You have assigned to us, and keep all those in this body constantly aware that You would have them write a constitution which provides for the good of all — the poor as well as the rich, the minority as well as the majority, the uninfluential as well as the influential. This is no simple task, Father, but You are no ordinary God. You make possible the impossible, and it is for that that we call upon You. Work through our consciences, our abilities, and our faith and lead us to pray with King Solomon, "And thy servant is in the midst of thy people whom thou hast chosen, a great people, that cannot be numbered or counted for multitudes. Give thy servant therefore an understanding mind to govern thy people, that I may discern between good and evil; for who is able to govern this thy great people?" Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call. The Clerk will open the key, you will record your presence.

Has every delegate recorded his presence? The key is closed.

Roll call discloses 97 present, one absent. A quorum is declared.

I surely want to welcome Delegate Benz back to our group. When I glanced at the board here, Delegate Benz, and I saw that little square I have all lighted up why I could hardly believe what I was seeing. But we are very, very happy that you are back with us. (Applause)

We'll be on the fourth order of business.

DELEGATE RUNDLE: Mr. President: You probably note that the famous man from Fargo, Delegate Paulson, is back. I don't know that I'm glad to see him or not today, but I guess we'll get along.

PRESIDENT WENSTROM: Delegate Paulson, we are — we are happy to see you back with our, shall I say, august body. And we do hope that you do not become overly ambitious and find that you have to leave us again, because as I understand it you've been playing around with pneumonia and that's not the best thing in the world to play with. So use a little caution.

DELEGATE PAULSON: I'll do that.

PRESIDENT WENSTROM: And thank you, Delegate Rundle, for bringing it to my attention.

We will be on the fourth order of business — approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 25th day of January, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Revision and Correction of the Journal. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

We will go to the sixth order of business. Delegate Baker.

DELEGATE BAKER: May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE BAKER: Mr. President: I should like at this time to propose an amendment to Convention Rule 27, that section that deals with the rules of debate. And there is a copy of the proposed amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Constitutional Convention Rule 27.

On page 33, in the second paragraph, in the first line after the word "once" insert the following: "nor for longer than five minutes."

PRESIDENT WENSTROM: Delegate — or Clerk Roy, would you wait just long enough to let us find the place in the book? Where was the amendment again?

CHIEF CLERK GILBREATH: On page 33 in the second paragraph, in the first line, after the word "once" insert the following: "nor for longer than five minutes".

Said paragraph will read as follows with the amendment in it:

"Times Delegates May Speak. No delegate may speak more than once **nor for longer than five minutes** without leave of the President or a majority of those present and voting unless he be the mover of the matter pending or chairman of the committee that reported it, said chairman's designee or unless another delegate has yielded his time to speak or he is asked a question on the matter by another delegate. By majority vote, limits on times delegates may speak shall be suspended and shall remain suspended until the suspension is removed by majority vote."

PRESIDENT WENSTROM: Do we have an amendment — second to the proposed amendment?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Knudson.

Is there any discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I think that the rule change is self-explanatory; quite simple. It does not impair the full exposition of a proposition that we have before us by the committee chairman, his designee or the mover of any main motion, but will place an arbitrary limit of five minutes on others speaking on the subject per member.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of an amendment to Rule 27 as read from the desk and offered by Delegate Baker.

Hearing no further discussion, as many as are in favor of adopting the Rule will say "aye;" those opposed say "no." The "ayes" have it and the Rule is adopted.

The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President, Fellow Delegates:

I rise to make an announcement relative to our present workload that is facing us. We have 51 committee proposals and 23 delegate proposals left to be acted upon. However, of the delegate proposals 21 of those are being held at the desk for withdrawal or indefinite postponement. There are five committee proposals that are at the desk for indefinite postponement. So we have actually to take positive action on the adoption or rejection of 46 committee proposals, two delegate proposals, for a total of 48 proposals. We have five working days remaining in which to clear our calendar. To give you some perspective as to what that

entails, in the last two days we have disposed of seven committee proposals. The day before yesterday we did not clear any committee proposals from the calendar; yesterday we cleared seven. We actually worked on more, but either help them over or re-referred them to committee. That means then that we have to act on an average of ten, we have to clear ten, proposals per day from the calendar in order to get our work done on time. And, incidentally, we do have some very complex and controversial proposals to act upon.

The Calendar Committee has discussed this problem at length. And the Calendar Committee has asked that I convey this message to you: That (1) because of the size of this body and the number of amendments that are being offered from the floor, tends to slow down the work of this body to a very great degree, that some thought must be given to either curtailing or using more restraint in offering amendments from the floor. Consequently, this committee is recommending that we adhere strictly to our present rule which requires that any amendment offered from the floor that is at all substantive in nature be presented in writing to the desk prior to the time that it is offered as an amendment. This means then that unless you have had your amendment prepared in advance, that the only recourse then is to ask that the proposal be moved down the calendar or held back for a time certain.

The other suggestion — and this is in the form of a suggestion only — is that if your amendment makes a substantive change, then it should be examined and approved by a member of the staff so that it will be properly worded.

Now in the event your amendment is, say, just to correct defects such as a defect in the spelling, a simple word change or something of that nature, then it should not and will not be necessary, of course, to submit the amendment or have the amendment submitted in writing prior to the time that it is offered from the floor.

Because of the tremendous workload that is facing us, the plan for our Plenary Session at this time goes something like this: That today we will work until rather late this evening but not plan to have an evening session; however, tomorrow morning we are going to — we are planning to begin at eight A.M. In other words, we will work late this evening and we will begin our session at eight o'clock tomorrow morning.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: May we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE PEARCE: I would like to announce my presence. My seat mate announced that had I been here we would for once all been here. If I thought it was in order I would move that we return to the third order of business.

PRESIDENT WENSTROM: Delegate Pearce announces his presence.

DELEGATE SAUGSTAD: Mr. President.

DELEGATE SAUGSTAD: We are about to go into the sixth order of business. We have quite a number of amendments to adopt. And I believe that in the main these are non-controversial items. Therefore, I am going to move that the Committee on Preamble, Bill of Rights and Suffrage be excused so that they may begin consideration of Committee Proposals 1-83 and 1-85. Also that any of the delegates on the floor that have opinions that they — and amendments that they would like to have considered by this committee may excuse themselves to attend the meeting of this committee so that they may be heard. In the event that anything controversial comes up on the floor in the sixth order we will hold that in abeyance until these excused members return. We will also notify this committee when we have completed the sixth order and will begin work on the tenth order on the calendar. Thank you. I have made a motion. I need a second.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved and seconded, seconded by Delegate Litten, that the Committee on Preamble, Bill of Rights and Suffrage be

excused in order that they might attend a committee hearing. As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it.

I have only one suggestion, one perhaps comment, and that is relative to the delegates that wish to appear before the Committee on Bill of Rights, Preamble and Suffrage; and that is don't — please don't all go at once.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Just hold up one second while the committee meets.

Now Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: I have a motion that I would like to make at the desk. And if I could have the Clerk read it and get a second, I'd like to explain.

PRESIDENT WENSTROM: Delegate — would the Clerk read the motion?

CHIEF CLERK GILBREATH: Delegate Hoffner moves:

1. That Proposals 1-105 through 1-113 which deal with initiative and referendum be presented as follows:

a. Each will be read in numerical order.

b. After each is read a committee member will explain the proposal.

c. Following the reading and explanation of Proposal 1-105 through 1-113, each will then be separately open for general discussion and amendment on Tenth Order.

PRESIDENT WENSTROM: You've heard the reading of the motion. Do we have a second?

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Hendrickson.

Now do we have any further discussion?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: The committee unanimously felt that since these were all tied together so closely and if we were to consider the one without the explanation of the other there would be questions asked and we'd be referring back and forth, we thought that this method would save a lot of time for the Convention. And the committee also has some amendments to offer. Rather than go through the sixth order, they felt that this would be the best method to use.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Did Chairman Hoffner deliberately leave out 1-99 on that list?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: 1-99 could be considered afterwards. I thought the committee felt that 1-99 was not that closely related and could be considered afterwards, but that the Style and Drafting Committee include 1-99 which is recalled in the people's section in the Constitution.

PRESIDENT WENSTROM: I believe the Clerk neglected to read that this is to be held at a time certain. It reads "at 10:00 a.m., Friday, January 26," is the time that this is to come before the Convention. Is that right, Delegate Hoffner?

DELEGATE HOFFNER: February 28th.

PRESIDENT WENSTROM: 28th. That's correct. 28th.

You've heard the motion. As many as are in favor of the motion will say

"aye;" opposed "no." The "ayes" have it, and these proposals will then be given consideration at ten a.m. on Friday, January 28th.

We'll be on the sixth order of business.

CHIEF CLERK GILBREATH: Delegate Hernet has moved that the amendments to Committee Proposal No. 1-25, as recommended by the Committee on Executive Functions, and as printed on Page 296 of the Journal be adopted.

The amendments are:

In line 15 after "may" delete ", by" and after "veto" delete ", strike" and insert in lieu thereof "or reduce" and after "bills" delete the comma and insert in lieu thereof a period.

Delete all of lines 16 and 17.

In line 18 delete "agencies." and after "vetoed" insert "or reduced".

In line 19 after "vetoed" delete "bill or item" and insert in lieu thereof "item or bill".

In line 23 after "passes" delete "the" and insert in lieu thereof "a vetoed item or".

On page 2 in line 1 after the period insert the following: "Any reduced item shall follow the same procedure as a vetoed item or bill, except if it is passed by a record vote of a majority of the elected members of both houses it shall become law."

Renumber the lines accordingly.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

The subcommittee from the Executive Functions Committee and a subcommittee from the Legislative Functions Committee met and worked out the functions of 1-25 which basically restored the governor's right to veto. However, the Legislature may override that reduction by a majority of the members. And in addition thereto the amendments removed from 1-25 the provision which gave the legislative appropriation immunity from the governor's veto. The discussion on the theory behind these amendments will be made tomorrow when it's on the tenth order.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lander.

DELEGATE LANDER: Mr. President: I would like to ask if at all possible sometime today to have the new 1-25 reproduced and placed on our desks. All this leaves reference to lines. It's almost impossible to tell what we ended up with. Would that be possible?

PRESIDENT WENSTROM: It is possible.

Will you make a note so that we don't forget?

The question — Delegate Hoghaug, did you have a question?

DELEGATE HOGHAUG: No, Mr. President. I agree with Delegate Lander that it is confusing. I think if we could get even a mimeographed sheet it would be much easier to follow.

PRESIDENT WENSTROM: Thank you.

The question then is on the adoption of the Committee Report — adoption of the amendments on Committee Proposal 1-25. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The amendments are adopted.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President: I wonder if we could be on the twelfth order for just a minute. I'd like to move on the sixth order 1-120 to come up right behind 1-26 because they both relate to each other. I think I can explain them; save some time.

PRESIDENT WENSTROM: Delegate Nething moves that 1-20 —

CHIEF CLERK GILBREATH: 1-120.

DELEGATE NETHING: 1-120. Excuse me.

PRESIDENT WENSTROM: —1-120 — you mean on the sixth order, Delegate Nething?

DELEGATE NETHING: Yes, I'd like to explain the amendments to that at the same time. I notice here I don't have them in my book, but I know what they are.

PRESIDENT WENSTROM: Without objection, the permission is granted to move Committee Proposal 1-120 immediately below 1-26. That's your request? Permission is granted.

CHIEF CLERK GILBREATH: Delegate Hernet has moved —

PRESIDENT WENSTROM: We did adopt the amendments on 1-25.

CHIEF CLERK GILBREATH: He just explained it. We haven't adopted it yet.

PRESIDENT WENSTROM: Didn't we adopt those amendments? Didn't we vote on them?

DELEGATES: Yes.

PRESIDENT WENSTROM: Okay.

CHIEF CLERK GILBREATH: Delegate Hernet has moved that the amendments to Committee Proposal 1-26, as recommended by the Committee on Executive Functions and as printed on Page 296 of the Journal be adopted.

The amendments are:

On page 1, line 19, after "or" delete "is disqualified" and insert in lieu thereof "fails to qualify".

On page 2, line 4, after the period delete the remainder of the line.

Delete all of lines 5 through 7 and insert in lieu thereof the following:

"The supreme court shall have original, exclusive and final jurisdiction to determine absence and disability of the governor or governor-elect and to determine the existence of a vacancy in the office of governor and all questions concerning succession to the office or to its powers and duties."

Renumber the lines accordingly.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

The amendment to 1-26 is an outgrowth of the same subcommittee meeting as I explained earlier. The language relates to Page 2 where there was a question regarding the Supreme Court's involvement. And we believe the language offered will cure that objection. The gubernatorial succession, as you will recall we discussed earlier, and the subject came up about removal. And this is what we're talking to. And while we don't have 1-120 in front of us right now, I'd like to just let you know that 1-26 will be tied into what we've done on 1-120. So after we have approved these amendments I'll explain 120. And the further effect of 1-26 will be explained tomorrow.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendment of Committee Proposal 1-26. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and the amendments are adopted.

Next 1-120.

CHIEF CLERK GILBREATH: Delegate Hernet has moved that the amendments to Committee Proposal 1-120, as recommended by the Committee on Executive Functions and as printed on Page 297 of the Journal, be adopted.

The amendments are:

In line 1 of the title after "that" delete "two" and insert in lieu thereof "a" and after "new" delete "sections" and insert in lieu thereof "section".

In line 2 after the comma delete "both of" and after "which" delete "pertain" and insert in lieu thereof "pertains".

In line 5 after the parentheses delete "Two" and insert in lieu thereof "A" and after "new" delete "sections" and insert in lieu thereof "section".

In line 6 after "Dakota" delete "are" and insert in lieu thereof "is".

Delete all of lines 7 through 17 and insert in lieu thereof the following:

"Section 1. Removal from Office.

"All elected and appointed officers of the state and its political subdivisions other than judicial officers shall be subject to removal from office as may be provided by law for crime, corrupt conduct, malfeasance, or because of chronic and continuing inability to perform the duties of office.

"Proceedings for removal of state executive officers shall be commenced as provided by law in the Supreme Court of the state, which court shall have original, exclusive, and final jurisdiction."

Renumber the lines.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

As you can see, there's quite a bit of change in the amendments on 1-120. And what the amendments are doing there is we are setting forth the procedure for removal from office for all elected and appointed officers, except judicial, in the State of North Dakota.

The last paragraph provides that the removal for state executive officers — that is any elected or appointed officer in the state — shall be under the jurisdiction of the Supreme Court. This then will permit the Legislature to prescribe who will have jurisdiction of the removal proceedings in the political subdivisions.

I might mention that earlier we passed 1-33. This was back on the 11th of January. That had a provision which related to appointed officers insofar as removal is concerned. If these amendments are adopted, and if tomorrow 1-120 is approved, we will then move an amendment on 1-33, which the effect will be that we will have all of our removal proceedings in one section. And the joint subcommittee felt that this was in our best interests.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendments to Committee Proposal No. 1-120. As many as are in favor of the motion to adopt will say "aye;" opposed "no." The "ayes" have it.

Delegate Lander.

DELEGATE LANDER: What was the page number of those amendments in the Journal?

CHIEF CLERK GILBREATH: Page 297.

DELEGATE LANDER: Thank you.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection we'll be on the twelfth order.

DELEGATE NETHING: Mr. President: At this time I would like to move that due to the fact that there were quite involved amendments in 1-25, 1-26 and 1-120 that we have them — not a new proposal printed, but just to have a distribution made of each of those three proposals as amended at the desk for tomorrow's reading so they can be made on the tenth order.

CHIEF CLERK GILBREATH: Engrossed copies on all the desks? I mean a copy of it?

DELEGATE NETHING: Just a copy of all three of them.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved and seconded that we have copies of 1-25, 1-26 and 1-120 prepared and distributed to the desks prior to the opening of tomorrow's session.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: The question — Delegate Saugstad.

DELEGATE SAUGSTAD: Point of inquiry. Could these also be punched so that they could be inserted in the bill books?

CHIEF CLERK GILBREATH: They will be too long, because they are on legal — yes, I think we can. I think we can reduce them. Yeah, I think so.

DELEGATE SAUGSTAD: That would be very good.

PRESIDENT WENSTROM: Any further discussion? The question is on the motion. As many as are in favor will say "aye;" those opposed "no." The "ayes" have it. And the copies of the proposals will be on the desks in the morning.

CHIEF CLERK GILBREATH: Delegate Hoffner has moved that the amendments to Committee Proposal 1-29, as recommended by the Committee on Legislative Functions and as printed on Pages 296 and 297 of the Journal be adopted.

The amendments are:

On page 1, line 15, of the engrossed proposal delete the words "a majority vote of".

On line 18 delete the comma after the word "senators" and insert a period and delete the remainder of the line and insert in lieu thereof the following:

"The commission shall guarantee that, as nearly as practicable, every voter is equal to every other voter in this state in the casting of ballots for legislative offices. One senator and at least two representatives shall be apportioned to each senatorial district and be elected at large or from subdistricts thereof."

Delete all of lines 19, 20 and 21.

On line 22 insert the word "The" before the word "commission".

On line 23 delete the words "in single or" and insert in lieu thereof the words "or from subdistricts thereof".

On line 24 delete everything before the period.

On page 2, line 9, after the period insert the following: "No member of the legislative assembly shall be eligible for appointment to the commission."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This is the reapportionment proposal. These amendments are largely of a perfecting nature. They received 85 percent support of the committee. There will be discussion of this on tenth order. I understand from talking to delegates that there will be numerous amendments and extended discussion on tenth order. Should be a lot of fun.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: Maybe in this case the amendment — the proposal should be reprinted for the use of the members because there are extensive amendments. Do we need a motion to do that or just a request?

PRESIDENT WENSTROM: No. Any further discussion on the proposed amendments to Committee Proposal No. 1-29? Hearing none, as many as are in favor of adopting the amendments will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Haugen has moved that the amendments to Committee Proposal 1-74, as recommended by the Committee on Finance and Taxation and as printed on page 282 of the Journal, be adopted.

The amendments are:

On page 1 delete lines 10 through 12 and insert in lieu thereof the following:

"STATE DEBT: The state may issue bonds and make loans, and guarantee the payment of such bonds and loans and interest thereon. A statewide property tax based on value shall not be used to retire or guarantee such bonds or loans."

PRESIDENT WENSTROM: Any discussion?

Delegate Erickson.

DELEGATE ERICKSON: Mr. President and Fellow Delegates:

This amendment just makes it a little easier to understand. And I'll certainly try my best to explain this better on the tenth order tomorrow.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendment to Committee Proposal 1-74. As many as are in favor of adopting the amendments will say "aye;" opposed "no." The "ayes" have it, and it will be on the tenth order tomorrow.

CHIEF CLERK GILBREATH: Delegate Haugen has moved that the amendments to Committee Proposal 1-87, as recommended by the Committee on Finance and Taxation, as printed on Page 283 of the Journal, be adopted.

The amendments are:

On line 20 after the period delete the remainder of the line and delete all of lines 21 and 22.

PRESIDENT WENSTROM: You've heard the reading of the proposed amendments. Is there any discussion? Is there any discussion?

The question is on the adoption of the amendments to Committee Proposal No. 1-87. As many as are in favor of adopting the amendments will say "aye." those opposed "no."

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: I think the amendments lost. I don't think we adopted the amendments. The Chair will rule that the amendments to Committee Proposal No. 1-87 failed.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I suggest that somebody give us some information here as to what these amendments are because it's very difficult to pick up and look at an amendment with about five seconds' notice and know what you are intelligently voting on. I would suggest that somebody be prepared to explain the amendments when they come onto the floor.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: May I explain the amendment at this point?

PRESIDENT WENSTROM: Pardon?

DELEGATE UNRUH: May I explain the amendments at this point?

PRESIDENT WENSTROM: Yes, you may explain the amendments.

DELEGATE UNRUH: I wasn't assigned to do it, but I concur with Senator Longmire.

The amendment merely removes the last sentence of Proposal 1-87. And as you recall, yesterday we voted to accept the Minority Report which provides that the highway dedicated users fund remains intact without giving authority to the Legislature to pierce this by a two-thirds vote.

PRESIDENT WENSTROM: Now, Fellow Delegates, do you wish to go through the procedure of reconsidering your action whereby the amendment failed?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move we reconsider our action by which the amendment to this Proposal 1-87 failed.

PRESIDENT WENSTROM: May I have a second?

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: It has been seconded by Delegate Baker.

As many as are in favor — Delegate Hernet.

DELEGATE HERNETT: Well, I wonder if we're still doing the right thing here. The Committee Chairman isn't here, many of the others are not here. This was a very controversial subject the other day. I think we should hold this

up until we have — have our members back here. I will oppose the motion to reconsider.

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I'm confused, too. I thought when we adopted the Minority Report this was all taken care of.

PRESIDENT WENSTROM: No. We have the amendments. We go on sixth order. And the situation, just so we understand where we are, that we did have Committee Proposal 1-87 before the Convention. And there was no discussion on the amendments. And I think you will agree that the Chair called three times for some discussion and we didn't get any, so I put the question and the amendments failed. And the Chair ruled that the amendments to the proposal lost. So now if we are going to do anything with them we have to reconsider the action as Delegate Longmire has suggested and Delegate Longmire has so moved. We have a second over here. So the question before the Convention at this time is whether we are going to pick this up and have it before the Convention.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President: May I suggest that we vote on the motion to reconsider and reconsider our — reconsider our action, and then a motion could be made to defer action until we have a larger body here in the adoption of the amendment, if that will be the will, which I think it will, of the Convention.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would urge that we reconsider this matter and take the amendments. Yesterday we spent several hours arguing to delete lines — the last sentence on this thing. The majority of this body said we should leave it. All we are doing is going through the formality of accomplishing what we said we would do yesterday. I see no reason to hold this up. They want to try to amend it again, it will come up on the tenth order. But let's get the amendments out of the way.

PRESIDENT WENSTROM: The question right now, though, Delegate Kelsch, is to reconsider the action of defeating the amendments.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: You recall this was not an amendment, this was a Minority Report. And I thought all Minority Reports if they prevailed they went right on the tenth order.

PRESIDENT WENSTROM: The Minority Report was to amend, Delegate Trenbeath.

DELEGATE TRENBEATH: I'm sorry. Is that the way the report read, Roy? Okay.

PRESIDENT WENSTROM: And the question again before the Convention is that we reconsider the action whereby we defeated the amendments to Committee Proposal No. 1-87.

As many as are in favor of the motion to reconsider will say "aye;" those opposed "no." The "ayes" have it, and the proposal is again before the Convention.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I believe that the chairman who presented this for sixth order has been absent for committee readings downstairs and as a result no one was assigned to this. But I do hope that we now will consciously vote to sustain this in the sixth order so that it may go onto the tenth order tomorrow morning for final disposition.

DELEGATE LANDER: Question.

PRESIDENT WENSTROM: The question now —

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: This is utterly noncontroversial. And as the speaker for the Majority Report yesterday, I certainly hope the delegates will approve the amendment so it may go on the tenth order.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: We are on the amendment?

PRESIDENT WENSTROM: Pardon?

DELEGATE AUBOL: The amendment will be read before we vote again?

PRESIDENT WENSTROM: It can be read.

Would the Clerk read the amendments again?

CHIEF CLERK GILBREATH: On line 20 after the word "period" delete the remainder of the line and delete all of lines 21 and 22.

PRESIDENT WENSTROM: The question before the question is on the adoption of the amendments of Committee Proposal No. 1-87.

As many as are in favor of the adoption will say "aye;" those opposed "no." The "ayes" have it, and the amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Hoffner has moved that the amendments to Committee Proposal 1-88, as recommended by the Committee on Legislative Functions and as printed on Page 284 of the Journal, be adopted.

The amendments are:

On line 1 before the numeral "44" insert the numerals "38, 40, 43," and also in line 5 delete the numeral "53".

On line 5 before the numeral "44" insert the numerals "38, 40, 43," and also in line 5 delete the numeral "53".

PRESIDENT WENSTROM: Any discussion?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I believe I assigned this to Delegate Solberg.

DELEGATE SOLBERG: 1-88?

PRESIDENT WENSTROM: 1-88. Committee Proposal No. 1-88.

DELEGATE SOLBERG: Mr. President: I was involved in other amendments and forgot my assignment, and I apologize.

Proposal — Committee Proposal No. 1-88 is for the purpose of deleting the numbers indicated of the old Constitution so that they can be taken out because they have been involved or made a part of new sections in the new Constitution, such as 44, 51, 53, 54, 57, 59, 60 and 62 in Section 199 and Article 75. They will be incorporated, and in some instances some will be completely deleted because they are of no consequence at the — at this time, they being inherent to the new Constitution. So this is for the purpose of deleting those, and because they have been incorporated in new proposals.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the proposed amendments, Committee Proposal No. 1-88. As many as are in favor of the adoption will say "aye;" opposed "no." The "ayes" have it, and the amendments are adopted.

Proceed with the sixth order.

We have nothing further then but the tenth.

The Convention will be at ease until the Committee on Preamble, Bill of Rights and Suffrage is returned to the Convention floor.

(The Session recessed at 10:00 A.M. until 10:16 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

We will be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Delegate Solberg announces that the twelfth

grade of the Bismarck High School of Bismarck, North Dakota, and their teacher and the government teachers, which are Rudy Steidle, John Helgerson, Bob Otto, Loran Guenthen, and Sieg Winger, are in the gallery with us today.

PRESIDENT WENSTROM: Would the students and their instructors and those visiting in the balcony please rise and be recognized by the Convention?
(Applause)

CHIEF CLERK GILBREATH: Could I please ask the delegates for the benefit of the verbatim Court Reporter down here when they are discussing their different proposals to use the "1-120". If you use just "120" it makes it a little harder for him to transcribe.

PRESIDENT WENSTROM: Anything further?

We'll be on the tenth order of business. First for consideration, Committee Proposal No. 1-100.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-100, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that two new sections to the constitution of the state of North Dakota, both of which pertain to the executive branch of government, be created.

"SECTION 1.) Two new sections to the constitution of the state of North Dakota are hereby created to read as follows:

"Section 1. Executive Organization.

"(a) The legislative assembly shall allocate the executive powers among not more than fifteen principal state departments which shall be organized along broad functional lines. The head of each department shall be a single executive unless otherwise provided by this constitution or by statute. The legislative assembly shall prescribe the duties for each executive department and shall also provide for the periodic reorganization of such department.

"(b) The governor may, by executive order, provide for the reorganization of the executive departments, other than constitutionally elective offices. If this executive order contravenes law it shall be submitted within the first twenty days of the legislative session and shall have the force of law provided it is not disapproved by the legislative assembly before the close of the session. Such changes shall take effect at the date provided in the executive order.

"Section 2. State Planning Council.

"The chief executive officers of the principal state departments shall constitute the state planning council. The governor shall be chairman of the council and the lieutenant governor shall be vice chairman. The council shall prepare a comprehensive state plan based on the comprehensive plan for each department."

PRESIDENT WENSTROM: Is there any discussion?

The question is on the first passage of Committee Proposal No. 1-100.

Delegate Hill.

DELEGATE HILL: Mr. President: I suppose if most people had to register their objections to our present Constitution in one sentence I think it would be that our current Constitution fails to provide an adequate framework of government. I think we have noticed in the major proposals presented this past week by the Judiciary Committee and the Legislative Committee that they have done a creditable job in strengthening the framework of the legislative and judicial branches of government.

Committee Proposal 1-100 is an attempt to provide a strong framework of the executive branch of government. The ancestors who wrote this present Constitution didn't have the problem, of course, that we have today in government that has been caused by the uncontrolled growth of our agencies. And this proposal is an attempt to limit the number of state agencies and provide for some orderly planning. All of us, whether we are participating in the management of our families, our business, our governmental affairs, engage in planning. And I think it's obvious in many cases of government, the federal government in the last few years, have been attempting to do so. Here we are setting it forth as a requirement in the Constitution.

I suppose if we ask ourselves what is the goal of the executive branch of state government we have to say that it is to effectively achieve the mandates given the executive branch by our Constitution and by the Legislature. And the question then is what is the reason that the executive branch has failed to effectively achieve these goals, if they have, in fact, failed? I think the two main reasons are that we have numerous independent agencies producing fragmented efforts in the delivery of governmental services. And the second reason would be that we have had no or very little comprehensive planning to assist in determining and coordinating the duties and establishing the priorities of our agencies.

I think that the solutions to these problems are that we can reduce the number of agencies by consolidating related functions into single departments. And the underlying concept of our proposal is that government should be organized — the departments of government should be organized along — around basic goals rather than narrow subjects or very limited constituencies. I think if we look at the sprawling mass of agencies that we have in North Dakota today we can safely say that our related functions are not consolidated and that we are not organizing our departments around basic goals or organizing them along broad functional lines.

Section 1(a) provides that: The legislative assembly shall allocate the executive powers among not more than fifteen principal state departments . . .” and that the Legislature “shall prescribe the duties” for these departments and “provide for the periodic reorganization”. This provides the limited number of state agencies and is somewhat consistent with the federal plan for reorganization of the federal government for the last forty years. And it’s also consistent with the idea of sound management advanced by many private organizations over the last period of years.

Section 1(b) is new to North Dakota. That is it is not in our present Constitution. But it is not new to North Dakota in that the Legislative Research Committee five or six years ago had proposed this as a constitutional provision. It’s also a provision that has been adopted by a number of our other states and is currently under consideration by other states that are engaged in constitutional revision.

This provision simply allows the governor by executive order to reorganize the departments which are not constitutionally elected offices whereby he can keep an updated system going where legislative functions are in the same agency. The operations of these agencies change from time to time; they are given new duties by the Legislature. And for passage of time and other reasons it’s sometimes best to transfer functions from one department to another. This is a way of doing so.

Section 2 is the requirement for the State Planning Council. Currently we have a State Planning Council that’s been implemented by executive order, but the problem is who do you decide sits on the State Planning Council when we have anywhere from fifty to a hundred and fifty state agencies depending upon how you count. If we are going to have effective planning you simply must have a limited number of agencies before you can engage in planning. Right now every agency that gets a separate appropriation consults the Legislature with the sole idea of gaining the largest increase for its department as possible. The department heads never sit down together and decide which of the programs of the state executive agencies are carrying out or are of the highest priority. This is an attempt of having the executives decide amongst themselves which are priority programs and propose a necessary proposed budget to the Legislature. And this provision puts the governor as the chairman of the Planning Council and the lieutenant governor as the vice chairman. We intend that the lieutenant governor shall be out of the legislative process and be a full-time assistant governor.

And I believe, in summation, that the two major cruxes of this proposal are to provide for a limited number of state agencies, and require that they engage in comprehensive planning. I urge your support of this proposal. It had the almost unanimous support of our committee on Sections 1(a) and in Section 2, that is the limited number of agencies and the State Planning Council. And on Section 1(b) there was some discussion as to exactly the procedure that should be followed, but there was substantial agreement that the idea of governor —

of gubernatorial reorganization of the executive branch be provided. And I think that when we look at our current fragmentation of government, I think it's obvious that neither the executive nor legislative branches of government have really been effective in reorganization of that government. And I think this proposal will accomplish that effectively. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: Mr. President: Proposal 1-100 is apparently an attempt to concentrate political power and remove it away from the people. I'm opposed to any such move as that. And if this goes through in conjunction with 102, it will lose voter control over a lot of the state government.

Now it's been mentioned here frequently that the governor lacked a lot of power. Now apparently under this proposal you are going to have a lieutenant governor act as an assistant governor to relieve him of a workload. I think this whole thing is completely out of line with a free government of, by and for the people.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rude.

DELEGATE RUDE: Mr. President, Fellow Delegates:

Many persons seem to believe that the President of the United States and the governor in each of the states can be approximately likened to one another in the nature and extent of their powers of office. This is by no means true. We can say that the governor is the captain of a ship of state navigated by a crew which he does not select and over which he has few powers of command. Despite this, however, the governor is the one whom the voters hold responsible for the conduct of state affairs.

And the next — what I'm going to say is taken from the LRC recommendation. "Because of this division of authority and responsibility the governor cannot establish the program upon which he ran for election, nor can duplication be prevented, or adequate coordination obtained. The governor is unable to create an effective integrated executive branch, with the result that state government is weak and unable to effectively cope with problems facing it. The governor, as a responsible head of the executive branch, should have considerable latitude to design an organizational pattern in keeping with his leadership style and program priorities."

Amongst experts in public administration there is near universal agreement that the approach represented in our Section (b) is a desirable means of providing this flexibility. The Legislature in the exercise of its general law-making power can reorganize the executive branch at any time. But the governor is also unable to initiate reorganization by statute orders automatically unless rejected by both houses of the Legislature.

Thus, without removing legislative checks, the prospects of obtaining administrative restructuring within a reasonable time, and especially within the term of a proposing governor, are greatly enhanced.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wonder if a member of the committee would explain Section (b) in a little more detail to describe how the governor by executive order could reorganize the executive department. I don't think there is any problem giving the governor that power except where it would contravene law. Now as I read the section it indicates that the order would have to be submitted to the Legislature within twenty days and then if it is not objected to by the Legislature it would go into effect. But then later on the last sentence says it will be effective at the time of the order. I wonder if there isn't some inconsistency there. I also wonder what an executive order is. Now is this a new type of law or is this filed someplace, is this an official document of state that exists some place? I'm also concerned about how this might fit in with the legislative article

that we have adopted that calls for — or allows the Legislature to meet and recess at different times. Are we going to have problems with twenty days and then adjourning the session? Now maybe they won't adjourn, I think, until — they might not adjourn until the end of the second year. And does the executive order go in effect — when does it go in effect?

DELEGATE HILL: Since this isn't the language for that section that I wanted, I'll ask Delegate Vogel to explain that.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: This is based very largely on provisions which were adopted recently in Illinois, also in Alaska and in most of the other states that have been considering constitutional revision. Some have done it by statute. It is also the recommendation essentially that was made by the LRC study commission in 1963.

As Mr. Hill has said, one of the greatest problems facing all state governments is the enormous conglomeration of state boards, agencies, committees and commissions that has grown up. And governmental reorganization has been a problem in practically every state in the union. This is the method that has been used generally to try to create some order out of the chaos that most executive departments in most states are today. New York was one of the first which adopted a governmental reorganization program something on this order.

To answer Mr. Kelsch, the process is this: — and this was what was done in both Illinois and Alaska — the Legislature is directed to reorganize state government along broadly functional lines. We toyed with the idea of no ceiling, then with twenty departments, with twelve departments, and fifteen seemed a compromise figure.

The legislative branch is given primary authority to reorganize state government into this number of departments. Then after that has been done the governor can from time to time make rearrangements, reallocate the functions and the duties of the executive department within these fifteen departments. If this would require a change in the law, then it is put in the form of an executive order and presented to the Legislature. Only the Legislature can make laws, and no change in the laws can be made unless the Legislature gives its permission. It's an effort to cut through the red tape but still give the Legislature the final authority. No reorganization which is in conflict with an existing legislative provision can go into effect without the approval of the Legislature. But it does save the time of the Legislature and red tape. This is primarily an executive department function, rearranging the powers and duties.

I think there is some problem probably with the twenty-day figure. This is one of the problems when you have one committee working on something and another committee working on something else. And we didn't know what the legislative term would be. But this would put — this would permit the rearrangement to go into effect at the time specified in the executive order, and it would give the Legislature the number of days between the time it was submitted and whenever the end of the session is and this possibly could have some rearrangement to disapprove it, if not disapproved it would go into effect with the force of law.

Does that answer your question to any extent?

DELEGATE KELSCH: I think it answers the question, although I don't know that the wording says exactly that. I think maybe it is unclear. And maybe after the last sentence that it should take effect at the time stated in the executive order. If it contravenes law, in that case it would only take effect after the Legislature had a chance to consider it. If it didn't contravene law, it would take effect whenever the Legislature said it should.

DELEGATE VOGEL: That is not what we mean. That unless it is disapproved by the Legislature it would go into effect, but in no case if the Legislature disapproves it. As I say, this is the path taken by Michigan, by Alaska, and it's under consideration in almost half of the states of the Union today.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President and Fellow Delegates:

I think Delegate Kelsch has put his finger on what's wrong with the picture. Committee Proposal 1-100, in my opinion, is a bold, new approach to the problem — or I'm not so sure it's a problem — but anyway the proposition of executive reorganization. And in the operation of such a structure the executive order in the hands of the governor could be an important tool. However, the way that the committee chose to put the executive order into our Constitution I feel has many faults; those that Delegate Kelsch has mentioned, the question of the days that we write into the Constitution, the detailed time lapse for certain functions and that sort of thing, which I think if we think about it we all know is bad Constitution writing. And at one time the committee had under consideration what I think would be the cure for this problem. But it — that idea got snowed under the blizzard of words from other states' constitutions and so forth.

Maybe I can make the idea a little more clear now in the hope that this assembly will approve the idea and then will direct the committee or somebody else to go about setting this matter right. I think that the way to handle the executive order is to provide in the Constitution that one of the powers of the governor is the executive order under detailed application as prescribed by law. Now the section that deals with the — or the particular proposal that deals with the power of the governor has gone by us now and it is in Style and Drafting. So if you agree that this power of the governor, which the governor now in North Dakota does not have, we're silent on the subject of the executive order, the executive order that you read about in the newspapers once in awhile is no more than a polite letter from the governor. That's what it is. If we were to provide in the Constitution that one of the powers of the governor is the executive order, and to provide that the Legislature shall write the rules of the application of that executive order, then that could be an important new function in the executive department and I believe it would fit in well with the other theory as expounded here in 1-100.

The remedy, I believe, would be to divide the question so as to separate Part (b) under Section 1 and to vote that down while approving the balance and then by motion direct a return of the other proposal, the number of which I have forgotten now, and bring it out on the floor for amendment as a provision for the executive order.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I'd like to speak a little bit more to the matter of the executive order. And I think the committee felt that inasmuch as it really does deal with reorganization that it should be presented to you as a body as part of the executive organization, and it also affects the matter of the Planning Council. And I also think that the committee did agree somewhat that probably it should be prescribed in duties of the governor. But rather than — since we reached that decision after the other measure passed we thought we had to bring it to you this way.

The matter of executive order in North Dakota state government is relatively new. We had but one expert appear on the subject, that being the governor himself. And he explained to us how at times he has used it and how really in using it the only thing that is behind it is the prestige of the office and the influence that the governor personally has with the people to whom he directs the order. There are times, primarily now, where we have many federal programs that are administered through the governor's office. Now this is something that ten years ago we did not have much of. Well, when it comes to his office he has to find a place, an agency — unless the Legislature will create a new one for him — where to have these matters handled. And the executive order has been a good way for him to work at this even though it did not have the effect of law. There may be times when he wants to reorganize some of the departments because of the federal picture and the programs that they have that must be administered in North Dakota. It was our feeling that when this does come about that the office of governor should have this authority so that the necessary reorganization of a particular department under his jurisdiction, so to speak, that he could do this.

Now there are also times when this might contravene existing law. And we by no means are giving him authority to contravene existing law unless he has the permission from the Legislature, which comes about only if the Legislature disapproves of the order that he issues. In other words, it's not something that they have to — to pass themselves; it's a matter of approving or disapproving the order. We think it would be a very handy tool for the governor to have, and I don't think the committee would have any particular objection to placing this under the powers and duties of the governor as opposed to having it here. We felt in talking about the concept of office, reorganization, state planning, it all fit together and this was the place to discuss it.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, ladies and gentlemen:

I feel that we need this proposition exactly like Custer needed more Indians. It's so full of holes, they have started pointing them out, I'm not even going to worry about the holes it has in it. But it's so full of holes it probably would wind up being amended fifty-two times. Just to start out on the very second line, "more than fifteen principal departments; what's a principal department"? The governor, if he so felt like it, could name fifty of them. They wouldn't be principal departments. They might soon grow to be principal departments, but they weren't when they started. I think we have one department now that started out with a legislative appropriation of 68,000, now I think it costs 800,000 to run. This is a small example. It's legislation in reverse. Sure, you give the Legislature the chance. But within twenty days I believe it says if they haven't acted it "shall have the force of law provided it is not disapproved", and so on.

And many people here have argued about legislation in the Constitution. I don't think that there is such a thing, really. But this is legislation in reverse; it is law if the Legislature doesn't act. I am not going to worry any further. I want to be on the record as opposing this absolutely, positively and I'm not going to worry about the details. You people want to amend it many times, why it will be fine with me.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel. I'm sorry. I'm sorry, Delegate Scheel, Delegate Meidinger asked for the floor.

DELEGATE SCHEEL: All right.

DELEGATE MEIDINGER: Mr. President: Like Delegate Rundle, I'm not going to be too concerned about the details. However, I would like to speak in behalf of Proposal 1-100. I have long felt and worked for governmental reorganization. I think the need is clear and that this is the time to get with it. State governments occupy the middle ground between the national government and local governments — that level of government that bears the primary responsibility for domestic government in these United States.

Outmoded constitutions and the outdated organization and structure of most state governments obstruct effective state and local action. Problems remain unsolved despite attempts by the federal government to fill the void with over 400 grant-in-aid programs — at a current annual cost that has reached over \$20 billion and continues to grow each year.

I think the challenge is clear: to so structure and finance state governments that they can be responsive to the important public needs for which the constitution makes them responsible. To be responsive, states must be able to act. This is one of those vehicles that I think makes it more possible. Responsive state and local governments and private enterprise are essential to the solution of social and economic problems and to restoring constitutional balance to federal-state relationships. I do believe that there are some holes in these proposals, but this is one step on the way. I'm sure there will be some pain, but I believe it's a step in the right direction. Thank you.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President.

We appreciate this report of Delegate Meidinger. We have given a lot of thought to this, and it hasn't been completely inexperienced thought. We are getting the idea that the thing is shot full of holes. It is not shot full of holes at all. It's "shall allocate the executive powers among not more than fifteen principal state departments". This was an idea of making the government responsible, with making them consolidate when they start to fragment.

We talk about twenty days down there. We are asking that the governor have his report, if it contravenes a law, submitted to the Legislature within twenty days of the start of the session so that the Legislature has plenty of time to consider it.

Now we understand, of course, the legislative sessions under this new proposal may end up at say thirty days, in which case this thing will have to be amended. But we're not putting this forward — the structure has been thought out, the structure is good. It's the way a structure operates in a good business. And government isn't that much different than business, it isn't that — when you talk about business you're talking about farming, you're talking about the operation of a school system, you're talking about anything; good management, good administration. And the proposal we have here isn't just off the top of our hats, it's the result of a lot of stirring, and a lot of consideration, consideration how the voters will feel about this out in — when we get back and try to sell this thing as we are going to have to do between now and May or June and also the consideration of how we'll function. Thank you.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President:

I would like to call — when I have a chance — to the attention of the delegates a letter that was brought to the attention of the committee from the Governor of Delaware. Now of course Delaware went to a complete cabinet form of government. Now we are not proposing that by any means. The governor — Governor Peterson moves on to tell of the changes Delaware has made. He says — and my remarks are going to be very brief, but I just wanted to make some quotes from him — "By the time I took office in January of 1969 the use of commissions in Delaware — in the Delaware government had grown to approximately 140 commissions and agencies, all theoretically reporting to the governor. In less than two years we have switched to a cabinet structure with ten departments, each headed by a secretary responsible to and serving at the pleasure of the governor. Today the government — the Governor of Delaware can gather around one table all the decision makers in the executive branch of state government. These people are full-time employees of the people of Delaware. Working twelve or more hours a day, try bring to bear on our problems, talents and expertise, that simply were not available before the full-time basis."

"This does not mean that the cabinet form is a bed of roses, because now the thorns of responsibility are larger and sharper. There is no longer the luxury of referring a problem to a commission or agency for decision. The buck stops where the responsibility is; first in the cabinet secretary's lap and then on the governor's desk."

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I would merely wish to move to have the remarks of Delegate Meidinger recorded in the Journal. I understand there is a copy at the desk.

PRESIDENT WENSTROM: Does Delegate Meidinger have a copy of his remarks? Then the request is granted.

DELEGATE KESSEL: Mr. President.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. President:

Would Delegate Scheel yield to a question?

PRESIDENT WENSTROM: Would Delegate Scheel yield to a question?

DELEGATE SCHEEL: Yes, Mr. President.

DELEGATE KESSEL: In 1(b) of your proposal you mention that the executive order shall take effect at a date provided therein.

DELEGATE SCHEEL: Yes.

DELEGATE KESSEL: And, secondly, if it contravenes law it shall be submitted to the Legislature. Now who is to determine when it contravenes law?

DELEGATE SCHEEL: Well, I would think the same person that determines it right now. Because executive orders can be given now. We're not setting this up as a new provision. An executive order is just an administrative order. For instance, in your office if you put out an order people shall not park near the building, they are to leave room for your customers, that's really an executive order. Now if that contravenes law — and the governor can put out executive orders now — the same thing would prevail then. Who decides now if it contravenes law?

DELEGATE KESSEL: The point is that when you provide that the executive order shall take effect at the date provided therein, then you will have that in effect, do you not, even if it does contravene law until the legislative assembly acts on it?

DELEGATE SCHEEL: This has to — Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: This has to be clarified, of course, with an amendment. Because our intention was that ordinarily an executive order would be given the Legislature with the idea it's going to take effect July 1st or next October 1st if it had to do with something like that, and that only after it has been approved by the Legislature then at some later date it would take effect.

DELEGATE KESSEL: Thank you.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President:

I just have one question. In Section (a), last sentence: "The legislative assembly shall prescribe the duties for each executive department and shall also provide for the periodic reorganization of such department." Could this then — that sentence gives the Legislature the authority to, once they have established the department, after two or three years, could they then remove that department?

PRESIDENT WENSTROM: Delegate Hoffner, to whom do you direct the question, to Delegate Hill?

DELEGATE HILL: Mr. President. Yes, that's correct, Delegate Hoffner. The Legislature will have several constitutional offices which will be discussed in Committee Proposal 1-102. But there are eleven other agencies which the Legislature, if they so desire, can totally rearrange if they wish. I think the history of the Legislature has been that they are unable to reorganize the government. They have been no more effective in government reorganization than they have been in reapportionment. And I think a directive of this nature would limit to a total number of agencies and will encourage them to reorganize. And I think this will do so. And since reorganization is so important, and it's so difficult to engage in, this is why we've also tried to get the executive branch or the governor to promote governmental reorganization also.

But I think one more word on the executive order. In effect, the way this is proposed we're saying, as regards reorganization, the governor can make law by executive order if the Legislature does not disapprove it after they've had the opportunity to consider it. But I think it's essential that we get reorganization, and we're trying to encourage it both from the governor's point of view and from the Legislature.

PRESIDENT WENSTROM: The Chair will recognize Delegate McIntyre.

DELEGATE McINTYRE: Mr. President and Fellow Delegates:

I would like to rise in support of Committee Proposal 1-100. I don't think there's any question but what we need reorganization. And as far as control

is concerned, I think that this not only gives the governor closer control of some of this reorganization, but it also gives the Legislature a closer contact and closer control of these departments. I think right now that they are all working in their own different directions. I think they are all responsible to themselves only. And I think this plan, the plan that we really need to bring all of these functions and all of these problems into focus under these fifteen departments, is good. I suppose that the basic plan does need amendment, and perhaps we've reached a point here where some of these amendments could be discussed. I don't have one, but I would again support this proposal.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Thank you, Mr. President.

It seems to me that under Section (a) where it says "the legislative assembly shall prescribe the duties and provide for reorganization" is the point at which the Legislature could say, "This is the way we want it." And if it's to be changed by executive order it shall follow the certain procedures that are set out. In other words, if the governor wants to change this by executive order he would have to submit it to the Legislature when in session, not in recess, so they wouldn't have to call a special session back in to approve the authority.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I'm in favor of Proposal 1-100. But I think there are problems in Section (b) that certainly need amending. I'm wondering, Mr. President, if we should divide the question. I think there are three separate matters we're dealing with; (a), (b) and (c).

If we were to divide the question to vote on them, could we refer (b) back to committee for amendment? I realize the whole proposal will have to go back, but couldn't we let the vote on (a) and (c) stand if it carried? Even though the proposal goes back? I know the whole proposal has to go back. But if we could consider the vote as binding that those two pass, the committee would then know that all they had to do was rework (b) to more clearly state what they are trying to get at.

PRESIDENT WENSTROM: Delegate Kelsch, I believe that we could vote on those two and then refer the other one back to committee if that would be the will of the Convention.

Delegate Solberg.

DELEGATE SOLBERG: Mr. President. If this is going to go back why then maybe I shouldn't take the time. But may I ask a couple of questions? It will only take a minute. Has the committee given any consideration to the reorganization procedure here in case we evolve with a permanent civil service in each one of these administrative areas? So that with the change of administration, change of party probably in the future, that this might cause a great problem in reorganization.

My second question is, if I may, and that is what about the overlapping? Because we have one or two yet to consider, and here are elected positions and elected officers. Will they be a part of the planning commission? I do not see it in line 23 and 24 of this bill if they are to be.

And then my other question is also that we have approved a legislative auditor. And as a result he's going to be a legislative administrative officer, and here we're going to have these others that are going to be elected, and then we are going to have not more than fifteen appointed positions. What kind of a conglomerate might result if some of these pressures were to result in the future?

I'm reminded of the president — the chairman of the board of a corporation who called his board of directors together and then he said, "Now, fellows, I have a suggestion to make. And I don't think that you need to be so concerned about it, but don't ever forget who made it." And so maybe our direction here is to centralization.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I believe many of Delegate Solberg's answers will be provided when we get to discuss 1-102.

I would like to make some comments on this proposal. The proposal gives the legislative and the executive branches joint responsibility to reorganize the executive department of government. There is no harm in considering innovation and creativity. Admittedly, this Committee Proposal is innovative, it is creative; however, it does provide the tools and the powers for our executive branch of government to function more effectively and plan for the future of North Dakota with adequate but not restrictive means of checks and balances. I believe our Constitution can survive a certain amount of error and stupidity providing our decisions are based on right principles. I do not believe this proposal is stupid, nor do I believe it is an error. And believe me, it is based on right principles, and it can survive.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

In response to the questions that have been asked, I'll try to answer them briefly. Regarding the matter of the effect of reorganization on those that might be under a merit system, I might — the only knowledge that I have would come from information provided as a legislator wherein there have been discussions and promises made combining our Social Services Department with the State Training School, Health Department. We did some combining there. And some of these departments are under a merit system, some are not. And the information — when we were asked the question at the legislative hearings, well, does this not create a problem? Whether it will in the future, of course, I couldn't say.

It is the intent that the elected state officials will head a principal department. I can't conceive of a Legislature that would have elected state officials and then not provide them with the department to head. And the heads of these departments as provided will be part of the Planning Council. So I think that could be taken care of.

Regarding Section (b), I think maybe one thing that's bothering me is the fact that the governor has twenty days after the Legislature convenes with which to present his plan for reorganization and the Legislature has until the end of the session to act on it.

Fellow Delegates, I would submit to you that a few days ago we took a very bold step in the procedures under which our Legislature should function. And at that time there was a problem raised whereby it was pointed out that the Legislature could meet on Friday in plenary session and have committee meetings the rest of the time. And it was answered that we think the Legislature would be responsible and would not act in that fashion. Well, I think that same argument can be applied to this section. I think when the governor does submit an executive order, that they will act on it. They are not going to waste their time, and they are either going to disapprove of it or they are going to accept it.

Now we can't say what's going to happen because of the difference of the executive branch held by one party and the legislative by another. The only people that can really say what's going to happen in this instance, if they do not function in the best interests of the State of North Dakota, is the voter. And that's really probably the best check that we would have in this situation.

I would like to see all three sections passed. And then if you would prefer to have Section (b) placed under the governor's powers and duties, I'm sure we could make arrangements for moving it and placing it there.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President:

My only concern on 1-100, considering separately 1-102, is the second sentence of paragraph (b). This sentence says that if the executive order is against the law — that's what contravene means — that it shall nevertheless have the force of law — might as well say "be a law" — unless the Legislature within a certain period of time disapproves it. I would only like to point out that this is a

radical departure from the other sections of the Constitution that provide how laws should be made, which states that they shall receive affirmative vote by both houses of the Legislature.

Now I am very bothered by the new method of laws being enacted. The section is broad, the powers are broad, and I do not believe that we should create a new method of enacting laws, whatever they may be, other than by an affirmative passage by a majority of the members elected to the Legislature. Now from this it may very well be that it will be amended. And I think Delegate Scheel used the words "approval by the Legislature". If it's affirmatively approved, all right. All we've done then is provide a new method for the introduction of a bill; instead of being introduced by a member of the Legislature it would in effect be introduced by the governor. But, nevertheless, to me nothing should be the law in any event unless it is positively approved by a vote of the Legislature. And perhaps an amendment would take away my fears on that proposition.

PRESIDENT WENSTROM: Any further discussion?

Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

I agree with Delegate Pearce, and I think that we can accomplish what the committee wants to accomplish by giving the governor the power to reorganize executive departments by executive order where the order does not conflict with law and then provide that by filing the order with the Secretary of State or something like that that it then becomes effective. And then give the governor the power where he wants to reorganize that we present statutes that allow him to introduce that reorganization plan to the Legislature. Then it would go through the regular course of a bill. I don't think this makes any substantial changes. I think it makes it work, and we wouldn't be creating a new method of passing laws.

I would therefore move, Mr. President, that we divide the question on 1-100 with the thought that Subsection (b) could be re-referred to the committee so they could consider that route.

DELEGATE Lander: Second.

PRESIDENT WENSTROM: Delegate Kelsch, just as a point of information, then you would recommend that we do vote on Section 1(a) and then dropping down to line 22 of the engrossed bill when we come to Section 2 you would be agreeable to vote on those two parts at one time?

DELEGATE KELSCH: That's agreeable unless someone wants — I have no objection to that, Mr. President, unless someone else wants to further divide it.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hougen.

DELEGATE HOUGEN: Mr. President, Fellow Delegates:

Maybe I'm not following everything as close as I should, but I wonder if we couldn't accomplish what we want to by amending 1-100 to take out Section — Part (b) of Section 1 and then call back to the floor Committee Proposal 1-27 and put in there that the governor shall have certain powers to reorganize if they do not conflict with law. I would direct this question to Delegate Hill. Could not this be done?

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Yes, I think it could. And I think the suggestion of Delegate Kelsch for voting on 1(a) and Section 2 as a package is fine, and Section (b) separately.

I want to emphasize again that this is the power of the governor — the Congress has given the President the power that the Legislative Council, Constitutional Revision Committee, recommended in 1965. And what we are trying to do is encourage the reorganization, of course.

In corporations the executive — chief executive officer of the corporation can usually reorganize his agency. This is what we're trying to encourage here. I think the concept is a good one, and if the language wants to be changed, that's

fine. But I certainly support 1(b) also. But I'm sure our committee has no objection as to voting on that amendment as suggested by Delegate Kelsch.

PRESIDENT WENSTROM: Is there any further discussion?

Delegate Chase.

DELEGATE CHASE: Just a brief moment, Mr. President. I can understand Delegate Pearce and Delegate Kelsch when you talk about contravening a law, being apprehensive and so forth. But most of the time we're talking about a particular law that says this particular office shall be in this particular department. And that's the law you want to contravene. And if we have to send it through the bill route and so forth then you're defeating the purpose of reorganization. The Legislature still has the power of disapproving this thing.

One other point, it has been said to be a new item, and it is not exactly that new. I think it was in '65 this was brought out in almost exactly the same language. In fact, I have it here now where the commission at that time said: "Where these changes require the force of law, they shall be set forth in executive order." I don't think it's that big a deal. I think we're getting a little bit too concerned. I think the section is good as it stands. However, if you want to refer it to committee, fine; I'll let it go at that.

PRESIDENT WENSTROM: Further discussion?

Delegate Lander.

DELEGATE LANDER: The world's greatest despot described certain laws as "trivial".

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I just think that it should be pointed out, too, that there is constitutional law. And this is what we're talking about here. And it does have some lasting effect.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: I'm supporting the language the way it came in.

PRESIDENT WENSTROM: I'm sorry.

The question —

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I'm assuming now that what we are voting on is the question has been asked to divide the proposal, is that right?

PRESIDENT WENSTROM: That is correct.

DELEGATE HERNETT: We'll be voting on Section 1(a) and Section 2?

PRESIDENT WENSTROM: That is correct.

DELEGATE HERNETT: Well, I have no objections. And I'm sure the committee can get their sandwiches early today and we can have a luncheon meeting again. So if that is the wish of the assembly, that's fine.

PRESIDENT WENSTROM: The question before the Convention is on the first passage of Section 1(a) and Section 2 of Committee Proposal No. 1-100. Is there any further discussion?

Hearing none, those in favor of passage of the sections as stated will vote "aye;" and those opposed will vote "nay." The key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 94 "ayes," 3 "nays," one delegate absent and not voting. Section 1(a) and Section 2 of Committee Proposal 1-100 have passed.

Now what are the wishes on Section (b) — Part (b) of Section 1?

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Would it be in order to move Committee Proposal 1-100

back to committee so over the noon hour our committee can reconsider Section 1(b)?

PRESIDENT WENSTROM: The Chair will accept that motion.

DELEGATE HILL: I so move.

DELEGATE LARSEN: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Hill, and seconded by Delegate Larsen, that Section (b) be re-referred to Committee. Is there any further discussion?

Delegate Meidinger.

DELEGATE MEIDINGER: Well, Mr. President, I would hope that when that committee meets all those who might have some ideas now to improve the section and make amendments would appear before that committee so that they can handle them in committee and that we would not spend all afternoon with amendments here on that particular bill.

PRESIDENT WENSTROM: Thank you, Delegate Meidinger.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I hope that the committee doesn't construe resistance on the floor as consensus to the fact that they ought to severely emasculate the powers that have been presented herein. After ten years of being on the inside executive branch of the government, I can tell you stories about duplication that will make your hair stand up. Now that was probably an inappropriate statement.

DELEGATE SINNER: Mr. President.

DELEGATE OMDAHL: I get a better reaction out of that than quoting Scripture.

PRESIDENT WENSTROM: I think it is well you have a little humor interjected into the seriousness of the work we are doing; however, I do think that we have to maintain decorum and keep things under control.

Delegate Sinner, did you have any words of wisdom?

DELEGATE SINNER: I just wondered if that referred to singular.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Question.

PRESIDENT WENSTROM: The question before the Convention is on the motion to re-refer Section (b) to the committee. As many as are in favor of the motion say "aye;" those opposed "no." The "ayes" have it, and the committee will give consideration to Section (b) of Committee Proposal No. 1-100.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President:

I would move at this time, if we might be on the twelfth order, to return Proposal 1-27 from the Style and Drafting Committee to the floor.

PRESIDENT WENSTROM: Delegate Nothing, we amended the Rules so that motions are no longer necessary. It is deemed to be in possession of the Convention.

DELEGATE NETHING: Then I would move that the Executive Functions — that 1-27 be referred to the Committee on Executive Functions for the purpose of determining whether or not Section (b) might better be amended onto that and we can take it all in one hearing.

PRESIDENT WENSTROM: Delegate Nothing moves that Committee Proposal No. 1-27 be referred to the Committee on Executive Functions.

DELEGATE SCHEEL: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Scheel.

Is there any discussion?

Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I just call to the attention of the body you wouldn't believe what we have done with 1-27. We have completely rewritten it and put it in a series of short paragraphs, not changing the substance of it, you understand. This is just for grammatical style. I'm wondering now, I assume under the present circumstances since we haven't returned it for amendment you will take it back in its existing form. But I just want to call your attention to the fact that whatever you produce may fall in a slightly different area than you thought.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Isn't it possible that the Style and Drafting has the authority to take Section (b) and place it where they like without our committee having 1-27 back to amend it?

PRESIDENT WENSTROM: And place it where they like?

DELEGATE HILL: Yes.

PRESIDENT WENSTROM: Well, they do have that authority. But they do not have the authority to amend the substance matter.

DELEGATE HILL: They wouldn't amend the substance, but whether it should be under the section under organization or whether it should be under the section on governor's powers is a question that the Style and Drafting Committee can settle without any action by the floor; isn't that correct?

PRESIDENT WENSTROM: I doubt that very much. I think they have the power to place definite sections in the final document in the position they think they should be, but I do not believe that they have the authority to move one section from one proposal to another. I do not believe they are empowered with that authority. The Chair may be in error, but that's the way I would interpret it.

Delegate Baker.

DELEGATE BAKER: Mr. President:

I'm wondering about the status of 1-27 if it is simply re-referred to the Committee on Executive Functions. In case the Executive Functions Committee might then want to amend that, would it perhaps be better if we were to reconsider our action in having passed it so that it would then be open for further amendment?

PRESIDENT WENSTROM: You are very correct, Delegate Baker. In the event that the committee was going to amend 1-27, then we would have to reconsider our action and bring that proposal back before the Convention if there was going to be anything done to it.

DELEGATE BAKER: Ordinarily I'd make a substitute motion, but I don't think I'm supposed to do that. So I'm wondering if the motion that was made might possibly be amended so as to provide for reconsideration of our action.

PRESIDENT WENSTROM: Have to reconsider if he's going to amend it.

DELEGATE NETHING: Well, Mr. President, the only reason I didn't want to reconsider our action is it may be determined that it shouldn't, after — I think the reason we have to take it back to committee is so we have it there so we can look at it and talk about it and be a proper subject for the committee to have. And then if we deem that it's best to amend it, then it would be my thought we bring it back and then reconsider our action and amend it at that point.

PRESIDENT WENSTROM: Delegate Nothing, the Chair has a question. Would it be adequate for your purpose to have an engrossed copy of 1-27 — if you had an engrossed copy of the Proposal 1-27 to use at your committee?

DELEGATE NETHING: I'm sure that's fine.

PRESIDENT WENSTROM: I'm sure that that would be a simple way to handle it. And then if you deem that it should go into 1-27, then you can make your recommendation to the Convention.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Did we vote on my motion to refer it to the committee?

PRESIDENT WENSTROM: I believe we did.

DELEGATE SINNER: No.

PRESIDENT WENSTROM: Didn't we vote? I thought we did.

DESK REPORTER KING: I have it prevailing.

CHIEF CLERK GILBREATH: I have it back in there, too.

PRESIDENT WENSTROM: Maybe the desk is ahead of the Convention, but they say that we did vote.

We will next take under consideration Committee Proposal 1-102.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Is there any thought that maybe we shouldn't start it now or what is the wish of the assembly? This is going to take some time. Let it go? All right.

PRESIDENT WENSTROM: Fellow delegates, just a point of information. In the discussions that we had pertaining to Committee Proposal No. 1-100 there were 29 delegates that entered into the discussion on what particular proposal, and the amount of time that was consumed, we started at ten-thirty on that question and I think we voted on it — about the last time that any delegate requested time was at eleven-thirteen. And I am happy to report to the delegates that no one exceeded his limit of five minutes.

We will proceed with Committee Proposal No. 1-102.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-102, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 71 and 72 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to the executive branch of government.

"SECTION 1. REPEAL.) Sections 71 and 72 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Executive Officers.

"(a) The elected state officials shall be the governor, and lieutenant governor, attorney general, secretary of state, and three public service commissioners.

"(b) The governor and lieutenant governor shall be elected on a joint ballot. One vote shall be cast jointly for the candidates nominated by the same party or petition. The governor shall prescribe the duties of the lieutenant governor.

"(c) The chief executive officers of the principal departments, other than those elected, shall be appointed by the governor and shall serve at his pleasure. They shall be confirmed by the senate with a majority of the members concurring by record vote. Any nomination not acted on by the senate, within twenty days after receipt thereof, shall be deemed to be confirmed by the senate.

"(d) The legislative assembly upon periodic review of executive departments, may by law, change and prescribe the manner of selecting those executive officers not provided for in this constitution.

"(e) If, during a recess of the senate, there is a vacancy in any office filled by appointment where confirmation is required by the senate, the governor shall make a temporary appointment until the next meeting of the senate, when he shall make a nomination to fill such office. No person rejected by the senate shall, except at the senate request, be nominated again for that office at the same session, or be appointed to that office during a recess of that senate."

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Committee Proposal No. 1-102 is what deals, of course, with the reorganization of the executive department. It's probably one

of the things, as Delegate Hill said earlier today, that people think of first when they think about constitutional revision.

Now your committee spent many hours on this proposal, and as usual when anything is as complicated as executive reorganization is, the committee ended up by compromising. This bill is full of compromises, as you will soon see. Now these five subsections that are in this 102 — 1-102 today will be explained by different members of the committee. And I have assigned these to the members of the committee. And I would hope that you would allow us to complete the explanation of the whole bill before we open it up for discussion. So at this time I'm going to yield to Delegate Chase to explain Subsection 1.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. Chairman.

Well, here goes.

Before I go to the explanation of Section (a), I call the delegates' attention to a resolution passed by the Executive Functions Committee. This resolution is directed to the Committee on Coordination and Transition.

And the main part of the resolution is as follows: Now, therefore, be it resolved by the Executive Functions Committee of this North Dakota Constitutional Convention that the elected officials of the executive department elected in the year of the ratification of this constitution shall continue in office and complete the terms of office for which they were elected.

It is the committee's sincere hope that the Coordination and Transition Committee and the delegates of this Convention will adopt this Spirit of '76, thereby soothing any apprehension that the legislators may have in wondering whether or not they'll have ample time to pass the necessary laws to implement this article, and more importantly, to clearly indicate to the candidates that will be campaigning for these offices that they will not be in — there will not be any curtailment of the term of the office they are running for. We ask the delegates to consider this Spirit of '76 not as a part of this proposal, but as an idea that may smooth out the wrinkles of the transition period.

Section (a) is a brief one, and I intend to keep my remarks on it as brief as possible. I ask only as Chairman Hernet has asked, that you hold off getting your amendments typed up until — until we've finished the discussion on these sections. I do want to call your attention to Section (d) as it refers to Section (a) very closely in this. And it will be explained to you later.

The first two officials mentioned are the governor and lieutenant governor. I imagine that almost everyone wants to elect them. The next official is the attorney general. Here we have had two opposite points of view. One side — and this has been recommended by many — is that the attorney general should be the legal counsel for the executive branch of the government, and particularly the governor, such as in our national system. Now you can make a good case for this side of the argument. However, the other side of the coin recognized that the attorney general should be the legal counsel for the executive branch, but also for the legislative branch. In fact, he should be the chief law officer for all the people of North Dakota. The latter argument has prevailed and for this reason and the reason that this elective office does provide a powerful check and balance within the executive branch, we have recommended that this be an elective office.

Now the secretary of state is the chief keeper of the records of this state, and historically has been associated in protecting the rights reserved for the people in his certification of initiative and referral petitions, petitions for amendments to the constitution, preparing of ballots, certification of elections, and so forth. It is also beneficial to have this office as an elective one, to serve again as an internal check and balance within the executive department. Also it may be desirable to have a majority of, well, we'll say the industrial commission, Delegate Decker, as elected. So we recommend the office of secretary of state be elective.

Now the three Public Service Commissioners by the nature of their duties in regulating rates and dealing with public utilities have a specific obligation to

the public and should therefore be elective. This would also provide additional elective officers to serve on various boards and commissions.

Now as Chairman Hernetts has told you, we have gone back and forth and back and forth again and again on the whole gamut of elective versus appointment of each of the present offices, and we have talked again and again about the acceptability or the nonacceptability of certain offices. And I think we have listened to all of the major elective offices that we now have, and most all of the appointive. We recognize that the model constitution and various authors' studies, and commissions and so forth, on executive reorganization recommend that the governor and lieutenant governor be elected and all other officials should be appointed.

We think we have made a proposal here that understands that the people of this state do not want a pure cabinet system, but would accept a system whereby there is a proper check and balance within this branch and whereby all the elected officials, and especially the governor, would be far more visible and accountable to the public.

The present system sets up independent departments that are free from any gubernatorial authority and in effect does create small government within our state government. I think it has been said before, and I will say again, that the governor cannot begin to establish his program that he ran for election on because of these, nor can duplication be prevented. This is evident in many ways, but especially in the meshing of state programs to the many federal grants and programs. Whether we like it or not, this has become a way of life and in order to get the most efficient use of the dollars we spend, it is almost imperative that we have careful planning and coordinated sound management at the executive level.

Now in summary, there is one main objection to reducing the number of elective officials. And it is that the governor may become too powerful and build a vast political machine. It is true under this proposal that the governor is more powerful; he will have more responsibility. However, we think we've effectively dealt with this objection in Proposal 1-102 by keeping some key state officials as elective, and also by previous action of this Convention when we made the auditor a part of the legislative system. Here is another check and balance. Another important check that has been agreed upon by this Convention is the passage of the legislative section where the Legislature during a biennium may recess and call itself back into session, and would very likely do this if there were anything that far wrong in the executive branch of government.

So, in the checks and balances all over the place, there still is in this proposal a step in the right direction of sound and efficient government, visible to the people in the spending of the tax dollars and in the performance of their duties.

Before I came down to this Convention, I asked quite a few people the broad general question: "What should we revise in our present Constitution?" And most of the answers were somewhat along this line: "I don't know what should be done. That's really what I am paying you for. You go down there and take a good hard look at our Constitution. I do not want you to make a change purely for the purpose of making a change, but after you've made a careful study and you think there should be changes or revision, then I expect you to make them."

Fellow delegates, I think that this is what the Executive Committee has done, not necessarily made a change for the sake of change, but have taken a good hard, careful look, and we respectfully ask the delegates to this Convention to take a good hard, careful look and adopt Proposal 1-102.

And, Mr. President, I'd like to yield to Delegate Sondreal.

DELEGATE SONDREAL: Mr. President.

PRESIDENT WENSTROM: Delegate Sondreal.

DELEGATE SONDREAL: Our committee has assigned to me the duty of explaining Committee Proposal No. 1-102, which, as you've already heard, calls for the governor and lieutenant governor to be elected jointly, with each elector casting one vote for them together, as a kind of "executive team," on the same ballot.

I think that perhaps one of the most important things that can be said about the Committee on Executive Functions is that it recognized a need throughout its interim meetings to fix in the new Constitution a framework for accountability in executive performance. We felt that the governor ought to be answerable to the people of North Dakota for his actions as the State's chief administrative officer. We also recognized, however, that accountability is a far-fetched goal, and an empty, high-sounding word, unless it can be applied to men in office who have been given a commensurate authority effectively to meet the needs of the State by implementation of a long-range and coordinated administrative programming.

Though the heart of the committee's report has to do with the creation of a comprehensive state plan and a reduction in the number of constitutionally elected executive officials, the reasoning behind the report is linked directly to a recognized need to simplify and facilitate the overall control of state administration — to assure, or try to assure, that the executive branch does not any longer become frustrated with self-limiting divisions of power.

Committee Proposal 1-102 is consistent with this reasoning, as it will automatically help to reduce the possibilities of politically motivated conflicts within the executive team. It should also enable the man holding the office of lieutenant governor to become a full-time executive officer, in the nature of an administrative assistant to the governor, rather than a kind of "outcast on Capitol Hill" and a stranger to affairs of state, presiding over the Senate and having little responsibility and less authority in the management and control of executive government.

The lieutenant governor as next in the line of succession could logically be of value to the governor in this role as administrative assistant. As a main force in the executive branch, he ought to be directly and personally responsible to the governor.

Further, the committee's action is consistent with that taken by the Committee on Legislative Functions in Committee Proposal 1-70, which was adopted last night, which has seen fit to remove the lieutenant governor from the Legislature altogether in the thought that he could, and would, become a full-time executive officer.

It has always seemed sensible to me that the President and Vice President of the United States are elected on the same ticket. Is it not just as logical that the two potentially most important members of the executive branch on the state level seek election together and work together in the preparation and execution of an administrative program? The entire membership of your Committee on Executive Functions feels that it is.

The major thrust of its report, as I've tried to indicate, is to grant the executive and legislative branches coordinate authority to organize the executive department along broad functional lines, and to give the chief executive officer of North Dakota the power to apportion administrative authority and responsibility in a way in which bureaucratic inaction at the state level can be reduced to a minimum.

In this way as well, the governor would inevitably become more accountable to the people for the organization and implementation of a comprehensive administrative program. Such an objective was basic to the committee's thinking in the preparation of its entire report.

I do not believe that there is any persuasive argument today in favor of unnecessarily fractionalizing the administration of state government in this area, and thereby undoing the work and the philosophy of your committee.

The governor and lieutenant governor, Mr. President, ought to be elected jointly.

I yield to Delegate Scheel.

PRESIDENT WENSTROM: The Chair will recognize Delegate Scheel.

DELEGATE SCHEEL: Mr. President:

We will refer you to Subsection (c) under Section 2. This is the report of the Executive Functions Committee and in our old Constitution it is Sections 82

and 83. That's of the 1889 Constitution. It says: "The chief executive officer — our new section says — the chief executive offices and the principal departments, other than those elected, should be appointed by the governor and shall serve at his pleasure."

Now of what did the old section consist? It consists of a secretary of state whom we are to continue to elect, and an auditor who is to be appointed as auditor general by the Legislature; a treasurer who can, if the Legislature so desires, be one of the fifteen maximum — maximum of fifteen new departments; superintendent of public instruction — this will probably come out of our present Constitution's Education Committee, and this of course could be set up as one of the departments under reorganization of the Legislature — commissioner of insurance, the same applies, he can be one of the fifteen departments which are set up under the reorganization by the Legislature; the attorney general is to continue to be elected — I'm taking these in the order now they appear in the old Constitution — the commissioner of agriculture will be up to the Legislature as one of the fifteen departments; commissioner of labor, the same; the tax commissioner, the same; the three Public Service Commissioners are to be elective, and of course the additional four principal appointed offices, highway, social service, health and fish and game department.

Now what we propose to do is elect these. As you can see, the governor, lieutenant governor, attorney general, secretary of state, and the three Public Service Commissioners. Half of the slate that we now elect. We propose the Legislature set up a maximum of fifteen total departments including these organized along broad functional lines as an executive department. These have to be approved by the Senate by majority vote when they are appointed in those instances where they are not elected.

Now we have had testimony from every one of the heads of the executive departments in our state government. Those who are elected testified pretty well that they should be reelected with the three exceptions; one of the Public Service Commissioners felt appointment is all right; the tax commissioner thought the appointment was all right; and the governor advocated appointment. And we had, of course, the others that are now appointed, and they all preferred that they be reappointed. Each one of the arguments on reelection was that we should continue to have a system of checks and balances. And we agree this is a valid argument. But, at the same time, the checks and balances should be principally between the departments, not within the departments. In other words, we feel that the executive department has or shall have its checks and balances in the legislative and in the judicial system, although we do advocate the attorney general will ride herd on behalf of the people in anything that might have a question of law in the executive branch.

Now the basic questions are — people ask us is this a long or short ballot? Well, the committee ran the gamut of the spectrum on all sides, from the short ballot, which is the election of just the governor who would then appoint an entire cabinet, as Delegate Chase pointed out, to the other end of the gamut, which is the long ballot in which everyone is elected. And we came out somewhat in the middle for two reasons: One, this thing has to be approved by the voters, and, two, this will work the way we have set it up. Now, basically, the deliberative process of government in the Legislature, whether it is unicameral or bicameral, it still is the process of deliberation. But when you hand this job to the executive department, it is there you expect to get the job done.

Now we can observe our government here in North Dakota, and despite what they may say this is basically a good government. You can look at the way these various departments operate, and they do a good job, especially if you compare them with other states that are big and unwieldy. But there is a better way to have this government operate, and that is the way we propose. The proposal and the program will be solved by concert between the Legislature and the executive branch. The Legislature can propose reorganization, have control of the reorganization, but the executive branch can also do so. And I think that is the wish of many people. I feel this is perfectly feasible, but in every case the Legislature holds the power. First, they have to finance it; and,

second, they have to approve every reorganizational move that the executive department wishes to make. This structure will work better. The executive can then execute the program that the Legislature lays out for it to do. This is one case where the whole is greater than the sum of the parts. And this is the case in a good football team. This is the case anyplace where all the individuals work together. They have the sum of their individual capabilities, but when you put those together as a team and they go to work they become a whole greater team — greater than the sum of the individuals.

In this you have to have autonomy within the departments. These departments have to have autonomy or there is no way of measuring how they are doing. Now they have the autonomy to an extent. This is good, but beyond this we have to have coordination between the departments and among the departments, and this is where it comes in — when the governor appoints a half a dozen individuals, they sit down and plan, counsel and start to work, you can — I can see this and I'm sure the rest of the committee can see this, too — you can see as this thing progresses in the course of an administration these people become part of a team. They will have elected members on there who don't always agree with them, they will have appointed members on there who don't always agree with them, but they have one commitment, and that is to make the thing work. And as it works, it engenders a fever which is like a winning team or a winning administration of anything. With this structure, you will get your money's worth and more, and we ask you to accept this committee proposal.

And now I yield to Delegate Birkeland to explain Subsection (d) under Section 2.

DELEGATE BIRKELAND: Thank you, Delegate Scheel.

PRESIDENT WENSTROM: Delegate Birkeland.

DELEGATE BIRKELAND: Mr. President and Fellow Delegates:

I would like to now refer to Subsection (d) which reads as follows: "The legislative assembly upon periodic review of executive departments, may by law, change and prescribe the manner of selecting those executive officers not provided for in this constitution."

This is an entirely new concept in planning and revising state constitutions. You will not find such a provision in our present Constitution, nor will you find such a provision in any other state constitution to my knowledge. It is truly a North Dakota born and reared provision designed specifically for North Dakota and our newly revised, modern, up-to-date Constitution.

However, because it is a new concept, I would ask my fellow delegates not to condemn or to cast adverse judgment upon it until each and every delegate here has thoroughly considered it in its entirety. I would also ask that you consider the fact that this new proposal is so very fundamental to our new proposed modified short ballot for North Dakota. It ties in directly with this new feature.

Why do we need this proposal? I'm sure this question is on our mind right now. Let me explain. In our executive article, as has been mentioned by the other delegates, we have gone from the old long ballot to the new modern short ballot. We are now proposing to elect seven state officials instead of the present fourteen. This is an effort to strengthen the executive department of our state government, and I am sure that most of us here today are in agreement with this basic principle.

However, when you do this, when you give any department more power, then it also seems advisable to provide a check on this additional power granted that department. This is one of the features and the functions of Subsection (d).

It will provide the Legislature with more flexibility, it will also give the Legislature authority to make changes which may seem desirable in the future, authority which it does not have at the present time. Also this is a safety valve allowing for change and leaving the final authority in the hands of the Legislature. We have heard throughout this Convention that we should place our trust and our confidence in our Legislature, and I so really believe that that is true. We must give them power, must give them flexibility.

And so in an effort in this effect we have given the executive branch more power — the power to appoint the officials. However, we have also implied that with this additional power the governor has the responsibility of choosing top-notch men, honest men with expertise, knowledge and responsibility to the citizens of our state. This responsibility of the governor, should it ever be violated by him, then and only then the Legislature shall have the power to take the necessary action by the powers given the Legislature in this subsection.

Further explanation of this section — let us now look at two words, “periodic review” in the first line. The intended purpose of these two words is an effort to remind the Legislature to only make a periodic review of the appointed offices, not necessarily change each office at each session. The committee felt strongly that changes should be made only when deemed necessary to insure continued good government and not make haphazard changes from time to time.

Another area of importance in this subsection reads: “The legislature may change and prescribe the manner of selecting appointees.” And here I wish to emphasize the word “prescribe”. It gives the power to the Legislature to change. They may appoint by governor, they may provide election by the people, election by a board or commission, or even appointment by the Legislature themselves, and there may be other ways that they will come up with at some future time.

Also, let's take a look at another portion of this subsection, the last six words, which I believe are quite important to this new document, which says simply: “not provided for in this constitution”. This simply insures that the seven constitutionally elected offices — those of the governor, lieutenant governor, attorney general, secretary of state and the three Public Service Commissioners — can never be changed by the Legislature from election by the people in any other form. This is a protective clause in there which will insure the voters of North Dakota that they should be guaranteed that they will be voting on at least seven individuals.

In summary of this subsection, I wish to make the following points: — and, by the way, our entire committee, the entire majority of our Executive Functions Committee, feels this section is very important and must go along with our entire new section.

Let me summarize Subsection (d).

1. Subsection (d) strengthens the executive branch of our state government.
2. Subsection (d) strengthens the legislative branch.
3. Subsection (d) adds flexibility to the executive branch.
4. Subsection (d) protects the electorate.
5. Subsection (d) will increase the salability of this new product to the people of North Dakota.

With that, I yield to Delegate Rude.

PRESIDENT WENSTROM: Delegate Rude.

DELEGATE RUDE: Mr. President. Thank you, Delegate Birkeland.

Fellow Delegates: Section (e) of Committee Proposal 1-102 refers in part to Section 78 of the executive department in our present Constitution: “When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the Governor shall have power to fill such vacancy by appointment.”

In this section of our proposal we give the governor power to make a recess or interim appointment “if, during a recess of the senate, there is a vacancy in any office filled by appointment where confirmation is required by the senate . . .”, which somewhat follows along the provision in Article 54 providing for appointments to the Board of Higher Education during the interim.

In our proposal this is a temporary appointment until the next meeting of the senate, when the governor shall make a nomination to fill such office. So limited, the section is substantially self-explanatory. It is, in short, simply a means of preventing the governor from getting around the requirement for confirmation of his appointees. It is worth emphasizing that the last sentence in

this section, Section (e), precludes reappointment of a nominee only if the senate rejects him. However, he may be nominated again at the request of the senate. The operation of this section appears to be basic and appropriate in the matter of interim appointments.

PRESIDENT WENSTROM: Fellow delegates, it is now one minute to twelve. And I think this would be a good time to have a recess.

Delegate Byrne.

DELEGATE BYRNE: Mr. President: Before recessing, we have completed the presentation of 102. I would like to make one statement to the delegates. This afternoon in presenting your comments it is the fervent hope of the committee that your premise, as ours, is that based on first knowledge, but on a group of facts cannot in the future develop government and reorganization and efficiency unless present Constitution restrictions are for the great extent improved. This has been a matter of sincere analysis within the committee. And I personally want to congratulate the members of the committee for viewing this thing as an abstract, and I believe in a very fine manner. But I do feel that this is the one premise that is very necessary for you to consider. I know it will not be possible to completely understand the circumstances. But would you please give that a little thought during the recess?

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President. I believe that these people have done a very commendable job, and would move that their — that the remarks of Delegates Chase, Sondreal, Scheel, Birkeland and Rude be placed in the Journal as I believe that this issue is one of the key issues to the approval of our new Constitution.

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Do I have a second to the motion? Second by Delegate Nothing.

Is there any discussion? I hate to put a motion like that without the Chairman of the Budget Committee on the floor, but I will. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and it will be in the record.

DELEGATE ROSENDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: As a member of the committee, may I just make one very brief statement? All states which are small in population have a golden opportunity to be model states. North Dakota has far fewer physical, economical and social encumbrances than are found in many of the more densely populated states. We should have a state government which is clean and strong and responsive in its position within the federal system. Fellow delegates, I believe that we have presented you under Proposal 1-100 and 1-102 the necessary tools to accomplish this for North Dakota.

PRESIDENT WENSTROM: Are there any announcements at the desk? Are there any announcements?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: If I could indulge the group a moment. May I have a show of hands from the Style and Drafting Committee of those members who are free to meet during the lunch hour? Please hold your hands up. Apparently we will not have a quorum, so we will not be able to meet. Sorry.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I was about to move to recess; however, I think there were two announcements to be made that were going to be made by the Committee Chairmen of the Executive Functions and Preamble, Bill of Rights to have a meeting this noon.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Mr. President: Our Executive Functions Committee will meet down in the usual room. And, as I said before, bring your lunch with you. And anybody who has any interest in that section of 1-100, why there is your chance to come down and be heard.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President: The Education Committee will meet in G-1. We have a complete and interesting menu for the members of the committee.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: The Bill of Rights Committee will meet at noon. I would say that to those who I didn't get to before, that there will be sandwiches there and you won't have to stand in line and bring them with you.

PRESIDENT WENSTROM: Further discussion? Further announcements?

Delegate Saugstad.

DELEGATE SAUGSTAD: Hearing none, I now move that we recess until one-thirty P.M.

PRESIDENT WENSTROM: It's been moved that we do recess until one-thirty P.M. Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

As many as are in favor of the motion say "aye," opposed "no." The "ayes" have it. We will be in recess until one-thirty.

(The Session recessed at 12:05 P.M. until 1:38 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:38 P.M., Thursday, January 27, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

We will continue with the discussion of Committee Proposal No. 1-102. At the time of the recess we had just concluded the statements of the five that spoke for the adoption of the proposal.

Delegate Hernet.

DELEGATE HERNETT: As the Chair said, and I want to say the same thing, that concludes our presentation. Now it is open for discussion by delegates.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President:

I agree with Chairman Hernet that the presentation was very fine this morning. But there was one or two things that I think the delegates should be brought up to date on in the way of the shift of position that occurred in the brochure and then taken back and broken down into the pieces that we have before us now.

You will recall that at that time there was a minority report. The minority has been subjected to some fragmentation, as well as the committee proposal. And while the committee was able to reassemble enough so as to produce a document for you, there is some difference of opinion still in the committee. One has to do with the question of length of the ballot, as you might expect. And the statement has been made that we made a compromise which would just eliminate half of the elected officials. And so far as that goes, I guess that's true. But in so doing Committee Proposal 101 — 1-102, as we have it before us, reduces the number of positions that the citizen may vote for from twelve to four. The reason for that, of course, is that the committee proposal combines the office of governor and lieutenant governor so as to call for a casting of one vote for both offices, whereas we vote separately on those offices now. And then only one of the three Public Service Commissions come up for election at each election. So, you see, while you would technically be able to vote for seven of our governmental officials, the most that you would be able to vote for at any one time

as far as ballot position is concerned are four; governor and lieutenant governor together, attorney general, secretary of state and one Public Service Commissioner. So I think that those of you who have an interest in the philosophy of the short ballot versus the long ballot should understand that's the case rather than simply cutting in half the ballot. It's been reduced quite a bit more than that.

Then another subject of considerable fate, and which we had the most to do with the minority report at an earlier date, concerned itself with the ability of the Legislature to have some say at a future date in whether or not to have an executive officer of a department of the state government elected by the people appointed by the governor, or provided for so far as selection is concerned in some other way — like be elected by a board or commission. And the minority report was thrown in the wastebasket after the revision of Section (d) under 1 by the committee as a whole on the theory that this, for all practical purposes, answered the arguments of the original minority report which would have provided that the Legislature have some future say at some time as to election, appointment or selection by some other means. And I think even yet some of the committee members feel that this is a fact, but it is not a fact. If you will read that you will find that that section says that: "The legislature may by law — or legislative assembly upon periodic review of the executive department, may by law, change and prescribe the manner of selecting those executive officers not provided for in this constitution." And the elective officers are provided for, of course, in Section (a).

And the chief executive officers of the present principal departments other than those elected are provided for by appointment in Section (c). So the only practical effect of Section (d) now would be that the Legislature could provide for the election or the selection by board, or any other way, some departments heads presumable, or something like that. So that objection still exists so far as I'm concerned, and I think some other members of this assembly.

There is also an objection on my part, and a few others, to the combining of the governor and of the lieutenant governor on a joint ballot. And for the purpose of seeking a possible remedy for that, I have an amendment at the desk which I would like to read now and will move, if seconded.

PRESIDENT WENSTROM: Further discussion?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-102 is as follows:

On page 1 of the engrossed proposal delete lines 14 through 17, inclusive, and insert in lieu thereof the following:

"b) All officers provided in this article shall be separate and distinct, except that the legislature may provide by law for the election of the governor and the lieutenant governor on a joint ballot. Until there may be provided by law for such joint ballot, the governor and lieutenant governor shall be elected by the qualified electors of the state. The persons having the highest number of votes for governor and lieutenant governor respectively shall be declared elected. The duties of the lieutenant governor shall be prescribed by law."

PRESIDENT WENSTROM: Do we have an amendment to the amendment — a second to the amendment?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: This amendment would provide, as is quite clearly stated, that the situation so far as the election of the governor and lieutenant governor would remain just the way it is now; elect the secretary, and it could be of different parties, just as the case today, or would be elected from the same party as has been the case on numerous occasions in the past; but that the Legislature could provide by law for a joint ballot just as is suggested by the committee report. And I think it is self-explanatory, and I don't suppose there should have to be a lot of debate on it, I hope not. I think everybody who's interested in this understands the implications. And that's all I have to say on the subject.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Baker.

Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I rise with mixed emotions to oppose this amendment for the simple reason that I don't know what the reaction is going to be to Section (b) of 102 which would, in effect, lock in the selection of the lieutenant governor and governor together which at this time I believe would be, in my opinion, more favorable than the amendment. However, if Section (b) were to fail then I would have to stand and support the amendment. But at least at this time I'm going to oppose the amendment until we find out what the assembly feels about Section (b). I just want to reserve the right to speak in favor of the amendment at that time if (b) is not approved.

PRESIDENT WENSTROM: Any further discussion on the amendment?

Delegate Vogel.

DELEGATE VOGEL: Like Mr. Nething, I would like to support (b) under 1-102. But as I was thinking — I rise to oppose the amendment. I think this would put me in order; is that correct?

PRESIDENT WENSTROM: That is correct. If you wish to speak in opposition to the amendment, why that would be correct.

DELEGATE VOGEL: I wish to speak in opposition to the amendment because I believe that it's a good and necessary thing that we elect the governor and the lieutenant governor on a single ballot as is done at the national level and as ten states have done since — during the last decade or so; Illinois being the last one. At the present time the lieutenant governor has exactly no duties. We just took away from him the duty of presiding over the Senate. So that that leaves him with no duties other than to step into the shoes of the governor should something happen to the governor. The purpose of having a lieutenant governor, of course, is to have someone who will step into the shoes of the governor and continue his program should something happen to the governor. We discussed the possibility of eliminating the lieutenant governor and making another elected officer second in line, as has been done in Alaska and I think maybe in another state or two. But we decided that better than that we should make the lieutenant governor a full-time officer of the executive department who would be trained in government and ready to take over should the occasion necessitate that. And to that end we have said in Section (b) that the governor shall prescribe the duties of the lieutenant governor. We've also said that he shall hold office at the seat of government. At the present time he is the only executive officer who is not directed to hold office at the seat of government. And we have also made him the vice chairman of the Planning Council, which I believe we passed earlier this morning. So I rise to urge you to support the original proposition, that the governor and lieutenant governor be elected on the same ticket, casting a single vote for the two of them and in opposition to the amendment that you have before you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Even though this is rather a small state population-wise, the governor on his last testimony before the committee about a week or ten days ago read his calendar to us of what he had been doing during the last year. I don't know if it was after that somebody said, "Well, he must be just a ceremonial governor." Because there was hardly any time after he'd done all that to actually function as a governor. And if this were the case, then he could prescribe to the lieutenant governor some of these social functions given to King or Queen Elizabeth so the Prime Minister won't have to carry them in England. If it were possible for the governor to have the lieutenant governor both help him in assigned administrative duties and social duties, it would make the job of governor worth just about twice to three times as much. And, therefore, I would advocate that we leave the proposal as it's now written to make effective the

whole plan of reorganization as we have outlined it here. Thank you.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: A brief statement, Mr. President. I think it's understood that these offices should be a working and fairly harmonious team. This is just good management. And I don't think we're going to insure harmony necessarily by having them both from the same political party or on a joint ballot. But you would erase one of the great barriers that cause a lot of bickering and so forth and division and what-have-you if you have both of these people elected on the same ballot. I think it's a concept that we ought to keep in mind in good management.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: This has brought up a question in my mind. If the governor is to prescribe the duties of a lieutenant governor and you have a lieutenant governor who is politically ambitious to the point where the governor and he come to a parting of the ways, the governor could therefore prescribe him actually nothing to do. I would really rather see the Legislature prescribe his duties, even if we do elect him on the same ballot.

PRESIDENT WENSTROM: Any further discussion?

Hearing none, the question before the Convention is on the amendment as offered by Delegate Baker. Hearing no further discussion, as many as are in favor of adopting the amendment will say "aye;" those opposed say "no." The "noes" have it, and the amendment lost.

We are back on Committee Proposal No. 1-102.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: There's one question I would like to ask, Mr. President, to one of the committee members. I notice in the language of the proposal, Committee Proposal 1-102, that they have prescribed the selection of the nominations shall be prescribed by law, but nowhere do I see where — who prescribes actually what a vacancy is. They provide that a vacancy — if a vacancy occurs in a recess. They have provided if a vacancy occurs while the legislative chamber is in session. Now, maybe — maybe it's open for debate whether the Legislature could prescribe actually what a vacancy is. In other words, what I'm thinking about, say, for instance, one of these officers died right early in the session and a vacancy supposedly occurs naturally. But who declares it is vacant? You wouldn't have to submit the nomination to the session while the Legislature was in session at that point. Would some member of the committee explain just exactly who determines a vacancy and what it is?

PRESIDENT WENSTROM: Delegate Rude.

DELEGATE RUDE: Mr. President: I believe that if you refer back to Section (c) in Proposal No. 1-102 they are appointed by the governor and shall be confirmed by the Senate. It's intended that if there is a vacancy when the Legislature is in session, that these appointments would be made and would have the confirmation of the Senate.

DELEGATE TRENBEATH: Yes, Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I realize that the — that it does provide by law in Section (d). It stipulates that by law how they can be selected for nomination. But really I see nowhere where it actually states that by law just what constitutes a vacancy.

DELEGATE VOGEL: I don't believe there is any provision in our present office — in our present Constitution for the finding of vacancy, is there? I think that there is much vague language — there is no definition of vacancy in the present Constitution. And the question simply didn't arise in the committee.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Of course I think we should start thinking about providing for vacancies. In all these executive offices we have got a completely different situation now.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

Earlier this morning we were talking about a couple of proposals that related to removal from office, and we also had a proposal that relates to impeachment. And of course these would create vacancies in the office. And of course that would create a provision here, I believe, which would come into play. And if there were a definite office then there also automatically would be deemed a vacant office. So I think the vacancy we're talking about would be one of the three ways plus, of course, a resignation. Because a resignation would automatically leave the office vacant. So I think when taken in context with the other provisions that are there, I think it probably would be covered while we do not enumerate a specific vacancy.

In 1-20, as a matter of fact, which we'll be discussing tomorrow, the amendment we adopted this morning did away with that particular language regarding what a vacancy was, because we felt that these things would automatically come about; death being a vacancy, impeachment being a vacancy, removal being a vacancy, resignation being a vacancy or failure to qualify being one. We felt that we didn't really need to have a provision on that because it would take care of itself. However, if there is some strong feeling that the language should be there it is found in 1-20. And tomorrow, if the feeling exists that we should speak to that particular thing in the Constitution, I'm sure the committee would not have any objection to it. It was taken out because we felt it was superfluous.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: If the committee feels that way, I certainly am not one to decide that it is wrong. But I was just thinking that probably it should be spelled out; death, impeachment, resignation or the inability to serve. But if this is the feeling of the committee that we're safe in this regard, that's fine.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President: I would like to compliment the committee —

PRESIDENT WENSTROM: Delegate Hoghaug, your mike is not working.

DELEGATE HOGHAUG: Thank you. Now I think I have it. I'd like to compliment the committee on the fine work they've done on this proposal, and I endorse it. But I have one question that I'm not sure about on the repeal portion. We're repealing Sections 71 and 72, I understand that. But also reference is being made to Sections 82 and 83, and there's also kind of a connection with Article 80. Is it necessary that these repeal —

DELEGATE DAWSON: Mr. President.

DELEGATE HOGHAUG: Is it necessary that these repeals be listed there or not? I'm not an expert on that, I'm just inquiring.

PRESIDENT WENSTROM: Can someone answer that question?

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Yes, those are covered under repeals in other articles. 82 and 83 are covered in 1-91 in the repeal for that proposal because there was an overlapping in the subject material. They will be covered.

DELEGATE HOGHAUG: Thank you.

DELEGATE LONGMIRE: Question.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: I have a very short amendment at the desk. If it can be read, I'll explain it.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-102.

On page 2 of the engrossed proposal, in line 2, after the word "of" delete "selecting" and insert in lieu thereof "the appointment of".

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: Second is by Delegate Omdahl.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: The Legislative Functions Committee went through the same word in the auditor general proposal and we belabored it at length and decided that the word "selecting" was too broad in that it may put the Legislature right back in the business of electing the people that we are trying to get appointed. And we feared that almost before this procedure could get started the heat would come on the Legislature to instigate an elective process again. And even though the day may come when there is an earnest wish by some groups to go back to an elective process, the process of constitutional revision is not that difficult. And we want it in the article, general article, and I think we want it here, too. We want to prevent the Legislature in these first years of this new process not to be under the terrible duress of groups of people and political parties putting pressure on them to immediately instigate the elective process. And we chose the word "appointment" so that the Legislature could devise different ways for the appointment of these people but that that procedure would not include election. That's my — I don't know the exact reasoning for the committee's choosing the word, but I suspect it didn't occur to them that this might cause this kind of effect.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President: I will speak directly to the word and the reason. And it can be answered in one word, and that word is "compromise". We were fully aware that leaving the word "selecting" as it is gave to the Legislature the authority to determine whether or not other state — heads of executive departments should be elected, appointed, or be appointed by a board. There are three options available. And it was the general consensus of the committee, after working on this for some six months — and that one particular area probably was as large a hangup as the committee had — we finally felt here that this could be one part of the Constitution that would either make it successful or unsuccessful. And we felt that for those that are reluctant to reduce the size of the ballot as we have done that they can see that the matter of reducing the ballot will be left up to the Legislature. And we think this is a fair option to have. We think it will be acceptable by the public. And, after all, if whatever we do is not successful it's going to be somewhat in vain. So I would urge the disapproval of the amendment. This has had considerable thought from the committee. I don't think we've met once that we didn't think about it. We thought about it so much that sometimes we would just say, "Don't even talk about it again," because it caused us so many problems. And I strongly urge the defeat of the amendment.

PRESIDENT WENSTROM: Delegate Chase. Delegate Cart.

DELEGATE CART: Well, Mr. President, I want to speak against the proposal. Now if there's an amendment maybe I should wait.

PRESIDENT WENSTROM: Then, Delegate Cart, you should wait.

The question before the Convention — Delegate Aubol.

DELEGATE AUBOL: Mr. President: Delegate Baker mentioned something about the fifteen chief officers in his remarks, and now at this point would Delegate Nething yield to a question?

DELEGATE NETHING: Yes, I will.

PRESIDENT WENSTROM: Delegate Aubol, now is your question on the amendment?

DELEGATE AUBOL: Yes, it is.

PRESIDENT WENSTROM: Okay, you may proceed.

DELEGATE AUBOL: Is it the feeling of the committee that the — let's see, what does it say here? Talks about fifteen officers up here someplace. But those officers it talks about in Subsection (c), is it your feeling that the Legislature could choose their method of being named under the provision of Subsection (d), that the Legislature could say — instead of appointing these chief officers that the Legislature could say, okay, these fifteen we will elect?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Delegate Aubol, that is exactly right. As a matter of fact, I think that there is some speculation as to all the way through this what the various intent has been of this body. And that's one of the reasons that we've been recording all of the proceedings here. Not only in the committee, but here in the chamber itself. And when a question of intent comes up, they are going to have to look back for interpretation on this.

And I can tell you as a body, Mr. President, fellow delegates, that it has been our intent in the committee that the Legislature shall be permitted to select the other officers other than those outlined in Section (a) in any way that they see fit. Now we are not at all attempting to imply in any way, shape or form that Section (d) would limit the selection of the chief executive officers and not permit them to be elected if the Legislature so chose.

PRESIDENT WENSTROM: Further discussion?

Delegate Omdahl.

DELEGATE OMDAHL: Mr. President: This looks like an ordinary piece of legislation where the advocates compromise to a degree where they feel they've accomplished something and the opponents feel that nothing is going to be accomplished so everybody's happy. I rise to support the amendment because I think we're under the impression here that we're going to reduce the number of elected officials in this state from our present number to about seven, whereas if we don't change the language here we might end up with fifteen or twenty.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I suppose as long as we have to get intent on a verbatim record we'd probably better do it. Now I'm not in agreement with Delegate Nothing on his interpretation of this thing. This article says, Article (a), that these particular officials shall be elected. And as you go on down to (c) the balance of the officers under the executive department shall be appointive. This is constitutional direction. And this is what it says. Now when you get to (d), "The legislative assembly upon periodic review," as you look further down the road, as this thing goes on, if we have not been all wise in our choice and maybe an appointive official should be chosen some other way, that's what that particular Section (d) means. To me it does not mean in the organization process, because we have pointed out in (a) and (c) what that shall be. But if we are wrong, or if situations should change, then we voted (d), "The legislative assembly upon periodic review of the executive departments, may by law, change . . ."

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I, too, oppose the amendment. I agree with Delegate Nothing. I think I would hate to see the word "appointive" in this because then that would indicate, too, that that is the only method of selecting these executive officers. Now the word "compromise" has been mentioned here several times, and this is probably true. But I think that no matter even if the Legislature does at some future date take another look at these departments and decides that they should be selected by some other method, I think we still have taken a great step forward. Because these offices that we are talking about by adopting this measure, this proposal as it was written, are unlocking these people from the Constitution. And I think this is — this is the great step forward that we are taking here.

I feel that by doing this as we are doing it, it gives the Legislature a chance over a period of years; and there is no time set in here, it might take years in some offices; some of them it might not take so long. Now sometimes it has been said the Legislature does not ever do any of these things. This is not so. We did it with the Labor Department. And I think if you give the Legislature time they will accomplish this.

There is another area here where it may take some time where they may decide to take a second look and it is because of all the boards and commissions that these officers do serve on. You've all seen that chart, I think, it was around here all summer, showing the interlocking directorate, or whatever you want to call it, of all these officers and offices and commissions in the state. And this will take some doing. It will take some time. And I think by adopting this proposal as it is written with the word "selecting" on line 2, I think we will accomplish it.

PRESIDENT WENSTROM: Any other discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Sinner. Those in favor of the adoption will vote "aye" and those opposed will vote "no." As many as are in favor of the motion to amend will say "aye;" those opposed "no." The "noes" have it, and the amendment lost.

We are back on the question of Committee Proposal No. 1-102.

Delegate Cart.

DELEGATE CART: Mr. President: I oppose this entire proceedings or procedure the same as I opposed that in 100 — 1-100. This is taking away from the people their basic rights to elect their public officers. And I certainly think if we should ever pass out anything like that it would invite defeat of the entire proposals that come out of this Convention, and it properly should. The people should not surrender their right lightly. It's the one protection they have against consolidated autocratic government. If we get this power concentrated in one or two places then you can build up a political machine that will endure and last for a long, long time. And your public will be largely frozen out of their operation of this state's affairs.

Now as far as shortening a ballot, why that's no handicap to a person to go to the polls and vote for ten or twelve or fourteen any more than it is to vote for seven. The problem is going to the polls. And as far as all this publicity of boards that has been talked about and bantered around, they are all, with the exception of four, created by the Legislature. And they can be abolished by the Legislature just as well. You have only four boards that are enumerated in the Constitution; that is the Board of Equalization, the Board of Pardons, the Board of University and School Lands, and the Board of Higher Education. Those are constitutionally provided for boards. The rest of them are all legislative.

Now I think that this whole proposal ought to be voted down and leave the public, the voting public, the right to select their officers.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, will Delegate Vogel yield to a question?

PRESIDENT WENSTROM: Will Delegate Vogel yield?

DELEGATE VOGEL: Yes.

DELEGATE DEVINE: Delegate Vogel, do you intend to offer your amendment?

DELEGATE VOGEL: Yes. That was what I was rising for. I don't know if I'm in order or not, having spoken before, but if I may offer this amendment I'll tell you why.

PRESIDENT WENSTROM: Is your amendment at the desk?

DELEGATE VOGEL: It was printed yesterday afternoon. I had hoped it would not come out until this morning. But maybe you can find it. It is a short one.

PRESIDENT WENSTROM: Is it at the desk? Do you have the amendment?

CHIEF CLERK GILBREATH: Want me to read it?

PRESIDENT WENSTROM: Yes. We will read it.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-102.

In line 19 of the engrossed proposal following the word "elected" insert the following: "or those chosen in a manner provided for in another section of this constitution."

DELEGATE VOGEL: The reason for offering this amendment is to bring our proposal in line with the proposal of the Education — excuse me.

PRESIDENT WENSTROM: Just one moment. May we have a second?

DELEGATE DAWSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Dawson.

Now you may proceed, Delegate Vogel.

DELEGATE VOGEL: The reason for offering this amendment is to bring this proposal in line with the proposal of the Education Committee which was not available to us before then. It would allow one or more of these heads of departments to be chosen in some other fashion than election by the general public or appointment by the governor at the consent of the Senate. And I believe that the Education Committee has a proposal which would have the Superintendent of Public Instruction selected by a board. And it is in order to make this proposal compatible with what is being proposed and to allow without further changes for such proposals that this amendment is being proposed. I don't believe that it greatly changes the intent of the proposal in any way.

PRESIDENT WENSTROM: Further discussion?

Delegate Devine.

DELEGATE DEVINE: Speaking briefly, I favor the amendment because as with the Board of Higher Education they select their own executive officer. And I think that this situation should continue if it's provided in the Constitution.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention, the adoption of the amendment as offered by Delegate Vogel as read from the desk. Any further discussion?

Hearing none, those that are in favor of its adoption will vote "aye" and those opposed will vote "nay." As many as are in favor of the motion of adopting the amendment will vote "aye;" those opposed "no." The amendment is adopted.

The question before the Convention, Committee Proposal No. 1-102 as amended. Delegate Nething.

DELEGATE NETHING: Mr. President: I would like to move that the rules be suspended, and that the Proposal 1-102 be deemed properly re-engrossed and placed before us for first reading and first passage.

PRESIDENT WENSTROM: Delegate Nething moves that the rules be suspended, that Committee Proposal No. 1-102 be deemed properly re-engrossed that it be placed before the Convention for first passage.

DELEGATE BIRKELAND: Second.

PRESIDENT WENSTROM: The motion is seconded by Delegate Birkeland.

Is there any discussion on the motion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I would join Governor Cart or Delegate Cart in opposing the entire thing, although I'll agree that the amendment, second from the last amendment, made it a little more palatable. However, from my area I think maybe the people are a little more inclined to be independent in nature and they do not want their officials appointed. Either they want their —

PRESIDENT WENSTROM: Delegate Rundle, I think the question before the Convention at the moment is whether we should suspend the rules and consider the proposal properly re-engrossed and placed on the calendar. I have to rule you out of order.

DELEGATE RUNDLE: I'm sorry.

PRESIDENT WENSTROM: The question as stated is on the motion to deem — to suspend the rules, deem the Committee Proposal No. 1-102 properly re-engrossed and placed on the calendar for first passage. As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it, and Committee Proposal No. 1-102 is now before the Convention as amended.

Now, Delegate Rundle, if you wish to comment.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I'm sorry I beat the gun. But I have found in this business that if you pass up too many opportunities you may find yourself completely beaten without knowing it. I don't want to take that chance.

The people in my area want to elect their officials. I appeared in front of the committee and said I didn't object if they consolidated some offices. But the people in my area, including myself, want to elect them. We want to elect the judges. And these are two of the more important issues. And I would point out that I had a list made yesterday here and I found that the people in my area voted 1,500 to a thousand, which is one and a half times, in favor of voting this Convention. So they didn't come in prejudiced or anything of the sort. Now I hope this entire proposal fails.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. I would like to ask Delegate Nothing a couple of questions.

Mr. Nothing, as I understand this proposal now, let us take it down to specifics, if the Constitution is approved then the commissioner of insurance would become an appointive officer, presuming the office is continued, for the first term under the new Constitution; is that correct?

DELEGATE NOTHING: Yes.

DELEGATE PAULSON: Then let us assume that the Legislature could start a periodic review two years later and transform that office back into an elective status if it so desired; is that correct?

DELEGATE NOTHING: I believe that's correct, Delegate Paulson. That would take effect after his term. It would be the next time, that's correct.

PRESIDENT WENSTROM: Further discussion?

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I just want to say I'm going to vote for the proposal with some reservations. And I think that what Delegates Cart and Rundle have had to say is pretty important. We were discussing judges the other day, and how people are very jealous about keeping their right to vote for judges. I think this would also apply in areas in which they are much more familiar with their elected officers. I think that this might well be a very good matter to put on an alternate proposal.

PRESIDENT WENSTROM: Delegate Birkeland.

DELEGATE BIRKELAND: I would just like to make one clarification regarding the comments from Mr. Rundle and Mr. Cart. It would be possible under this new proposal that in the future we could actually elect as many as seventeen different state officials. In the beginning it is seven, but we have given the flexibility to the Legislature that they may in the future change and prescribe as Section (d) stands for. So it is possible we could be electing seventeen state officials. I don't think they have anything to fear.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lander.

DELEGATE LANDER: Mr. President: Would Delegate Baker yield to a question, please?

PRESIDENT WENSTROM: Delegate Baker?

DELEGATE BAKER: Yes.

DELEGATE LANDER: On the basis of what you were saying earlier this afternoon would you agree with the conclusions that Delegates Nething and Birkeland have just expressed?

DELEGATE BAKER: No, I do not. The language is quite plain to me.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I just want to remind the delegates that this morning we acted on Proposal 1-100. And this proposal provides methods for giving dignity and responsibility to both elected and appointed state officials and department heads. And I think that when it's said and done there is not going to be a lot of vacillating back and forth as to who is going to be appointed and who is elected.

PRESIDENT WENSTROM: The Chair will recognize Delegate Peters.

DELEGATE PETERS: Mr. President and Fellow Delegates:

I want to oppose this measure. I don't think it is a democratic way of doing things. I think it changes to put too much power into the hands of too few people. An aggressive and politically minded governor could build up a powerful political machine. And I'm not very anxious to go home and tell the people in my district that the Convention didn't feel that they were capable of electing their state officials. I don't think appointed officials are the answer to any of the problem. And I'd just like to point out that the head of the U. S. Department of Agriculture has been an appointed official for quite sometime. Now I think that should settle the matter.

PRESIDENT WENSTROM: Further discussion?

Delegate Hill.

DELEGATE HILL: Mr. President: I think the delegates that have some fears about appointing too many officials raise a very valid point, and that is no matter how specific a proposal we adopt here, it cannot be effective unless it's adopted by our citizens. And I think as Delegate Stanton has pointed out, this perhaps is one of the key issues of the Convention. And I think it's essential that we give the voters of North Dakota a choice on this in the form of an alternative question on the ballot; one question basically provides for an appointive system with flexibility of the Legislature to change, and another system basically providing for an elective system with flexibility given to the Legislature. But I think it essential at this time that we support this proposal and that those who may be interested in the alternative question of the Rules Committee, Ballot Committee, to take care of that problem.

PRESIDENT WENSTROM: Delegate Kwako.

DELEGATE KWAKO: Mr. Chairman. Thank you.

Teacher 2,300 years ago made this following statement: "When power lies only in the hands of the people and their government is restricted, then that people flourisheth and no man or group of men can conquer them."

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-102 as amended. No further discussion, those in favor will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 75 "ayes," 23 "nays," all delegates present and voting. Committee Proposal No. 1-102 has passed.

Next for consideration is Committee Proposal No. 1-114.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-114, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that Article XIX to the constitution of the state of North Dakota, which pertains to adverse possession of public lands, be created.

"SECTION 1.) Article XIX to the constitution of the state of North Dakota is hereby created to read as follows:

**“ARTICLE XIX
“ADVERSE POSSESSION**

“Section 1. No interest in public lands may be created by adverse possession or by occupation in the nature of adverse possession.”

PRESIDENT WENSTROM: You’ve heard the reading.

Delegate Knudson.

DELEGATE KNUDSON: Mr. President: I’ve been assigned by the Committee on Education, Resources and Public Lands to report both Proposals 1-114 and 1-115. I’ve been ready to report ever since last Monday. I hope I can remember what I’ve planned to tell the Convention.

These two proposals are really on the calendar somewhat in reverse order, but I’ll try not to talk on both of them at one time. These proposals came from our consideration of Article IX of the present Constitution which is entitled “School and Public Lands”.

This particular proposal, 1-114, is a result of our consideration of Section 163 of the present Constitution. Section 163 is not mentioned in the title because it is listed among the repealers in the other proposal.

In our work we decided that we should have an article separately and only about the trust lands, so we designed such a section. It was remodeled and rewritten I believe somewhere in the neighborhood of a dozen times. And recently during the Plenary Session the attorneys for the State Highway Department discovered that we had removed any general adverse possession recommendation from our draft. Our draft applied only to trust lands. So they came down and said, “What are you doing to us?” And they recommended very strongly that we put in such a general proposal as you find here in 1-114.

The original Section 163 states: “No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association . . .” and so forth. We boiled this down into this one simple sentence: “No interest in public lands may be created by adverse possession or by occupation in the nature of adverse possession.”

I have been told by some delegates that this is statutory material; probably doesn’t need to be in the Constitution. And perhaps that is true. But it was recommended very strongly to our committee, both by the Highway Department and the Game and Fish Department, that we continue to have an adverse possession clause in the Constitution.

PRESIDENT WENSTROM: Any further discussion?

Delegate Devine.

DELEGATE DEVINE: Mr. President: I speak in opposition to Committee Proposal 1-114. And I’m on the committee. This is separate and apart from the following provision on trust lands which will be discussed later. Plain and simple, this is a piece of legislation. Adverse possession is a creature of statute, and any limitations on it should be dealt with in the statutes. I feel that the provision is good and necessary and think it’s, in effect, included in the present law. And if they need it that’s where this reservation should be. It’s just an unnecessary provision for a constitution.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: Mr. President: I’d like to ask Delegate Knudson a question, if I may.

PRESIDENT WENSTROM: Delegate Knudson yield?

DELEGATE KNUDSON: Yes.

PRESIDENT WENSTROM: Yes.

DELEGATE CART: Delegate Knudson, why wouldn’t it be simpler just to insert the words in line 18 of 1-115 the words “or other public lands” and not have to have this separate section?

DELEGATE KNUDSON: Mr. President and Delegate Cart:

Perhaps it would be simpler from the Constitution drafting standpoint, but I believe it would produce at least a certain amount of confusion. We wanted the article on trust lands to apply only to the trust lands and nothing else. And we didn't want anybody — any other agency of the state government to be able to read anything in it referring to their department. We didn't even realize to begin with that Section 163 applied to any other public lands. This is about the only section that we're recommending for retention that has clause "any public lands". The rest of them which we are continuing in 1-115 say "these lands granted for these purposes" or other similar words.

If I may respond to what Delegate Devine said, I certainly don't feel qualified to get into any kind of a legal quarrel with a delegate who's been functioning as the Attorney General for the Education, Resources and Public Lands Committee ever since last April. But I'll simply repeat that these departments of state government recommended very strongly that we keep this provision and apply it to their departments.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President: I agree with Delegate Devine that it has no place in the Constitution; that its consequences might be a problem. Statutes of adverse possession have always been called statutes of repose. The meaning of the term being that they are for the purpose of settling claims, particularly on boundaries. We have no absolute assurance that all of our surveys are completely accurate. We have even monkeyed with a survey of the boundary of the State of North Dakota here. My recollection, although I haven't had time to check, and I don't have access to one of the Codes around here, is at present it takes forty years to establish an adverse possession against the state. Now that means forty years of open, notorious adverse possession under a claim of ownership. Now if the survey line on some piece of state property was incorrect and a farmer or any other occupant of land has for forty years claimed, paid taxes on, and thought he owned a certain strip of land, and then it was found that the boundary was in error, and even after forty years has gone by you take that land away from the man without any recompense at all. There can be no possible harm for such a provision not being in the Constitution. The matter is entirely statutory. And if the statute — if all of the statutes on adverse possession were repealed we simply wouldn't have any, and then nobody could make any claims. And for that reason I think it's definitely wrong to have it in the Constitution. And it could be the source of many ills that we were trying to cure sometime in the future.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-114. Those in favor of its passage will vote "yes;" those opposed will vote "nay." The key will be opened, the delegates will record their vote.

Has every delegate voted? Does any delegate wish to change his vote. The vote is closed.

Roll call discloses 25 "ayes," 67 "nays," six delegates absent and not voting. Committee Proposal 1-114 failed to pass.

Next for consideration is Committee Proposal No. 1-115.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-115, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 153, 154, 155, 156, 157, 158, 160, 161, 163, 164 and 165 of the constitution of the state of North Dakota be repealed; and that article VII to the constitution of the state of North Dakota be created; all of which pertain to trust lands.

SECTION 1. REPEAL.) Sections 153, 154, 155, 156, 157, 158, 160, 161, 163, 164 and 165 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Article VII to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE VII
"TRUST LANDS**

"Section 1. All lands granted by the United States for the support of ele-

mentary and secondary public schools of this state, and the proceeds from the sale thereof, the proceeds of property that shall fall to the state by escheat, and all other property acquired for the schools, except gifts and donations otherwise appropriated or qualified, shall be and remain a perpetual trust fund for the maintenance of the elementary and secondary public schools of the state.

"The principal of this fund shall be retained and devoted to the trust purpose. The interest and income of this fund shall be used and applied each year for the benefit of the elementary and secondary public schools, apportioned as prescribed by law.

"Section 2. All lands granted by the United States for the support of educational or other public institutions of this state, and the proceeds from the sale thereof, shall be and remain a perpetual trust fund for the maintenance of each institution, and may be commingled with similar funds for the same institution only in a manner prescribed by law. If any institution shall cease to operate, its trust fund shall be apportioned among the other existing educational or public institutions within the provisions of the enabling act.

"The principal of these funds shall be retained and devoted to the trust purpose. The interest and income of each institutional trust fund held by the state shall be appropriated by the legislative assembly to the exclusive use of the institution for which the funds were given.

"Section 3. The legislative assembly shall provide for the sale or lease at public auction of all properties held by the state in the school or other institutional trust funds, except that lands needed for public use may be sold at public sale for their fair market value. No interest in trust lands may be created by adverse possession or by occupation in the nature of adverse possession. In the sale of trust lands, the minerals, including but not limited to oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ore, and colloidal or other clays, shall be reserved and excepted to the state of North Dakota. Leases may be executed by the state for the extraction and sale of such materials in the manner and upon conditions which the legislative assembly may provide. The proceeds of all sales and mineral leases shall be credited to the trust fund from which the property was removed for sale purposes. Any trust lands may be exchanged for lands of the United States, the state of North Dakota, or political subdivision thereof, as the legislature may provide.

"Section 4. The legislative assembly shall provide for the investment, safe-keeping, transfer and disbursement of the foregoing trust funds."

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: I assured my constituents when I came down here I would not be run by a machine. Would you please turn off my light?

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President, Fellow Delegates:

I don't want to lose this one. This article is one that I have become very concerned with. It's been the major thrust of my efforts in the committee ever since we began working last summer.

Committee Proposal 1-115 is the result of the deliberations of your Committee on Education, Resources and Public Lands on Article IX of our present Constitution. Article IX is long and involved. In your blue constitution book it runs from page 153 through page 166, including all the amendments and court cases that are listed. It contains a great deal of material that might be considered statutory in nature, but that was required in our 1889 Constitution both by the provisions of the enabling act in regard to these lands and by the determination of the delegates at the 1889 Convention that the lands with which the state had been endowed by the federal government should not be dissipated.

I would like to read you a paragraph from a speech which is reprinted in the July 1964 edition of the **North Dakota History** magazine. This was a speech made by the Honorable Burley S. Spalding, I believe was his name. Mr. Spalding was a delegate at that original convention. He later was a Justice, and finally

a Chief Justice of the North Dakota Supreme Court. I quote from page 159, quoting Mr. Spalding:

"I have the honor to serve on the Committee on the Judicial Department and on the Committee on Public and School Lands. On the latter committee were several old men who had pioneered from the East to our state. They had seen some of the funds in the other states entirely dissipated by the extravagance and waste, if not worse, of legislatures and public officials and they were determined to so hedge around this fund that it should forever remain inviolate."

And one of the most salutary provisions in the Constitution adopted was included at the behest of these men. Among other things, it provides in substance that these funds shall forever remain inviolate, and that any loss or diminution shall be made good from the general fund of the state. Now we have taken this long Article IX, have shortened it up into four sections. We've deleted material made obsolete by the passage of time. We've deleted material that doesn't fit in with what appeared to our committee to be the decisions being made by other committees. But we have attempted to preserve the intent of the original.

Now you may maintain that this one, like the last one, is statutory. I believe we'll be causing trouble if we do not maintain at least these provisions which we have in these four sections of Committee Proposal 1-115.

I'll attempt to explain this proposal and refer to the sections of the old Constitution. I hope you will ask questions because, as I said before, I'm afraid I've forgotten some of the things I intended to tell you.

Let me begin on line 12 with the title. You notice we have changed the title from "School and Public Lands" to "Trust Lands". I suppose in all the Ten Commandments the one that we farmers break the most often is the one about coveting your neighbor's land. And during our deliberations I, at least, if not the whole committee, got the impression that this then also extends to public agencies. I suppose there's not one of us farmers who hasn't said, "If that quarter was mine I'd run the strips in a different direction. I'd lay them across the wind, or I'd put it into contours, or I'd put it into grass and raise cattle, or I'd plow it up and raise wheat." The general idea being that if it was mine I sure would do a better job of it than the present owner. And this also extends to public agencies.

Now I think that one of the reasons that these public agencies have been tempted by these public lands, by these school lands, is simply the title. Because these lands are not public lands, have not been public lands since they were granted to North Dakota. They were public lands of the United States. They were granted to North Dakota as an endowment, as a trust. Some of them as a trust for the common schools, some of them for the colleges and other state institutions.

In Section 1 we deal with the land grant to the United States for the support of elementary and secondary public schools. We have continued the provision from the old Constitution referring to property which may fall to the state by escheat. I would guess that that property is not very extensive, but it would presumably include some real estate. And we felt that this is the best way to handle any real estate which might fall to the state by this way.

We have continued the language of a perpetual trust fund. And in line 21 the following: "The principal of this fund shall be retained and devoted to the trust purpose. The interest and income of this fund shall be used and applied each year for the benefit of elementary and secondary public schools, apportioned as provided by law." We found this language or the basic ideas for this language in Sections 153 and 154 of our present Constitution.

In Section 2, beginning at the bottom of page 1, we deal with the lands granted by the United States for the support of educational and other public institutions. This section is parallel to Section 1, but slightly different because it deals not with one single fund but with a number of funds for the maintenance of all the various institutions which were mentioned in our enabling act. You'll notice a new sentence beginning on line 5: "If any institution shall cease to operate, its trust fund shall be apportioned among the other existing educational or public institutions within the provisions of the enabling act." This is to deal with the situations similar to the one caused by the closing of the institution at Ellendale.

The second paragraph, on line 9, is exactly parallel with the second paragraph of Section 1, except that it has to be in the plural because it's dealing with several funds. This language of the second paragraph came from Section 160 which dealt with the educational public institutions.

Section 3, we found the material in several of the present sections, mainly from 155 and 158. Here again we have an adverse possession clause, that's on lines 18, 19 and 20, which came from Section 163. And the sentence about the mineral reservation is from Section 155 as amended in 1960.

We have continued the language about public auction. This is one of the things required by our enabling act, those exact words. In our draft that we brought here to the Plenary Session we referred only to fair market value. It was pointed out to us by the attorneys for the State Land Department that we must have this public auction; that we were allowed to use other than public auction for sales to other public agencies. This comes — this second part of the first sentence comes from Section 158; the section that lands needed for public use may be sold at public sale for their fair market value. This is the way this matter is handled at present.

The adverse possession clause I spoke on in regard to the last proposal. I wonder if this is statutory. If it could cause problems because it is statutory, why it has not caused any problems since 1889. The long specific list of mineral reservation we considered simply mentioning reserving all minerals. We found that that wouldn't really work out because some of these materials probably aren't exactly minerals. We decided that we had best continue the exact wording used in the 1960 version of Section 155.

On line 27 and following: "The proceeds of all sales and mineral leases shall be credited to the trust fund . . ." Our committee had a question as to how royalties from coal and oil leases are handled. We were assured by the attorneys of the State Land Department that that money goes into the permanent fund, it is not part of the income that is disbursed every year.

Finally Section 4 we entrust to the legislative assembly provision for the investment, safekeeping, transfer and disbursement of the foregoing trust funds. Here we included the provisions that are dealt with specifically in Sections 155, 156, 164 and 165. We felt that we could not deal with them specifically because of questions raised by the possible deletion of some of the state officers and some of the county officers from the final Constitution that this Convention may come up with.

Section 155 establishes — I believe that's the one — Section 156 as amended in 1970 establishes the Board of University and School Lands which includes the governor, the attorney general, secretary of state and state auditor — Superintendent of Public Instruction, Governor, Attorney General, Secretary of State and State Auditor. Well, we did not know at the time we drafted this article, and we do not know now, if all of those offices will still be elective offices. Section 155 — Section 157 establishes a county board of appraisal which okays the prospective sale of any parcel of school land. This board consists of the County Superintendent, the Chairman of the County Board of Commissioners and the County Auditor. We did not know, and we do not know now, if all of these offices will still continue. So we have left — left it up to the Legislature to decide how these lands and these funds shall be administered.

PRESIDENT WENSTROM: Is there any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President: I have — I have an amendment at the desk. I would like to ask Representative Knudson two questions before it's introduced. Is that okay?

PRESIDENT WENSTROM: Will Delegate Knudson yield?

DELEGATE KNUDSON: Yes.

PRESIDENT WENSTROM: You may proceed.

DELEGATE RUNDLE: Do you believe that the funds at the present time or the way your proposal reads is properly protected for the future?

DELEGATE KNUDSON: Well, Delegate Rundle, I hope it is. I'm very —

I'm very jealous of this fund that it shall be protected and continue in the future to produce income for the elementary and educational schools. Our committee felt that by calling it a perpetual trust fund as we do on line 18 in Section 1 and line 3 in Section 2, and by saying that the principal of this fund shall be retained as we do in line 21 of Section 1 and line 9 of Section 2, that we were — that we were protecting the fund.

DELEGATE RUNDLE: Well, thank you. I shall pass the other question.

Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Could I ask that the amendment be read?

PRESIDENT WENSTROM: The amendment — proposed amendment will be read from the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-115 is as follows:

On page 2, line 35, following the word "funds" insert the following: "and the state shall make good all losses in such fund".

PRESIDENT WENSTROM: Now do we have a second to the amendment?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

The school fund last July, the trust fund, had \$73,541,402.92. It went up something over two million, I believe it was, the last year. Now this is quite a sum of money. And as Delegate Knudson said, he and many others have been very zealous in the past in protecting this fund. I would like to mention that the governor is the head of the land board or handles this money. The governor is also head of the Industrial Commission. And in the future some of these — we may have some appointed officers we don't know quite how they will work.

Now I'd like to mention a few things that the school fund includes, but I point out that the Industrial Commission which now consists of three state officers hasn't done too well with their investments. And I feel that this proposal is a little wide open, and I think that the people that want to play with the money perhaps if they had to make it up from the general fund would be a little more careful. I'll admit that the state would lose the money, but the school fund wouldn't lose it. I have taken the words out — my original proposal had the words "shall never be diminished", and I took that out to give it more freedom. But I'd like to give you a few little things I got from the Attorney General. The State of North Dakota, maybe the Bank of North Dakota, the Industrial Commission, anyway the taxpayers, lost \$335,000 recently in the Cass County Industrial Development Corporation at Mapleton. The same deal cost the bank \$75,000. And the Wishek Bank, incidentally, to this moment feels that they were double-crossed by the state because they got into it and they sued and the court ruled that they couldn't collect. So the state only lost \$335,000, the Wishek Bank \$75,000. The Dickinson Clay Products Company, of which I am quite familiar — I didn't have any stock in it, I knew better — went broke. The Industrial Commission lost \$25,000 in it. This came as a surprise to me. I didn't know they were in that one. The Industrial Commission just recently okayed the loan — the expenditure of \$1,300,000 for a building, the plans of which the Attorney General hasn't seen yet, as of three days ago. And he's on this commission. He said he voted against it because he didn't — he'd like to see the plans, he'd like to know how big the building was for a million three hundred thousand. Another state agency under this control lost — finally lost \$400,000 when the Cox Bakeries got into the State Mill for \$529,000 just a few years ago. And they finally lost \$400,000.

Now I only want to bring you these figures to show you that things can happen to state investments. And I would like to protect the school fund as much as possible. And I would add this little amendment: "That all money, any losses, shall be made up by the state." Which would mean the state general

fund. And my only thought is that it might make them a little more careful about investing the money.

Thank you.

DELEGATE KNUDSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President: I certainly wouldn't resist this amendment. I think it might add something to our proposal. I had all these facts and figures about all these school lands, how much they were, where they came from and all that. That's one of the things I forgot to mention. But perhaps that isn't exactly germane to what we are trying to do. I do not oppose the proposal, the proposed amendment.

PRESIDENT WENSTROM: Delegate Poulson, did you wish the floor?

DELEGATE POULSON: I would yield to Delegate Lander.

DELEGATE LANDER: Mr. President: I think that Delegate Knudson speaks for the committee when he says that we do not necessarily oppose the amendment. I would like to show, however, that I have been listening to Delegate Rundle for the last nineteen days. The old Section 153 of the Constitution had in its last sentence, "The state shall make good all losses thereof." The new Section 156 of the Constitution says that "All this money shall be invested as provided by law." As in our Section 4. The reason for that is because the people in North Dakota in 1970 by a vote of 48,552 to 43,435 approved that change.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President: I recognize this. But also in the amendment were the words "The funds shall never be diminished". These were the words that many officials objected to because they couldn't sell the United States Bonds they had at a low rate of interest at the time. And I have been told by some that favor that change that is the real reason they wanted the words "shall never be diminished" out of there. And they are not in the new amendment.

PRESIDENT WENSTROM: The Chair will recognize Delegate Cart.

DELEGATE CART: Mr. President: I think it's well that we would include this amendment because while this sum that I am going to mention was very small, it does occur that you can get dishonest officials and they like to dip into public funds. Well, this incident occurred prior to World War I, I think in either 1914 or '15. The Attorney General at that time, being attorney for the Board of University and School Lands, approved fictitious mortgages and got the money for his own personal use out of this fund. Then time went on and apparently he got into adverse circumstances and couldn't keep up the interest payments. This came to light in about 1921 because in 1923 that session of the Legislature had to appropriate approximately \$4,000 to reimburse the fund and bring it back — bring back the loss that had occurred through this transaction. So I think it's well that we include in this bill that's now before us the requirement that the state make good these losses if they do occur.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates:

I speak in opposition to the amendment. I know that Delegate Knudson has been a good shepherd on this and has carefully tended his flock. I also realize that he and Delegate Rundle were on the same side of this exact issue when it was before the Legislature apparently prior to 1969 when the proposed amendment was recommended by the Legislature and later adopted by the people in 1969.

We discussed this at some length, gave it careful consideration. We visited with Delegate Rundle I believe a couple times on this and kicked it around. And there's lots of pro's and con's. I don't feel strongly on this, but we get into a situation I think all of us want to see this fund remain intact. There is no question about that. But what would the situation be in the event that times got tough, they sustained certain losses, the state was hard pressed for funds, and besides meeting the general obligations would also have to meet the obligations

of making up any losses to this fund? It could put the state in a real awkward position. Like I say, I don't feel strongly about it. We gave it careful consideration and we thought Section 4 as it stands would probably be the best all-around manner in which to handle this.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman: I would suggest that the delegates go slow in putting some window dressing on such an important matter as this. There is no way that the state can guarantee a multimillion dollar fund against incurring losses. Unfortunately, not many of us remember the depression years. The university was one of those funds which took losses. They were low on school lands, the losses were established, and the state had to foreclose. If you have — if you would invest in good government bonds the bond market goes up and down. So if you have to sell at a loss, does the state have to come in and fork in two or three hundred thousand dollars every time there is a transfer to get something out of a low interest into a high interest? This is a true banking procedure. And when you try to sit here and just simply say that all losses must be made good by the state, you may be having the state making good for a land property value drop statewide that would simply put the state out of business. I think we're — we're trying to window dress something up against the economic facts of life.

PRESIDENT WENSTROM: The Chair will recognize Delegate Lerberg.

DELEGATE LERBERG: Mr. President: It seems to me this might have the opposite effect of what Delegate Rundle has in mind for it because it seems to me that instead of making them more careful about investments, it might say, in effect, that you have a carte blanche appropriation on the general fund and that fund will never go below a certain figure so you can make any investment you want. I have some questions about the amendment.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President: I was going to speak in reference to what Delegate Paulson said about the foreclosures during the depression years. The Land Department has always carried their lands on their books at a value of \$10 per acre because that was the minimum selling price established by the enabling act. No doubt many of these lands which they were forced to foreclose during the thirties, which they were still forced to carry at a book value of \$10 an acre, had an actual money value at the time of less than \$1 per acre. In 1940 the State Land Department had more acres than they started out with in 1889. But during the forties, fifties and sixties they have sold these lands that they foreclosed, plus other lands, from the endowment which they still have at prices which were twice or three times the going market value in North Dakota at the time. So in the long run they do not lose on the lands they were forced to foreclose on.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the amendment as offered by Delegate Rundle. Those in favor of the adoption of the amendment will vote "aye;" those opposed will vote "no." the "noes" have it. And the amendment lost.

The question before the Convention: First passage of Committee Proposal 1-115. Is there any further discussion?

Hearing none, those that are in favor will vote "aye" and those opposed will vote "no." The key will be opened, you will record your vote. We have two delegates, Delegate Pearce, Delegate Hubrig, how do you vote?

DELEGATE PEARCE: "Aye."

DELEGATE HUBRIG: I'll vote "aye," too.

PRESIDENT WENSTROM: Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: I would publicly like to compliment Delegate Knudson for his fine job today and the able committee that turned out a perfect document without amendment. (Applause)

PRESIDENT WENSTROM: Roll call discloses 98 "ayes," no "nays," no delegates absent and not voting. Committee Proposal 1-115 has passed.

It's terrific what Delegate Knudson can do once he gets warmed up.

Next for consideration is Committee Proposal 1-14.

Fellow delegates, we'll be in recess for ten minutes.

DELEGATE HAUGEN: Mr. President, could I be on the eighth order for a minute?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE HAUGEN: I'd like to ask the members of the Finance and Tax Committee to come down to the Blue Room immediately. Coffee is available there. Please come down to the Blue Room, all Tax and Finance Committee members.

PRESIDENT WENSTROM: Inasmuch as the Tax Committee is going to go down and meet we will take a fifteen-minute break.

DELEGATE HERNETT: Mr. President: Would the Executive Functions Committee report to the meeting room? The Executive Functions Committee will have a short meeting.

PRESIDENT WENSTROM: The Executive Functions Committee is scheduled for a short meeting in the regularly scheduled meeting room.

(The Session recessed at 3:12 P.M. until 3:38 P.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order? Will the Convention please come to order?

We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: There are sixteen girls from Junior Troop No. 84 Girl Scouts, Northridge School and their leader, Mrs. Robert Zentner in the gallery.

PRESIDENT WENSTROM: Will the visitors please rise and be recognized by the Convention? (Applause)

CHIEF CLERK GILBREATH: Delegate Binek would like to announce that Trinity High School of Dickinson, North Dakota, social problems class with instructor, Bill Henkins, and fifteen students are in the balcony today.

PRESIDENT WENSTROM: Will the students please rise and be recognized by the Convention? Possibly they have left us.

We will be on the tenth order of business. Next for consideration, Committee Proposal No. 1-14.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-14, introduced by Committee on Judicial Functions and Political Subdivisions:

"Be it resolved by the North Dakota Constitutional Convention that sections 206 and 207 of the constitution of the state of North Dakota be repealed; and that Article XV of the constitution of the state of North Dakota be created; all of which pertain to state boundaries and the state seal.

"SECTION 1. REPEAL.) Sections 206 and 207 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Article XV to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XV "BOUNDARIES; SEAL

"Section 1. The name of this state is 'North Dakota.' The state of North Dakota shall consist of all the territory included within the following boundary, to-wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence southward up the main channel of the same and along the boundary line of the state of Minnesota to a point where the seventh standard parallel intersects

the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

"Section 2. The following described seal is hereby declared to be and hereby constituted the Great Seal of the state of North Dakota, to-wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left, a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto 'Liberty and Union Now and Forever, One and Inseparable'; the words 'Great Seal' at the top; the words 'State of North Dakota' at the bottom; 'October 1st' on the left and '1889' on the right. The seal to be two and one-half inches in diameter."

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I do not intend to spend any more time on this unless some delegate has a question. We updated the description of the boundaries of our state; we took no land, we gave none. And we brought this up to date as recommended by a modern-day engineer, and we cleared it through the Bureau of Land Management in Washington, and it was approved as we have it.

We made only one change in the description of the seal to make a complete sentence. We added the word "shall" in the last part of it there to make that a complete sentence. Otherwise it's verbatim the way it was in the old Constitution. We hope you approve this proposal.

PRESIDENT WENSTROM: Any further discussion?

Delegate Dobson.

DELEGATE DOBSON: Will Delegate Longmire yield to a question?

PRESIDENT WENSTROM: Will Delegate Longmire yield?

DELEGATE LONGMIRE: Yes, Delegate Longmire yields.

DELEGATE DOBSON: I wonder why it's necessary way back in Article XV of the Constitution, almost as an after-thought, it seems, to say "The name of this state is North Dakota". Now this is declared in the preamble and all through the Constitution.

DELEGATE LONGMIRE: Well, we felt that there shouldn't be any doubt about it, when you cross that Minnesota line, that you were in the great State of North Dakota. And we just left that in the way it was in the old description that we had.

DELEGATE DOBSON: Thank you. It seems to be superfluous, to me, but I won't pursue it.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention —

DELEGATE KESSEL: Mr. Chairman, I hesitated making an amendment on this —

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: — and so we will leave it. But I thought on page 2, line 5, a "Indian on horseback pursuing a buffalo toward the setting sun," I felt this has been true over a period of years. But this year the Sioux caught the buffalo in football and again in basketball, and I thought possibly it was no longer necessary.

PRESIDENT WENSTROM: The question before the Convention is on the adoption on the first passage of Committee Proposal No. 1-14.

Any further discussion? Hearing none, those in favor of adoption will vote "yes," and those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 92 "ayes," 2 "nays," four delegates absent and not voting. Committee Proposal 1-14 has passed.

Next for consideration is Committee Proposal No. 1-16.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-16, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that article VI to the constitution of the state of North Dakota which pertains to environmental degradation be created.

"SECTION 1.) Article VI to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE VI
"ENVIRONMENT**

"Section 1. The public policy of the state and the duty of each person is to conserve, develop and utilize its natural resources and public lands in order to provide a pleasant and healthful environment for the benefit of this and future generations. The legislative assembly shall provide by law for the implementation and enforcement of this policy.

"Section 2. Each person has the right to a healthful environment and may enforce this right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as the legislative assembly may provide by law."

PRESIDENT WENSTROM: The Chair will recognize Delegate Fritzell.

DELEGATE FRITZELL: Thank you, Mr. President, and Fellow Delegates:

I know you've been bombarded by words, and we've had plenty of discussion on this, so I don't think I should go any further. You know how I feel about it. And there's just one statement I'd like to make. You must admit that special interest has been defeating common interest in the control of environment. And in the future I think possibly we might welcome some public action to get some new evidence on how the threats as are now coming forward might endanger man. And I would ask you to support both sections of this proposal. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lander.

DELEGATE LANDER: Mr. President. I have an amendment at the desk.

CHIEF CLERK GILBREATH: The proposed amendment to 1-16 is as follows: Delete lines 14 through 18.

DELEGATE PEARCE: Second.

PRESIDENT WENSTROM: Motion is seconded by Delegate Pearce.

Delegate Lander.

DELEGATE LANDER: Mr. President. I also would hope that there is not a great deal of discussion on this today. However, the vote on the Minority — Majority Report was so close, and it was a first time through for so many people on Monday, that I felt that this body ought to have a chance to re-vote on that particular issue. If you recall, the substance of the amendment is exactly the same as the substance of the Minority Report, which was defeated some days ago on a 43-51 vote.

PRESIDENT WENSTROM: Any further discussion?

Delegate Larsen.

DELEGATE LARSEN: Mr. Chairman, Fellow Delegates:

In our committee we spent considerable time on this section and this article. And it was my motion, I believe, that we adopted this section.

I feel that we must have certain laws, certain teeth in certain articles, in order to preserve much of our environment for future generations. And so I hope that the amendment fails. Thank you.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I want to call your attention to an article in a letter from the League of Women Voters which was put on your desk a few days ago. You probably have thrown it away because it did come at a time when we were discussing it. Do notice that they say, "Section 2 is important because it gives the citizens of this state the most important tool of all, the opportunity and right to their day in court when it comes to environmental matters."

PRESIDENT WENSTROM: Any discussion on the amendment?
Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, members of the assembly:
I had hoped that we had this round finished the other day. But I would simply call your attention again to the North Dakota Law Review conclusions on this subject in which the two authors summarize that the incorporation of the recommended constitutional provision would accomplish several ends. And I think we ought to think of those ends again just in review: (1) it would demonstrate an active dedication by the people of this state to abatement of pollution in all forms; (2) it would facilitate enforcement to the inclusion of the private sectors of plaintiffs and anti-pollution actions; and (3) it would also insure that such litigants could not transcend legitimate problems prescribed by legislative mandate. And that's the most important part of that whole section 2, restrictions and limitations which the people's representatives in the Senate and the House of this body in the future legislative sessions could place in the way of anybody who would use this indiscriminately or in a wrong way. I think it's proper inclusion in the Constitution that we should write this in at this time.

PRESIDENT WENSTROM: Any further discussion?
Delegate McElroy.

DELEGATE McELROY: Mr. Chairman — or Mr. President: We dislike taking the time of the Convention with further discussion, but I didn't like this Section 2 a couple of days ago and I like it even worse — even less now. Like most farmers, I'm extremely conscious of the environment around me. I'm particularly conscious of the environment that I pay taxes on. And I've gotten quite sensitive in the last year or so in reading various publications, sporting magazines and newspapers and so on, which seem to condemn the farmer unnecessarily for pollution, fertilizing, pesticides and so forth. And they don't seem to take into account the thousands of trees that the farmers are planting, the water holes they are developing, a lot of wildlife habitat and things like that, and this bothers me. I'm not worried about my neighbors suing me, but I am very concerned about some of these self-appointed environmental protectionists. When I talked about the vigilantes the other day, I wasn't kidding. Some of these people are extremely dedicated. And after listening to Bill Pearce mentioning that any individual can start proceedings, it scares me even more. We've seen the activities of some of these people, and they appear to want to take us back to the days of buffalo. I'm not sure they'll like buffalo meat when they get there.

Now one of the reasons for this proposal, I'm guessing, is that it presumes fast action on environmental matters through court action. And I wonder if this is — if this is really true. There are a lot of court actions that take a considerable amount of time. I'm wondering also — I think that court action is qualified to stop certain procedures, but I'm not sure that it's the proper place to decide on proper corrective matters.

There are many economic factors here. And while we maybe snare the economics of the situation, it's still a poor consideration. You can look down in Minnesota at the discharge of radioactive materials in the Mississippi River by Northern States Power. Now they apparently meet federal standards. There's some argument as to whether they meet the state standards. Which set of standards is proper, I don't know. But think a little bit. None of us feel very sorry for Northern States Power. But think of the cost that it must take to protect themselves and defend themselves against the large amount of legal activity that's going on. Eventually you and I pay for it. Now it's easy, perhaps, to sue them and put a complete stop to it. But then how do you turn on the light switch?

PRESIDENT WENSTROM: Any further discussion?

Delegate Paulson.

DELEGATE PAULSON: Mr. President: Again I would like to warn this Convention against window dressing in this Constitution which serves no good purpose. I speak against — I speak for the amendment and for the elimination of the last paragraph. The proposal as it stands only opens a Pandora's box of troubles. The sponsors cannot tell what will happen, we cannot tell the public what will happen. They say they are giving the citizens a right to sue. What they are doing is giving the peculiar limited interest people a chance to go into court and raise trouble and stop the state from carrying on programs which the state has already deemed to be in the public interest. You'll find that the water control programs that are the major project within the state from one border to the next would be under court attack from — no matter how limited they were in preference or in scope. There are people who don't like a dam no matter what its purpose. I think that a smokestack would be an automatic target for anyone of these special interest or class action suits, but the sponsors can't tell whether it is or not. They say that's up to the Legislature. But as long as we've put it into the Constitution we are inviting all kinds of actions. We don't know where it will stop. And all of the overkill on pollution would be multiplied. I hope that the amendment is approved.

DELEGATE LERBERG: Mr. President.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg — Delegate Butler. Delegate Butler.

DELEGATE BUTLER: I was home this past weekend and we had quite a snowstorm there. There was the City of Fargo motor vehicle going down the street trying to open the street so we could get out. Makes a little noise. I sell that kind of equipment. I know that manufacturers are doing everything possible to reduce the amount of noise these machines make. But there is still going to be people, well, I'll say two-thirds, occasionally want to get rid of the noise altogether; which is impossible. And I think I'd rather have my streets plowed than to be faced with a court suit against the City of Fargo to stop them because of the noise that's being made. And I certainly stand for the deletion of this part of the proposal.

DELEGATE LONGMIRE: Question.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Mr. President, Fellow Delegates:

I might remind you on this matter — and I support the amendment — just recently at the federal level, at the very highest level, we've seen what happens with premature crusading on this environmental thing. The federal government, maybe not in official language, but it has indicated to the soap companies that phosphates are very bad things. Now just within a year and a half of the time they came out with this thing, they have decided that the substitute for phosphates which they have suggested are even a worse thing. And I think if we allow this to go through without this amendment there is no end to the litigation that may arise, and most of it very unwarranted.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President and Fellow Delegates:

We voted on this issue the other day. The situation is still very much the same. Then was raised the question of would cows pollute our waters if they were able to cross a stream. That's a natural process for North Dakota. We — I urge that you defeat the amendment as you did the other day.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I support the amendment. The thing that bothers me the most about Section 2 is that each case that is brought by an individual relates solely to himself under the provisions of Section 2. We will have, over a period of years, I'm sure, hundreds of individual lawsuits in which the courts

will have made hundreds of individual decisions. That would be a complete fragmentation of the public's right to control pollution. This is a public right. Ecology is a two-way street. Mankind is still involved in ecology. If we, instead of putting the control in a public agency, would put it in the hands of any individual who wishes to go to court, we will have such a confused set of decisions, rules and regulations that it would be impossible after a period of time to determine what are the rules. That is the reason for my concern against the individuals. Certainly I am not against Paragraph 1. I believe that it's a good public policy. We, from time to time, in fact quite a few times each day, put a great deal of faith and credit in the Legislature. I think they can do what's necessary; I think they have been moving, but certainly not through Paragraph 2.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. President: Not to argue the point, but because I am a member of the task force headed up by Dr. Peterson at the University of North Dakota, on some of this pollution thing, I've done some research into some of the areas that perhaps this assembly might like to hear. It will only take me one minute. This is from the Health, Education and Welfare study that they completed on natural areas and pollutants that come from our sources of that type. And this is their report:

"Air chemistry experts of this department estimate that the terpene emissions of one square mile of forest are equivalent to the annual hydrocarbon output of 625 cars with current air pollution control equipment. Terpene is from growing trees and causes a blue haze of the Great Smokies. As a matter of scientific fact, 75 to 85 percent of all global hydrocarbon emissions come from natural sources. Besides hydrocarbons, the other ingredients of photochemical smog, automobile-caused air pollution, are oxides of nitrogen, carbon monoxide, and particulate matter. Again nature puts 95 percent of all oxides of nitrogen into the air and 22 percent of the carbon monoxide. And technological advances are winning the battle to reduce particulate matter as a pollutant. So let's put all manmade pollutants into their proper perspective."

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President: I've learned long ago that there's only one way to fight a woman — with due respect, Mrs. Fritzell — and that's with your hat. You take it and run. But I want to remind you that everything should be taken care of in the first section. I see no reason for the second. In the first section it says, "The legislative assembly shall provide by law for the implementation and enforcement of this policy." I agree with Mr. Paulson that the second section is window dressing. It's extraneous speech. I see no need for it. If we are merely trying to coddle the people who are extremists in this sort of line, I see no reason why we should do this. Anything they should wish to do that's reasonable should be taken care of in the first section.

I would remind you that all change is not bad. It was the God of Nature who put the apple — the worm in the apple. Man took it out. And there's nothing so frustrating as to find a half an apple. So I think that we ought to be thankful that man has done something to change some of these things. Now I may be reaching a little, but this is an extreme that could be reached if this thing is allowed to go unchecked. I am not afraid of having the legislative assembly provide for the laws to implement this. I have faith in the legislators that they will take care of this. So I urge the acceptance of this amendment to delete the second section.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Fellow Delegates:

I didn't mean to speak again but there are a few things that have been brought up that I have to, I think, rebut. We in the regulatory agencies of our state are aware the legislation is here. It's good legislation. But the reason it's been ineffective is not — is because of a lack of personnel and no funding. And the people know this, and so they are concerned about it.

Now as far as the interpretation of Section 2 as an individual, now we've thought of amending this to "people have". But as you know, I must remind you, that this was taken word for word from the Illinois Constitution. And Illinois, looking up Illinois, Michigan, Connecticut, the courts have interpreted this very wording as class action. And I'm not going to go into the definition of "class action" that I did yesterday.

And as far as somebody mentioning about the soap deal, it's true they reversed themselves because they found out the substitutes were worse. And yet they are trying very hard now to find a substitute for phosphates. But that doesn't make any difference, because I am concerned about man as I have emphasized so many times.

And I also would want to remind you that the U. S. Senate passed a strong water pollution bill only recently 86 to nothing. And in this bill was the citizen's right to sue class action. And the House has got a bill before it that is much stronger than the Senate, but the administration right now is trying to soft pedal it a little because you know we've got an economic thing to get going here. And as long as the gross national production is the god to industry, labor and to government, we as citizens need to have some right to see that we are — we're not asking — I'm not — I'm emotional now, I admit I'm emotional now. But actually, I am quite a pragmatic optimistic person. Yet I am concerned about the human race. And all the citizen wants is the right to bring out evidence as it comes to us how it affects us as a species. Thank you.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I'm not going to go into a long dialogue on this, thanks to Mr. Baker's amendment, if nothing else. I think that we should really be aware of what we're doing here in spite of what we are being told. Section 2 is the teeth in this particular section, and that's why it is being opposed.

Section 1 is the window dressing that does nothing, and that is why it is being supported. So if we delete Section 2 we might as well delete Section 1, because it will do nothing.

PRESIDENT WENSTROM: Question — Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. Chairman: There is something that has been brought to my attention since the last time we voted on this. And you all recall the Minot Daily News and the adverse publicity that was given to the association at that time. It seems that some gentleman from Minot had made some statement to the committee that Lake Metigoshe was about to become an environmental disaster. Lake Metigoshe, we have a group of people up there, the owners of about 700 cabins around Lake Metigoshe, of which I am a member and a property owner. I was in contact with the president of that organization, Mr. Otto Corbin from Bottineau, just the other day and he tells me to vote against this in its entirety. He says Mr. Olson from Minot did not speak for the organization. Thank you.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE KELSCH: Mr. President: I think everyone's — the ones that are supporting this amendment fear court actions. Now you must all stop to realize the courts are open to anybody and all kinds of matters. I can be charged tomorrow with any number of crimes, I can be sued tomorrow by any number of people, and in any conduct that I am involved in. I face the risk of someone suing me frivolously or with grounds. And the court is the place where the merits of the action are decided. I have no great fear that our courts are going to be frivolous. If frivolous suits are brought, they will throw them out of court.

Now our Legislature has given strong direction in this state for both water and air pollution. They've declared polluted streams to be unlawful. If you delete Section 2, then the only ones that can enforce that will be the administrative agency. All we are asking is that the people themselves individually, if they want to bring actions, can enforce it. And I would urge you to defeat the amendment and, as Delegate Omdahl said, "Leave the teeth in the proposal."

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: When you call the question, Mr. President, I would like to ask for a recorded roll call vote, please.

PRESIDENT WENSTROM: Will ten —

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Would ten of the delegates that wish a recorded roll call vote please stand? That's a sufficient number.

Are you ready for the question? The question is on the amendment as offered by Delegate Baker. Those in favor of adopting the amendment will vote "aye," and those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call indicates there were 44 "ayes," there were 53 "nays," with one delegate absent and not voting. The amendment failed.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: May I change my vote?

PRESIDENT WENSTROM: I'm sorry, Delegate Scheel, the vote has been declared closed.

DELEGATE SCHEEL: All right.

PRESIDENT WENSTROM: The question before the Convention is on the passage of Committee Proposal No. 1-16.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Delegate Lander?

DELEGATE LANDER: No.

DELEGATE LONGMIRE: Question.

PRESIDENT WENSTROM: Question?

Delegate Sinner.

DELEGATE SINNER: I'm just going to explain to Delegate Scheel that he could explain his vote for the record.

PRESIDENT WENSTROM: I'm sorry. I thought he said to change his vote.

DELEGATE SINNER: He did, Mr. President. But I thought he should realize he could explain it if he wanted to.

PRESIDENT WENSTROM: Did I misinterpret your request, Delegate Scheel? I thought you wanted to change your vote. If you wish to explain your vote, you sure can do that.

DELEGATE SCHEEL: I might as well explain my vote. I just voted in error. I intended to vote against the amendment and in favor of the proposal as listed here in the book.

PRESIDENT WENSTROM: The question then before the Convention is on the first passage of Committee Proposal No. 1-16. Those in favor of its adoption will vote "aye," and those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 66 "ayes," 30 "nays," two delegates absent and not voting. Committee Proposal No. 1-16 is passed.

Next for consideration, Committee Proposal No. 1-38.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-38, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 37 of Article II of the constitution of the state of North Dakota be repealed; and that section 7 of Article II to the constitution of the state of North Dakota be created; both of which pertain to restrictions on the office-holding capabilities of state legislators.

"SECTION 1. REPEAL.) Section 37 of Article II of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) Section 7 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 7. No member while serving in the legislative assembly shall hold any other elective office of the state or any of its political subdivisions, nor any appointive state office which shall be deemed to be an office established by this constitution or by law. During the term of office for which he was elected, no legislator shall be appointed to any office which has been created, or for which the compensation has been increased by the legislative assembly during that term."

PRESIDENT WENSTROM: Any discussion?

DELEGATE HARDMEYER: Mr. President.

PRESIDENT WENSTROM: Delegate Hardmeyer.

DELEGATE HARDMEYER: We have a technical amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-38.

On line 1 delete the word "section" and insert the word "sections". After the numeral "37" insert the words "and 39". After the words "Article II" insert the words "and Article 51 of the amendments to".

On line 4 delete the word "both" and insert the word "all".

On line 7 delete the word "Section" and insert the word "Sections". After the numeral "37" insert the words "and 39". And after the words "Article II" insert the words "and Article 51 of the amendments to".

On line 8 delete the word "is" and insert the word "are".

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sinner.

DELEGATE HARDMEYER: Mr. President.

PRESIDENT WENSTROM: Delegate Hardmeyer.

DELEGATE HARDMEYER: This is a technical amendment; some deletions that we forgot to insert in the original document in the committee. And I ask its adoption.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I wonder if it might be a little harsh. I don't believe anyone in this assembly could ever be appointed ombudsman under this section. It says, "Any office —

PRESIDENT WENSTROM: Delegate Rundle, I think we're on the proposed amendment. Are you talking — you must be talking on the main subject. You aren't talking on the amendment, are you, as offered by Delegate Hardmeyer?

DELEGATE RUNDLE: No. Sorry.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Hardmeyer. As many as are in favor of adopting the amendment will say "aye;" those opposed say "no." The "ayes" have it, and the amendments are adopted.

Now Delegate Hardmeyer.

DELEGATE HARDMEYER: Mr. President, Fellow Delegates:

Proposal 1-38 is new language expressing the ideas found in the present Constitution in Section 37 and Article 39. Under this section, this new section, that we are proposing here, certain prohibitions are placed upon members of the legislative assembly. The first prohibition is against holding any other elective or appointive office while serving in the assembly; and the second prohibition is against accepting appointments during the term from which one is elected to an office which has been created, or for which compensation has been increased by the assembly

during that term. And there is some new language that was not found in any of the others, and that is "or any of its political subdivisions". This is new language; prohibits mayors and county commissioners from serving in the Legislature. The committee felt that members of the Legislature should not wear too many hats; that they should represent all the people and not just those of any minor office on which the Legislature might vote. So we urge your adoption of Committee Proposal 1-38.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: If I read this language in this section correctly, I cannot believe that the Legislative Functions Committee intends to do what the language says. It says that: "No member while serving in the legislative assembly shall hold any other elective office of the state or any of its political subdivisions, nor any appointive office which shall be deemed to be any office established by this Constitution or by law." Now I have a list here of the members of this body who could not have served as a legislator at some time in their governmental experience: Aubol, Baker, Bassingthwaite, Berg, Binek, Burke, Butler, Cart, Chase, Christensen, Daniels, Decker, Diehl, Fiedler, Fritzell, Geelan, Gipp, Hartl, Haugen, Hernet, Hill, Hoghaug, Hougen, Jestrab, Kelsch, Kessel, Kretschmar, Lamb, Lander, Lerberg, Longmire, Maxwell, Nething, Omdahl, Pearce, Peterson, Paulson, Quam, Roney, Rosendahl, Saugstad, Scheel, Simonson, Sinner, Thompson, Trenbeath, Warner and Wicks. Now most of these — there are some cases where some of these people should not have served; they are State's Attorney or something like that. But you're talking about a township supervisor, you're talking about a member of a local board, you're talking about a member of the local irrigation board of directors, you're talking about a member of a dental — what do you call your dental board, Mrs. Wicks, back there — park boards. I don't know about precinct committeemen. I guess so, it's created by law. Yes, right. I just can't believe that you want to do this. These people who hold these offices in these townships and these school districts and these irrigation districts are the leaders of the community. They are the people that should be elected to serve in this Legislature. They are the people whose experience qualifies them to become members of the Legislature. I certainly hope that this thing would be sent back and amended so it does not do what it says it's going to do.

DELEGATE SINNER: Mr President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: There was rather strong division in the committee, and a Minority Report is in the offing. The committee on this issue, and on several others that will be coming up, decided that rather than belabor these things two and three times and go the route of Minority Reports, that we would say quite frankly on the floor that there was a difference of opinion and that amendments that a minority held, believed in, would be submitted. And, therefore, I submit in behalf of several members of the committee an amendment which is at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-38 is as follows:

In line 1 — in line 13, delete "any of its".

In line 14 delete the words "political subdivision, nor".

And renumber the lines.

DELEGATE DOBSON: Second.

PRESIDENT WENSTROM: Who seconded that? Who seconded the motion? Delegate Dobson.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: The question before the Convention now is the amendment offered by Delegate Sinner.

Delegate Sinner.

DELEGATE SINNER: Mr. President: I don't wish to belabor this very

long. There were three reasons that we felt that this cause should not — or this phrase should not be in the language. First, we think it is the right of the electorate to pick their representatives. And if they think it should be their township supervisor or it should be a school board member, we think that should be their choice. Secondly, we think that the expertise of these people in the Legislature is an expertise that's an advantage to the Legislature. Thirdly, if the criticism is that these people are prejudicial in their acts in the Legislature, aren't teachers prejudicial and aren't farmers prejudicial and aren't lawyers and doctors and housewives also prejudicial? We think that the advantages to be gained by letting these people run are far in excess of those disadvantages that might be encountered.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: It was the committee's intent to exclude persons holding elected — holding other elected offices in this state or its political subdivisions. I do not agree with the list that Delegate Haugen read. My name was on there. It was true I was a State's Attorney. I was also a legislator. But I was not doing both at the same time.

Now present Constitution Section 37 says that: "No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this state — and they exclude the militia or notary publics — . . . shall hold any office in either branch of the legislative assembly or become a member thereof."

Now that's the present Constitution. And what the Majority Report does is say that we — I fail to see why the register of deeds couldn't be on the Legislature but the clerk of court could or the auditor or the treasurer. I don't know what the basis of the original distinction was. But the majority of the Committee on Legislative Functions felt that if you want to be in the Legislature while you are serving in the Legislature you should not have an allegiance and elect an individual to another subdivision. Now if you don't, if you want to be president of your school board, if you want to be sheriff or State's Attorney, then don't run for the Legislature. If you want to be in the Legislature and get elected, then resign those other offices. While you are in the Legislature then for your district you will be representing the district, you will not be representing the school board or the township or the county, you'll be representing the people of that district. Is it so much to ask?

We are not saying that if you were once a township supervisor you can never run for the Legislature. All we are saying is don't wear two hats. If you want to be in the Legislature, resign the other position. After you've been in awhile and been defeated or something, you can go back and serve on the school board. We don't lose the experience and the expertise of these people. Many people brought to the Legislature have brought their experience from other positions. We are just saying don't ask to hold two positions, because we believe it causes conflict and you don't give the best service.

I would urge that you support the majority position of the committee on this.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Further discussion?

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman: I should just want to point out in support of the original proposal, and against the amendment, that the proposal does not bar anybody from running for the Legislature. It's only if you win do you have to make a choice. At that point you have to decide whether you are going to serve in the Legislature or remain as governor of Mott or Fargo — I mean as mayor of Mott or Fargo. The prohibition is on the member of the Legislative Assembly. He can serve here, but he can't serve here and on the Cass County Commission or what-have-you. So the prohibition doesn't come in until he wins. He can run for it and be on the school board. If he's on the Convention he must resign the other elected position if he decides to serve in the Legislature.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President: I'd like to ask a question of the Legislative Functions Committee. How did you happen to differentiate between someone that's elected to a position of government or somebody that's employed in a position of government? It seems to me that your theory of wearing two hats and having two masters would have to carry over to someone that works for a political subdivision or a department, state agency. Did the subject come up? And, if so, how did you treat it?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: We did consider the problem of teachers, persons employed. We considered saying that anybody who was paid a salary could not run in the Legislature if the salary was appropriated by the Legislature. But we felt that this was too broad a disenfranchisement of too many people. And so we limited to persons appointed at a state level, being those that are either named in the Constitution or established by law. If the Legislature establishes a position to say that there shall be a President of the University of North Dakota, then he could not do both. He could not be President of the University of North Dakota and also a legislator. But a teacher at the University would not be disenfranchised merely because his salary is paid through legislative appropriations.

Now I know you can bring argument that there is also a conflict. I will agree that all of us have biases and prejudices and things that we favor or don't favor. I think there is a difference between the elected local official who is running on his record locally, who is also in the Legislature. And we felt this is the very distinction.

Now you must also remember the elected sheriff; there is no law that says he's got to work two hours a day, any hours a day. He can put his feet up on the desk and never work, as long as he is around the courthouse every six months. And he can run for the Legislature, he can hold that office, he can hold sheriff's office. Is there any limit to how many offices he can hold? We felt that this is not too much to ask of a citizen. If he wants to serve in the Legislature, he should represent the state and not be a representative of a subdivision as an elected official of that subdivision.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: I would like to ask Delegate Kelsch two questions, please.

PRESIDENT WENSTROM: Will Delegate Kelsch yield?

DELEGATE MILLER: Sir, does this in fact go down — if I'm not being derogatory — go down as low as a township officer? Would this include a township officer?

DELEGATE KELSCH: If a township is a political subdivision of the state, it would, and I think it is. The answer is yes.

DELEGATE NETHING: You know it is.

DELEGATE MILLER: Okay. Well, secondly, I find it a little hard to believe but do you concur that merely by resigning you are going to change a conflict of interest, you're going to alter prejudices or bias?

DELEGATE KELSCH: No, you would not. But if I'm a county commissioner and if the question comes up on the division of the state gas tax you know where I'm going to stand; raising the mill levy for counties, you know where I'm going to stand. I can hardly go back as both a legislator and an elected official who also wants to be elected in that position. Now if I resign the position I'm released free of the pressure of worrying about whether my actions over here in this body might reflect whether I will be reelected or not in that race.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, Fellow Delegates:

It's difficult enough for the political parties in this state to come up with highly qualified candidates for the Legislature without writing restrictions in the

Constitution such as this. If the Mayor of Washburn, for example, wants to run for the State Senate he should be able to do so without having to resign as Mayor if he's elected a Senator. The adoption of this provision before us I fear would have a long-term adverse effect on the quality of our State Legislature. I urge you to support Delegate Sinner's amendment.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President, Fellow Delegates:

I didn't intend to get into this argument. But if I can't serve as a township supervisor, recreation board or some of these things back home and my people decide that I should wear two hats, then they should make that decision. And if they make that decision I don't know why I can't wear the two hats. I think like Delegate Rundle, let's kick this one in the creek.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. Since I am the Chairman of the Legislative Functions Committee I hesitate to get into these quarrels. We still haven't had our party, you see. In answer to Delegate Dobson's question about finding members to run for the Legislature, after we've taken all of the restrictions off the Constitution that we have now, and this afternoon we had one coming up for a four-year term with salaries, with annual salaries, and if the Legislature spreads out the load to annual sessions I'm sure we're going to find a lot of people who will be interested. And they will not have to be mayors or county commissioners or township supervisors. We have enough people in the State of North Dakota. I'm opposed to the amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate Kessel has asked for the floor. I'm sorry.

DELEGATE KESSEL: I was just going to say that if we have a good argument for 1-38 as it stands, I think it should go further and disqualify everybody that has ever held one of those lowly offices. I speak against — I speak in favor of the amendment.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'd like to speak in favor of the committee proposal, being on that committee. I think that it's a difficult situation for a man to wear two hats and come to the Legislature and work for two individual entities. And really, that's what he's doing. He's going to have a conflict of interest, if not in fact, with himself. I think that Committee Proposal 1-38 is solid as it stands.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Hardmeyer — no — as offered by Delegate Sinner. As many as are in favor of adopting the amendment will say "aye;" those opposed say "no." The "ayes" have it. The amendment's adopted.

Division has been requested. That's sufficient number. Those that are in favor of adopting the amendment will say "aye," and those opposed will vote "nay." The key will be opened, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call indicates 63 "ayes," 35 "nays," no delegates absent and not voting. The amendment has been adopted.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch. Someone asked for Mr. President?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would move an amendment after the word "or" on line 13 insert the words "its counties, nor".

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: We have the amendment at the desk now?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: We will be with you in a minute, Delegate Baker.

DELEGATE BAKER: Procedural question I have, Mr. President.

PRESIDENT WENSTROM: What is your question?

DELEGATE BAKER: Will this be a substantive amendment, would you say?

PRESIDENT WENSTROM: No, this will be further amendment. This will be a further amendment. It's not an amendment to an amendment.

The proposal is before the Convention. On the tenth order you can amend, so I'd have to rule it's an amendment.

The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: The proposed amendments to Proposal No. 1-38 are as follows:

In line 13 of the amended proposal after the word "or" insert the words "its county, nor".

DELEGATE KELSCH: "Counties."

CHIEF CLERK GILBREATH: "Counties."

DELEGATE KELSCH: ", nor."

PRESIDENT WENSTROM: Now do we have a second to the proposed amendment?

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Jestrab.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: What the amendment will simply do now, it will read: "No member while serving in the legislative assembly shall hold any other elected office of the state or its counties, nor any appointed state office shall be . . ." et cetera. So this would allow the township supervisor, school board member, park board member, the water district member to run for the Legislature but would keep out sheriff, treasurer, state's attorney, county commissioners, many which are presently named in the present Constitution, being judge, clerk of court, register of deeds, sheriff.

PRESIDENT WENSTROM: Any further discussion on the proposed amendment?

Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, I put forth a question. What good sense does it make to exclude county commissioners without mayors?

PRESIDENT WENSTROM: Is the question directed to any person, any individual?

DELEGATE DOBSON: Mr. President, that's simply a rhetorical question.

DELEGATE KELSCH: I agree.

PRESIDENT WENSTROM: Further discussion? The question is on the amendment.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: A question for Delegate Kelsch. I serve as legal counsel for the Area Mental Health Association which is part of the County of Grand Forks. Would that bar me from serving further in the Legislature?

DELEGATE KELSCH: Delegate Longmire, if that's an elected position it would.

DELEGATE LONGMIRE: Well, it's an appointive position. Don't you still have the "appointive" in the proposal?

DELEGATE KELSCH: I think it reads "any other elective office of the state" or its counties. I would assume that "elective office" would modify "county".

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: We agree with the amendment, and I appreciate the good vote by which it was adopted. In my opinion, it does not go far enough. Because the wording "appointive state office which shall be deemed to be any office established by this constitution or by law," it goes a long, long ways. And I'm not sure whether it applies here, but it does apply to a lot of advisory committees, and we've got hundreds of them. I think we have got scores of them at least.

PRESIDENT WENSTROM: Delegate Haugen, I wonder if that is involved in the question before the Convention.

DELEGATE HAUGEN: No.

PRESIDENT WENSTROM: I believe that we're on the motion as offered — the amendment as offered by Delegate Kelsch.

DELEGATE HAUGEN: Yes.

PRESIDENT WENSTROM: I believe that matters that you've referred to are lower in the proposal and are not being affected by the question before the Convention.

DELEGATE HAUGEN: Yes, that is right, Mr. President. My comments were occasioned, of course, by Delegate Longmire's question.

PRESIDENT WENSTROM: I see. The question, then, before the Convention is on the adoption of the amendment as offered by Delegate Kelsch.

Delegate Engstrom.

DELEGATE ENGSTROM: Mr. President: I would like to ask Delegate Kelsch if his amendment would bar members of the Legislature from running for the next — for the next Constitutional Convention?

DELEGATE KELSCH: I don't know if that's to the amendment. I would — I would presume yes. I think that under our present Constitution there is a serious question they could run anyway. But I don't think we are changing it. They are here.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Kelsch. As many as are in favor of adopting the amendment will say "aye;" those opposed say "no." The Chair will rule that the amendment was adopted.

DELEGATE DOBSON: Division.

DELEGATE DEVINE: Division.

PRESIDENT WENSTROM: Division has been requested. That's sufficient number. Those in favor of adopting the amendment will vote "aye" and those opposed will vote "nay." The Clerk will open the key, you will record your choice.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

The vote indicates 59 "ayes," 39 "nays," all delegates present. The amendment to Committee Proposal No. 1-38 has been adopted.

Again we are on the question of first passage of Committee Proposal No. 1-38. Delegate Hernet.

DELEGATE HERNETT: Mr. President: I might point out one other thing that I think is a problem under this bill. And this goes into the old statute, too. You take the last two sentences there it says: "During the term of office for which he was elected . . ." and so on about appointments there. You have already been appointed to some state office or some board — in fact, this happened to me years ago, I was serving on the State Banking Board and then I ran for the Legislature. We secured at the time an Attorney General's opinion, and I continued to serve on the Banking Board and the Legislature. Because this says just the opposite. So you're not getting at that person who is presently serving on a board and then runs for the Legislature.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I wonder if Delegate Hernet would yield to a question? Is it correct, Delegate Hernet, at the same time you were Mayor of Ashley?

DELEGATE HERNETT: Yes, I was. That has nothing to do with what I see wrong with this.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President: Article 51 which is being repealed speaks to a certain category of appointment. I don't recall it, unless I didn't listen properly, the explanation as to why those restrictions were removed if I interpret it correctly from the present article proposed.

PRESIDENT WENSTROM: Someone enlighten Delegate Lander on this question? Why Article 51 — Delegate Kelsch.

DELEGATE KELSCH: Mr. President: It's been some time since I've looked at 51. But I believe that we covered that in the last paragraph which says: "During the term of office for which he was elected, no legislator shall be appointed to any office . . ." I guess it would be another office. I think that — I think that we were concerned — I think our thinking was this, if I recall; we saw nothing wrong with the governor appointing a legislator he felt would do a good job on the state board. The evil we wanted to remove was the raising of the salary on it. The present Constitution should prohibit the appointment of any legislator. This would allow the appointment unless the legislator voted for the salary or voted to create the position.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. President: Article 51 was an outgrowth of the Langer heyday in the 1930's, and at that time in those years it wasn't too uncommon for a legislator to get a state job right after a legislative session provided he voted right throughout the session. And we trust that those days are gone forever. And we believe that the Legislature does have the men who can probably serve the state good or serve the state well in some appointive position which appointee would have to resign, like say they serve on the Board of Higher Education or any of the other appointive offices that are being established; if they did — if such appointments did become a payoff we trust that the electorate would take the action similar to what they did in 1939.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hartl.

DELEGATE HARTL: Mr. President: I would move an additional amendment at this time. On line 13 behind the word "state" insert a comma and the words "its cities". So that the line would read: "shall hold any other elective office of the state, its cities or its counties". And if I can have a second I will explain.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

DELEGATE HARTL: The reason I have moved this amendment is due to the fact that we have now excluded my lowly rural area of county commissioners who have the great power to take home the dollar from the Legislature for their county interests. I am concerned about the city mayor and councilmen from our other areas who at this time can still sit in the Legislature and bring home that dollar which we have been attempting to divide equally. I think my point is clear.

PRESIDENT WENSTROM: Any further discussion? Do we have the amendment now at the desk? The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-38 is as follows:

In line 13 of the amended proposal after the word "state" insert the following: " , its cities,".

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: You've heard the reading of the amendment.

Delegate Haugen.

DELEGATE HAUGEN: I agree in principle with the proposal of Delegate Kelsch to eliminate counties. But again I think when you go down to the cities you're going a little too far. This Convention actually is impugning the judgments and motives of a good many citizens of North Dakota, including members of park boards in the cities, members of zoning commissions, I believe, and a lot of other such things. And I think that we've got to have judgment in these people that come — that come to the Legislature to serve their constituents. Surely, I know that every legislator is influenced by his own personal background and his own occupation. I have a son that is a lawyer, and I can't help but believe that every lawyer is influenced in his legislative decisions by clients that he has worked for at some time or another, but their interests, and especially if he's on a retainer, and there's a lot of them are, and I'm not impugning their motives. But I'm saying that there's a conflict of interest there also. And I think when we knock out the counties we've gone far enough. Let's stop there.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President: It's kind of a losing game anyway, fellows. You haven't got all the rascals around the courthouse and city hall here anyway. Because at the county level there is the director of tax equalization, he's appointed, he can run; got some of the Christian legislation, no doubt; county highway superintendent, he's got some interest in the money, that sort of thing; the city manager, if the city has a manager for them; the city attorney and so on and on and on.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This amendment would put us back, Mr. President, about 80 percent of the way to the original language. Let's not bar competent local government leaders from serving in the Legislature. I urge its rejection. Let's not approve this amendment.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I voted for the Sinner amendment, and I voted for the Kelsch amendment. And in order to keep my voting record in balance I intend to vote for the Hartl amendment and for the very reason that Delegate Hartl said. We have taken away the vote — the voice of the county commissioners. I don't think that we should leave the cities represented if counties can't be represented in the Legislature.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the amendment as offered by Delegate Hartl which was read from the desk. As many as are in favor of adopting the amendment will say "aye;" those opposed vote "no." The Chair is in doubt. We will open the key. Those in favor of adoption will vote "yes," and those opposed will vote "no."

Delegate Chase.

DELEGATE CHASE: Mr. Chairman: Could I refuse to vote? I think I have a vested interest in this thing.

PRESIDENT WENSTROM: A question on Delegate Chase voting. He has asked to be excused from voting.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that we permit Delegate Chase to vote, knowing of his present position.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE HAUGEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Haugen. It is moved and seconded that the Convention do permit Delegate Chase to vote. As many as are in favor of the proposal say "aye;" opposed "no." The "ayes" have it. Your permission to vote is granted.

DELEGATE CHASE: Thank you.

PRESIDENT WENSTROM: The question now before the Convention is on the adoption of the amendment as offered by Delegate Hartl. I believe we did vote on that, didn't we? I have failed to decide which way it went and asked that we use the key. Those in favor will vote "aye," and those opposed will vote "nay." The key will be opened, you will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call indicates 50 "ayes," 47 "nays," one delegate absent. The amendment to Committee Proposal No. 1-38 has been adopted.

DELEGATE NETHING: Question.

PRESIDENT WENSTROM: Question? Delegate Saugstad.

DELEGATE SAUGSTAD: I believe that this — being Proposal 1-27 has been amended —

CHIEF CLERK GILBREATH: 38.

DELEGATE SAUGSTAD: I beg your pardon. — 1-38 and that the Convention wishes to act upon it immediately, then I would move to suspend the rules and that we consider it properly re-engrossed and placed on tenth order.

PRESIDENT WENSTROM: Delegate Saugstad moves that the rules be suspended, that Committee Proposal No. 1-38 be deemed properly re-engrossed, and be placed on the calendar for passage as amended.

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Delegate Jestrab seconds the motion.

As many as are in favor — Delegate Berg.

DELEGATE BERG: Mr. Chairman, I'd like to have that 1-38 read back to us with the amendments.

CHIEF CLERK GILBREATH: Can't do it. There are four amendments alone in line 13.

DELEGATE BERG: Mr. Chairman. Could I suspend the rules then and have it read back to us?

PRESIDENT WENSTROM: No. The question is not on whether it can be read back; the question is whether the desk can get it properly listed here.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: If I may make a suggestion, the thing to do is to vote down the motion to suspend the rules and then it will be over tomorrow, I guess, and by that time maybe the amendments will be in the Journal.

PRESIDENT WENSTROM: That is correct. The bill will also be engrossed then.

The question before the Convention is on the motion to suspend the rules.

DELEGATE SAUGSTAD: May I ask permission to withdraw the motion?

PRESIDENT WENSTROM: Delegate Jestrab yield to the request to withdraw the motion?

DELEGATE JESTRAB: I suppose.

PRESIDENT WENSTROM: Then we will proceed to consideration of Committee Proposal No. 1-44, and Committee Proposal 1-38 will be on the tenth order tomorrow.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think while we're thinking about 1-38 overnight, if we get to think tonight, that there were a couple of things brought up that weren't mentioned that we should be aware of, and that is that a state office is a position of the government where you exercise a part of the sovereignty of the state government. And it just isn't any old position or job. And so we are talking about primarily the executive.

Another thing that you should be aware of in this article is — in this proposal is that this will prohibit a member of the Legislature from running for an executive position during the term of office if the salary for the governor or lieutenant governor or one of the other elective offices has been increased while he was a member of the legislative assembly. Just so you know that this is what it does.

PRESIDENT WENSTROM: Delegate Paulson, did you wish the floor?

DELEGATE PAULSON: Mr. Chairman: I just want to say that Mr. Om-dahl is in error. There is no prohibition on running for an office. The prohibition is on being appointed to one which has been created during the term; "no legislator shall be appointed to any office which has been created, or for which the compensation has been increased . . ." In other words, it's an office — an appointive office which has been created or in which the compensation has been increased during that term.

PRESIDENT WENSTROM: We will next consider Committee Proposal No. 1-44.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-44, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 27 and 30 of Article II of the constitution of the state of North Dakota be repealed; and that sections 2 and 5 of Article II to the constitution of the state of North Dakota be created; all pertaining to legislative terms of office.

"SECTION 1. REPEAL.) Sections 27 and 30 of Article II of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Sections 2 and 5 of Article II of the constitution of the state of North Dakota are hereby created to read as follows:

"ARTICLE II

"Section 2. Members of the legislative assembly shall be elected for terms of four years.

"Section 5. The legislative seats shall be numbered consecutively, and be divided into two classes, even-numbered seats constituting one class and odd-numbered seats constituting the other class, so that one-half of the legislators, as nearly as practicable, may be elected biennially; provided, however, that when the legislative assembly is redistricted the legislators elected prior thereto shall continue in office until the expiration of the terms for which they were elected, and the act providing for such redistricting shall specify, where necessary, the newly established seats they shall hold for the balance of their terms."

DELEGATE KWAKO: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kwako.

DELEGATE KWAKO: There's a few minor amendments at the desk.

CHIEF CLERK GILBREATH: The proposed amendments to Proposal No. 1-44:

On line 1 after the numeral "27" delete the word "and" and insert in lieu thereof a comma and after the numeral "30" insert "and 33".

On line 6 after the numeral "27" delete the word "and" and insert in lieu thereof a comma and after the numeral "30" insert "and 33".

DELEGATE KWAKO: Mr. Chairman — Mr. President.

PRESIDENT WENSTROM: Delegate Kwako.

DELEGATE KWAKO: I move that these — that we adopt these amendments.

PRESIDENT WENSTROM: Delegate Kwako moves the adoption of the amendments.

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hendrickson.

Is there any discussion? The question is on the adoption of the amendments as offered by Delegate Kwako. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted.

Delegate Kwako.

DELEGATE KWAKO: Mr. President: If you will note on this proposal the few changes that were made. Now the committee — the chairman has assigned me this proposal. Now it is stated that Section 27 and 30 in Article II are repealed and Sections 2 and 5 are created. Now most of these workings may be seen in Sections 27 and 30. As you'll note in Section 2 the term of office for the House of Representatives has been increased to four years. And we felt that due to all the work that the Legislature will be having we felt that a four-year term would be more appropriate. And I find after serving here just a few weeks that four years would make a Representative more accountable to the people.

And now Section 5, as it's written: "The legislative seats shall be numbered consecutively, and be divided into two classes, even-numbered seats constituting one class and odd-numbered seats constituting the other class, so that one-half of the legislators, as nearly as practicable, may be elected biennially; provided, however, that when the legislative assembly is redistricted the legislators elected prior thereto shall continue in office until the expiration of the terms for which they were elected . . ."

I would like to turn this over to Delegate Dobson. He sponsored the proposal, and I think it's a very important proposal. And I was very happy to be assigned this one. Thank you.

PRESIDENT WENSTROM: Further discussion?

Delegate Cart.

DELEGATE CART: I would like to make or address this inquiry to someone on the committee. And that is whether the candidate's name would appear on the ballot by seat number or by name?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This matter of numbering seats doesn't mean that someone's going to get a paint brush and go through this chamber and start numbering the blue chairs. This is simply an administrative duty for the reapportionment commission. The language is drafted in such a way that it applies to either the unicameral - bicameral multi-member of single-member districts. The object, of course, is to assure that one-half of the legislators in each house as nearly as practicable will stand for election every two years. If you have a two-senator district, one of those senators will be up one year, the next will be up two years later. They both — they will not both run in the same year.

What it amounts to, the first half of Section 5 there, is an update of old Section 30. The last half of Section 5 simply provides that the legislator will not be redistricted out of office at mid-term. I think this is a good provision.

PRESIDENT WENSTROM: Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

At the risk of being in trouble for talking again after nineteen days, I feel that I have to say that I oppose this measure because two years — the legislators that are elected for two years are far more responsive to the people than they would be elected for four. I know from experience. You go home after one session and you better have been somewhat good or you don't come back. And why should you come back for an extra years if you haven't been a good representative? And I think two houses, if we continue to have them, there should be a difference. The House is supposed to represent changes more quickly than the Senate. The Senators are supposed to be a little more dignified and slower to act perhaps. And there's one other thing, too. If you are interested, the elections are about half the fun of being in politics. I see no real reason to change the thing to four years.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kwako.

DELEGATE KWAKO: Just the other day Delegate Sanstead made a very good remark. He said when he was elected as a representative he sat back in those three seats back there, three young fellows, and he said when he was undecided every time something came up he voted "no" due to the fact that he was inexperienced.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Mr. President: I think I should direct this question to Delegate Dobson. Just supposing now they do reapportion or redistrict, oh, say the first part of next year. For instance, a Senator or a Representative elected for four years, in other words, the redistricting couldn't take place for four years; is that right?

PRESIDENT WENSTROM: Someone answer the question? Delegate Dobson.

DELEGATE DOBSON: No, the redistricting would take effect immediately. However, in case the legislator — say a Senator — had a four-year term, he could not be knocked out of office after two years. And the redistricting act would simply specify the seat he would hold for the balance of his term. I'll have to frankly admit that this provision was found in rummaging through the Nebraska Constitution. And it seemed to work pretty well there, and I think it will work here. Because we don't have any more — any great changes. We had a big change in '65 when we had reapportionment, but now it's mainly because nothing has happened for 35 years. In the future we're not really looking to such great population changes as would create a problem in this regard.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I think I see what you're trying to get at. But I am — for instance, in my district, and if it is redistricted next year, one house member would be on a two-year basis and the other house member would be on a four-year basis. And then the redistricting came along and reapportioning this, how would — one house member would be representing one district of a certain size and the other would be representing something entirely different, it seems to me. Especially if he had to take in some of your neighbor's district which is what is going to happen. I just don't see how it's going to work with somebody with a four-year term.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President: I'm going to speak to the same thing. I can see where a member can live fifty miles or a hundred miles from the new district that he represents. And I think this would concern me a little bit if you got a guy locked in for four years, we have a redistricting, he may not live within fifty or a hundred miles of the district that he represents.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: We have that very problem now in the Senate. I don't know how you'd avoid it. Either you've got to say the Senator in that four-year term or two years left when the redistricting board met, you would have to boot him out of office because he was redistricted out or you would have to let him serve even though it may be true he would not be serving in the district — district lines would be changed so he would live outside them. How else could you do it where you've got staggering four-year terms? Now that's true of the Senate. Of course this proposal would make it apply equally true in the House by giving the House members four-year terms.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President: Going back to the first part of Section 5 and using the example that Delegate Hernet gave, is it then the idea that this redistricting system would have no geographical continuity, the system the way it is today? I think possibly when you folks divided this up in order for us to get in these little pieces, you're handing us something which in your mind fits together but in our minds are a bunch of disconnected things. It's real hard to follow.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Here is the way it would work: Right now District 1 is Williston. Instead of renumbering the Senate districts would continue about the same, while the two House seats in District 1 would be numbered 1 and 2; the two House seats in District 2 would be numbered 3 and 4; the District 3, 5 and 6; District 4, 7 and 8; and then you come to a multimember district, Minot, and there the numbering for the six house members would be 9, 10, 11, 12, 13 and 14. And, you see, the odd-numbered ones would be up one year, and the even-numbered ones would be up the next year.

Now if that covers that, I would like to address myself to Delegate Hernet's inquiry. It's possible that that — it's hard to give an example of how this would really work. But say an area or a district lost population and was going to lose one of its House seats, but that member — well, presumably the one that would go out is the one whose term expires. Because one House member would be up the one year and the other one would be up two years later. So there would always be someone there to eliminate.

As far as the Senate seats go, if a Senator had a four-year term and he was due to be redistricted out of office, it's possible there would be a two-year delay in the transfer of that seat to another district because of this provision.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President: I've been trying to follow the example given. And it would seem that if there is the two-year delay, then some district would have two senators and the other would have none, because then in the redistricting that takes place you're moving boundary lines as opposed to just having the numbers shifted to arrive at the total serving the Legislature. And I'm wondering if that — you might not leave a district say for two years without a Senator or the comparable number of Representatives by shifting the line.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, there are two things that I think affect the committee's — affected the committee's decision here; number one is that we, in fact, have a situation like that right now, in the multi-member districts where whole parts of cities have no elected representative. And I don't think that we can say that it's been a clear case of misrepresentation or lack of representation. In some of the court cases they are finding that. But if the — if the other alternative of going to four-year or twelve-year reapportionment were taken, you could solve this problem. But you either have to go to partial terms or else you have to recognize the fact that these people don't change that much. The districts aren't going to change that much, and their point of view isn't going to change that much. They are still going to represent the people.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President: I think I've found an example here. The 1970 census disclosed very little population shift. If you exclude the Air Force Bases — and I don't think anyone wants to give the Air Force Bases a Senator each — so if we exclude them the only net change which would have taken place in the Senate would have been a shift of one rural seat to the Fargo area as the result of the 1970 census.

Now some of the district boundaries would have changed out in the rural areas. Many of the plans which went through the last Legislature in effect broke up the old Thirteenth District, I guess, which is Eddy-Foster; those two counties have lost population, didn't have enough to sustain a Senator. So let's say that the Eddy-Foster District was dissolved and that seat shifted into Fargo. Now if a Senator from Eddy-Foster, if his term was up there was no problem, the seat would shift immediately. If he had two years remaining, the reapportionment commission would arbitrarily give him a numbered seat which would be in the Fargo district. He would, in effect, be a Senator from Fargo for two years, then he would be out and the Fargo district would then elect a Senator to fill that seat.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I have yet — I'm confused here — I have yet to see what kind of black magic there is on numbering these seats. It would seem to me that it's much better to number the district that a Senator or a Representative represents rather than trying to number the seats. Because if I understand this proposal correctly, you're going to have Representatives running at different times in the wrong district that they represent. And I can't see any advantage to that. It may be causing that much more expense to the election districts. I would like to see it go back to the numbered districts. I can see no advantage to numbering seats.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Well, of course, in the original 1889 Constitution Section 30 went by numbered districts. Now the reason we went to numbered seats was because of the advent of multi-member districts. We couldn't see any good reason why all four Senators from Fargo should come up in one year. It would seem to make more sense to have two come up one year and then two two years later. So that's why we went to numbering seats. The whole purpose of this really is to try and get away from a situation that developed in 1966 when the whole Senate had to run for reelection and half of those Senators had to run at mid-term. We don't think that we should put the whole Senate and the House on the ballot after every redistricting.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: One other advantage in numbering the seats is that where you have two representatives from one district, if we changed them to four-year terms and they were numbered districts, you'd only get to vote for representatives every four years. By numbering the seats, the even-numbered one would run — you'd have one even two years, odd two years, even two years, odd two years. So you'd be able to vote every two years rather than to wait for four years like you do for Senators in your district.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Fellow Delegates: It would seem the example that was given I think describes quite adequately that the problem I was trying to get at is that the people from a district that were to have additional representation based on population could conceivably wait two years before they get that. And I am just wondering — and perhaps your committee discussed the matter of what the federal law — what the application would do to that situation.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: Yes. I'd like to speak in favor of this. I can see in rural districts, and there's many of them in North Dakota, and many times you have one strong representative and you have a poor one, and many times the stronger one carries the poorer one in. And I think at least every couple years you'd get a shot at that poor one.

PRESIDENT WENSTROM: Delegate John Paulson.

DELEGATE PAULSON: Mr. President: This program is necessarily involved, but it isn't quite as far-reaching as taking a seat from Eddy-Foster and moving it down to Fargo. What would have happened in 1972 if the Legislature had reapportioned? For instance, the 21st District boundaries would have shrunk and West Fargo would have been eliminated from the 21st. That would have meant on a four-year term basis that the representative from West Fargo, there's only one of them, Leroy Larson, would no longer have qualified in the 21st under normal procedure. If he were serving on the two-year balance of the two-year term, he would have continued to serve those two years and then when his term normally expired in 1974 the seat would have been filled by Fargo election and he would have to contend with the people in the 22nd for a return to the House if he so desired. It isn't a long-range move, but it's simply a neighborhood proposition in most cases, and you're moving the boundary a few miles, or it might be ten or twenty. But that holdover isn't going to be that far removed from his

home base; he's going to be right next door. And I'm sure you would want him to take care of the people who elected him even though his home happens to be a few miles away under the new district situation.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: Well, members of the Convention, I would just like to suggest after all this discussion that there's a plain simple remedy awaiting to be heard, and that's Delegate Proposal 2-52.

PRESIDENT WENSTROM: Further discussion?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: If there are no further amendments and discussion are we ready for a motion?

PRESIDENT WENSTROM: We are.

DELEGATE HOFFNER: I'll move that Proposal 1-44 be deemed properly re-engrossed, and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Hoffner moves that the rules be suspended, that Committee Proposal 1-44 be deemed properly re-engrossed, that it be placed on first passage as amended. Do I have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Kwako. As many as are in favor of the motion say "aye;" those opposed "no." The "ayes" have it, and Committee Proposal No. 1-44 is now before the Convention.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: In all the concern about the mechanics here, I have missed a very good — again I haven't been in this committee for the last six months — I missed a real good selling job as to why the people in the House of Representatives should serve for four years, and since I haven't heard it I'm going to vote "no" on the whole thing.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I think it was the feeling of the committee here that we could see no real valid reason for the distinction between the four-year term for the Senate and the two-year term for the House. What reasons that used to exist we felt were certainly nonexistent at this point and that both the House and Senate should be put on an even keel.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: The four-year term — let's just assume that you're all legislators for the first time. Now you can see how long it takes to just get acquainted with the procedure part of this assembly. Now it takes a legislator almost half his term to understand the procedure; thinking nothing of the substance of the material, fourteen or thirteen hundred bills. A legislator for the first time in his first term does not have the confidence he needs. He is continually looking over his shoulder, worried about his election. He becomes a candidate immediately after his election. Now a four-year term gives him that confidence, gets his feet on the ground, and then he's prepared to run for that next four-year term. I really feel very strongly about the four-year term, and I think that is a legitimate argument for the four-year term.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President: I know that many of the members would like to get this over with. But I feel as strongly as Representative — or as Delegate Hoffner does the other way. And I am an ex-member of the House. I think that we should have one body of this Legislature of ours that is immediately responsible to the people. And if they are completely dissatisfied with the actions of the Legislature, they have a place where they can make a change. And if you would have a divided membership where only half can be voted out at

one time, you don't have that situation. I worked for a couple years for S. L. Burdick, I campaigned for him. I heard him say this so many times in regard to the United States Government: "As long as we have a Congress in which one house is elected every two years, we are never going to have a danger of a dictatorship in the United States." I think that applies somewhat also on the state level.

PRESIDENT WENSTROM: Further discussion?

Delegate Peterson.

DELEGATE PETERSON: Well, I've been listening for some time. And I want to speak on both the bills that we have been considering. I can see nothing in either one of them that would change my mind, because I think definitely you are heading toward a professional Legislature. In the first place, you are eliminating all the people from the lower level on up who have had the opportunity to learn about people on every level of life. And you are speaking of the type of people who work in offices or whatever they are doing and working people in every possible way and you may be tending to cut all of those people with the experiences out and put in types that might move right directly from school and into a legislative position having had no experience at all in the business of making a living, which I think is a very important thing. And I think a Legislature that has a House and elects them every two years is keeping itself in close contact and has its hands on the pulse, knows what's going on in its own district, in its own area. And if you elect them, the House and the Senate, for four years apiece, what else are you encouraging but a professional Legislature?

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President: I think that just the contrary is going to happen or is assured. We have indicated a great concern in this body for what we call a citizen legislator. Yet we must recognize that these legislators are to deal with a wide array of complicated and complex social, economic and political problems every time they gather. And so we've given them a few more days, but not so many more days that they could become professional legislators. Now the only way that a legislator can build up the confidence and the background and the knowledge and the information that's necessary to solve these complex problems is to serve more terms if he is not going to put in more time in any short period of a year or two years. So I think that if we are going to make it possible for our legislators to keep on top of the complex problems of the future, it's going to be necessary that we build up a little background, a little experience in each one of them. And the only way you can do this is by assuring them that the knowledge and experience they get the first year or two is going to continue to be useful for the State of North Dakota.

PRESIDENT WENSTROM: Further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: This is the vital, I think, improvement to our Legislature; whether it be bicameral or unicameral. Look at the body here. Look at the legislators in here. Every one of them is here because they did develop some quasi professional understanding of the problems of the state. Delegate Hernet and Litten and Rundle, and you can go all around the chamber, that's why they are here, because the people trusted them and they knew they had learned something about the problems of the state. And our Legislature has been blessed, fortunately, with some long-term people who were willing to run and to learn and to work at the problems of the state. And we want to help these people that come here, stay here long enough so that they can learn and be better qualified legislators. I think the committee acted wisely, and I'm sure that to all the committee members this is one of the most fundamental changes that they are recommending.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the first passage of Committee Proposal No. 1-44. Those in favor of the adoption will vote "yes," and those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 70 "ayes," 26 "nays," two delegates absent and not voting. Committee Proposal No. 1-44 has passed.

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, may we be on the twelfth order of business for a minute?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE PAULSON: During my absence Committee Proposal 1-76 was moved to the bottom of the calendar, and my opponent on that particular proposal now has had to leave, Mr. Butler, and he requests that Committee Proposal 1-76 be inserted in the calendar between Committee Proposal 93 and Committee Proposal 1-104, both to come up first thing tomorrow morning.

PRESIDENT WENSTROM: 1-93 and 1-104. Do we have a second to the motion?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been moved and seconded that Committee Proposal 1-76 be placed between Committee Proposal 1-93 and Committee Proposal No. 1-104. The motion has been seconded. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-76 will be at that place on the calendar.

Fellow delegates, I think we should take a recess for a few minutes. And I believe that our agenda as discussed this morning when the Committee on the Calendar met was that we would work until six-thirty, and we will not come back this evening. Now I'm going to declare a recess of ten minutes where you can stretch. But before we do that, I want to divulge to the Convention the other part of the statement so ably expressed by Delegate Kwako relative to at this point I'll say Senator Sanstead. It was my privilege to observe his work in the Senate. And I also have to go along with the statement as stated by Delegate Kwako that he did have a large callous on the inside of his right thumb from consistently voting "no."

We will be in recess for ten minutes.

(The Session recessed at 5:34 P.M. until 5:58 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: You'll notice we have two new pages with us today; they are Mr. Ernie Johnson and Mr. Mark Ulness of Bismarck. They are getting the necessary experience to apply against their obtaining an Eagle Scout badge, and this is some of their experience in government. (Applause)

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: On Committee Proposal 1-89, which is next on the calendar, I'd like to say that debate on this will take considerably longer than is left for the session today, and that Delegate Geelan and I have commitments that will require us to leave a little bit early. And we both intend to engage in the debate. I would therefore move to have this proposal placed four positions down on the calendar.

PRESIDENT WENSTROM: That's 1-89?

DELEGATE MAXWELL: Yes, Mr. President.

PRESIDENT WENSTROM: You'd like to have it down below 1-117?

DELEGATE MAXWELL: Yes, Mr. President.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: The question — Delegate Hoffner.

DELEGATE HOFFNER: 105, 106, 108, 109, 110, 111, 112 are on for tomorrow at ten o'clock, just for your information and he is attempting to place a proposal between them. I just want to give you that information.

PRESIDENT WENSTROM: No, I think his request was to place his proposal below 117, Committee Proposal 1-117.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: 1-97 then would be the next proposal on the calendar. This is the proposal dealing with tax exemptions. I anticipate that there will be considerable discussion on this. And I think the committee would appreciate it if it could be completed in one setting instead of starting on it and breaking it. The same is true of 116 and 117. I would wish to move that they be placed on the calendar immediately following 1-89.

PRESIDENT WENSTROM: Immediately below 1-89?

DELEGATE HAUGEN: 1-89; yes.

PRESIDENT WENSTROM: Well, maybe we should — maybe we should just reverse the calendar and start working from the bottom.

DELEGATE STANTON: Second.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I think I could make a motion that might help some here.

PRESIDENT WENSTROM: Well, now we do have Delegate Maxwell's motion before the Convention; and that was to move Committee Proposal No. 1-89 and place it between 1-91 and 117. We'd better dispose of that one. As many as are in favor of adopting his motion will say "aye;" those opposed "no." Now we have Proposal No. 1-89 placed below 117.

Now Delegate Haugen.

DELEGATE HAUGEN: Mr. President: In all seriousness, I can always be mistaken, and I have been, but we do anticipate considerable time will be required on these next three bills or proposals from our committee. And I do feel that they are important enough so that we would like to have a debate and a decision concluded when they are once taken up.

PRESIDENT WENSTROM: You have Proposal 76, is that yours?

CHIEF CLERK GILBREATH: No.

DELEGATE HAUGEN: 1-97.

PRESIDENT WENSTROM: 97.

DELEGATE HAUGEN: 1-97, 116 and 117.

PRESIDENT WENSTROM: And you'd like to hold those together?

DELEGATE HAUGEN: Yes, I would.

PRESIDENT WENSTROM: Well, the next suggestion then would be that Committee Proposal No. 1-91 be moved to the head of the calendar.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President: I was going to say that I think that if 1-91 were moved to the head of the calendar, that the time might be just about right. I anticipate around a half hour discussion of that particular one. It's not ultra controversial, but there may be some questions about it.

PRESIDENT WENSTROM: Anyone object? Then Delegate Baker moves that Committee Proposal No. 1-91 be moved to the head of the calendar.

DELEGATE HERNETT: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hernet.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The question before the Convention is consideration of Committee Proposal No. 1-91.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker. Delegate Baker, we'll read it from the desk.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-91, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 74, 82 and 83 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota pertaining to elections and terms, be created.

"SECTION 1. REPEAL.) Sections 74, 82 and 83 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Elections and Terms.

"(a) The elected officers shall be chosen by the qualified electors of the state at a time to be designated by the legislative assembly. The terms of elective officers shall be four years except that the public service commissioners shall serve staggered six-year terms. All elected officers shall serve until their successors are elected and qualified.

"(b) Elected officers and the heads of all principal departments shall hold office at the seat of government.

"(c) If two or more candidates for any executive office shall have an equal and highest number of votes, the legislative assembly, in joint session, shall choose the successful candidate or candidates."

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, Fellow Delegates:

Committee Proposal 1-91 deals with part of the organization of the executive department of the state government as has been explained in the reading. And it occurred to me that some of you may be a little confused by the reference to repeal and the subject matter which seems to cover only part of the material in the repealed sections that we have before us. This, I think, was partly explained awhile ago when it was noted during the discussion of 1-102 that the — that the committee has chosen to rearrange some of the material in the executive articles so that it is in a little bit more logical order, according to the judgment of the committee, at least.

Anyway, so far as Section (a), the election and terms, there is no substantive change from the present situation except that considerable words have been eliminated. It still provides that the elected officers now, who number quite fewer than have been elected, shall be elected by the state as now and that the terms shall be for four years, except that the Public Service Commissioners will serve six-year terms, just as they do now and staggered terms, just as they do now, so that one of the three is elected each two years.

The language in that section also provides the same as material in the present Constitution does; that the elected officers shall serve until their successors are elected and qualified. There may be a question in this regard about the limitation on the terms. The committee did have considerable discussion on limitation. And some of that discussion has come here to the floor on other sections of the Constitution. I think that the reasons that were given here on the floor on limitation was turned down whenever it was here a few days ago. It was about the same reasoning that the committee applied. In any event, they chose not to write into this section or any of the recommendations any limitation of terms.

The Section (b) provides that elected officers and the heads of all principal departments — that would include those who would be appointed under the new system which has been approved here, if it is approved by the people — that all of the elected and appointed officers will have their office — their office here at the seat of government in Bismarck, which you will remember we have designated in another proposal that has passed the Senate — the assembly.

Then Section (c) deals with the question of settling ties. This has nothing to do with election contests where there is a recount necessary or whenever — wherever any of the other machinery provided for settling disputes about the real outcome of an election, but only where the vote as certified shows an official tie. The present Constitution provides only that ties in the Constitution — the Constitution provides that only ties shall be settled in the case of governor and lieutenant governor. The committee felt this should be broadened and applied to all elected officials. That's what Section (c) is all about. The legislative assembly meeting in joint session would settle the tie.

If I have missed anything, or if there are any other questions, I'll be glad to try to answer them.

PRESIDENT WENSTROM: The question before the Convention is Committee Proposal No. 1-91.

Delegate Omdahl.

DELEGATE OMDAHL: Mr. President: There is a very significant change that was not mentioned under (a); it says, "Elected officers shall be chosen by the qualified electors of the state at a time to be designated by the legislative assembly." Is it not true at this time that the election of the four-year term people as specified be in a presidential year?

DELEGATE BAKER: Yes, I am sorry. I missed that. And you are perfectly right, Delegate Omdahl. There was considerable discussion about this aspect. The suggestion was made that we write into the constitution, in fact, an off-year election of North Dakota officials. And this had considerable discussion and debate. The conclusion of the committee was that this question of when the election should be was best left with the Legislature, and that's the reason why that particular change was made. It is a significant change, I agree.

PRESIDENT WENSTROM: Any further discussion?

Delegate Omdahl.

DELEGATE OMDAHL: Well, I don't think that something as basic as this is best left to the Legislature. I do believe we need to give the Legislature more responsibility, and we've been doing it throughout this Convention. But I think it's getting to the point where we're letting them decide all kinds of things. And this happens to be one that I think is basic enough so that it ought to be mentioned. I don't have a preference for presidential years or off years. There are political disadvantages for one party in one year, and there are political disadvantages for the other years. But it rotates so much that I don't think any one particular party would benefit from it being on a presidential year over a long period of time any more than it would benefit the other political party to have it in the odd year. So I don't have a preference. But it just seems that something as basic as this should have been included in the draft.

DELEGATE VOGEL: Mr. President.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I yield to Delegate Hill.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Our recommendation to the coordinating and transition committee which would be voted on by the entire group here is to the effect that the executive article shall take effect in 1976. This then provides that the terms of elected officers who were elected in 1976 shall have a four-year term. If the Constitution requires that these people continue to have a four-year term, this guarantees that they will always have an election in a presidential year unless they change the time of the election of the President. I was initially in favor of a presidential year election, then I changed my mind to one to allow the Legislature to provide an off year election. However, that lost in committee. And it is my understanding right now this article would become effective in 1976 and will lock in an election for state officials in the presidential years.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I may add that in the present Constitution all that

is said is that the governor and lieutenant governor shall be elected at a time and place of the choosing of the members of the legislative assembly. We felt that the four-year term could not be altered by the Legislature, and possibly the statement that "They shall be chosen at the time designated to meet by the legislative assembly" as we have said in this Constitution is unnecessary to support the present cycle as locked in by the four-year term. The legislative assembly could not change that.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: May I ask a question of Delegate Baker? Are there any electors that are not qualified?

DELEGATE BAKER: I think that's standard language in the Constitution myself. I think it means all the people who are qualified to vote.

PRESIDENT WENSTROM: Further discussion?

DELEGATE TRENBEATH: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Delegate Baker, could I ask a question? I notice that the reference is made — I guess this whole section is supposed to deal with executive officers, is it not?

DELEGATE BAKER: Correct.

DELEGATE TRENBEATH: Except that in the repeal section you are talking about legislative members also. In Section (a) and (b) you use the word "elected state officers". Should you?

DELEGATE BAKER: This is part —

DELEGATE TRENBEATH: Or "elected officers".

DELEGATE BAKER: This is a part of the executive section. The reference is that it is — that these are state officers. I don't know whether additional language is necessary to further indicate that what we're talking about are those officers named in the material in 1-102. I think it's clear enough and definite enough and there won't be any trouble. But if that's not right, why I suppose it should be corrected. I don't think that Sections 74, 82 and 83 have anything to do with anything but the executive department, though there is language in there, of course, about the election being at the time and place of the election of the legislative assembly just for, I presume, reference purposes in the present Constitution.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I would like to ask Delegate Baker another question, please.

PRESIDENT WENSTROM: Delegate Baker yield?

DELEGATE BAKER: Yup.

DELEGATE BURBIDGE: On your Proposal 1-91(b), "the heads of all principal departments shall hold office at the seat of government;" what do you mean by "principal departments"? Are these the fifteen that were established earlier, or does it go further than this?

DELEGATE BAKER: This would, Delegate Burbidge, include the elected officers. Those named in 1-103 as well as the heads of the principal departments also outlined, I guess, at least the fifteen departments that are provided for and the appointment of the heads of those departments provided for in that same division. Yes, those are the ones we are talking of.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the first passage of Committee Proposal No. 1-91. Hearing no further discussion, those in favor of its passage will vote "aye;" those opposed will vote "no." The key will be opened, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 88 "ayes," one "nay," one delegate absent and not voting. Committee proposal No. 1-91 has passed.

DESK REPORTER KING: Nine delegates absent.

PRESIDENT WENSTROM: What did I say?

CHIEF CLERK GILBREATH: One.

PRESIDENT WENSTROM: I'm sorry. I will re-read the vote. There were 88 "yeas" and one "nay," there were nine delegates absent and not voting. So Committee Proposal No. 1-91 has passed.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker:

DELEGATE BAKER: I got another one in here. I underestimated the time a little on that last one. Got another one here we might have some fun with and we could wind up on. I will move that 1-103 be moved to the head of the calendar.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Baker moves that 1-103 —

DELEGATE BAKER: Right.

PRESIDENT WENSTROM: — 1-103 be moved to the head of the calendar. And the motion has been seconded by Delegate Litten.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. The question before the Convention, first passage, Committee Proposal 1-103.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-103, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 81 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to ethics, be created.

"SECTION 1. REPEAL.) Section 81 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Ethics.

"The governor shall not use his official influence in exchange for a legislator's official vote."

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President: Section 81 of the present Constitution of the State of North Dakota is my favorite section; it's about the longest sentence I've ever seen. And in my opinion, it's a good one. So it was with considerable pain that I finally agreed to the reduction of the language in Section 81, that magnificent thing, to one short sentence as it stands before you in 1-103.

Now there are some subversive elements among us who would do away with the thing entirely, you understand. So even getting it this far in this shape represents some kind of a minor triumph.

On the serious side, though, Section 81, the way it is, is the attempt of the constitution writers at that time to put a kind of a constitutional safeguard against the practice of influence by the governor of the legislative action. And I don't know how often this section has anything to do with the relationship between the governor and the Legislature. But I do know from personal experience that the relationship between the governor and the Legislature has been almost always, all that I know about, correct. And so I believe that that section could have done no harm, and maybe contributed a little bit to that correct relationship.

And my concern about eliminating it entirely is that I think it would be noticed, and that it would furnish additional ammunition for those who may wish to make a strong case against the Constitution, the new Constitution, entirely. And so that's the basis for my appeal to you now to leave some sort of an ethic section in the Constitution — new Constitution, even though it be only one short sentence which may be meaningless to some of you. It's meaningful to some of us. And "us" includes the people of North Dakota, I believe.

PRESIDENT WENSTROM: Any further discussion?

Delegate Cart.

DELEGATE CART: I'd like to ask Delegate Baker a question. I notice here that "The governor shall not use his official influence in exchange for a legislator's vote." Would it be all right if he used his personal influence?

DELEGATE BAKER: Well, I really don't know. This is the way it came out of the wringer.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President: I have an amendment at the desk which I move at this time.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-103 is as follows:

Delete lines 7 through 11, inclusive.

DELEGATE HILL: Would you read that again, please?

CHIEF CLERK GILBREATH: Delete lines 7 through 11, inclusive.

DELEGATE HILL: Thank you.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: May we have a second?

DELEGATE SONDRÉAL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nothing.

DELEGATE NOTHING: No, no. No, I don't want to second that. I'm for Bill Baker.

PRESIDENT WENSTROM: All right.

DELEGATE SONDRÉAL: Second.

PRESIDENT WENSTROM: Delegate Sondreal seconds the motion.

Now Delegate Hill.

DELEGATE HILL: Delegate Baker describes it well. This is a section our committee has had the most fun with. We killed it three or four times, and then like the snake I heard about in the Senate a couple sessions ago, it keeps coming back to life. This is about the sixth draft we've approved also. And I think Section 81 has mainly been honored in the breach. We don't want — it says the governor cannot suggest to the legislator he might veto a bill. But the point I'm making here is that we have adopted grounds for impeachment which would include crimes, corruptive influence and things like this. In our Committee Proposal 1-120 we have provided that all elected officials can "be removed from office for crimes, corrupt conduct, malfeasance," and this would include illegal influence on the Legislature by the governor. When I see a statement that "The governor shall not use his official influence in exchange for a legislator's official vote" it seems to me to indicate that it is all right to use your own official influence. And I don't think that's what we're intending. And I think it's adequately covered elsewhere. And I don't think the poor legislators have to be afraid of the governor. The governor's thoughts on this subject were to the effect that he doesn't like the section. He thought a couple of legislators who wanted to embarrass him could claim that he was using his official influence on them to influence them. And I think as a practical matter the legislators like to know if the governor is going to — want to veto a bill or something of this nature. And we really don't know what "official influence in exchange for a legislator's vote" is. And we do have sections which would prohibit crime, influence by the governor, and everything else. I think that would cover it; "anything else".

DELEGATE SOLBERG: It may add a little austerity to your statement, Delegate Baker, to have continued your research. This is a unique sentence in the Constitution, Section 81. It has, as you said, only one sentence. It has no semicolons, it has no colons, it has eighteen commas and one period.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: Those of you who were at the Mary College Conference may recall that Mr. Braden, the drafting officer, consultant to the Illinois Convention, singled this out for his attention and said that he had never, ever seen anything like it anywhere.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I have just completed the count. We have 212 words.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the amendment as offered by Delegate Hill.

Delegate Kessel.

DELEGATE KESSEL: It may be that if this is so unique we should keep it.

DELEGATE LARSEN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: If we can reduce the size of our constitution in a like manner I'm sure we could have a constitution that the people of North Dakota will not only be proud of, but would accept.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Hill.

No further discussion, those in favor will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will vote "aye;" those opposed vote "no." The Chair will call the amendment passed.

DELEGATE McINTYRE: Division.

DELEGATE CHASE: I think Mr. Baker should have a division.

PRESIDENT WENSTROM: Division has been called. Can I change my — can I change my decision?

The question before the Convention is on the adoption of the amendment. Those that are in favor of its adoption will vote "yes," and those opposed will vote "no." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

DELEGATE SINNER: I vote "aye".

CHIEF CLERK GILBREATH: Sinner votes "aye".

PRESIDENT WENSTROM: Press Sinner's vote, please.

Any delegate wish to change his vote? The vote is closed.

Roll call discloses 53 "ayes," 38 "nays," seven delegates absent and not voting. The amendment to Committee Proposal No. 1-103 has been adopted.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to move that we delay action on this for one day to see what the engrossed bill looks like.

PRESIDENT WENSTROM: I'm afraid that your motion — in fact, you didn't make a motion.

The Chair will recognize Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President: I know that the hour is getting late. And I regret that you eliminated this matter of ethics because I have intimate knowledge of the fact that this sort of thing has been abused much in the past. Those of you who might be interested in real history of North Dakota will know that at a certain time the price of North Dakota bonds jumped very substantially. The reason for that was that Section 81 had not been observed.

And certain members of the Legislature were unduly influenced at that time. It's one of the things that brought about the dedicated highway funds. Many, many ramifications were caused by the non-observance of the old Section 81. I would be delighted to know the real history of it.

PRESIDENT WENSTROM: We still have Committee Proposal 1-103 before the Convention as amended.

Delegate Hendrickson, did you wish the floor?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I move — I think we need to suspend the rules, don't we? I move that the rules be temporarily suspended, that Proposal 1-103 be deemed properly re-engrossed, and be placed on the calendar for first reading and first passage.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It has been moved by Delegate Omdahl that the rules be suspended, that Committee Proposal 1-103 be properly re-engrossed, and be placed on the calendar for first passage as amended.

Delegate Knudson.

DELEGATE KNUDSON: Since this amendment passed so narrowly, I will resist the motion to suspend the rules on this one. I think it's all right if we think it over. We aren't going to save very much time by passing it now.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Under Committee Proposal 1-34, which has been passed, the Legislature has been mandated to enact a code of ethics for all state officials. I'm hopeful they will preserve 81 in statutory law as a matter of historical curiosity.

PRESIDENT WENSTROM: Any further discussion?

The question is on the suspension of the rules. As many as are in favor of the motion say "aye;" those opposed say "no." The "ayes" have it. Committee Proposal No. 1-103 is before the Convention for first passage —

DELEGATE LONGMIRE: Question.

PRESIDENT WENSTROM: — as amended. As many as are in favor of the motion will say "aye," and those opposed to the adoption — I guess we're all getting tired. The question is on the first passage of Committee Proposal No. 1-103 as amended. Those in favor of its passage will vote "yes," and those opposed will vote "no." The Clerk will open the key and you will record your preference.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 63 "ayes," 27 "nays," eight delegates absent and not voting. Committee Proposal 1-103 has been passed as amended.

We'll be on the ninth order of business.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-1, submitted by Delegates Benson, Bender, Poulson, Brakke, Bassingthwaite, Aubol, Billey, Lander, Hardmeyer, Hill, Hoghaug, Hougén, Hubrig, Erickson, Fritzell, Geelan, Haugen, Decker, Larsen, Thompson, Wallin, Tudor, Simonson, Sinner, Sondreal, Urdahl, Warner, Wicks, Miller, Sullivan, Paulson, Litten, Dawson, Scheel, Roney, Vogel, Maxwell, Sanstead, Rosendahl, Peterson, Chase, Christensen, Binek, Burke, Daniels, Griffin, Gipp, Hartl, Hildebrand, Fiedler, Schmit, Engstrom, Dobson, Nicholas, O'-Toole, Kelsch, Kessel and Jestrab:

"Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-43 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot."

PRESIDENT WENSTROM: Alternate Proposal No. 4-1 is referred to the Committee on Constitutional Ballot.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-2 submitted by the following delegates: Bassingthwaite, Aas, Bender, Billey, Chase, Brakke, Cart, Ketchum, Unruh, Baker, Fallgatter, Erickson, Huckle, Rundle, Scheel, Knudson, Hougen, Trenbeath, Haugen, Stanton, Peterson, Wenstrom, Peters, Jestrab, Hernet, Poulson, Byrne, Diehl, Longmire, Warner and Christensen:

"Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-4 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot."

PRESIDENT WENSTROM: Alternate Proposal No. 4-2 is referred to the Committee on Constitutional Ballot.

Anything under the eighth order? Any announcements?

Delegate Nothing.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I know that there are some proposals going around for purposes of being presented to the Ballot Committee on alternates. I have one that I would appreciate some signatures on, and it relates to the matter as to whether or not we should have a provision placed in the Constitution declaring persons eighteen years of age or older to be adults for all purposes. And for those of you that might be interested in signing such alternate proposal, see me tomorrow and I'll be happy to show it to you.

PRESIDENT WENSTROM: Anything else under the eighth order?

Delegate Engstrom moves, and Delegate Bassingthwaite seconds, that the absent delegates be excused. Maybe we don't have any. See, that shows how tired we're getting.

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: Is the desk clear?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: It is clear.

DELEGATE SAUGSTAD: I move that we now adjourn until eight A.M. January 28th.

PRESIDENT WENSTROM: It's been moved that the Convention do now adjourn until eight A.M. January 28th. As many as are in favor — did anyone second that motion?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Second by Delegate Aubol.

DELEGATE AUBOL: I will second it, but could I first get an answer? What time do we intend to adjourn or recess tomorrow afternoon?

PRESIDENT WENSTROM: I would say three o'clock.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. We are adjourned until eight A.M. tomorrow.

(The Plenary Session adjourned at 6:30 P.M., Thursday, January 27, 1972, until 8:00 A.M., Friday, January 28, 1972.)

VOLUME XX

(January 28, 1972)

MORNING SESSION

(The twentieth day of the Plenary Session commenced at 8:10 A.M., Friday, January 28, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

We're on the second order of business, the invocation. Our Chaplain for this morning is the Reverend Stanley Malmgren of the First Baptist Church, Bismarck.

REV. STANLEY MALMGREN: Shall we pray?

Almighty God, we come humbly into Thy presence this day acknowledging our need of Thee. May each of us, both men and women, be mindful of our weaknesses and our often lack of wisdom. Forgive us for our past failures and grant that as we look unto Thee we may have that needed wisdom to do the work Thou hast given us to do. We are grateful for all divine direction that Thou hast hitherto granted unto the leaders of both our State and Nation. We pray that we may always be mindful of our daily need of Thy divine guidance and assure us that when we call upon Thee that Thou wilt be pleased to grant us understanding in all matters, and that in following Thy guidance we can be assured of blessing on both our State and Nation.

We thank Thee for hearing our prayers this day. In the name of Christ we pray, Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call.

The Clerk will open the key, you will record your presence.

DELEGATE RUNDLE: Locker 87 here.

PRESIDENT WENSTROM: Somebody record Delegate Haugen present. He's right there.

DELEGATE HAUGEN: That's okay. You do that.

PRESIDENT WENSTROM: Has every delegate recorded his presence? Close the key and record the vote — record the presence, rather. Roll call discloses 95 present, three absent. A quorum is declared.

We'll be on the fourth order of business — approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 26th day of January, 1972, and recommends the same be corrected as follows:

On page 290, line 32, delete the word "buy" and insert in lieu thereof the word "pay".

On page 292, line 3, delete "everyone who" and insert in lieu thereof "every educable person".

On page 292, delete lines 4 and 5.

On page 301, line 25, delete the word "are" and insert in lieu thereof the word "is".

On page 305, following line 13, insert the following: "President Wenstrom called Delegate Saugstad to the rostrum to preside."

Delegate Simonson, Chairman.

Delegate Dobson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Revision and Correction of the Journal. As many as are in favor of that motion will say "aye," opposed "no." The "ayes" have it. The report is adopted.

We'll be on the tenth order of business.

At the head of the calendar for this morning, Committee Proposal 1-97.

CHIEF CLERK GILBREATH: Committee Proposal 1-97, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 176 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to tax uniformity and exemptions.

"SECTION 1. REPEAL.) Section 176 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"TAX UNIFORMITY AND EXEMPTIONS. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly may by law define and exempt any or all classes of property. Property used exclusively for school, cemetery or religious purposes shall be exempt from taxation. Provided that all taxes and exemptions in force when this constitution is enacted shall remain in force until otherwise provided by statute."

PRESIDENT WENSTROM: The Chair will recognize Delegate Aas.

DELEGATE AAS: Mr. President, Fellow Delegates:

We have before us again 1-97. This is at least the third time we've been discussing this proposal, and so I hope to keep my remarks as brief as possible.

Perhaps we should have continued with this at six o'clock last night or five-thirty, because it might have given us a deadline against which to work. Because I suspect we may have a lot of time again involved in this bill. This does deal with taxes. And, of course, it has some rather controversial areas in it. I want to say again that the committee did arrive at what they feel was a reasonable compromise in this area. This bill, this proposal, we hope can answer some of the problems that the committee found in the old language, and at the same time we would hope that it can give us something in the way of a defense against abuses of tax exemption.

I want to call to your attention the second sentence which says: "The legislative assembly may by law define and exempt any or all classes of property." We have in that sentence removed the old references to personal property. And this, of course, in our opinion, clears the air somewhat as to personal property being real estate or improvements to real estate. And by this language we feel that the Legislature can exempt any and all property that they feel should be exempted. And I want to say again that the Legislature has exempted property, the tax exempt property, and numerous other items of property in the North Dakota Century Code. And 57-02 is the chapter in which the exemptions are listed.

We feel in the committee that tax exemptions can and adequately should be covered by statute. Originally we had an eleven to three vote with one absent, or an eleven to four position in favor of repealing all property tax exemptions. We compromised because we felt that there was pressure from religious organizations and from certain other ones, and we did go back to include the religious organizations, cemeteries and schools.

You have now added tax exemption for the hospitals, nursing homes and retirement homes. We have consulted with the tax attorneys in the Tax Department and in the Attorney General's Department. And they are seriously concerned with the nonprofit wording which is in this amendment. We, too, are concerned with the nonprofit wording which we have in the new amendments which have been made from the floor of this body.

The attorneys in the Tax Department tell us that it would not be possible for any group of ten of these people in this room or any other ten people to form a nonprofit corporation for a retirement home, and no matter what your income was, what your source of funding for this was, you could have tax exemption under this statute. This is why they are seriously concerned with the nonprofit statements which are in our present exemptions that we have before us at this time.

The committee does feel that we went a long way in our compromises on this matter. We felt that we did have a very valid and solid ground on which to hold for excluding all tax exempt property from the Constitution. Our only concession was made to what we would consider pressure from the voters in getting this Constitution passed.

We have seen some bold strides taken in the last few days. And I can refer particularly to our executive reorganization yesterday. And if we are going to sell this to the voters, and I sincerely hope we can, I think that we have just as good a ground to sell a good, clean tax section in the Constitution. We would hope that we do not proliferate our tax exemptions any further.

But I do understand there are numerous proposals for amendments from the floor, and with these short remarks I would ask that you give support to our committee. Our committee feels that we have come a long way in making the best proposal we can for you and we hope that you can support it.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President: I have an amendment at the desk.

CHIEF CLERK GILBREATH: The proposed amendment to Proposal 1-97 is as follows:

On line 14 delete the words "Property used exclusively for nonprofit".

Delete lines 15 and 16.

On line 17 delete "taxation".

And insert in lieu thereof the following:

"Property used exclusively for public worship, school, hospitals, nursing homes, rest or retirement homes or cemetery purposes shall be exempt from taxation if it is non-profit as defined by law."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President: I move this amendment.

PRESIDENT WENSTROM: Delegate Lamb moves the amendment as read from the desk.

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Chase.

DELEGATE LAMB: Mr. President, Fellow Delegates:

I personally am not happy with the language of the Committee Proposal No. 1-97 as it is before us. I do not believe in the enumeration of any special charities and things of this nature. I think that it should be left up to the Legislature. The purpose of my amendment is to make sure that the Legislature has this ability to define what nonprofit is, what the particular organizations are. If you will notice in the old language, in the language of the present — as it is right now, there is no definition about schools. A commercial college could be exempt under this particular provision, a profit cemetery could be exempt under this particular provision, and all these sort of things. And by this amendment I am hoping that we will be able to at least confine the exemptions to these ones that have been approved so far.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I think I have an amendment up there and I ask the Clerk to toss it in the wastebasket. Because what he is saying straightens out what we are trying to do here and what we all want.

Now I think that there's been the argument that we aren't going to use tax exemptions because we feel that they are too indeterminate. But I think that a lot of these people and these organizations that have worked on the bill feel that they have to have some anchor from which they can decide whether they are free or not or whether they will have to be coming under the Legislative section. Because we saw a lot of vacillating on the ideas which were proposed here as to why a thing should or should not be tax exempt. I think, too, when I

look in history, the greatest historians of our time said that civilizations tend to work through their troubles based on a firm religion. And after they have settled most of those troubles and things become affluent they move away from religion. When they move away from religion, they move into the field of logic. And you can see what happens here in the field of logic. Everybody's logic is different and finally chaos develops and they return to religion. I think the same could be said of a constitution. With a constitution we have something firm, implacable, unalterable, except by amendment of the people, and consequently we can rest at peace when this thing is done down here this way. I think we can continue to tack amendments on this, as Delegate Aas has mentioned, and after we have tacked a number of them on then we are just going to throw this thing out and come right back to the clean language that they had before. I say we have got what we need here and we ought to leave it this way. The ship can hold no more. If we add anything to the cargo, pretty soon it will sink.

If we just have a clean bill without any specifications in it at all, I think we have a number of delegates who are unconvinced. Furthermore, you have those people that are concerned with having built these organizations that will be ill at ease, and you have to convince them that they are going to be treated fairly. With what we have now as cleaned up here by Delegate Lamb, we have a clear, clean proposal that I think all of us can support and I think the people back home that are really concerned about these — not everybody's concerned about these — but the people that helped build these organizations can rest at ease. And I would sincerely urge your support of the amendment and the final proposal as outlined by Delegate Lamb.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment.

DELEGATE TRENBEATH: Mr. Chairman — or Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: What Mr. Lamb and Mr. Scheel just said I'm sure is not going to work the way they'd like to see it work. The committee explored all these positions that they have suggested here. And we have done it sincerely. We went to the people that are going to have to administer this thing; to the Attorney General and Tax Department's office. The word "non-profit" in this section is a key word that can give us the trouble. And I don't know how we can insert that word in there and not get into trouble. Because any organization that's ever organized for nonprofit purposes most certainly is going to be tax exempt under this section.

Now I'd like to make this one statement: The present section of the Constitution, the executive section I'm speaking of, has all the case law it needs, has all the Attorney General's opinions it needs, and has all the rules of the Tax Department and statutes built around the wording in our present Constitution that does the very thing that you are attempting to do to insure yourselves of tax exemption for these things. And if we deviate or disturb the wording in our present Constitution I'm afraid we're in trouble.

So it gets down to just plain nitty-gritty. We either leave the Constitution with the wording as it is now and not get into trouble, either that or we wipe out the sentence completely on tax exemptions. I think those are the key things that we should consider here this morning; either leave the wording as it is in the Constitution or knock the whole exemption thing out and leave it be defined by statute.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Delegates:

I would like to compliment Delegate Lamb for his work in cleaning up the language. A week ago I entered the first amendment that has stirred up this trouble. And I compliment Delegate Lamb, and I think the entire delegation can support this amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE QUAM: Mr. President.

PRESIDENT WENSTROM: Delegate Quam.

DELEGATE QUAM: I'd like to move an amendment to the amendment. It's at the desk.

CHIEF CLERK GILBREATH: The proposed amendment to the amendment is as follows: —

DELEGATE KELSCH: Mr. President: I don't know which is the simpler procedure here. There are a number of amendments. Would it be easier to pass the Lamb amendment and then attempt to amend the bill?

CHIEF CLERK GILBREATH: It would be easier.

PRESIDENT WENSTROM: That would be the easier way. However, he's offered an amendment to the amendment.

DELEGATE QUAM: I'll withdraw that, Mr. President.

PRESIDENT WENSTROM: You withdraw the proposed amendment?

The question then as before the Convention is on the amendment as offered by Delegate Lamb.

Delegate Cart.

DELEGATE CART: Mr. President: I've consistently opposed any change in the present language of Section 176. I've been in the minority, that's true. But this language is so clear and specific that all of our court decisions have sustained it — set up a good pathway of operation for our Tax Department and there should be no confusion with it.

The first — or the second sentence seems to have created some confusion here recently, about 1967, when the Legislature attempted to set up a different classification of buildings than is set up in the Constitution. And that's where a lot of the trouble started. That sentence is very clear and specific. It says: "The legislature may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property." Now that is what is subject to exemption by statute. And the language there is so clear and specific, anything but land is subject to exemption.

Now with this change, the various changes — and I don't know which ones to address myself to — where all property could be exempt if the Legislature so desired and so classified, and then the constitutional exemptions which seem to be the principal bone of contention at the moment, that is very plain and specific: "The property of the United States and of the state, county and municipal corporations and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation." Now that word "exclusively" is the key word there. It's got to be used exclusively for these purposes. It could not take in say a commercial college where the people that own it charge a tuition sufficient to pay the operating expenses and probably earn a profit for the owners. Such things as that are not exempt under this constitutional provision.

But those institutions like the churches which are having a difficult time to struggle along and pay their operating expenses are certainly in need of this continued exemption. And there's some other institutions probably that are in the same category. And I certainly plead with you not to disturb this section at all. It's had a good pathway, as Delegate Trenbeath has said. There's good case law on it. And any inequities that may have arisen from over the period of years are due to administrative or legislative failure, not to the constitutional provisions. And, therefore, we should start to correct those inequities if they do exist, and I think probably some do. To attempt to redefine and open this field wide open and create chaos is not a good thing. Thank you.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. The matter that's been raised by Delegate Cart was settled I believe at the time the Majority and Minority Committee Reports were reported when this first came to the floor. The committee or the large majority of the committee believes that specific exemptions of this

type or the property that we are talking about should not be in the Constitution itself, but should be defined by the Legislature. We cannot determine the course of action of this Convention. I would say for the committee that I believe they would prefer that Delegate Lamb's amendment be defeated. We do feel, as Delegate Trenbeath has said, if we have to have exemptions in this section then they should be the exemptions of the present section which are defined by case history and by experience. So if I could say that the committee would have a preference how this matter is handled, we would like to have Delegate Lamb's proposal — amendment defeated and we would like then to have the motion on Delegate Quam's amendment which would take all of these exemptions out, and then Delegate Erickson has an amendment after that to be proposed which will go back to the present language dealing with exemptions in the Constitution we have now.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Lamb.

Those in favor will vote "aye;" those opposed will vote "nay".

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I just wanted to say that I worked with Delegate Lamb in preparation of this amendment. And I thought it was on the right track. But I think that the question that Delegate Trenbeath has raised is a significant one, and I'm going to have to vote against something I helped draft.

PRESIDENT WENSTROM: The question is on the adoption of the amendment as offered by Delegate Lamb. Hearing no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no." The "noes" have it, and the amendment lost.

Delegate Quam.

DELEGATE QUAM: Mr. President: I have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-97.

Delete everything after line 9 on page 1 of the engrossed bill, and insert in lieu thereof the following:

"TAX UNIFORMITY AND EXEMPTIONS. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly may by law define and exempt any or all classes of property. Provided that all taxes and exemptions in force when this constitution is enacted shall remain in force until otherwise provided by statute."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do I have a second?

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engelter.

Delegate Quam.

DELEGATE QUAM: Mr. President: I don't think there should be any exemptions in this proposal. An exemption should be legislative. That's just what this amendment would do.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think that the discussion on the floor both times that we've had this before us indicates there are enough unsettled factors to be taken into consideration that it is going to be impossible for this body to resolve the question in one sitting for the next fifty years. And this suggests to me that this is a legislative matter because only the Legislature can deal with such problems as nonprofit as they've been discussed here. Therefore, I would like to support Delegate Quam's amendment so that the Legislature can deal with all these variables.

Lynn Aas happens to have some different interpretation of that first sentence than I do, but that's carrying forward the same as in the old Constitution in the

last line of Delegate Quam's proposal from the old Constitution. And I think that the legislative assembly can be handed this problem and they will deal with it responsibly. And I don't think any of the religious or charitable organizations have anything to fear from the Legislature, because frankly I don't think the Legislature is going to become anti-religious even though we give them four-year terms.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

Our committee by an agreement yesterday agreed that the approach we should take was to first support the amendment which Delegate Quam has submitted. A majority of our committee supports that, and rather strongly. And a minority of our delegates — of our committee supports the Trenbeath proposal, or what will be the Erickson proposal.

Now there is a feeling amongst our committee that it is not easy to enforce the exclusions as they are listed in the Constitution. We know that once the appeal is made for a tax exemption on any property, the courts and the decision-making bodies are lenient in the interpretation in granting the tax exemption. We know there is no way we can control this. We know we have no method of accountability to the governmental agencies. And we know that there is an opportunity for abuse when we have it in the Constitution. We also know that the second sentence of our proposal here will grant this authority to the Legislature.

And we are satisfied that the exemptions which are listed in 57-02-08 have not been changed every year or every two years by the Legislature, and some of them have stood the test of time for fifty years. And we submit that we would like to have you vote favorably on this or else we would ask you to support the Erickson amendment and get this over with.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I enthusiastically support Delegate Quam's proposal or amendment, and for several reasons. I believe that the clean language of the proposal and the possible powers given to the Legislature will also cure such apprehensions as Delegate Gipp had about bodies that discriminate on the basis of race, color, so on. Because with the power given to the Legislature to define and exempt property, this would embody the various charitable exemptions now granted. And these could be successfully challenged on the basis that some of these organizations do discriminate. And there have been cases in other states where the exemption to a club which discriminates has been denied.

I also want to bring out that there is a common fallacy among many of us that unless exemptions are specified in the Constitution they cannot be granted. This is not correct. And also there is a fallacy that if you specify exemptions in a constitution that that automatically makes them exempt. This is not correct.

There is a line of legal authority in our courts that states that a constitutional exemption is not self-executing, but that the exemptions exist only if the Legislature provides for them and interprets them. And there's a North Dakota case on this for the legal scholars, **Engstad v. Grand Forks County**, 84 N.W. 577, and I would urge the delegates to leave the matter of exemptions for interpretation and decision by the Legislature.

There is a saving clause on Delegate Quam's proposal that: "All taxes and exemptions in force when this constitution is enacted shall remain in force until otherwise provided by law." And there is, as Delegate Aas pointed out, statutes presently in Chapter 57-02, I believe, specifying all of the exemptions for churches, schools, so on. And I would urge the delegates to support Delegate Quam's amendment.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President: I think that Delegate Omdahl touched upon a significant point. No matter what exemptions we write into this Constitution today in twenty years or thirty years they could be outmoded. Many of

the delegates here are concerned now about nursing homes and rest and retirement homes. Twenty years ago, thirty years ago we did not have this type of institution in our state. Who is going to know in another thirty years if we are going to have something that is entitled to exemption and we are going to have to leave it up to the Legislature. Why can't we trust the Legislature to do the job in the first place? They have to do it, they will do it. And I think the people, the people who are interested in religious exemptions, can trust them.

We have now, I think, about twenty-three states that have no provision for this type of exemptions in their constitution. When the people who were testifying before our committee were asked if there was any state in which they had problems because of this failure to exempt in the constitution, they could not point to a single state where there is any question now where they have any difficulties because this matter is not in their constitution.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President, we're finally getting down to the real meat of the discussion on this section. As stated by Delegate Omdahl and Delegate Aas, this is the realistic and right way to do this thing. There is no question about that. I am convinced of it myself. But I will remind you that I have this opinion also — and if this amendment fails the motion will be presented to you to go back to the original Constitution — but what I want to remind you of is this: Is that those constitutions that have been revised in recent times wherein that constitution had these exemptions in them, they have taken them out simply because they were up against the same thing that we're up against here today. There is a great feeling out amongst the people in the State of North Dakota by pulling these exemptions out they won't always be handled by statutes properly and they want them in here and they want them in the Constitution. So I'll have to remind you people that it could have a great influence on the vote of whether our Constitution's approved or not. This one thing. I'll submit that when you go back to your people and hold meetings, that this will be one of the questions that will be asked. And maybe you can clear it up in the mind of those that are at that meeting, but there's going to be a vast group of people that aren't going to be at those meetings and they are going to hesitate to vote for the Constitution because we did put these back. And this is significant because we did have 700 letters come to our committee in this regard. Granted, some of this was stirred up by a fear. But at the same time this fear does address to the people. So I would say that this is the ideal way of doing it. Leave it be handled by statute. But we have this thing hanging over our head which is a real fear with many of our citizens in North Dakota. So the thing is clear-cut in your minds, either vote for this one or vote and go back to the original Constitution.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President: I think Delegate Quam's proposal is dynamite. If we think that the right-to-work has caused a stir, then pass this one. I predict, as Delegate Trenbeath has just mentioned, that if we do pass this amendment that most of the delegates' time spent in trying to sell this Constitution to the voters will be spent in explaining this particular deal. I think we should defeat the amendment and go back to the original language, I think, as is being brought up by the Erickson proposal.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: Mr. President and Fellow Delegates:

I, too, feel that this is a basic right for the people to have this exemption in our Constitution. And I feel that there have been inferences made, oh, of tax exemptions that have been abused. And I think this is strictly a local matter, and if there are abuses that the local people can certainly take care of it. But I certainly hope we defeat this amendment. And I will propose an amendment, if this is defeated, to go back to the original language.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: I will recognize Delegate Aubol.

DELEGATE AUBOL: I would agree with the Quam amendment and I would agree with Delegate Trenbeath. I do think that if we are going to be concerned about the reaction of the people back home on this, that one way to avoid the reaction back home if we accept the Quam amendment is for all of us to vote for it. If we go back home and the people start saying, "Why did you take the sections out?", we can say, "We did it because we saw the impossibility by leaving them in the Constitution."

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President: I support the Quam amendment. And I think that this is the real thing that we have to get to at this time. We have to get these out of the Constitution, leave the Legislature the opportunity to investigate them.

And I also hope, Delegate Quam, that you didn't have Delegate Sinner help you draw it up.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I have nothing to say.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President: I think Delegate Trenbeath hit it right on the head when he said going back to these meetings and you are going to explain this to the people that were at the meetings there's going to be a vast majority who are concerned about this who aren't going to be at those meetings.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Quam. Hearing no more discussion, those that are in favor will vote "aye," and those opposed will vote "nay." As many as are in favor of the motion will say "aye;" those opposed say "nay." The Chair is in doubt. We'll open the key. Those that favor the adoption of the amendment will vote "aye;" those that are opposed will vote "nay." The Clerk will open the key, you will record your preference.

Has every delegate voted? Any delegate wish to change? The vote is closed.

DELEGATE TUDOR: Mr. President. Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: Yes. May I report my presence here? I was a little tardy.

PRESIDENT WENSTROM: Delegate Tudor records his presence.

The tally indicates there were 40 "ayes," there were 57 "nays," there was one delegate absent. The amendment failed.

DELEGATE ERICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: Now as a question to the Chair, what status is 1-97 in right now?

PRESIDENT WENSTROM: Just the way it came in this morning.

DELEGATE ERICKSON: Well, then there really would be no — yes, I guess it would be. I'll propose an amendment. Will the Clerk please read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-97.

Delete everything after line 9 on page 1 of the engrossed proposal, and insert in lieu thereof the following:

"TAX UNIFORMITY AND EXEMPTIONS. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly may by law define and exempt any or all classes of property. Property used exclusively for school, religious, cemetery, charitable or other public purposes shall be exempt from taxation. All taxes and exemptions in force when this constitution is enacted shall remain in force until otherwise provided by law."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do I have a second?

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: Second by Delegate Trenbeath.

Delegate Erickson.

DELEGATE ERICKSON: Mr. President, Fellow Delegates:

I think there's been enough discussion said already this morning. We've spent about fifty-five minutes on it. And I would hope that you can support this amendment and we pass it out. I think the people in North Dakota are looking for this exemption.

PRESIDENT WENSTROM: Further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

CHIEF CLERK GILBREATH: Sinner.

DELEGATE TRENBEATH: I'll yield to Delegate Sinner.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE TRENBEATH: Mr. President, evidently he wants me first.

Now we are right back to the way the original Constitution is as it regards the exemptions section — sentence. And I think probably this is a wise decision. The words "schools", "public purposes", "charitable", "religious", "cemetery" are all words, as I mentioned before, that case law and the rules of our Tax Department and statutes are built around. The word "exclusive" and the word "charitable" in particular are used to take care of the nonprofit end of it. The word "charitable" I know there is a court case with regard to the situation, Ken Urdahl's district in regard to the Jamestown Crippled Children. So as I repeated before, I think that by leaving these words in our present Constitution we are avoiding a lot of trouble. Certainly they could be better handled by statute. This I agree with. But there is this overriding issue of the people back home. And as far as we look down the road here, people, I am sure that we're going to exempt these very things that we're exempting now. So the difference is should we leave them in the Constitution or not? I think this is a wise decision.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: I don't think that any of us came here to avoid trouble or to reiterate the complexities and the problems of the past. And who is there in here who hasn't had exposure to the abuses and the problems that have come from this section? I think the only thing we can do at this point is to defeat the motion and let the committee rework this thing. The obvious problems of the old language are obvious to anybody that's ever worked with it. And how we can go home and defend this is beyond me.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President: I merely want to call the delegates' attention to the only change from the present law. That's in the second sentence. And if you'll follow your Constitution there you will notice that "all property" would be subject to exemption by statute. The Legislature could define and exempt any or all class of property. Now if you want to cover the whole field, then you've got the same language that you have today with the exception of today you can only exempt personal property.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President: With the risk of being somewhat corny, I feel that the adoption of this amendment will be a "security blanket" not only for the passage of this Constitution but for the Legislature.

Now Delegate Cart and I have had a difference of opinion on this, along with a lot of other legislators, as he has done his work through the legislative sessions for a number of years to try to get them to see a point of view. But the fact is that we have to change this particular section regarding the power of the Legislature to define an exemption. If we don't, we're in serious trouble in a number of areas in our state government; particularly with reference to municipal and development bonds. I feel that Delegate Cart's concern and worry that the Legislature is going to be besieged with attempts to have them redefine this and classify that, it's a concern, yes. But I think the Legislature can handle

this. It isn't like in Minnesota where they have twenty or thirty different classes of property, keep juggling up and down just to provide some answers to people that pressure them. But I think the legislative assembly in North Dakota is broad enough in its wisdom to not monkey too much with the present list of exemptions.

You have been handed at your desk three or four pages of the exemptions that are current in our statutes. And I think we will make a wise decision if we will give the people the security that they want in the exemption list. I agree, it's not the best constitutional writing, but, folks, let's be practical. I believe unless you accept this you might as well go home for the week-end and just write the whole thing off. I think you're really asking for trouble unless you put this list of exemptions in the Constitution.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

I supported the Quam amendment because I felt that the Legislature was the proper place to be defining exemptions. However, I do support this amendment. Section 2 which provides that: "The legislative assembly may by law define and exempt any or all classes of property," I think this refers to the exemptions that are also excluded in here. I think the Legislature will have the power to define what schools are used — what property is used exclusively for schools, religious, cemetery, charitable or other public purposes. This wasn't in our Constitution before. And I think this has broadened the scope of the legislative power in defining these exemptions. I think it's important because if our Legislature doesn't have the power to define these exemptions the courts will do so by interpretation. I think the courts do still have the power that if the Legislature abuses the definitions that are included in the Constitution, the courts will overrule what the legislative — the Legislature has done in their definitions. So I fully support this amendment.

PRESIDENT WENSTROM: Further discussion?

Delegate Aas.

DELEGATE AAS: Mr. Speaker: I support this amendment. The delegates have spoken, and I move we pass it and move on.

DELEGATE LONGMIRE: Question.

PRESIDENT WENSTROM: Delegate Quam.

DELEGATE QUAM: Mr. President: I rise in support of the Erickson amendment, then I can go home and get absolution.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Erickson. Hearing no more discussion, those in favor will vote "aye;" those opposed will vote "nay." Those in favor of adopting the amendment will say "aye;" those opposed "nay." The "ayes" have it. The amendment is adopted.

DELEGATE ERICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: I move that we suspend the rules and re-engage — make the proper motion. How is it read?

PRESIDENT WENSTROM: Delegate Erickson moves that the rules be suspended. —

DELEGATE ERICKSON: — that it be deemed properly —

PRESIDENT WENSTROM: — that the Committee Proposal No. 1-97 be deemed properly engrossed, be placed on the calendar for first passage.

DELEGATE ERICKSON: I so move.

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: Delegate Engelter seconds the motion.

Any discussion? As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it. Committee Proposal No. 1-97 is before the Convention as amended.

Any further discussion? The question — Delegate Aubol.

DELEGATE AUBOL: Mr. President: I have been listening to the debate on the exemptions. And we really haven't talked very much about the other parts of the section which also has some problems. I was going to offer an amendment, but I don't think I would — don't think I will. I was going to delete the entire section because I don't think the section at all has to be in the Constitution.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-97 as amended. Those in favor will vote "aye," and those opposed vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 87 "ayes," there were 10 "nays," one delegate absent and not voting. Committee Proposal No. 1-97 has passed.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: Have you announced the vote?

PRESIDENT WENSTROM: Yes.

DELEGATE NICHOLAS: Can we be on the twelfth order for just a minute?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE NICHOLAS: We have a gentleman in the audience who is a Representative from my district, and I would like at this time for him to be recognized. He is Oscar Solberg from Rolla, North Dakota. If he'd come to the rail, please. (Applause)

PRESIDENT WENSTROM: Next for consideration, Committee Proposal No. 1-116.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-116, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 174 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to raising of revenues.

"(SECTION 1. REPEAL.) Section 174 of the constitution of the state of North Dakota is hereby repealed.

"(SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Raising of Revenues. The legislative assembly shall provide for the raising of revenues sufficient to defray the expenses of the state for each year. A two-thirds vote of the members-elect in each house of the legislative assembly may provide an annual property tax, based on value, for state purposes for not in excess of two years unless re-enacted."

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I hesitate a little bit in going ahead with this, but I guess we can't defer everything. And so I think we will launch out.

This matter has been on the floor before as the second section of 1-23. It had a great deal of discussion in the committee, both before and after its return. The language of the present 1-116 is the same as previously debated on the floor. The committee by a ten or eleven majority still felt that this was the best version possible of this section. We didn't consider its return to committee as a rejection of this wording, but for the committee to look at it again, which we did.

Since we've debated this matter on the floor, New Jersey has joined both Texas and California in court decisions affecting local school levies. We felt in committee that we would be less than responsible if we foreclosed the possibility of a statewide levy in the face of these court decisions. If the body feels strongly that they wish to further limit the Legislature's powers, then they can use 1-117,

which has been brought to the floor here, with no recommendation. But I should like to remind those who are concerned about the Legislature having an unlimited levy power that they presently have this power now, as far as local levies are concerned. The State Legislature can increase local levies to whatever they wish. So that I think the concern about this as far as the statewide levy is ill-founded, and the Legislature would act as responsibly here as they do in controlling local levies at the present time, which are also real estate levies.

Committee Proposal 1-117 is another possibility for handling this section. But this goes against the committee's attitude as far as dedicated funds are concerned. And if 1-117 were adopted this would in essence be putting another dedicated fund into the Constitution. And so we feel very strongly, had strong majority in the committee again, that this Convention should pass 1-116. And we feel that it is preferable to the old Section 174, and is certainly repealable — is certainly preferable at this date to an outright constitutional prohibition of statewide property levies, particularly due to the fact that this school matter is just now in the process of germination and so many courts are deciding on it so rapidly. And I'm sure the Legislature is going to be faced with the problem perhaps even at their next session. So I recommend to you the passage as its before you of 1-116.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, Fellow Delegates:

It will come as no surprise to you that my view as to what we should do is retain the language in Section 174 of the Constitution as it now exists. This one time, however, I hope that you will not brush aside this suggestion. Because I think it is perhaps the solution to one of the most serious matters of consideration that this body can give to the constitutional revision.

The language of 174, the way it stands, is clear. It allows the Legislature to levy up to four mills if need be, and it requires that the Legislature shall provide for the raising of revenues sufficient to defray the expenses of the state and so on. And it provides that the interest on state debt can be provided for as well.

And this is the section that we have constructed a vast and rather good amount of taxation law around. And the way it's working right now is that the state is not levying property taxes for state purposes, but on judgment allowing this field of taxation to be used by local subdivisions. And I assure you that the local subdivisions like this arrangement very much the way things are right now. They would not like to have this disturbed, and they would not like to have any new language in the Constitution which might give — might be a threat of its being disturbed.

Then if the state has an emergency, there is a vast amount of leeway under Section 174 the way it stands now and the other law making authority that's in our Constitution for the Legislature. As has been pointed out by Delegate Paulson sometime ago, there's nothing sacred about the level of assessment as it presently stands. And this is subject to revision by law. And if that revision were made to the maximum available, this four mills spoken of here which now seems to provide a sum so far too modest to give any give of emergency usefulness, could be increased tenfold.

Now it is perfectly true that there would have to be a number of other laws changed along with that to maintain the kind of balance that we are used to or that we might find useful under a different set of circumstances. But this also could be done by simple changing of the law. And then most of all I don't think we ought to anticipate emergencies in this field in the Constitution. I don't believe that we can outguess the federal courts. I'm not convinced that the North Dakota structure for the support of education is subject to attack on the same grounds that those structures of financial support for education has been attacked in the states that have been mentioned. I think North Dakota has gone a long way past the point the other states have gone in this matter of equalization of educational opportunities and of the dollar support behind those funds.

When I spoke to the committee the other day along this same line it was pointed out by one of the members, Delegate Unruh, that even if the courts should find North Dakota's support of education faulty, that it would be extremely unlikely that there would be any immediate effect so that corrective measures could not be taken even by constitutional amendment if that were necessary under some kind of a court order.

So I'll repeat that the best solution here in my view — and I believe one that will be supported by the people of North Dakota — is to leave Section 174 just the way it is, which means turning down both 1-116 and 1-117.

PRESIDENT WENSTROM: Delegate Bassingthwaite.

DELEGATE BASSINGTHWAITE: I, too, would like to oppose this 1-116. I think we're trying to solve the problem here that we can't solve. And I don't think it's the problem of this Convention to solve this problem. We don't know what the courts are going to do in the future. If the courts finally tell North Dakota that we do not have an equal opportunity for education in North Dakota, I'm sure the Legislature is perfectly capable of finding a way to solve that problem. We do need equal opportunity in education in North Dakota as well as everywhere else, and we also need some equality in taxation. I don't think this provision or the 117, either one, provides that equality of taxation or I think equal opportunity for education. So I oppose both 116 and 117.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: Mr. President and Fellow Delegates:

I'd just like to remind you the State Board of Equalization has the authority to levy these four mills now. And in line 12 we're putting in two-thirds to the members elected in each house. So, in other words, 98 people can determine whether they should levy taxes against real property rather than just by the people.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I agree with most of the delegates who have just recently spoken. I don't like 1-116 or 1-117 either. I would suggest that the Legislature — and this list is really incomplete — draw in your own experience, the Legislature can now raise the gas tax, the income tax, the sales tax, the use tax, fees of all kinds. And I don't think that they should be dipping into the general property tax, the levy money, for unseen and unguessable emergencies. Thank you.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: Mr. President: I do like Section or Proposal 116. I don't like Proposal 1-117. I don't like Section 174. 174 limits the — well, before I say that, the whole intent of the committee is to try to get the state out of the real estate tax business at a state level. We wanted to reserve real estate to the political subdivisions entirely. Now Proposal 1-116 does that with certain limitations in case of an emergency; it may be a school emergency, it may be some other. But there is — the intent is to not tap real estate at the state level unless there is a very good reason. And a two-thirds vote renewable every two years would certainly be an indication of an emergency situation.

But now under Section 174 there is a four-mill levy permissible. By action of the Legislature this can be multiplied ten times. In other words, instead of a four-mill levy you could have a forty-mill levy at a state level. This would be on top of everything that's levied on a local level. And I don't — I don't think that's the intent of anyone here, to leave this kind of a tax available.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

It has come to my attention that we've been talking about the California and Texas cases. And many of the delegates don't really know what these are about. I thought I would briefly discuss the Texas situation. This was a case of **Rodriguez v. San Antonio School District**. They brought a lawsuit on behalf of various Mexican - American school children on the ground that the method of

financing public elementary and secondary education deprived their class of equal protection of the laws under the Fourteenth Amendment. Now the Texas school district had a system of financing very similar to North Dakota. They depended upon local revenues derived from real estate tax, the federal government contributed only about ten percent of the public school expenditures, and they had a foundation program very similar to North Dakota.

The persons showed that seven San Antonio school districts followed the same statewide pattern. They compared the market value of property per student in these districts, and they found that in one district there was about \$5,400 per pupil valuation of property and there was a high valuation of \$45,000 per pupil in another district. And as is common in North Dakota, the district with the lowest valuation per pupil had the highest rate of taxation. And despite the high rate, the low valued district produced only \$21 per pupil, whereas a lower rate of taxation derived \$307 per pupil. And the foundation payments from the state served not to equalize the disparity, but they tended to extend or exaggerate them. Because they were awarded on a per pupil basis. And the Texas — this was a federal case. And the federal court determined that this method of financing was contrary to the Fourteenth Amendment, and they enjoined the officials in Texas from continuing this. They gave them two years to correct the situation.

It is for these reasons that we have come up with Committee Proposal 1-116. As you know, the philosophy of the Finance and Taxation Committee is to save real estate tax from burden. We believe that 1-116 is a safety valve in case the future demands that we do something to avoid the unconstitutionality of our present local taxing systems. I support 1-116.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I think most of the discussion here this morning from the committee itself and from other delegates has been with reference to these court cases back to education in these other states. And I think that if that is the prime concern by the committee and by the delegates that — and in referring to 1-116, that this state can't afford unlimited property tax for any other reason but education. So I am talking against 1-116, and hoping that this delegation will support 1-117.

We've all agreed here that the property tax is not a good tax. We're doing things in other areas to do away with using this tax where possible. Most of us agree that the present section setting down the four-mill levy in its present form should be removed.

And for these reasons I would hope that this delegation would support 1-117.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President.

I don't believe it has been pointed out again today, and perhaps it should be, that if the Legislature has to some day face the problem of raising money outside of its usual income and sales tax procedures through a property levy on a statewide basis, that this levy will undoubtedly, and almost assuredly, be a replacement of existing local property taxes, both on the local level and on the county level. The case in question now dealing with the court decisions in Texas and so forth say that those local levies are no longer constitutional and that they must be replaced by state support in the education program.

Now the committee feels that if we came to this issue in this state that there would not be enough money available to increase income or sales tax. We believe that it would probably require almost doubling those taxes. It's true you would still reduce and not have the local levies and the county levy, but I think there would be too much objection to that sudden and sharp increase in either sales or income tax. So I want the Convention, in making this decision, to realize that you are going to be replacing the local taxes.

Now we considered Delegate Sinner's proposal the last time this was discussed and tried to write into this provision a method of replacement. But we consulted with the people in the Tax Department, including their attorney, Mr. Jakes, who is really a competent authority on taxation, and he tells us that it would be almost

impossible to divorce. There really is no question that if the state has to come to a property tax in this amount it will replace property levies.

Now it has been argued that we shouldn't look ahead. I don't know why we are doing this entire process of writing a new Constitution but trying to look ahead to the problems that may face us in the near future and that may face us in the far future. And certainly no one can forecast there will not be problems in the future outside of this education problem that might require some emergency use of a state property tax. And I don't — absolutely believe that we have to fear action of the Legislature in misusing this. Some people believe that it's impossible to secure a two-thirds vote. The committee does not feel that in case of a real emergency that it is impossible to secure that. And we feel that the Legislature will be responsible to the needs of the time that they face.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I just wanted to add a few figures here. It's easy to say that we can rely on other taxes at the state level. But the school purpose tax now, if my figures are correct, are providing some \$63 million and sales tax and income tax both together in total don't raise much more than this.

As far as the old 174 is concerned, we discussed this in committee and we had figures. The present one-mill levy would raise about \$2.4 million. And if you could, as Delegate Baker has suggested, expand this ten times by putting it on a hundred percent of market valuation, we're talking still just about \$24 million.

And all of you are aware, I'm sure, that the school matter is a serious matter. And when it is related with property taxes it's a more serious matter. And the number of local levies that have been defeated in recent years gives indication of this. And this again, too, many people I think are thinking — are talking on the side that this is a carte blanche for a statewide real estate levy. And I point out again that the Legislature can say to the local school district, "We will remove your levy entirely." They have got this power now. So why should they deal irresponsibly with this?

And we feel that 1-116 is a definite restriction on the levy of statewide real estate levies. The two-thirds vote in there we feel gives some real protection, much more protection than if we left the present Section 174 as it is now.

As Chairman Haugen has pointed out, this will give a chance then for some bargaining and making sure that if a state levy was put on that it would be on some type of a replacement basis and it would replace local levies and not increase the burden on the property. We feel that this is a protection on real estate and not an extra burden over the present Constitution.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, would Delegate Burke yield to a question?

PRESIDENT WENSTROM: Will Delegate Burke yield?

DELEGATE BURKE: Yes, Mr. President.

DELEGATE DECKER: Delegate Burke, I was wondering, do you have those figures on North Dakota from the top district to the bottom district comparing it to Texas? I believe you had \$21 to \$300-some?

DELEGATE BURKE: No, I do not have that — those figures. But the same disparities do exist in North Dakota as in Texas.

DELEGATE DECKER: Are they as big a difference as Texas?

DELEGATE BURKE: Mr. President.

Yes, they would be as wide a disparity.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Thank you, Mr. President.

Fellow Delegates: I appreciate the efforts in the Tax Committee taking this matter and giving it some further consideration. After listening to Delegate McIntyre and Delegate Haugen, I realized that the general assumption is still that property taxation for education is a fair means of financing. Delegate Haugen speaks of replacement of property tax levies. We should be at least thinking of moving in the direction of removing property tax levies as a means

of financing education. Nobody has said anything to justify financing education in this way. All anyone has said in the way of justification is it is sanctified by ancient practice. We've always done it this way; therefore we should always finance education this way.

I expounded on this somewhat the other day, that really we're being tremendously unfair. The minority is now attacking the majority. Delegates have mentioned that we would have to increase our sales tax and income tax to such a huge extent and the people just would not go for that.

I firmly believe that the eventual result of this is going to be more taxes of this type on a federal level. You probably noticed in the papers this last week the administration is thinking about a value-added tax for education, which is nothing but a sales tax. And we can probably look for increases in income tax as we go more toward federal financing. And with more federal financing of schools, of course, we'll have the theory of equalization. The richer states should help the more poverty stricken states like North Dakota. But also there is the side of the problem of all the money that's eaten up by the red tape of the process.

This has been sort of a unique maneuver to get 1-116 on the calendar ahead of 1-117. I don't like either one of them. I realize it's quite easy to manufacture an emergency. And education is something sacred, and not too difficult to sell to the Legislature because of its importance. I have helped sell a few measures myself that have caused school boards to hang me in effigy in various parts of North Dakota. But this morning I'm put in the position where I have to support 1-116 as a less noxious measure than 1-117.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Thank you. With respect to the value-added tax, I believe that if the thing should survive the Congress, it's the intention to bring it out in the form of a revenue sharing back to the states by direct grant. And I just don't know that we can put too much confidence in this. It's an election year. And it may not be the most palatable thing with the Congress. However, if it comes, fine. But I wouldn't bet too much money on it at this point.

I think the distinction between 116 and 117 is very clear to me. In 116 you have the opportunity to give the Legislature a safety valve without stating for what purposes this is to be used. You're going to have to trust them to use it for emergency purposes. And there possibly are other emergencies besides schools. And that's the reason I prefer it.

117 relatively, if you want to use the phrase "earmarks", does that. It dedicates funds to a specific purpose. And we've been trying to get away from that in this Constitution. In 116 or 117 we are repealing the old measure which has the four-mill levy in it. We repealed the one-mill medical levy, to my sorrow. But I believe that was good constitution writing. I think we would be doing a better job here, delegates, if we passed 116. I think it is the better measure of the two.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President. There are a couple of things that we ought to be aware of when we talk about 116 and 117 and also 174. Actually I do believe that the State of North Dakota is now in violation of Section 174 with a 21-mill county levy which is used for education or for state purposes. And the court cases that we've been talking about are stating that the education levy is for state purposes. Under 116 it would be necessary to reenact, I believe, the 21-mill levy every two years. This would also be true under 117. The difference, however, is under 116 you would need a two-thirds majority of the Legislature to relevel the 21-mill levy, whereas under 117 it would not be necessary. I support, as Delegate — as Delegate McIntyre does, I support 1-117 because I don't believe that property tax ought to be available for any purpose except for education, and only then when we are caught in a crisis such as we might be if the court — the Supreme Court of the United States upholds the other decisions that have been made. And I think that 117 narrows it down. I know that it dedicates a tax which is not good constitution writing, but I think 116 is the greater of the evils. Because you can use the property tax for everything under that.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

As you can see there are a lot of problems when we try to write constitutional law relating to taxes. Any tax that we are going to pay is an obnoxious tax as long as it hits us and as long as it is one that we are going to be faced with. The Finance and Taxation Committee took the position throughout that we did not want a property tax at the state level. This was the position we moved along with at all times. We did feel, however, that we should face the reality of what might happen with the various court cases which we have such as the **Rodriguez** case and the **Serrano** case. We did also feel that the protections which were granted in existing 174 were certainly inadequate. We have a four-mill levy which can be assessed by the Equalization Board. And all the Legislature needs to do is to vote one hundred percent of tax of full value and we've got about a forty-mill levy. And we have a forty-mill levy at the state level.

Now we did make every effort we thought that we could to broaden the base to other areas of taxation, and it probably will be the replacement of property taxes at the local level. We have done that by hoping that somewhere in passing some of our proposals that we could permit the body to be taxed by methods other than by real property or property taxation. We have done that by hoping that we will broaden and open other possibilities for this use.

I think that throughout these proceedings we have not anywhere had greater prohibitions in the Constitution than there are in there at the present time. We cannot intend to prohibit the use of property taxes or any other taxes if they were needed, but we did hope to broaden the base so that other taxes could be used for school purposes and for any other purposes that were necessary at the local level.

Now we know that there are a lot of people that feel that other taxes should be raised, but to replace the personal property or the property tax levy for school tax purposes we are going to need to raise our sales tax to a six percent level and double the income taxes. This is what the Tax Department has told us. And I think we have to face the two possibilities. Are you people along the Minnesota border going to want to raise your sales tax to six percent in the face of a four percent tax across the river? This is one thing you have to consider. We have to consider are we going to bring in the kind of people we want in North Dakota to pay a top level tax of twenty-two percent? And I suppose if we increase the exemptions at the bottom we probably would have to raise that to a twenty-six percent tax or a thirty-three percent tax on state income at the top level. We have to balance these things and give the Legislature an opportunity to move forward in the direction that they can as they can. If we raise our sales tax too high, we're in trouble. If we raise our income tax too high, we're in trouble. And so what we have to do is to leave the avenues open, give the Legislature the most opportunity that they can possibly have, and hope that we can have a gradual elimination of the property tax as has been indicated. We are leaving that avenue open, but we don't want to close any avenues that would put us into any trouble. I would ask you to support 1-116.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, Fellow Delegates:

I would like to support the committee and reiterate what Delegates Knudson and Unruh said. I don't — I certainly don't like a property tax. I think 116 gives us a safety valve with a two-thirds vote of the House — of the Legislature, whereas 117 does not give us that safety valve. And 117 on one hand is too open and is too restrictive. There are many other types of emergencies which may occur in all our service areas that the state is responsible for.

PRESIDENT WENSTROM: Will someone yield his time to Delegate McIntyre or to Delegate McElroy? He has spoken once.

DELEGATE THOMPSON: I'll yield.

DELEGATE ERICKSON: I'll yield.

PRESIDENT WENSTROM: Delegate Erickson yields.

DELEGATE McELROY: Mr. President.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: Last week we had a headline in one of the newspapers that was kind of humorous. It mentioned that the Proposal 116 offered an unlimited mill levy. I just want to remind you that there are restrictions on 116, there aren't very many restrictions on 117. I think this would be an unlimited levy on real estate for educational purposes which could be had by simple majority vote and I think this taxation will be quite great to use this.

Now some of the more knowledgeable people here have talked about the folks back home and their reaction to this Constitution. But I can't imagine any bigger reaction than we're going to get if we do go back with a proposal like 117 which opens the door to higher taxes on real estate for educational or any other purpose.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President: I want to support the position taken by Delegate Baker and retain Section 174 as it presently is. Section 174 is merely a limitation on the amount that can be levied on property at the state level. And if we open this up and the emergencies arise then we would have no limitation.

In the last general levies there was \$104,600,000 for all purposes — all general purposes levied at the local levels. None of this was state. 64½ million of that was for school purposes. And so I think that the property tax is bearing a very substantial burden of education in North Dakota.

Now when your emergency arises that comes about from the appropriations made by your Legislature. And if the existing taxes do not cover them, then they will have to go to the property tax. And believe me, they'll use it if the pressure is on for more and more and more at the state level and less back home. So what we're really doing here is opening the door for the pressure to be put onto the state cabinet to fund more of our funds now being carried at the local level and then they'll be forced to use the property level and you'll have a goodly tax base as these exemptions we've got now take up about close to a little over forty percent of — if they went to court — they would take over forty percent of the old tax base. So this thing is serious, especially for the landowner.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Hougen, Jim Hougen.

DELEGATE HOUGEN: Yes. Mr. President, Delegates:

I resisted Bill No. 1-116 last week because I felt that it was incorrect and that it did seem to point the way towards property taxes if we did need further financing. But I think we all have to accept the fact that there could possibly be emergencies. And we're going to have to have some leeway that can be taken by the Legislature. I therefore have changed my mind. I am going to support 1-116 and hope that it is accepted by the delegates as a whole.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

We have 116, 117 and the old Constitution, which makes three choices. With the idea of trying to move this on, we have got 117 waiting behind 116; and some delegates favor that, some 116. I favor 117, Mr. President, so I'm going to move that we amend 116 by deleting lines 1 through 15 and insert in lieu thereof lines 1 through 15 from 117.

DELEGATE VOGEL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Vogel.

Delegate Haugen.

DELEGATE HAUGEN: Is the amendment at the desk?

PRESIDENT WENSTROM: No, it isn't. Except — Delegate Haugen.

DELEGATE HAUGEN: I don't object — excuse me, Mr. President.

PRESIDENT WENSTROM: Delegate Haugen, the amendment is at the desk in the fact that this material that he offered to amend with is in the 117 — 1-117 is here. Technically not as an amendment, but the bill is here.

DELEGATE HAUGEN: Yes. Mr. President and members:

Certainly no member of the Tax Committee will question the right of this Convention to do what it wants in its eyes. But certainly I know that my committee would much prefer to have a vote on 116 previous to a vote on 117. I do not see how Delegate Kelsch is helping his cause any by a maneuver such as this. The decision is going to have to be made on one or the other. Why not make it on 116 at present? I would oppose the motion to amend.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I thought maybe I was saving some time by suggesting we get rid of 117. If it carried, that's the ballgame. I have no strong feelings on this. If the committee would rather vote on 116 first, Mr. President, I will withdraw my motion.

PRESIDENT WENSTROM: Delegate Kelsch offers to withdraw his motion. How about the second? Who seconded it?

DELEGATE VOGEL: Yes.

PRESIDENT WENSTROM: Delegate Vogel seconded it.

The question then is back on Committee Proposal 1-116.

Delegate Saugstad.

DELEGATE SAUGSTAD: I was just going to mention that Delegate Kelsch could accomplish the same purpose by moving Delegate Proposal — or Committee Proposal 1-117 to the head of the calendar.

PRESIDENT WENSTROM: The question before the Convention — Delegate Paulson.

DELEGATE PAULSON: Mr. President:

I hesitate to get into the meat of this. But I want to warn you against tying the Legislature into a proposition that the necessary financial measure has to be reenacted by a two-thirds vote every two years. If this ever does come about you will find that there is so much danger involved in such a procedure that the two-thirds requirement and the two-year reenactment that we're trying to saddle the Legislature with simply won't work. It will give a minority in the Legislature an untenable position in which they will demand and get certain things in return for the two-thirds vote necessary to pass the reenactment clause. We have lived in North Dakota for twenty years with a two-year sales tax. And that came up time and time again for reenactment. And time and time again the reenactment was the last measure passed through the Legislature, and tied with it were certain other demands that somebody got for that very necessary reenactment or that very necessary reenactment would not have passed. I do not like the language in 116. I hope it is killed.

PRESIDENT WENSTROM: The question before the Convention is on the first passage of Committee Proposal No. 1-116. Those who favor will vote "aye," and those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 55 "ayes," 41 "nay" votes, two delegates absent and not voting. Committee Proposal No. 116 has passed.

The Chair will declare a ten-minute recess. Let's not forget that we are scheduled to have the next matter to come before the Convention on Delegate Hoffner's motion of a couple days ago where we take up starting with 1-105 at ten o'clock.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I'd like to announce a meeting of the Executive Functions Committee down in our usual meeting room. And I think there's coffee there. Right now.

PRESIDENT WENSTROM: The Convention will be in recess until ten.

(The Session recessed at 9:51 A.M. until 10:00 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. Will the Convention please come to order?

We will be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Delegate Chase has 28 children from the twelfth grade of the Wilton School at Wilton, North Dakota, and their teacher, Mr. Loney in the gallery.

Delegate Kelsch has the eighth grade from Christ the King School of Mandan and their teacher, Mr. Messmer in the gallery.

Delegate Solberg has the sixth grade of the Highland Acres School of Bismarck and their teacher, Mrs. Gladys Crandall, in the gallery.

PRESIDENT WENSTROM: Will the students please rise and be recognized by the Convention? (Applause)

For consideration at this time by previous motion are Proposals 1-105 through 1-113.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: May I make just a very few comments before the Clerk starts reading?

PRESIDENT WENSTROM: Yes, you may.

First of all, I want to thank the Convention for allowing the committee to go ahead with this procedure, and explain also that you'll find that some committee members will be proposing amendments. And the reason they went this route is because it would save a lot of time. Instead of going into the sixth order and going through Minority Reports and then again debating the issue on the tenth order, they thought to save time they would offer the amendments on the tenth order. And we divided this whole proposition because we felt that the Convention would want it done that way. To make it easier, we have furnished two-page copies of all the proposals, working documents, so to speak. It's labeled "Powers Reserved to the People". And I believe that will take care of it. So there will be amendments by committee members as well as anyone else, I'm sure. But the reason for that is that we didn't want to go through the sixth and then to the tenth order.

PRESIDENT WENSTROM: Ready, Mr. Clerk? If you want to proceed.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-105, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that Sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 1 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

"SECTION 1. REPEAL.) Sections 25 and 202 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Section 1 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XVI

"POWERS RESERVED TO THE PEOPLE

"Section 1. The powers reserved. Notwithstanding any other provision in this constitution, the people reserve the power to propose and enact laws by the initiative, including the call for a constitutional convention, approve or reject legislative acts, or parts thereof, by the referendum, propose and enact constitutional amendments by the initiative, and recall certain elected public officers. This article shall be self-executing and all of its provisions shall be treated as mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper restrict or impair these powers."

DELEGATE BENSON: Mr. President.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: I would like to briefly explain what the committee has done to this section.

First of all, you will notice the committee is creating a new article to the Constitution, Article XVI. And the reason we have done this is to put all the powers reserved to the people in one article. As you will find, it is divided up in ten sections, I think. Now this first section deals with the powers that are reserved to the people. And these are the powers by the initiative, to issue a call for constitutional conventions, to approve or reject legislative acts or parts thereof by the referendum, propose and adopt constitutional amendments by the use of the initiative, power to recall certain elected public officers. This first section has the powers that are reserved to the people. They will be explained in detail as we progress through the new article.

PRESIDENT WENSTROM: Roy, would you read the next article — next section? That would be 106.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I would move that we not read the deletions and the repeals because they are the same in each of the proposals.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: Delegate Hoffner moves that we do not read the repeals in each section as it is repetitious, and it's been seconded by Delegate Sinner.

Is there any discussion? Hearing none, as many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it, and we will not read the repealing clause.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-106, introduced by Committee on Legislative Functions:

"SECTION 2.) Section 2 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XVI

"POWERS RESERVED TO THE PEOPLE

"Section 2. Petition. A petition to initiate or to refer a measure shall be presented to the secretary of state for approval as to form. A request for approval shall be presented over the names and signatures of 25 or more electors as sponsors, one of whom shall be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure."

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: This section provides that whoever is going to initiate or prepare a petition shall check with the secretary of state's office to see that it is in proper form. The committee feels that there is no discretionary authority here on the part of the secretary of state and that he could not really prohibit anybody from circulating a petition, but the committee did feel that they ought to have the petitions in proper form. This would reduce the number of inadequate petitions that could develop later on and create complications when it comes to the filing of petitions with the secretary of state.

There is one significant change, if you can call it that, or variation, from the old language; and this is the requirement that we have 25 or more electors as sponsors, whereas the present language provides for only five.

PRESIDENT WENSTROM: We will proceed.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-107, introduced by Committee on Legislative Functions:

"Section 3, Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XVI

"POWERS RESERVED TO THE PEOPLE

"Section 3. Circulation. The petition shall be circulated by electors who swear thereon that the electors who have signed said petition did so in their presence.

Each elector signing a petition shall affix thereto the date of signing and his post office address. No law shall be enacted limiting the number of counterparts of a petition. Such counterparts shall become part of the original petition when filed. No person shall give or receive compensation for circulating a petition."

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: This section sets forth the context of circulating and signing a petition which it is not for the most part in our present Section 25. The first sentence says in effect that only qualified electors may circulate the petition, and that he must further witness the signing of the petition. This is in line with the thinking of the committee, that the circulation of the petition should be a responsible action of the concerned voters, as should the rest of the initiative and referendum process, and that this should not be delegated to someone who is a non-voter, which would in this instance be maybe high school students under the age of eighteen or nonresidents of the state.

The next sentence which requires the date of signing and the post office address of the signer is intended to make the verification of the validity of the signatures easier to do.

The third sentence is similar to the present Section 25, which states: "No law shall be enacted limiting the number of copies of a petition which may be circulated." But on the advice of our legal expert, Delegate Pearce, we have substituted the word "counterpart" for "copies" as being a more precise term, and then have spelled out in the next sentence that all of these counterparts are not separate petitions but merely a part of the same petition.

The last sentence in this reads: "No person shall give or receive compensation for circulating a petition." While this sentence is supported in principle by the majority of our committee because we feel that responsible voters in circulating a petition should not have to be paid, nor should they have to give pay, I have been instructed by the committee to offer an amendment, and I will do so at the proper time, to delete this last line merely because we do not feel that it is enforceable.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

Could I ask a matter of procedure here? Are we going to debate this all at once?

PRESIDENT WENSTROM: Delegate Rundle, it's my understanding that we will go through them this way, have an explanation, and then come back and debate each one and adopt them one at a time.

DELEGATE RUNDLE: Thank you.

PRESIDENT WENSTROM: And if you will read 108.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-108, introduced by Committee on Legislative Functions:

"Section 4 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows: ,

"ARTICLE XVI

"POWERS RESERVED TO THE PEOPLE

"Section 4. Signature Requirement. The petition may be submitted to the secretary of state if signed by electors equal in number to three percent of the resident population of the state at the last federal decennial census."

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President:

The repealer covered in this section repeals the old requirement of 10,000 for initiative petitions and 7,000 for referendum petitions. The new language, while it is not held as the ideal by all of the committee members, represents a compromise on the part of the committee. Some members of the committee, including myself, do not believe in initiative and referendum of government, others think

that the old requirements were adequate, and still others think that three percent is not a bad figure. And that is why the committee has recommended the three percent figure.

I should point out that by far less than half of the states do not use the initiative and referendum procedure at all. In fact, 29 states have no provision for initiative and referendum.

The question might arise why did the committee decide to go percentages and not a flat figure? Of the 21 states that do have initiative and referendum, the staff spot checked I think twelve states. Every one of them used a percentage figure of one kind or another, some used a percentage of the votes cast in the last gubernatorial election, some used a percentage of the voters, and some used a percentage of population. It was the feeling of the committee that to have a constitutional provision that would be versatile and that would be easy to determine, and it would not be changing every year or so, but would be based on a ten-year decennial census would be the best approach. Philosophically, the question is how much do we trust the Legislature? Do we want a procedure of what is really pure democracy and not representative democracy? Do we want a procedure that can hamstring the representatives in the democratic process? We felt that the three percent figure was a logical and responsible determination of the right of the people to initiate and refer laws.

As a matter of fact, in 1918 when this section was first adopted by this state the figures 7,000 and 10,000 did, in fact, represent about three percent of the voting public at that time. Since the addition of women suffrage and eighteen and nineteen-year-old and twenty-year-old vote, the actual percentage of voters remains about the same when you go to three percent of the population as we did in this figure.

Given the ease of transportation, of communication, in the present world we think that we have not in any way presented an obstacle to the effective use of this right of the people.

The committee asked itself, can we let a group of people equal to only one-half the size of one legislative district register an actual veto over a general measure? We looked at what the other states did, and of the twelve that the committee — that the staff spot checked only one would require less signatures than we are requiring here, and that was the State of Alaska. And in the State of Alaska there are about one-third the people of North Dakota. And Alaska even requires seven to eight thousand signatures. Arizona requires about six percent of its population for initiative measures and about three percent for referendum. California requires three percent for referendum and two percent for initiative. And that amounts to 470,000 signatures. California was the only state of the 21 in the spot check by the staff that had a figure below three percent. And that figure represented 470,000. Colorado requires five percent for initiative and three and a third percent for referendum.

You will notice in our proposal that we do not require, as some of the states do, that all districts of the state be represented on the petition, which we think is an unduly restrictive requirement. The language and the percentage that you see before you represents the committee's feeling that — and belief that we have outstanding legislators, and that we should not hamstring their work with an irresponsible and sometimes fickle use of this right of the people.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-109, introduced by Committee on Legislative Functions:

"Section 5 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XVI

"POWERS RESERVED TO THE PEOPLE

"Section 5. Submission. An initiative petition shall be submitted not less than ninety days before the general election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly

except emergency measures and appropriations measures for the support and maintenance of departments of state government and state institutions, but the submission of a petition against one or more items, sections or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at the biennial general election or at a special election called by the governor."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Section 5 is a somewhat complicated section, Mr. President, but is very important. I'll explain it briefly now and then later if there are any questions I'll endeavor to answer them.

First of all, the word "submission". The committee settled on this word to avoid any misunderstanding. Originally in our draft we had the word "filing". But after discussion with the secretary of state we found that where the people bring in petitions and leave them on his desk that does not constitute filing. So in order to avoid any misunderstanding we went to the word submission and "submitted". At least the petition would be submitted not less than ninety days before the general election at which it is to be voted upon. The ninety-day requirement is the same at the present. However, an initiative petition cannot be voted on in a primary election. We felt that it is best to move all these measures to the general election ballot due to the very light turnout at most primaries nowadays. The provision on filing of a referendum petition ninety days after the Legislature has passed it and gone across the governor's desk, filed with the secretary of state, the ninety-day requirement is the same as at present. The referendum petition, the active submission would suspend the operation of any measure except emergency measures and appropriations measures. It was felt that you'd have to suspend the measure when the petition is filed. Now this in some rare instance might lead to the brief suspension of a measure by the submission of an insufficient petition. But your other alternative is an even greater evil. Because of the 1971 law requiring the secretary of state to check the validity, some detail of all the signatures, we have about a six-week waiting period. And we felt that it wouldn't be fair to let a law go into effect for six weeks while the secretary of state is doing his checking. It could get to be very complicated if, for example, a sales tax increase was passed and then referred, the petition was filed on the nineteenth day, and then your sales tax increase goes into effect for six weeks while the secretary of state is doing his checking. You can imagine the outcry from the merchants of this state if a situation like that ever developed. A referred measure would be voted upon at a general election or special election called by the governor. Again no referred measures on the primary ballot.

PRESIDENT WENSTROM: You will read 1-110.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-110, introduced by Committee on Legislative Functions:

"Section 6 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XVI

"POWERS RESERVED TO THE PEOPLE

"Section 6. Certification. The secretary of state shall determine the validity and sufficiency of the signatures. If he finds irregularities, he shall notify the sponsoring committee and allow twenty days for corrections, but in no case shall time be granted for the addition of new signatures. If the secretary of state finds the petition sufficient, he shall certify it as such and prepare a ballot containing the full text of the measure and a ballot title summarizing the measure. If he finds the referendum petition insufficient, the suspension shall end and the measure shall not be referred."

DELEGATE DIEHL: Mr. President.

PRESIDENT WENSTROM: Delegate Diehl.

DELEGATE DIEHL: Delegates:

This Proposal 1-110 deals with certification of petitions. The proposal in effect is also identical to what we have at the present time. It provides that the secretary of state shall determine the validity and sufficiency of the signatures. If he finds irregularities he notifies the sponsors and they have twenty days to make corrections. If the secretary of state finds the petitions sufficient then he certifies and prepares a ballot containing the full text of the measure and a title — prepares a ballot with a title summarizing the measure. If he finds the referendum petition insufficient, the suspension ends immediately and the measure is not referred.

PRESIDENT WENSTROM: 1-111.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-111, introduced by Committee on Legislative Functions:

“Section 7, Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

“ARTICLE XVI

“POWERS RESERVED TO THE PEOPLE

“Section 7. **Judicial Review.** All decisions of the secretary of state in the petition process shall be subject to review by the Supreme Court in the exercise of its original jurisdiction. But if his decision is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no subsequent action shall invalidate such measure if it is approved at the election by a majority of the votes cast thereon.”

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: This section is almost identical to the present provision in Section 25. We have added the words after “Supreme Court,” “in the exercise of its original jurisdiction,” simply to make sure that you don’t have to start an action in the District Court. We have eliminated the sentence in Section 25 that says: “If proceedings are brought against any petition upon any ground, the burden of proof shall be upon the party attacking it.” And the theory was it was unnecessary language; the complainant, petitioner or plaintiff always has the burden of proof.

PRESIDENT WENSTROM: Proposal 1-112.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-112, introduced by Committee on Legislative Functions:

“Section 8 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

“ARTICLE XVI

“POWERS RESERVED TO THE PEOPLE

“Section 8. **Enactment.** If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall become law. An initiated law or an act approved by referendum shall become effective thirty days after the election, and a referred measure rejected shall be void immediately after the election.”

DELEGATE PETERS: Mr. President.

PRESIDENT WENSTROM: Delegate Peters.

DELEGATE PETERS: Proposal 1-112 deals with —

PRESIDENT WENSTROM: Delegate Peters, I don’t believe you have the button pressed on your mike.

DELEGATE PETERS: Proposal 1-112 deals with an enactment of initiative and referred measures. If the referred and initiated measure are placed on the ballot and they receive an affirmative vote, why they are considered enacted. If there are several measures on the ballot, and there are ones that are conflicting, the one that receives the highest number of votes would be the one that would become a law. The measures that pass would become law thirty days after the

election. And the referred measures that are defeated would become void immediately.

Now this proposal is taken from the Section 25 of the present Constitution, and the sentences are worded almost identical to the way they are in the present Constitution.

PRESIDENT WENSTROM: We will read 1-113.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-113, introduced by Committee on Legislative Functions:

"Section 9 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XVI

"POWERS RESERVED TO THE PEOPLE

"Section 9. Initiated Constitutional Amendment. A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to five percent of the resident population of the state at the last federal decennial census, the petition may be filed with the secretary of state. All other constitutional and statutory provisions relating to initiative measures shall apply hereto."

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Fellow Delegates:

Proposal 1-113, Section 9, refers to old Section 202 which is repealed. It reaffirms the right of the initiated constitutional amendment, and it offers a couple of changes.

Primary change is the number of signatures required. It changes the present number of 20,000 to a percentage figure, and that percentage figure to be five percent; the reasons being basically the same as the reasons given for the increase in initiative and referendum.

It also changes the 120-day limit that is used for filing with the secretary of state to ninety days, and it does this by virtue of the last sentence in this section which states: "All other constitutional and statutory provisions relating to initiative measures shall apply hereto."

PRESIDENT WENSTROM: You've heard the reading and the explanations of I believe nine different proposals. Now we will proceed. And the first one before the Convention is 1-105.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

Before we start to argue this matter, I have a short statement I ask be put in the record. And I have it prepared, and even if I haven't I know Barbara can keep up with me any time.

There are many of you who may disagree with this statement, but in my opinion the initiative and referendum section is the most important one we will face in this Convention.

Each delegate is entitled to his or her own opinion and I know better than to try to cram anything down your throats. Up until this point, fairness and sportsmanship have been the rule of this Convention, and I would hope that this would continue to be true.

I ask that an alternate proposal be placed on the ballot leaving the old sections much the same as they are now, very much the same, and another proposal as tough as anyone cares to make it on the other side.

Before we start arguing each section at a time, it makes it very difficult. I know that you can sometimes override a committee on one thing, but to try to beat a committee on nine proposals is impossible. So I would hope we keep this in mind and not try to out-manuever me, because this is easily done. I didn't plan to be the select parliamentarian when I came here, I don't pretend to be. I like to settle issues on their merits, and I hope we will do this here. Thank you.

DELEGATE BENSON: Mr. President.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: Is the Chair ready to begin debate on the proposals?

PRESIDENT WENSTROM: We are ready to proceed.

DELEGATE BENSON: I have an amendment to offer to Proposal 1-105. It's at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-105.

Delete all of lines 13 through 22 and insert in lieu thereof the following:

"Section 1. The Powers Reserved. Notwithstanding any other provision in this constitution, the people reserve these powers: to propose and enact laws by the initiative, including the call for a constitutional convention; to approve or reject legislative acts, or parts thereof, by the referendum; to propose and adopt constitutional amendments by the initiative; and to recall certain elected public officers. This article shall be self-executing and all of its provisions shall be treated as mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict or impair these powers."

DELEGATE BENSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Benson.

May we have a second to this amendment?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

Now you may proceed.

DELEGATE BENSON: This amendment, as you have undoubtedly discovered by now, is strictly stylistic. The language we feel is better the way it has been written now. There has been one word changed, and that is the word "adopt" which appears in line 17 instead of "enact". Other than that the amendment is the same as the original.

I don't think there is anything that needs to be said further on this first section. This is substantially or it's exactly the same as it has been in the old Constitution; the same rights that are reserved to the people we propose to present to you at this time.

I would therefore move the adoption of Committee Proposal 1-105.

PRESIDENT WENSTROM: Well, Delegate Benson, I believe you offered an amendment. Didn't you offer an amendment?

DELEGATE BENSON: Yes. Excuse me. I think I should move that the amendment be — that the bill may now be properly engrossed.

PRESIDENT WENSTROM: No, no, we haven't voted on your proposed amendment yet.

DELEGATE BENSON: Excuse me.

PRESIDENT WENSTROM: Is there any discussion on the proposed amendment? Are you ready for the question?

DELEGATE MAXWELL: Question.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment to Proposal No. 1-105, as offered by Delegate Benson. As many as are in favor of its adoption will say "aye;" those opposed "no." The "ayes" have it. And the amendments are adopted.

Now, Delegate Benson.

DELEGATE BENSON: Mr. Chairman:

I would now move that the proposal be deemed properly engrossed to be placed on the tenth order for final passage.

PRESIDENT WENSTROM: Delegate Benson moves that the rules be suspended, that Committee Proposal No. 1-105 be deemed properly re-engrossed, and be placed on the calendar for first passage as amended.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

This is what I was talking about. I have no objection to this section, but as one delegate told me it was just like cutting the tail off a dog an inch at a time. And if we're going to vote on each section as we go along, I don't think

it gives you any chance on the whole proposition. I would resist this motion to vote on the section at this time.

DELEGATE CART: Mr. President.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet. Who called "Mr. President"?

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Did you call? Which one of you did?

Just let me read this last section of (c) of the motion that we adopted when we set up the procedure to be followed here.

Section (c) says: "Following the reading and explanation of Proposals 1-105 through 1-113 each will then be separately open for general discussion and amendments on tenth order.

Now that's where we are, and I believe that's the way we are proceeding.

DELEGATE DOBSON: Mr. President.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I intended to offer as a substitute motion —

PRESIDENT WENSTROM: Delegate Cart, you aren't going to get by with it.

DELEGATE CART: Well, am I going to be denied?

PRESIDENT WENSTROM: I will rule every substitute motion out of order, and I will continue to do that. The question on the floor right now is the question that the rules be suspended. And if you wish to offer an amendment after this has passed, you are perfectly free — or it has been defeated — you surely may offer additional amendments if that's what you wish to do.

DELEGATE CART: Well, it will cover all nine of these propositions before us. How am I going to proceed?

PRESIDENT WENSTROM: I don't believe that you can do that, Delegate Cart.

DELEGATE CART: Well, am I going to be foreclosed from offering what in effect is the original language with a few exceptions, changes?

PRESIDENT WENSTROM: No. Your situation is going to be this: You're going to have to defeat this particular proposal and you're going to have to defeat each one of them as we go down the line. Because we did suspend the rules the other day and adopt this procedure. So the only way I can see that if you wish to use the old section, as I believe that's what you would like to do, —

DELEGATE CART: That is correct.

PRESIDENT WENSTROM: — then I think you would have to defeat each one of these proposals as we vote on them.

DELEGATE CART: Well, so be it.

DELEGATE DOBSON: Mr. President.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Cart, of course bear in mind that you can appeal from the decision of the Chair.

DELEGATE CART: I have no intention of doing that.

PRESIDENT WENSTROM: This is procedure that we have established in our deliberations on this question, I believe it was yesterday or the day before.

DELEGATE CART: But it was certainly my understanding that there would be an opportunity to offer a substitute motion. And when the substitute — substitute proposal — when that covers all nine of these I don't know how I can offer it against a single one.

PRESIDENT WENSTROM: Well, you can surely argue to defeat each one of them.

DELEGATE CART: Well, I don't want to take that much time.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Do I understand that the arrangement that we decided was to be used for considering these proposals does not provide a delegate the opportunity to offer an amendment when each section is being considered?

PRESIDENT WENSTROM: Oh, no, that's what I told Delegate Cart. Whether this motion passes or fails, the motion before the Convention at the moment is the motion that the rules be suspended, and that this proposal be deemed properly engrossed, and that it be placed on the calendar for passage.

DELEGATE HAUGEN: Yes.

PRESIDENT WENSTROM: That's the motion. Now if that motion fails, or if it passes, either way, the thing — the proposal is on the calendar in front of you and it's open for further amendment, it's open for anything you want to do with it.

DELEGATE KELSCH: Mr. President.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I want to make it clear I think on the committee's behalf, the reason we presented it this way, we decided initially in committee we should rewrite Section 25 because of the many questions and problems in it. So we made a basic style change by rewriting it. Now rather than present it to you as one total proposal, which we could have done, we thought it would be simpler — and to save time — if you wanted to amend this you could take any changes any way you wanted to. Now we do not in any way want to foreclose any delegate from trying — from suggesting we should use the old language. I think it would be proper for Delegate Cart to move to delete Section 106 and insert the language of the old Constitution, or he could urge you to vote "no" on all the sections, all these proposals. And that would tell the committee— if a majority of you feel that way, that would tell the committee that you want the old Constitution. We don't want to foreclose in any way. We thought this would be a tool or vehicle whereby you could take each one and amend it as you saw fit.

PRESIDENT WENSTROM: Delegate Kelsch, —

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Excuse me, Delegate Cart. — just what is the difference in what you said and what I said?

DELEGATE KELSCH: Same thing, Mr. President. I just wanted to let the Convention know how the committee felt about it. I think your interpretation is correct. And the reason we did it this way was not to foreclose anybody. We thought this would be an easy way of considering the whole matter.

PRESIDENT WENSTROM: Thank you.

Now, Delegate Cart.

DELEGATE CART: Mr. President:

It would just be an impossibility to pick out certain spots of the existing initiative and referendum provisions of the Constitution and fit them into the various subdivisions the way it is set up now.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Well, I don't know how you're going to do that. But I do know the rule we established, I know the policy we have to follow, and these proposals are before us.

Delegate Hoffner, do you have a question?

DELEGATE HOFFNER: Mr. President:

I have a question. Could not Delegate Cart actually amend 1-105 to insert everything that's included in this whole — in these nine proposals in the one proposal?

PRESIDENT WENSTROM: Certainly he can. No question but what he can. But he can't do it right now. You've got another motion before the Convention. And when this is either passed or defeated, we've got the proposal before us just

exactly like it was with the exception of the amendment that Mr. Benson put on it — Delegate Benson put on it.

DELEGATE BENSON: Mr. Chairman. Mr. President.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: With the consent of my second, I would withdraw my amendment.

PRESIDENT WENSTROM: I don't think you should withdraw it. Because there's no harm in passing it or defeating it.

DELEGATE BENSON: Okay.

PRESIDENT WENSTROM: It's just as much work to do it one way as the other way.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I remind these people of the fact that earlier in this Convention we presented Proposal 1-8 which had this all included, then we recalled 1-8 back to committee and now are presenting it this way because 1-8 put the whole thing into one big area total and it was most confusing to many. And that's why this is done, so that we could break it down into the areas pertaining to each. And I think as we go along on these Proposals 105 through 113 that you're going to find it all ties together and becomes 1-8.

PRESIDENT WENSTROM: Thank you, Delegate Solberg.

The question before the Convention is on the motion of Delegate Benson; the rules be suspended, Committee Proposal No. 1-105 be deemed properly re-engrossed, be placed on the calendar for first passage as amended.

As many as are in favor of that motion will say "aye;" those opposed "no." The "ayes" have it, and the proposal is now before the Convention.

Now what are the wishes or what is the wish of the Convention?

DELEGATE CART: Would an amendment now be in order?

PRESIDENT WENSTROM: Yes, sir, an amendment is in order.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: At this time I'll offer an amendment to Proposal 10 — 1-105; the language contained in Delegate Proposal 2-52 beginning on page 1 and continuing through page 3. It's all before you in your books.

PRESIDENT WENSTROM: Will you restate the area that you want?

DELEGATE CART: The proposal in Delegate Proposal 2-52 on pages 1, 2 and 3. If I may explain what this is. It is the present constitutional provisions on the initiative and referendum with a few minor changes. And they are as follows: It increases the signature requirement for an initiative measure from 10 to 17,000 and from 7 to 12,000. That's for referral.

Also it limits the time when an initiative or referendum measure requires a two-thirds vote in the Legislature to repeal or amend from indefinite to seven years. Those are the changes in the existing language.

PRESIDENT WENSTROM: Do we have a second to Delegate Cart's motion?

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: It has been seconded by Delegate Baker.

Any further discussion? Possibly before we go any further we should read the proposed amendment.

CHIEF CLERK GILBREATH: As I understand the amendment it would be to delete —

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move we dispense with the reading of the amendment.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been moved and seconded that we dispense with the reading of the amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I rise to resist the amendment, Mr. President. Old Section 25, if you have read it through, —

PRESIDENT WENSTROM: Delegate Dobson, we have a motion now before the house to dispense with the reading of the proposed amendment.

DELEGATE DOBSON: Excuse me.

PRESIDENT WENSTROM: Then you can have the floor right after that.

Is there any discussion on the motion? Hearing none, the question's on the motion to dispense with the reading of the proposed amendment. As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. We will dispense with the reading of the amendment.

Now, Delegate Dobson.

DELEGATE DOBSON: Mr. President.

I want to resist the amendment. If you've ever read through old Section 25 it's quite a hodgepodge. And there are provisions in there that need to be updated, that have created a problem in recent years. The committee has done this. The committee is looking ahead. In these Committee Proposals — actually about 90 percent of old 25 is retained in Committee Proposals 1-105 through 1-113. We have simply taken and arranged them in an orderly sequence, an understandable sequence. We are not now discussing the number of signatures required, that will come up later. I urge you to reject the amendment.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President:

I also oppose the amendment. As most of you have noticed on your desk I have a proposed amendment to several sections which will at the appropriate time give those in favor of the substantial provisions that are in the old provision a chance to vote on the amendment or the old law, so to speak.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President:

I also want to point out that the proposals that are before us now have dropped from the language in the present constitutional requirement of a two-thirds vote to amend or repeal. And no matter what happened, if you went out and circulated a petition, got an initiated measure approved, the Legislature could appeal it on a strict majority vote any time right after it was adopted. It could do the same thing by reenacting a referred measure.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I'm very sorry to break with my good old friend, Delegate Cart. I'm afraid he's joining the liberals now. I think 17,000 is way, way too high. And I see no reason starting to compromise without even getting your position considered. So I'm going to resist the amendment.

I would point out a couple of things. When this was first started, the women weren't voting, the State of North Dakota had 53 percent men in those days, there were a lot of bachelor homesteaders, and the ladies' lib hadn't started yet. Then we also have two Air Bases. Our population isn't 617,000 by 190. These are things to be considered in the number of signatures. Furthermore, it is not easier to get petitions signed than it used to be in the old days when the people were more interested perhaps and more politically minded. Good roads have nothing to do with it. No one's ever home. I went out last year and I only had to get 163 names to join this delightful and august body, which sometimes doesn't agree with me, and it took me two full days. And then I went to a fair where everyone was in town. So it isn't so simple to get these names.

And I would say here that we shouldn't be shooting at one individual, who will be possibly gone from the scene in a few years. Thank you.

PRESIDENT WENSTROM: The question before the delegates — Delegate Solberg.

DELEGATE SOLBERG: Mr. President:

I hope that the Convention here will take these one by one and as we do let's say — just let's be optimistic as far as the committee is concerned now and say that we adopt each of them, 105 through 113. If we find that in the process of adopting these, and after amendments and things of this type provided for each one of these proposals, we find that there are areas that need to be redone we can always, by motion, reconsider the vote by which we passed a certain proposal and then perhaps amend again and bring into line the things that many delegates may want in that order. I think this would save time, Mr. President. And I think we then have a complete composite picture of what the committee has attempted to do by breaking apart the old 1-8 proposal and bringing it out in this way so that we can logically call this the people's rights section of the Constitution.

PRESIDENT WENSTROM: Any further discussion on the amendment? The amendment before us is as offered by Delegate Cart. As many as are in favor of adopting will say "aye;" those opposed say "no." The "noes" have it. The amendment failed.

We are back on — Delegate Rundle.

DELEGATE RUNDLE: May I ask what order we're on?

PRESIDENT WENSTROM: We're on the tenth order.

DELEGATE RUNDLE: I have an amendment. I'm not sure if it's at the desk or not. It's a very simple amendment. It would just go back and put the figures where they were.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I believe that what Delegate Rundle is referring to is the signatures — number of signatures and so forth which appear in another section. And he could probably amend that when those sections come before the assembly.

PRESIDENT WENSTROM: Thank you, Delegate McIntyre.

I'm just glancing through this, and I don't see any. There could be a percentage in here or something.

The question before the Convention is on the first passage of Proposal 1-105 as amended.

Those in favor of its adoption will vote "aye," and those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 94 "ayes," two "nays," two delegates absent and not voting. Committee Proposal No. 1-105 is passed.

Next for consideration is Committee Proposal No. 1-106.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: The only reason I voted "no" on that is because I'm not sure which one we passed, if we passed the 105 that's on the sheet or the 105 that's in the book. There is a difference on the two. I tried to get the floor before you voted.

PRESIDENT WENSTROM: I'm sorry.

DELEGATE AUBOL: Mr. President:

Perhaps my question can be answered now.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: There were a number of technical amendments that we made. And the delegates carrying the particular section to the floor, I think

Delegate Benson made the amendments. So the way it reads on your new sheet are the stylistic changes. So we voted on 105 and the amended version as it reads on the long sheet, not in the bill book.

PRESIDENT WENSTROM: We will proceed to Committee Proposal No. 1-106.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill, just may I interrupt just one second?

Delegate Aubol, I'm sorry that this happened. And, fellow delegates, when you wish the floor and we are in the process up here of putting a motion or something, don't hesitate about standing up and saying, "Mr. President" and then there isn't a possible chance of being missed. I'm real sorry that you didn't get your chance before we took the vote.

Now you may proceed, Delegate Hill.

DELEGATE HILL: I have an amendment at the desk to Committee Proposal 106 which I move at this time.

CHIEF CLERK GILBREATH: The proposed amendment to Proposal 1-106 is as follows:

Delete lines 13 through 20 and insert in lieu thereof:

"Each copy of the petition shall contain the full text of the measure and the names and post office addresses of at least ten sponsors, one of whom shall be designated as chairman."

PRESIDENT WENSTROM: You've heard the reading of the amendment.

Delegate Hill.

DELEGATE HILL: Was there a second to that?

PRESIDENT WENSTROM: May we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Kwako.

DELEGATE HILL: All of us here, and most of our citizens, have developed a philosophy of government in which they expect to see represented and we expect to see represented in our Constitution. Most of us pursue the philosophy that we want an effective and orderly government, but we also want a government that allows for a maximum of self-government and citizens control of the established government.

There are a number of valid objections to present Section 25 of our Constitution. There are two ways to handle these problems; one, we can make it much more difficult to use our initiative and referendum process; or, two, we can take the bandying out of the present section. Which method do you think most closely follows the philosophy that allows for a maximum amount of citizen control of the government? There are hundreds of improvements that will be included in a new Constitution and a few provisions that I don't see as improvements. But I'm not willing to risk the hundreds of improvements to our Constitution over one potentially explosive issue when we have satisfactory alternatives which are covered by the amendments I have prepared and are at your desk.

My amendment to Committee Proposal 106 is what I consider in the nature of a minor amendment, however. I have three or four what I consider serious objections to the committee's proposals covering the total package. But at this point I think the idea of requiring 25 sponsors for an initiative or referred proposal is an attempt to restrict the use of this process. And, further, I think an application to the secretary of state is an attempt to intimidate potential users of the process. For example, if these people want to test the water, so to speak, I don't believe they have to be publicly committed to go out and secure the necessary amount of signatures. A lot of people who raise noise about using the initiative and referral are simply making noise. I don't think we want these people to commit themselves going through with their act. But once they have to commit themselves, and only as sponsors initially, I think that we're going to find that we are causing them to pursue the use of this process when they really would like to back out of it.

My proposed amendment requires ten sponsors rather than twenty-five, and eliminates the process of the application of the secretary of state. The secretary of state is very willing to help any potential user of the initiative and referral to draft his petition in the proper form if he wants their help. Many of our fine independent citizens of North Dakota consider it an insult to be forced to do something which they feel is unnecessary. I urge the adoption of my amendment.

PRESIDENT WENSTROM: Further discussion?

Delegate Omdahl.

DELEGATE OMDAHL: On behalf of the committee I rise to resist the proposed amendment for a couple of very basic reasons. I think when we are referring to the referral and initiative we are talking about enacting legislation or negating something that was done by the Legislature. This opportunity that we give our citizens is not done in a majority of the states. And I think we need to be very serious when we talk about the referral and initiative. We are enacting laws. We are referring laws. For this purpose we usually have an elected representative body that represents all the people of the state. And so it is a very serious exercise of a very important power. Therefore, the committee felt there was no — there was no intimidation in asking that 25 responsible people come forward to identify themselves as sponsors of something as important as enacting or referring legislation.

Now as far as requiring the approval of the form before the circulation of petitions is concerned, the intent of the committee was merely to prevent technical and legal problems from developing in relation to the form after it had been filed. We do not want to prolong the secretary of state's responsibility after a law has been suspended.

PRESIDENT WENSTROM: Further discussion?

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I rise in support of Delegate Hill's amendment. I am also on the committee, and of course we didn't agree on everything, as everybody knows. We hear a lot of talk about what other states are doing. I, for one, don't really care what the other states are doing. We're not writing a constitution for the other states; we're writing a constitution for the State of North Dakota to whom the initiative and referral process is very familiar. I really don't object to the section that much except that I think it is a restriction and I think that we're dealing with a very, very sensitive area. And I don't think this application is really that necessary because the secretary of state has been very helpful in this area and I'm sure any future secretary of state would be, too.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: There are some very good reasons, Mr. President, why the committee felt that a petition should be submitted to the secretary of state in advance for approval as to form. One of them has to do with alerting the public at large that a campaign is underway. As you may recall, in 1970 a petition campaign was launched to relieve Delegate Hill of his then present employment. No one even knew this campaign was underway until the petitions were filed; caught just about everybody by surprise. We think that the public should know when a campaign is going to be launched.

Secondly, many initiated constitutional amendments have been put in our present Constitution which did not conform as to style and form. This would simply give the secretary of state an opportunity to make sure that proposals to be petitioned are in proper form and would probably save time later because they wouldn't have to send petitions back for technical corrections. So I urge the rejection of this amendment. And if it is rejected, if anyone feels that 25 electors is too many for a sponsoring committee, another motion could be made to reduce that.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. President, Delegates:

As a practicing attorney I've often thought that I would like to have all of my pleadings submitted to the court for approval before it finally is brought in for determination. This method pretty well goes in accordance with what I thought would be good as a practicing lawyer.

Secondly, not long ago I, too, thought about referring a measure. I started the proceedings and talked to a few people and got their signatures, and then I decided that as long as I wasn't running for governor or for some big job that I wanted to bury it, I didn't want the publicity, and therefore it died without all of this publicity. I, therefore, move — vote in support of Delegate Hill's amendment.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I also support the amendment. My reasons are just a little bit different than Delegate Kessel's. However, awhile back we enacted a provision which created the office of ombudsman. And in thinking about the duties of the secretary of state, it might well be that the Legislature would like to have him become the ombudsman. And if such were the case, I think we would find him in conflict with the Constitution if we were to adopt a provision like this. So I'm not so sure we might want to lock him in. And I think the amendment's an excellent one.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Hill. Those in favor will vote "aye," and those opposed will vote "no." Those in favor of adopting the amendment will vote "aye," those opposed "no." The "noes" have it.

DELEGATE BAKER: Division.

PRESIDENT WENSTROM: Division has been requested. Those in favor of adopting the amendment will vote "aye," and those opposed will vote "nay." The key will be opened, the Clerk will then take your preference.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 47 "ayes," 48 "nays," three delegates absent and not voting. The proposed amendment failed.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: At this time I would move in line 16 in the engrossed the figure "25" be deleted and the figure "10" inserted in lieu thereof.

DELEGATE BAKER: Second the motion.

DELEGATE WALLIN: Second.

PRESIDENT WENSTROM: It's been moved and seconded — seconded by Delegate Wallin —

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: — that we strike "25" in the engrossed bill and insert in lieu thereof the numeral "10".

Now I had a — Delegate Sinner.

DELEGATE SINNER: One last comment on behalf of the committee. Although I think it has been clear that the committee was divided on many of these points, and this is one of them, the majority felt that if we're going to continue with large legislative bodies, and even here we require a rather significant percentage even to get a question of division, that is it asking too much to have 25 people be responsible for the preparation of a law to affect every other citizen in the state? And the majority didn't think it was unreasonable at all.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I can think, too, of just the reverse in this particular situation. I think it could very well be a good effort and it could help the efforts of those initiating — referring measures. Also I can well understand why five was the limit back in 1914. But we're talking about quite a few more

people, we're talking about a statewide initiation — initiative or referendum. I think that we could ask more than to have 25 people out of the State of North Dakota acknowledge the fact that they are trying to take some sort of action.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the amendment as offered by Delegate Hill that we strike "25" and insert in lieu thereof "10." As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The Chair will rule that the amendment was adopted.

DELEGATE DOBSON: Division.

PRESIDENT WENSTROM: I hope my hearing was as good as it was the other day. That is a sufficient number. Those in favor of adopting the amendment will vote "aye;" and those opposed will vote "nay." The Clerk will open the key, you will record your preference. Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call indicates there were 44 "ayes," 51 "nays," three delegates absent and not voting. The amendment failed.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I'm fully aware of the rule that amendments must be at the desk. But I would have a request that I be given the opportunity to get one down there. I had more objection to the publicity part of it, if you change your mind as Delegate Kessel said, than I did the 25. We don't need to get 25 names, but I was going to initiate a petition. But like Delegate Kessel, I would not like to make up my mind until I found out if it was fairly popular and somebody wanted it besides me. So I would like to present a petition — an amendment to cut out the part that you must go to the secretary of state for approval as to form.

PRESIDENT WENSTROM: Do we have a second to Delegate Rundle's amendment?

DELEGATE KESSEL: Mr. Chairman. I move that we delay action on this until Delegate Rundle has an opportunity to do so.

PRESIDENT WENSTROM: Delegate Kessel, there is a provision, as I interpret it in the rule, that amendments can be made on tenth order without — I believe I'm in error. I believe that the rule requires that the proposed amendment be delivered to the desk. However, it does not need to be placed on every one of the desks for amendment. I believe that's the rule. So then I will accept your motion that we delay further consideration of Committee Proposal 1-106 until such time as Delegate Rundle has an opportunity to prepare an amendment.

DELEGATE PAULSON: Mr. Chairman:

A point of order.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The original amendment did exactly what Mr. Rundle proposes to do, it eliminated the necessity for filing with the secretary of state. And so all that his further amendment would do would be duplicate again what we've already voted down.

DELEGATE KESSEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I was for Delegate Hill's original amendment because of the publicity angle of it. Now — and then I voted in favor of the matter on the 25. I had no objection to that. So this is not a duplication, it just divides the issue.

PRESIDENT WENSTROM: May I have a second to Delegate Kessel's motion?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Been seconded by Delegate Stanton. The question is that we delay further consideration of Committee Proposal No. 1-106 until such time as Delegate Rundle's had an opportunity to prepare an amendment and present it at the desk. As many as are in favor of that motion —

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I speak against this motion because I don't think it takes that much time to prepare the amendment. He's just eliminating three lines. There's no sense to delay this. He's had ample time to get it down there. He can get it down there yet without delay.

Is that what you intend to do, Delegate Rundle?

PRESIDENT WENSTROM: Now may we have order in the court? May we have order in the Convention?

The question before the Convention is on Delegate Kessel's motion that we delay consideration of 1-106 until such time as an amendment is at the desk. As many as are in favor of the motion will say "aye;" those opposed "no." The "noes" have it, and the amendment lost — or the motion lost.

Delegate Rundle.

DELEGATE RUNDLE: Mr. Chairman:

Would I be in order to present it then? I have it ready now.

PRESIDENT WENSTROM: You may present it.

DELEGATE RUNDLE: The 25 —

PRESIDENT WENSTROM: Delegate Rundle, I don't believe that that's presenting it at the desk. Have one of the pages bring it down here, will you, please?

DELEGATE RUNDLE: Thank you.

Mr. Chairman:

I ask that the page please bring it back. I would yield to Delegate Hill. He's smarter at parliamentary procedure than I am.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I move that 1-106 be placed below 1-113.

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Delegate Hoffner moves that Proposal No. 1-106 be placed below Proposal No. 1-113. Now do we have a second to that?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten. All that are in favor of the motion say "aye;" opposed "no." The "ayes" have it.

Next for consideration is Committee Proposal No. 1-107.

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: I have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-107.

On line 19 after the period delete the following:

"No person shall give or receive compensation".

On line 20 delete "for circulating a petition."

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

Delegate Wicks.

DELEGATE WICKS: As I indicated when I explained this section originally, the committee felt that we should delete this last sentence because there is no way it can be properly enforced. And I might illustrate this by saying that if I, for example, wanted to give compensation to somebody for delivering a petition, I could make an arrangement with them whereby I would do their dental work at a reduced price and nobody would be able to tell whether or not I had given any compensation. So I move that this amendment be adopted.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: It's been moved, and seconded by — Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Fellow Delegates:

I am one of the strong supporters of the proposal as originally written simply because I do not think that money should play a part in the law-making process. We are very restricted here on what a legislator may do for money. He may work for the state, but he cannot work for anybody else to get a law passed. And here we delete from a proposal the provision that would restrict the power of money in the initiative and referendum process. Money by itself can abort this process and do evil with it. And I think if we have the original restriction in it as proposed by the committee we will keep the process for the people and not for the man with access to campaign money or whatever.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, members of the assembly:

I concur with Delegate Wicks that certainly the policing of this kind of a sentence would be almost impossible, if not impracticable totally. But I also agree totally I think with the statements just given by Delegate Paulson that at least the sentiment ought to be there that certainly the question of the affluent having enough influence to be able to purchase signatures without difficulty. That is the question before us. They have a great advantage now. I think under the payment of the circulators of petitions they have even possible greater advantage. And if it were a flagrant thing then at least the sentence should be there showing that it is flagrant, that it is illegal, and that they ought not to be paid. I realize we could not police the under-the-table operation or the payment in lieu of actual funds, et cetera. But I think the sentiment is important and it ought to remain in the Constitution.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I think it should be pointed out, Mr. President, that this is a committee amendment. A substantial majority of the committee felt that this provision would be unworkable and unenforceable.

PRESIDENT WENSTROM: Delegate Jim Hougen.

DELEGATE HOUGEN: Yes. Mr. President, Fellow Delegates:

I, too, resist the amendment that we should delete this language, this last section of 1-107. During the drive last year to get away — do away with the Department of Accounts and Purchases I had a young man in our store that was paid to get signers on this petition. I do not like this idea at all. I think that either a petition or referendum should be a popular uprising of the people of North Dakota. And I don't mind if I have some people who wanted to do this, but to have to go out and pay people for something like this, I don't — I don't care for it at all. We perhaps can't enforce it, but I think we should go on record as saying that we don't want something like this brought before the people through the — about the state through the payment of young people.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I stand in favor of the amendment. This restriction is really not being put on wealthy people. It is really being put on the small guy. If you belong to an organization which has hundreds and hundreds of members this will be no problem for you to go out and get signatures. For anyone who has ever carried a petition you know it is not an easy job, it's very difficult to do. And I think by striking out this being able to pay somebody, and you're not buying votes, we allow lobbyists to be paid to influence legislation. I see no reason why you couldn't, if you want to — you don't have to — you can pay somebody to go out and handle a petition. You are not buying votes, you are simply paying them to carry that. And I think we should pass this amendment.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: Mr. Chairman:

In California a few years ago — I presume it is still there — there is a business whose business is putting referred measures on the ballot. And for a set fee it will guarantee without any effort whatsoever on your part to put any kind of measure on the ballot. Now to make it legal it would offer some enterprising group of people a fine way to earn their way through college. I think that to make this type of business legal is a very dangerous thing. It has happened in other states, and I see no reason why it shouldn't happen here. I believe that

initiative and referendum is to be used, and I think we want it. It should be reserved for those times when there is a great popular feeling that what the Legislature has done or has not done is wrong and that people should be anxious to go out and circulate those petitions and to sign them. And unless this is the case they shouldn't be used.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER Mr. President:

As I said earlier, I don't believe in initiative and referral government. And yet I support the amendment because I think it is virtually unworkable to prohibit the kind of things that Mrs. Vogel is speaking about. The language actually prohibits a group from paying for the gas because it is compensation, or paying for the time the person is working. I — we pay our legislators, we pay everybody in government. If we're going to have this system I think you have to let the people that are going to try to use it get some kind of daily sustenance from their work. I don't believe in the system really, but I think we're going to have it. We can't make it unfair to at least pay the people for their — for their day's work.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Well, Mr. President, I at one time had a feud with one of our leading automobile dealers on this same thing. And I would resist the amendment. I think it should be there. It may not serve the purpose entirely that it is intended for. But at the time I know I felt very strongly about hiring young folks, minors, to circulate petitions. And at that time the going rate was fifteen cents per name. And the circulators used this as a method to get signers on a petition by saying that they were out raising money to buy band uniforms. And I think this is going a little bit too far in getting signatures on petitions.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: Mr. Chairman:

I hope that we are not too isolated here in our deliberations. And I wonder if we shouldn't think that we are not possibly in what you might call a hang-over from the last referred measure. It has to be youthful people who solicit your vote. In this provision here the petitions could not be circulated other than by an elector. I doubt the possibility of being able to enforce it. And I think we should stop and close our eyes and just think for a moment the difficulty which you have in obtaining petitions without any expenditure of money or payment. I think you want to remember if you do not eliminate this what the impact is going to be among many people that what you're doing — and we go back I think in many of our thinkings, much of our thoughts, as to what recently occurred — that you are going to — that you are making every effort in the world to make the initiated and referred statutes inoperable. I think we should be very careful about that. And I hope that the motion to eliminate this sentence does pass.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

I want to read you a provision — or a sentence that is in the present Constitution: "Nor shall any law be enacted prohibiting any person from giving or receiving compensation for circulating the petitions, nor in any manner interfering with the freedom in securing signatures to petitions." I think adopting an amendment would place our Constitution or our new provision in the same position that our old Constitution placed us, and I would support the amendment.

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: Mr. Chairman:

As a member of the committee, I also support the amendment. And I think we should read that line No. 16 and not let someone else in the delegation substitute the word "money" for the word "compensation".

PRESIDENT WENSTROM: Any further discussion? The question — Delegate Cart.

DELEGATE CART: Well, Mr. President, I just merely wanted to make this observation; there's been some discussion about the misuse of these provisions. And I know that has gone on, because I have spent a lot of money counteracting activities of an automobile dealer myself. But I still adhere to what Voltaire said a good many years ago: "I disagree violently with everything you say, but I will —"

PRESIDENT WENSTROM: Defend.

DELEGATE CART: — I will defend with my life your right to say it."

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Wicks that we strike "No person shall give or receive compensation for circulating a petition." That's right, isn't it, Delegate Wicks?

As many as are in favor of adopting the amendment will say "aye," those opposed say "no." The "ayes" have it. The amendment carried.

DELEGATE WICKS: Mr. President.

PRESIDENT WENSTROM: Delegate Wicks.

DELEGATE WICKS: I now move that the rules be suspended, and that the proposal be deemed properly engrossed, and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Wicks moves that the rules be suspended, that Committee Proposal No. 1-107 be deemed properly re-engrossed, and that it be placed on the calendar for first passage as amended. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. And Committee Proposal No. 1-107 is now before the Convention as amended.

The question — no further discussion? The question is on the first passage of Committee Proposal No. 1-107. Those in favor of its passage will vote "aye" and those opposed will vote "nay." The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 94 "ayes," 1 "nay," three delegates absent and not voting. Committee Proposal No. 1-107 has passed.

We will be on the eighth order of business — Announcements. Do we have any announcements at the desk?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: This noon Style and Drafting will meet. And lunch has been provided for the members of that committee.

PRESIDENT WENSTROM: Any further announcements? We are about to recess. We will recess — Delegate Erickson.

DELEGATE ERICKSON: Mr. President:

May we be on the twelfth order?

PRESIDENT WENSTROM: Without objections, we will be on the twelfth order.

DELEGATE ERICKSON: I move the unanimous consent of this Convention to withdraw 2-47 because I think it's served a very worthy purpose.

PRESIDENT WENSTROM: 2- —

DELEGATE ERICKSON: 47.

PRESIDENT WENSTROM: — 27. Delegate Erickson moves or requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-47. Hearing no objection, the request is granted.

Any further announcements under eighth order?

Delegate Haugen, did you have an announcement on the eighth order?

We will be in recess until one o'clock.

(The Session recessed at 11:47 until 1:08 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:08 P.M., Friday, January 28, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

First for consideration this afternoon, Committee Proposal No. 1-108.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-108 introduced by Committee on Legislative Functions.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. President:

I have an amendment at the desk which I'd like to have read.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-108.

On line 15 delete the word "three" and insert in lieu thereof the word "two".

DELEGATE SOLBERG: Mr. President.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Solberg, just one moment.

The motion is seconded by Delegate Kwako.

DELEGATE SOLBERG: I'm sorry. Once it's been set and will be set in the future of the number of signatures required for these petitions of initiative, referral and constitutional amendment, I'm particularly interested in the initiative and the referendum, and I hope that we will not judge and make our final decision based upon the emotion of experience that we may have had to look at the initiative and the referendum as the media that can be used by everyone as an electorate in the State of North Dakota to use when it is essential and when it is necessary, which it's intended to do.

I believe we have reached the point when 7,000 and 10,000 fixed figures may not be realistic. I would have liked to have looked at this thing with much more favor had it been two percent of the number cast — number of votes cast for governor in the last general election. But I recognize also that flexibility of that and the number of people that vote might not give us a fixed base from which to work. But I think three percent of the number tabulated in the last census in each decennial year is a little bit difficult for the average person. This would leave the referendum and initiative I believe to an organization that has adequate facilities and manpower to go out and get eighteen, twenty thousand signatures.

And so I know that there are going to be many amendments on this, Mr. President, many other amendments — I believe I have some of them on my desk — but I do hope that you will give good consideration to reducing it from three to two percent. Because this seems more realistic. And then as our population changes, we hope going up, why we still keep a percentage factor to use in determining the number of signatures. A fixed number in a very mobile type of society in which we live might not be realistic any more. Because I defy anyone to know what the population of North Dakota is going to be in 1980. You may say that it's a fascinating dream that we may make a little bit fantastic by saying that by 1980 our population will be one million in North Dakota. But it could be, you know. And so if we have a factor that we can use, a two percent against a fixed number, then you see for ten years, regardless of when the referral or initiative may be used, we will have a fixed figure to use as a base to calculate and determine the number of signatures. But I do believe three percent is a little high. I hope you'll go along with the two percent, and I know you're going to be deluged with all kinds of proposals to amend on this figure.

PRESIDENT WENSTROM: The Chair will recognize Delegate Sinner.

DELEGATE SINNER: Mr. President:

One of the things that I neglected to point out when I made my explanation of the committee proposal was that three percent represents approximately 18,000 people, two percent about 12,000. I had hoped to get the floor first to suggest that maybe rather than have a long, complicated debate over what figure we wanted — I think it's pretty much all about said, many people have more to say about it — but if this motion fails, I would suggest that we ask the Chair to have

a show of hands for — to see what the delegates prefer so we don't have to draw up a whole bunch of amendments — simply by a show of hands for four percent, three percent, two percent and one percent. However, if this motion succeeds, then I think that that's unnecessary. But I would like to move that if this motion fails.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'm on the Legislative Functions Committee and have talked considerably in that committee in defense of the three percent; however, I have since changed my mind and have gone to the support of a two percent figure for a couple of reasons: One, I still am entrenched with the belief that a percent is what we need rather than a set number of electors; secondly, the two percent figure, I believe, is a figure that the people will accept. And I don't believe that, however, the intent of initiative and referendum when it was passed around 1914 was simply to — I believe it was, I should say, to allow a nucleus or a segment of the population to refer or initiate a measure. I don't believe that this necessarily is an individual, but I believe it is a collective right. And a two percent figure I think would meet this intent. It would be a figure that the people would accept, and I hope we approve of the amendment.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President: May I move an amendment to the amendment? It's at the desk.

PRESIDENT WENSTROM: State your amendment.

CHIEF CLERK GILBREATH: Delegate Rundle's amendment to the amendment would be to delete the word "two" and then delete — all the language in Committee Proposal 1- — no, delete the word "two", then delete all the language in lines 13 through 16 in the proposal and insert in lieu thereof the following:

"Section 4. Signature Requirement. The petitions may be submitted to the secretary of state if signed by seven thousand electors in the case of a referred measure and if signed by ten thousand electors in the case of an initiated measure."

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: May I have a second for the motion?

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Maxwell.

Now Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I had a proposal in on the percentage basis, I think it was 1.67. Anyway it came out at 7,000. I was trying to be modern, and if they wanted it percentage-wise put it on that. But it didn't get anywhere. Now in the meantime I have many people say let's keep it on a figure the people can understand without a calculator even though it wouldn't take too much time to figure it. They'd rather have a flat figure. And I point out to you that the population has been dwindling and my percentage thing would have been more in the line that I lean than this. In other words, it would have been less names than the 7,000 possibly. But for the sake of not changing everything, we've torn many, many things apart, and this I feel is a very — a thing very close to many of the people. And I combat the old figure. I'd just like — I won't take a lot of time. But there hasn't ever been an issue that I know of, and neither did the secretary of state's clerk, that's been voted upon by the people so many times. Since 1918 it's been voted upon eight times. Changes were recommended by the Legislature in each case to make it tougher, to put the number of signatures up, and other various little gadgets to make it tougher. 1932 two different proposals were voted down, three to one — two to one; 1936 127,511 to 41,500. Constitutional amendment was submitted by the Legislature that time. 1940, Constitutional amendment submitted by the Legislature. In that time they only proposed that the initiative and referendum go up to 15,000. And that was closer, 64,000 to 61,000. 1942, 69,000 to 52,000. Again in 1942, 70,000 to 53,000. '58, a whopping 127,000 to 47. And the last one, which I missed, and the secretary of state's clerk Harriet Witte put it in her own writing on my sheet, November 8, 1966, three percent of the population

to initiate, two percent to refer. Three percent and two. It got beat 84,131 to 69,116. People haven't wanted these figures changed and have said so eight times. I think maybe this should tell us something. Thank you.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered — the amendment to the amendment as offered by Delegate Rundle.

Delegate Cart.

DELEGATE CART: Well, Mr. President, I merely want to correct some ideas that apparently are here in the Convention. The mention of 1914 when the initiative and referendum was first adopted did require ten percent of the voters, which is almost an impossible figure to determine. And it required the petitions to be circulated in fifty percent of the counties. Now in the 1918 change that was to a fixed figure of so many thousand signatures, get them all in one county if you could or you could get them at large over the state with no fixed requirement. So I would hope that we would at least adhere to the fixed number of signatures, or in the alternative to at least the last federal census so we've got a definite base to start from.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hill.

DELEGATE HILL: Mr. President:

I would oppose the amendment to the amendment which is before us right now for this reason: There are at least half a dozen people in this chamber who have engaged in futile efforts to stop the filing of referral petitions with the secretary of state. The reason they have done so is not necessarily because they were afraid of how the people would vote on the issue, but because the filing of a referral suspends the operation of the law until voted on. And this is my objection basically to the amendment; it is that we are providing a smaller number for referral and that encourages the use of the referral petition whereby if they use the initiative they wouldn't cause all the trouble to start with. And I'm opposed to any system of voting which encourages a smaller number of signers use of a referral than it does an initiative. Because this interrupts the governmental process. And I hope the delegates would read my proposal amendment to Committee Proposal 108 before they vote on these amendments.

PRESIDENT WENSTROM: Any further discussion?

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President:

Delegate Rundle is right. In this situation he has pointed out the people have spoken repeatedly and probably more often than on any other issue that has been presented to them. And invariably they have supported the language of the original constitutional amendment. I support the amendment to the amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, Fellow Delegates:

This Convention is certainly justified in voting an increase in the number of signatures requiring referral of an act of the Legislature. And all the indications are the people will accept a modest increase. Since 1918 the electorate has been substantially at large. We have good roads now. Fifty years ago there wasn't even a gravel road between Minot and Bismarck, it was just a trail. We have newspapers blanketing the state, we have radio and television, good communications. A modest increase in the number of signatures is in order. I resist the amendment.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Mr. President:

I think if there is an amendment with which the people of North Dakota are really familiar it is the initiative and referendum. And since 1932 it has been voted on six times and soundly defeated each time. And I keep saying that I think the people are telling us something, we better listen to them. This

morning we passed proposals not because we thought they were particularly good, but because we felt the people of North Dakota were not going to like them. And I don't think they would like it if we changed the number of signatures required. It doesn't really matter what happened fifty years ago or how the roads were or anything else. The basic issue here is that the people are used to 7,000 and 10,000 signatures, and I think that we should bow to their wishes as they have voted in the past and retain these figures.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President:

I can't help but remember a time in 1963 when Senator Lee Brooks from Fargo and I co-sponsored a bill to repeal the — for food-liquor divorcement law. And everyone said, "Oh, you can't do that. The people have spoken." And Senator Brooks had, in fact, introduced the bill several times before I arrived on the scene, and I was really tagging along in something I believed in. Well, they told Senator Brooks that so many times and they told the Republican majority in the Senate so many times that he was forced to withdraw his own bill from the floor of the Senate because the people had spoken. Well, some five months later the issue was presented to the people and they threw it out four to one. All I'm saying is that the people are aware of what's going on and they are not all that blind to some of the malpractices and some of the abuses and they are ready for an increase in this number of signatures required.

DELEGATE URDAHL: I think it should be pointed out that when this law was passed now many years ago it was before women were franchised. I think another thing that we should consider today is that we probably have thirty-five to forty thousand new voters in granting the eighteen-year-olds the right to vote. And I resist the amendment to the amendment.

PRESIDENT WENSTROM: Further discussion?

DELEGATE BENSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: I've been on the Legislative Functions Committee. We have spent a great deal of time talking this thing over. To me the idea of initiative and referendum is good. But on the other hand, I don't think it should be used as freely as it has been for this reason: We live in what we call a representative democracy; we elect people to represent us. When we resort to the initiative and referendum we are, in effect, saying, "Let's all of us get together and we'll all get our laws." Now this is poor democracy. And under many circumstances it would be very desirable. But I think the problem is this: If we cannot all get together and discuss these issues thoroughly and completely so that everybody has the proper information on which to make a good and honest evaluation of the things that we are considering, for that reason I'm just a little bit leery about the initiative and referendum. On the other hand, on the matter of signatures, signers, when we ask for three percent of the population, if we consider our population a little bit over 600,000, three percent amounts to about 15,000 signers. This is comparable to about seven and a half percent of the eligible voters. Now I think that if I have an issue that I want to refer to the people, and figure out and out of every 100 voters which I contact I cannot find eight people who agree with me that I do have a real issue, that probably maybe I don't have an issue and it shouldn't be referred. For that reason I think we should resist the amendment to the amendment and the amendment and support the committee's position at three percent.

PRESIDENT WENSTROM: The question before the Convention is on the amendment to the amendment.

Will you read the amendment?

DELEGATE BERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: I'm also a member of the Legislative Functions Committee. And in our District 14 we took a number of polls before we came out to our Plenary Session. And we gave the people at our hearings three alternatives to vote on: They were three percent, two percent and leave it alone. The majority

want to leave it as it is written. The next group favored a two percent. But nobody that attended our meetings favored three percent. And I don't know why we should be trying to give our people something that they are resisting. I definitely support the amendment of Delegate Rundle.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment to the amendment as offered by Delegate Rundle.

Will you read it again, Roy, so we have it before us?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment of Delegate Solberg.

Delete the amendment as proposed by Delegate Solberg and insert the following:

PRESIDENT WENSTROM: Woop, woop.

CHIEF CLERK GILBREATH: — on page 1 delete the lines 13 through 16 and insert in lieu thereof the following:

"Section 4. Signature Requirement. The petitions may be submitted to the secretary of state if signed by seven thousand electors in the case of a referred measure and if signed by ten thousand electors in the case of an initiated measure."

PRESIDENT WENSTROM: You've heard the reading of the proposed amendment.

DELEGATE SOLBERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: That was Rundle's amendment.

PRESIDENT WENSTROM: Those in favor will vote "aye," and those opposed will vote "nay". As many as are in favor of adopting the amendment to the amendment will say "aye;" those opposed "no." I think the amendment lost. We will open the key.

DELEGATE KELSCH: Division.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Could I request a recorded roll call vote?

PRESIDENT WENSTROM: Well, if you can get ten people to go along with you. That is sufficient. There will be a recorded roll call vote.

Again, the question is on the adoption of the amendment to the amendment. Those in favor of its adoption will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 32 "ayes," 60 "nays," six delegates absent and not voting. The amendment to the amendment has failed.

We are back on the amendment as offered by Delegate Solberg where we would strike the "three" and insert the number "two". Any further discussion?

DELEGATE HILDEBRAND: Question.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Very briefly, I believe that this is a very modest compromise and I don't think we'd have any trouble explaining it at all. I hope you support this amendment.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment as offered by Delegate Solberg. As many as are in favor of the motion to adopt will say "aye;" those opposed "no." The "ayes" have it. The amendment is adopted.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President.

I have a further amendment, and I'd like to move that amendment at this time. It's at the desk.

PRESIDENT WENSTROM: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-108.

Delete lines 13 through 16, inclusive, of the amended proposal and insert in lieu thereof the following:

"A petition signed by at least 10,000 electors shall require a statute or proposed statute to be placed on the ballot. A referendum petition signed by at least 15,000 electors and filed within ninety days after the filing of the measure with the secretary of state shall suspend operation of the measure if so requested in the petition. A petition signed by at least 20,000 electors shall be necessary to propose a constitutional amendment."

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Maxwell.

Delegate Hill.

DELEGATE HILL: Thank you. Mr. President.

What this petition or what this amendment is doing is staying fairly close to the two percent figure. It's leaving the initiative at 10,000 where it is because we haven't had any difficulty with our initiative process. It's raising the referral to 10,000 also so we do not encourage people to use the referral when they could better use the initiative. And as I tried to say earlier, it's the filing of the referral that causes the suspension of the act of the Legislature that causes the chaos in the governmental process. And I can't emphasize this too strongly. This is my — I suppose my basic objection to the committee's report at present is that it is containing the same basic problem as the present law in that it allows for the suspension. It gives the person who files the petition no other choice. I am saying that if 10,000 electors want to place a law passed by the Legislature on the ballot, they can do so. It will simply be voted on at the next regular state-wide election and there will be no disruption of the process. The Legislature's enactment will be in effect until voted out by the people for thirty days after that. There are some laws which the people might legitimately want to suspend pending the vote. For example, a law passed to build the state office building. It would do little good to vote yes or no on that question if the building had already been built. I am providing a means of 15,000 signatures to suspend such a provision. This will discourage people from needlessly suspending the operation of the law and causing the chaos that is taking place every time we have a referral petition. I'm not afraid of the judgment of the citizens of North Dakota on a question passed by the Legislature, but I don't think those of us that have worked in state government and have seen it happen every time a referral petition is filed, there's all sorts of problems. The committee proposal which is in the next enactment talks about suspension, but they have to be dealt with together, for the purposes of my amendment simply provides that you can't suspend an appropriation measure. Well, that doesn't solve the problem. There are a host of other statutes that can just as effectively hurt the state department as an appropriation measure. And I can't emphasize it too strongly. Let's say if you amended the law that levied a tax or raises a license fee, the Legislature has increased the appropriation in anticipation of the increased revenue from raising the license fee or the tax. They are in different bills, of course, so they merely suspend the levying of the tax measure or the increase in the license fee. Here you have chaos again. You can't expect the governor to allow a suspension of a law which raises the tax when one that suspends the money is not suspended. We simply have to provide an opportunity for reasonable citizens to have a plebescite on laws passed by the Legislature, but we don't want to force them to suspend the law. I'm allowing them to suspend the law if they get an additional 5,000 signatures. Possibly it could be two percent and three percent for suspension. But I think if we stick with a definite figure like 10,000 we have a much better chance of selling it to the people. This 15,000 is only when you want to suspend the operation of the law.

And I think we have to make it more difficult to suspend the law. Because this is where the chaos in the government operation is. And I urge you to support this amendment, and I think this is something that the people will buy. It's only a very modest increase in the signatures required for referral, but it does the

important thing of making it possible to suspend the law with an additional 5,000 signatures. Thank you.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Personally, delegates, I think Delegate Hill really has hit the nail on the head in that couple sentences there on the suspension of the law. I think that's the real key to his amendment. Probably more important than even the number of signatures. And I'm not saying 15,000 is correct, I would sooner see that down a little bit, but because of those sentences as he's explained in that section this is by far the best amendment that we have before us.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: We considered these ideas in committee, and we regarded the mandatory suspension an evil. However, leaving the suspension up to the petitioners is probably the greater evil. Because here you're giving private people an opportunity to negotiate, bargain and even blackjack the state into doing certain things because they have negotiating room. They will say, "Well, public officials, if you do thus and so we won't get the extra signatures and therefore we will bargain with you on it." I don't think that an act passed by the Legislature ought to be treated that lightly that we permit private parties to begin negotiating and upsetting the government in that fashion.

Another problem here is perhaps the first 10,000 signers in the petition didn't want to suspend the law but the people who were circulating the petition, they decide they are going to go out and suspend the law anyway; they go out and get that other 5,000. So I think you have to have a uniform system to which all petitioners are signing so they know what they are signing, they know that only that kind of act can result from their signing.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I would beg Delegate Omdahl to read my amendment. The law can only be suspended with 15,000 signatures if so requested in the petition. His statement is incorrect in that regard.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I have to oppose this amendment for several reasons; first of all, the draftsmanship is terribly defective. It says: "A petition signed by at least 10,000 electors shall require . . ." Well, that's not what we mean at all. The petition can be submitted, but it has to go through the certification process, the secretary of state has to determine the sufficiency of the petition, the validity of the signatures.

Second, I don't think we can leave it in the hands of the sponsoring committee to decide whether or not to suspend the law. The presumption here is that the sponsoring committee is going to consist of responsible citizens. That may not necessarily be so. They may let, for example, a law go into effect simply to help in their "no" vote campaign.

Finally, the last sentence is not germane. That should be offered when Proposal 1-113 comes up.

I urge the Convention to stand by the committee and reject the amendment.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. President.

May I ask a question, sir? Are we talking about other matters besides the percentage two in our debate? If we are to refer to provisions regarding matters to be referred, is that not to be covered next in 1-1 — 1-109? I wonder if I'm right in that. Because if it is, why we're discussing a matter that will be taken up in 1-109 and has not much to do with the 1-108.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I think it is germane, Delegate Solberg, because the contention of the mover is that this is a key factor in his motion.

I should point out, though, that the committee has worked extremely hard to set up a timetable of the effective date of legislation so that no referral may be filed after the effective date of a law that's passed by the Legislature. And I don't want to go into all of that. But the timetable of effective dates of new laws prevents a petition for referral from being filed after the law goes into effect.

Now the committee also felt that it maybe is wise that new tax measures that may be referred do not go into effect. Because if — if we suppose the Legislature passed a sales tax increase and merchants went through all the bother of starting the imposition of this new tax, referral was filed and then it would all stop, we have then been very careful to make sure that this does not happen and cannot happen with the timetable that the committee is proposing. However, we don't want either the referral to be able to let the tax go into effect and then the people vote and throw it out. We think it's much better that the delay is from the very beginning. And I think our timetable will solve the problem Delegate Hill was trying to get at.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Hill. Are you aware of the question? Want it read? Those in favor of the adoption of the amendment will say "aye;" those opposed will say "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "noes" have it. The amendment lost.

We are back on the Committee Proposal No. 1-108 with Delegate Solberg's amendment.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: May I now move that the rules be suspended?

PRESIDENT WENSTROM: No, Delegate Solberg, we haven't voted on your amendment.

DESK REPORTER KING: Oh, yes, we did.

CHIEF CLERK GILBREATH: That's adopted.

PRESIDENT WENSTROM: I'm in error. Right. You're correct. Now you can move.

DELEGATE SOLBERG: Thank you, Mr. President. I move further that the rules be temporarily suspended, and that the proposal be deemed properly engrossed, and placed on the calendar for final reading and passage — or for first reading and passage.

PRESIDENT WENSTROM: Delegate Solberg moves that the rules be suspended, Committee Proposal No. 1-108 be deemed properly re-engrossed, be placed on the calendar for first passage as amended. It is moved.

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: The motion is seconded by Delegate Omdahl.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and Committee Proposal No. 1-108 as amended is before the Convention.

Any further discussion? The question is on the first passage.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Could we move this down beneath 113 or behind 106 after 113? I'm confident that there's some misunderstanding, and I'd like to try a further amendment.

PRESIDENT WENSTROM: Delegate Hill, to move it on the calendar would require a motion.

DELEGATE HILL: I move that it be placed immediately following Committee Proposal 1-106.

PRESIDENT WENSTROM: Delegate Hill moves that Committee Proposal No. 1-108 be placed immediately below Committee Proposal No. 1-106. Now do I have a second?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Aubol.

Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" those opposed say "no." The "noes" have it. And the motion lost.

We are back for first passage of Committee Proposal No. 1-108 as amended. Those in favor of its passage will vote "aye," and those opposed will vote "nay." The key will be opened, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 80 "ayes," 12 "nays," six delegates absent and not voting. Committee Proposal No. 1-108 has passed.

Next for consideration, Committee Proposal No. 1-109. I believe Delegate Dobson discussed it when we first went through it.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I have nothing further at this moment to add to my earlier remarks.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President:

I had an amendment. I want to make a comment before I make the amendment. The objection to this section is somewhat minor, I presume. It regards the fact that it can only be voted on at the general election. I have never been concerned about the size of the vote, only the quality of it. And the situation here is that this means the citizens must wait another several months at a minimum until their question can be decided. It's possible our primary may be moved back to June. And this would certainly allow that these questions could be decided more quickly. The law is going to be suspended to provide for a minimum amount of chaos, you should simply provide for an election at the earliest possible date. And if it's a special election of course that creates more unnecessary suspense and chaos. But I see no reason why these measures cannot be voted on at a primary election.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Question — Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I agree with Delegate Hill on this one for two reasons; time involved and the cost involved. Time is more important in this case. Why wait until a general election? People that are interested, they'll vote in a primary. In fact, this might be a helpful way to get more people out to vote at the primary.

PRESIDENT WENSTROM: Any discussion, further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I as one of the committee really have no strong feelings on that last sentence in Section 5. However, I think it was felt that, one, that more people come out for a general election and that if it was near a primary election the governor could call a special election in conjunction with a primary election.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Speaking for the committee on this proposal, we don't really feel too strongly about this matter of general elections. Two points: First, the turnout is always better at a general election than at a primary election; second, the only reason we felt someone would probably want to put a measure on

the primary ballot would possibly be to help his own candidacy for some office. We saw an example of that a couple of years ago when a measure was referred to the primary ballot.

PRESIDENT WENSTROM: Any further discussion?

Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

I agree very much with the last sentence of Delegate Hill's amendment dealing with some time period before the Legislature can amend an initiated act except by a two-thirds vote. And I think that probably this should be submitted at the end of Proposal 1-112, and I intend to make a motion at that time — when that is being considered to do so.

If I might digress just a moment with the permission of the Convention, I cannot blame Delegate Hill for not submitting this last amendment and having it slapped down. Delegate Hill has had a tough day today, and I suppose there are few of you that are aware of it, this morning he received this letter:

"Mr. Vance K. Roykeshaugen, a/k/a Vance K. Hill.

"Dear Mr. Roykeshaugen:

"It was a pleasure to read yesterday's news release. Having long opposed the selection of members of the North Dakota Judicial Department by any method other than by election by the qualified electors of the State, I was pleased that the majority of the Constitutional Convention delegates voted down any proposed change in the process of selecting judges.

"The news release regarding your sour grapes statements about persons with non-Nordic names and the reply of Delegate Donnell Haugen is hilarious. You can now consider yourself one of God's children.

"With reference to your comment about the difficulty of a person with a non-Nordic name being elected to office, I wonder if the following judges are all Nordic:

Redetzke; Maxwell; Friederick; O'Keefe; Gefreh; Lynch; Fredricks; Jan-sonius; Burdick; Beede; Kelsch; Muggli; McCullagh; Smith; Hodny; Margulies; Ewing, Krause; O'Connell?

Unless Italians, Irishmen, Scotsmen, and Germans are all classified by you as Nordic, then there are nineteen of the thirty-two judges who are non-Nordic.

"Very truly yours, Lawrence O'Connell, County Judge."

I can understand why Mr. Hill is despondent at this moment.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the first passage of Committee Proposal No. 1-109. Those in favor of its adoption will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 86 "ayes," 6 "nays," six delegates absent and not voting. Committee Proposal No. 1-109 has passed.

Next for consideration, Committee Proposal No. 1-110.

DELEGATE DIEHL: Mr. President.

PRESIDENT WENSTROM: Delegate Diehl.

DELEGATE DIEHL: I think I have nothing further to offer. This has been covered. And the language is quite similar to what we now have.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the first passage of Committee Proposal No. 1-110.

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

I really haven't looked this over, but I see that Delegate Hill did have a proposed amendment. And if he would submit himself to the body here, he ought to explain what he had in mind.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: This amendment is worthless if the proposed amendment to 108 is not adopted because it relates to the language contained about referring suspension. So there is no use to move that amendment without the amendment to Committee Proposal No. 1-108.

PRESIDENT WENSTROM: The question before the Convention then is for first passage of Committee Proposal No. 1-110. Those in favor will vote "aye," and those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 88 "ayes," 2 "nays," eight delegates absent and not voting. Committee Proposal No. 1-110 has passed.

Next for consideration is Committee Proposal No. 1-111.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Fellow Delegates:

Please don't interrupt the pleasant momentum we are gathering here.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Delegate Pearce, did you have any further comments to offer on Committee Proposal No. 1-111? I believe you commented on it when it was first presented to the Convention.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: The question before the Convention is on the first passage of Committee Proposal No. 1-111. Those in favor will vote "aye," those opposed will vote "nay." The key will be opened, you will record your vote.

Has every delegate voted? Any —

DELEGATE NETHING: No. I vote "aye".

CHIEF CLERK GILBREATH: Would you push Delegate Nething's?

DELEGATE MEIDINGER: Meidinger votes "aye."

PRESIDENT WENSTROM: Meidinger votes "aye". Any delegate wish to change his vote? The vote is closed.

Roll Call discloses 92 "ayes," no "nays," six delegates absent and not voting. Committee Proposal No. 1-111 has passed.

Next for consideration is Committee Proposal No. 1-112.

DELEGATE NETHING: Question.

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: Delegate Peters, do you have anything further to comment on?

DELEGATE PETERS: Mr. President:

I just want to say ditto for what Mr. Pearce just said.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

The momentum here has almost overrun me. I just barely got a suggested amendment to the desk. I wonder if it's in such handwriting that the Clerk can read it?

CHIEF CLERK GILBREATH: We already have it typed.

DELEGATE HAUGEN: Thank you. Thank you.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-112.

Following line 18, add the following: "Any statute approved by the electors cannot be amended for five years except by a two-thirds vote of the legislature."

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

May I have a second?

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Second by Delegate Rundle.

DELEGATE HAUGEN: Mr. President:

I believe we are all agreed that this right of initiative and referendum is a right of the people. I went along with the proposal to raise the number of signatures required because I think it is reasonable under present conditions. But I do think there are an awful lot of electors that are going to wonder what is the use of initiative amendment or an initiative measure if the Legislature can change it immediately upon its passage. Now I believe it's important if we give the people a right to at least five years to be sure that their measure is going to stay in effect unless a two-thirds vote of the Legislature can be secured. I do hope that this amendment will be approved.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I want to offer an amendment to the amendment to strike out "five" and insert "seven." If I can get a second I'd like to discuss that.

PRESIDENT WENSTROM: Have a second to Delegate Cart's amendment?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Second by Delegate Kwako.

DELEGATE CART: There is naturally an emergency whenever legitimate referendum or initiative law is enacted. And it will take a little time for that to be worked out. So where it maybe needs amendment or repeal could be left on the statute. And I think five years is just a little bit short. That's only two sessions of the Legislature. I really think we should have three sessions of the Legislature pass by before it is subject to change or revision, the same as any other legislation.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

Was that an amendment to the amendment?

PRESIDENT WENSTROM: That is correct.

DELEGATE RUNDLE: Well, I was a little bit slow. There is another amendment to the exact wording. I support this amendment. I had legal counsel prepare one at noon; the exact wording "seven years". I feel five years is a little too short.

And I would bring it to the attention of the delegates of how fast we're moving. This very important feature wasn't even included in the report. Just going to slip through that the majority of the Legislature could override the people. And under the deal we now are offering under, or we will if everything passes, with an eighty-day legislative session which might be recessed, you could get a petition overridden by the Legislature the day after it was in effect. They could call the Legislature back in. This isn't a very great probability, but it certainly is a possibility. And we are just making a mockery of this if we don't have the two-thirds majority in. I feel seven years is quite a compromise because now you know it's forever the way it has been. But I wouldn't like to go down lower than seven years. I support the amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: The committee, of course, considered this matter. We thought that maybe we should put in five years where we require a two-thirds vote. But we finally concluded that would be unnecessary because it is rather unlikely that the Legislature is going to start fiddling with something that the people have approved for a couple sessions anyway. The legislators are political animals; they have to go home and run for reelection. They aren't going to override the wishes of their constituents. And if they do make any changes within the first five-year period they will probably have substantial reasons to make those changes. That's the committee's position.

PRESIDENT WENSTROM: Any further discussion? The question is on the amendment to the amendment.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Just a short comment. I speak in favor of the amendment. I talked to legislators, but not that far and not all the way. A bill which was referred and turned down by the voters of this state was being considered by the next legislative session if you will remember.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: The last time that the Constitution was amended providing for a Legislature of sixty days was in September 1968. That's less than four years ago. We've changed that already.

PRESIDENT WENSTROM: The question before the Convention is on the amendment to the amendment as offered by Delegate Cart; that the period be changed from five to seven years. As many as are in favor of adoption of the amendment to the amendment will say "aye;" those opposed "no." I'll rule that the "ayes" had it.

DELEGATE SINNER: Division.

PRESIDENT WENSTROM: The "ayes" carried. Division has been called for. Those in favor will vote "aye," and those opposed will vote "nay." The key will be opened, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

DELEGATE HERNETT: Vote "aye".

PRESIDENT WENSTROM: The vote is closed. The vote indicates there were 51 "ayes," there were 39 "nays," there were eight delegates absent and not voting. The amendment to the amendment has been adopted.

Delegate Lander.

DELEGATE LANDER: Mr. President:

I would like to ask Delegate Haugen a question, please.

DELEGATE HAUGEN: Yes, certainly.

DELEGATE LANDER: In your amendment you use the words "only amended" whereas the present Constitution says "repealed or amended". Is there any significance to that?

DELEGATE HAUGEN: Now I stuck with Delegate Hill's wording. I do think it is important. I assume there is some significance to it. It would certainly be preferable if the word "repealed" were in. This would require another — another amendment, which I hesitate to make. I think that the people will look much more favorably upon the section with the inclusion of the wording that I have — that Delegate Cart and I have suggested. I had intended to say this, and I still think it is a matter of some importance. Delegate Dobson said that there would only be an amendment by a majority vote if there was a substantial amendment to be made. But if there's a substantial and important amendment to make, then that amendment can be secured by two-thirds — or two-thirds support might be taken. Might I submit your question, Delegate Lander, now to Delegate Hill? Vance, you got his question?

DELEGATE HILL: My thought was amendment in the general sense means any change whatsoever. But to clarify, it might be better to add the word "repeal" also.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: So that we have it correct, what we are doing, I would move that the words "or repealed" be inserted after the words "be amended" on the amendment. "Or repealed.

PRESIDENT WENSTROM: Delegate Kelsch moves that the words "or repealed" be inserted.

CHIEF CLERK GILBREATH: That is after — where you would want that inserted?

DELEGATE KELSCH: After the word "amended". It is a one-sentence amendment.

CHIEF CLERK GILBREATH: "Any statute approved by the electors cannot be amended —

DELEGATE KELSCH: Or repealed.

CHIEF CLERK GILBREATH: — or repealed . . ."

PRESIDENT WENSTROM: So we have an amendment to the amendment before the Convention again.

Does the record show we have a second for that?

DELEGATE CART: I'll second that.

PRESIDENT WENSTROM: The amendment was seconded by Delegate Cart.

The question before the Convention is on the amendment to the amendment as offered by Delegate Kelsch.

Will you read it the way it reads now, Mr. Clerk?

CHIEF CLERK GILBREATH: The proposed amendment to the amendment is as follows: After the words "be amended" insert the words "or repealed".

PRESIDENT WENSTROM: Any question? Any further discussion? The question before the Convention is on the adoption of the amendment to the amendment. As many as are in favor of adoption will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Would Delegate Haugen yield to a question?

DELEGATE HAUGEN: I hope I can answer it better than the last one.

DELEGATE HOFFNER: Delegate Haugen, do you feel — let's take an example. If the majority of the people of the State of North Dakota want to change a law that they put on the books by initiative, do you think that a minority of the legislators should be able to stop that repeal?

DELEGATE HAUGEN: Will you state that over again? Can you put it in a more positive way?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: If a majority of the people of the State of North Dakota want to change a law that they put on the books by initiative, want to change that, should a minority of the legislators that represent them be able to stop them from making that change?

DELEGATE HAUGEN: Will you set an example as how a minority might do that?

DELEGATE HOFFNER: Well, you require two-thirds vote of both houses to change a law that's been initiated, you see.

DELEGATE HAUGEN: Right.

DELEGATE HOFFNER: So you reverse that. You are saying a minority can stop the majority of the people's wishes.

DELEGATE HAUGEN: I —

PRESIDENT WENSTROM: You may answer.

DELEGATE HAUGEN: I don't believe I'm saying that, no, that a minority can stop it. I'm saying that it would require a two-thirds majority to overrule for seven years now what the people have wanted.

PRESIDENT WENSTROM: Delegate Haugen, just in answer to Delegate Hoffner, it's just a fact that it takes two-thirds to change, so one-third, one more than one-third can block it. That's his point. It's all right. That's the way — that's what the Convention has decided. But then that's perfectly all right.

DELEGATE HAUGEN: This is what we have been doing in North Dakota for a good many years.

PRESIDENT WENSTROM: You are absolutely right.

DELEGATE AUBOL: Mr. President.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Mr. Chairman and Fellow Delegates:

For about the two hundredth time I have found that I write much slower than the Chief Clerk reads. Can we please have the amendment read. Thank you.

DELEGATE KELSCH: Mr. President:

It is the last sentence of Delegate Hill's proposed amendment to this section. So it is the words "or repealed" if you want to refer to that.

PRESIDENT WENSTROM: That has not been adopted, Delegate Kelsch.

DELEGATE KELSCH: As has been amended, we are adding the words "or repealed". But otherwise the sentence is the same.

CHIEF CLERK GILBREATH: The proposed amendment as amended is as follows:

Following line 18 add the following: "Any statute approved by the electors cannot be amended or repealed for seven years except by a two-thirds vote of the legislature."

DELEGATE DOBSON: Now, Mr. President, —

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Will Delegate Haugen yield to a question?

DELEGATE HAUGEN: I will try. I'm having difficulty, but I'll try.

DELEGATE DOBSON: Currently to amend or repeal a law which has gone through the initiative-referendum process requires a two-thirds vote in each house.

DELEGATE HAUGEN: Yes.

DELEGATE DOBSON: Your amendment provides for a two-thirds vote of the Legislature. Is that your intent?

DELEGATE HAUGEN: I think that all of us here understand the nature —
(Applause)

(Delegate Byrne fell out of his chair and then reclaimed his chair with nothing more than bruised dignity.)

DELEGATE TUDOR: Mr. President.

DELEGATE HAUGEN: Mr. President.

I was going to reply to Delegate Dobson. I was going to say that I believe that all of us here understand the meaning of the language; two-thirds vote of the Legislature. If this is not technically correct, I know that we have a very, very good Committee on Style and Drafting and I have no doubt but what they will put that particular phrase in its proper language, proper wording.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President:

I hate to ask this, but on the basis of Delegate Hoffner's question, and in reference to what is in the present Constitution, I would like to ask these many lawyers here if we have really changed what's in there now? Because the amendment before us says that any statute approved, et cetera, may not be repealed except by two-thirds vote. Which I thought he was saying then that the initiative or referendum could not be used because it wasn't a two-thirds vote of the Legislature. I don't know whether you meant that. But the present Constitution says what the Legislature shall do. We have reworded the sentence, and that's why I'd like the expert opinions as to whether we have really created a restriction we did not intend to create in this amendment.

PRESIDENT WENSTROM: Someone care to answer Delegate Lander?

Delegate Longmire.

DELEGATE LONGMIRE: I'll yield to Judge Rundle.

DELEGATE RUNDLE: Mr. President:

Thank you, Attorney Lingmire — Longmire. I have the — my amendment that was drawn, the very same wording is at the desk and was drawn by a sharp

young counsel. It might solve the problem. He assured me it was a very good one and ready to go.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Would Delegate Rundle offer the amendment so we could hear what it says?

CHIEF CLERK GILBREATH: I don't have it.

DELEGATE RUNDLE: Mr. President:

Would it be in order to offer — I'm a little confused at just where we are.

PRESIDENT WENSTROM: Well, I wonder if there's anyone in here that isn't.

The question before the Convention is on Delegate Haugen's motion to amend that has never been adopted. And we have two amendments to amendments and those have been adopted. So we're right back on Delegate Haugen's motion as amended.

DELEGATE LONGMIRE: Mr. President:

It's difficult for me in my book here to follow these amendments on amendments on amendments. And I think it would be wise if we carried this forward until after the next proposal anyway until we know what we're voting on. I would suggest it, if not move it. Those who offered it maybe could do that.

PRESIDENT WENSTROM: Delegate Longmire, just so that we don't add to further confusion, there is no amendment to the amendment to the amendment. That's not correct.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I think to clear this up, the best thing to do is move that the motion — move the question. And if there is an inaccuracy in it — everyone knows the substance of it — if there is an inaccuracy in it we can correct it in Style and Drafting. I'll move the question.

DELEGATE KWAKO: Second.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: The previous question has been moved. Will five delegates stand? That is a sufficient number. Seconded by Delegates Litten and Kwako and Binek and Aas and Christensen. The previous question has been moved which, of course, calls for immediate vote on Delegate Haugen's amendment as amended. Those in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE DOBSON: Point of order, Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: It was my understanding that question was Delegate Sinner's motion for the previous question.

PRESIDENT WENSTROM: I believe the Chair is in error. The question was on — the question was the motion for the previous motion, that is correct. Now we are back on Delegate Haugen's motion as amended and amended. As many as are in favor of adopting that motion will say "aye;" those opposed "no." The "ayes" have it, and the amendments are adopted.

Now we are back on Committee Proposal No. 1-112 as amended.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to move that Proposal 1-112 be considered properly engrossed and placed on first reading and passage.

PRESIDENT WENSTROM: Delegate Haugen moves that the rules be suspended, that Committee Proposal No. 1-112 be deemed properly re-engrossed, be placed on the calendar for first passage as amended.

Do I have a second?

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kelsch.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Committee Proposal 1-112 is before the Convention.

The question before the Convention is on the first passage of Committee Proposal No. 1-112. Those in favor of its passage will vote "aye;" those opposed will vote "nay." The key will be opened, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

DELEGATE SCHMIDT: Mr. President.

PRESIDENT WENSTROM: Delegate Schmidt. Did you vote? Your vote wasn't recorded.

DELEGATE SCHMIDT: I'm sorry, my vote wasn't recorded.

PRESIDENT WENSTROM: And how do you vote?

DELEGATE SCHMIDT: Aye.

PRESIDENT WENSTROM: He votes "aye".

Roll call discloses 88 "ayes," 4 "nays," six delegates absent and not voting. Committee Proposal No. 1-112 has passed.

Next for consideration is Committee Proposal No. 1-113.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Just briefly, repeating points that I outlined earlier in the same section, the primary change here is the number of signatures. We have changed that number from the 20,000 in the current section to five percent of the resident population of the state.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I have an amendment at the desk. I ask that it be read.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-113.

On page 1 delete lines 13 through 19 and insert in lieu thereof the following: "Section 9. Initiated Constitutional Amendment. A constitutional amendment may be proposed by initiative petition. If signed by twenty thousand electors the petition may be filed with the secretary of state."

PRESIDENT WENSTROM: You have heard the amendment. Do we have a second?

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Baker.

PRESIDENT RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: These are exactly the same figures that are in the old Constitution. And why you want to make it any more difficult in this case, I can't understand. I would hope the amendment would prevail.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: It strikes me as odd that we require two percent to initiate and refer, but then we have a fixed figure to initiate a constitutional amendment. The committee voted to increase the number of signatures required to initiate a constitutional amendment for the same reason that they voted for an increase on initiative and referendum measures. Also Delegate Rundle's motion has left off the last sentence of C.P. 1-113. That last sentence is very important.

PRESIDENT WENSTROM: Any further comment? The question before the Convention is on the adoption of the amendment as offered by Delegate Rundle.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President:

While Delegate Rundle rummages up some language or does something about that last sentence, I would observe that if you don't have that last sentence in there, among other things, you don't have an effective date for constitutional amendment. And we need that.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Well, in answer to that, Attorney Cuffe, counsel for the committee here, drew this and he left that out at my suggestion. And now I have had other legal-lights tell me it should be in there. I'll tell you the reason I left it out. We're just killing this thing a little bit at a time, completely ruining it, and I thought perhaps there was some ulterior motive in that. I wanted this section by itself. But I guess I was wrong.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I don't agree with the amendment, but I think we can go ahead and act on it and if it's passed we can move another amendment and put that sentence back in.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Rundle.

Any further discussion? Hearing none, as many as are in favor of adopting the amendment will say "aye;" those opposed "no." I believe the "noes" have it.

DELEGATE CHASE: Request division.

PRESIDENT WENSTROM: Division has been requested.

DELEGATE RUNDLE: Could we request a recorded roll call vote?

PRESIDENT WENSTROM: We will have a vote, but not a roll call vote. Those in favor of adopting the amendment will vote "aye" and those opposed will vote "nay." The Clerk will open the key, you will record your preference.

DELEGATE SINNER: Could it be read again so we could understand it?

PRESIDENT WENSTROM: Have the amendment read again? Certainly.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-113 is as follows:

On page 1 delete lines 13 through 19 and insert in lieu thereof the following:

"Section 9. Initiated Constitutional Amendment. A constitutional amendment may be proposed by initiative petition. If signed by twenty thousand electors the petition may be filed with the secretary of state."

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President:

I do intend to vote "no" on the amendment. And if it fails I do intend to offer a further amendment that would change the percentage from five percent to four percent.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Rundle. Those in favor of its adoption will vote "aye" and those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The vote indicates 38 "ayes," 52 "nays," eight delegates absent and not voting. The amendment as offered failed.

Delegate Sinner.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President:

I should like to offer a further amendment to Proposal 1-113. It's at the desk.

PRESIDENT WENSTROM: Delegate Baker has a further amendment to Proposal 1-113.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: While we're waiting for the typing, one of the reasons that the committee put the figure of five percent was that we were and are providing kind of an adoptive proposal which will call for an automatic vote on a constitutional convention every thirty years. And we felt that this kind of review of the Constitution on a more or less periodic basis by the people and the prospect of calling a convention is a better way than to have too easy an amendment of the Constitution brought in and adopted sometimes with far-reaching indications that aren't obvious to a non-studying body.

PRESIDENT WENSTROM: Delegate Baker's amendment at the desk? Would you read the proposed amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-113.

In line 15, after the word "to" delete the word "five" and insert in lieu thereof the word "three".

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE ENGSTROM: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engstrom.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I think the effect of this amendment is clear. It would reduce the necessary signatures on the basis of the present census from around 30,000 to something under 20,000, which is the current requirement in our Constitution. But then we know that the state's going to grow so it will be back up there pretty soon. And anyway we made it tougher the other day, you know, for the Legislature to propose a constitutional amendment. And thirty years is a long time.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I would oppose the amendment. We are working in reverse here. We adopted Proposal 1-108 by an 80-to-12 margin. And I think that an increase of sorts is needed. We are dropping from 20 down to 18,000. So I'd oppose the amendment.

DELEGATE DOBSON: Mr. President.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President:

I also oppose the amendment. I have an amendment at the desk that calls for reducing the number from five down to four percent, which puts the figure at about 24,000.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on Delegate Baker's motion that the word "five" be stricken and the word "three" be inserted in lieu thereof on the percentage.

Being no more discussion, the question is on the adoption of the amendment. As many as are in favor of adopting the amendment will say "aye," those opposed "no." The "noes" have it.

DELEGATE RUNDLE: Division.

PRESIDENT WENSTROM: We will have a vote. We will have a ballot. Those in favor will vote "aye" and those opposed will vote "nay." The Clerk will open the key, you will indicate your preference.

Has every delegate voted? And delegate wish to change? The key is closed.

Tally indicated 43 "ayes," 47 "nays," eight delegates absent and not voting. The amendment failed.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I have an amendment at the desk, and I would ask that it be read at this time.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-113 is as follows:

In line 15, after the word "to", delete the word "five" and insert in lieu thereof the word "four".

PRESIDENT WENSTROM: You've heard the reading of the amendment. Do I have a second?

DELEGATE BENSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Benson.

Any discussion? The question — the question is on the adoption of the amendment that the word "five" is stricken and the word "four" inserted. As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The ayes have it. The amendment is adopted.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'm sorry for this inconvenience, but we forgot to propose an amendment to this proposal. I think the desk has it. If they will read it.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-113.

On line 17 delete the words "filed with" and insert in lieu thereof the words "submitted to".

DELEGATE SINNER: Second.

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: The motion is seconded by Delegate Solberg.

Is this offered by Delegate McIntyre? Do you offer the amendment?

DELEGATE McINTYRE: Yes.

Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Fellow Delegates:

This is just a change in wordage here from "filed with" to "submitted to" to get away from any intent what the words "filed with" mean, that the petition has been deemed filed.

PRESIDENT WENSTROM: Any further discussion on the proposed amendment?

Hearing none, — do you want that read? — as many as are in favor of adopting the amendment will say "aye;" those opposed say "no." The "ayes" have it. The amendment is adopted.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President.

I see no further amendments. I will move that the rules be suspended and that 1-113 be deemed properly re-engrossed and placed on the tenth order for passage.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: Delegate Hoffner moves —

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Before we put the motion to a vote, I wonder if we've ever put this language back in that was inadvertently left out by Delegate Rundle.

PRESIDENT WENSTROM: We aren't on his amendment.

The question before the Convention is on Delegate Hoffner's motion that the rules be suspended, that Committee Proposal No. 1-113 be deemed properly re-engrossed, that it be placed on the calendar for first passage as amended.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Sinner.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Committee Proposal 1-113 is before the Convention as amended.

Is there any further discussion? The question before the Convention is on the first passage of Committee Proposal No. 1-113 as amended. Those in favor will vote "aye;" and those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

Roll call discloses 86 "ayes," 5 "nays," seven delegates absent and not voting. Committee Proposal No. 1-113 has passed.

We will be on the eighth order of business.

CHIEF CLERK GILBREATH: 106.

PRESIDENT WENSTROM: Do we have one? Oh, that's the one we moved down. Next for consideration is Committee Proposal No. 1-106.

DELEGATE KESSEL: Mr. President.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-106.

Delete lines 13 through 20, inclusive, and insert in lieu thereof the following: "Section 2. Petition. A petition to initiate or to refer a measure shall contain the full text of the measure and the names and post office addresses of at least twenty-five sponsors, one of whom shall be designated as chairman."

PRESIDENT WENSTROM: Do we have a second?

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Delegate Rundle.

Delegate Kessel.

DELEGATE KESSEL: This amendment merely takes out of the Committee Proposal 1-106 the matter of submitting the petition to the secretary of state before initiating the same and requiring his approval. Section 1-108 still provides for the submission of the petitions to the secretary of state, and 1-110 still provides for the certification. So it really doesn't do anything that hasn't been done in the past. But the secretary of state should never be put in the position of assisting and helping someone to amend a petition and then be forced in the awkward position of later going through the thing and perhaps even having to rule out some of the work that he had approved. The publicity — another thing, if the petition has gone to him for form and approval, it becomes a public record. And this petition might not even be circulated. And why publicize it and why embarrass some people who do not seek publicity for any particular reason to have this submitted to the secretary of state beforehand? As I pointed out this morning, it's much like a lawyer taking his pleadings to the judge, have him approve it, and then later having them attacked by opposing counsel and then having the judge reverse himself. It is unnecessary, it doesn't add a thing. I hope we get support of this.

PRESIDENT WENSTROM: Any further discussion?

Delegate Paulson.

DELEGATE PAULSON: Mr. President:

I repeat that this amendment is nothing more than a rehash of the first amendment as Mr. Hill offered this morning and was voted on. His original amendment eliminated the request of the secretary of state and reduced the number of signers. That amendment served a separate vote of the number of signers and now this new amendment simply does the same thing. Again, if you are talking about the legislative process, we simply believe that the persons who are attempting to participate in the legislative process should be willing to stand up and be identified as the sponsors, and that the prior check with the secretary of state will eliminate so much possible court action as to the adequacy of petitions and the like that the committee thought the process did require this check through

the secretary of state ahead of time. And I trust that the amendments will be voted down.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I wish to correct a statement made by Delegate Paulson. The Hill proposal this morning which was defeated 47-to-48 provided for ten sponsors. This was later adopted by the delegates as 25, and that has been left in the present proposal. So there is a difference.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

I support this proposal. And I don't think in any case the secretary of state can propose a suggested form. And I think this question with regard to it being a proper form, the secretary of state would still have the power to recommend or prepare a form that would be suggested.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

I simply want to reiterate two things: First, the public at large should be alerted when a petition campaign starts. Now we should not make it possible to sneak a petition through, so to speak. This has happened in the recent past. Second, the secretary of state should have this power to check style and form. This will avoid problems later. I think the committee proposal is in order.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I've listened to a lot of discussion that's been passed upon the fact that all legislative meetings of this type should be open. And I think a great deal of this discussion has been led by Delegate Rundle. I'm wondering why he reverses his position on this. I wonder if he would care to answer that for the Convention.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I was going to say I didn't think about it. I didn't reverse my position. This is not an official public action, it's a person planning something.

And as long as we are on the subject, I might say I was in the newspaper business and publicity business for some years. And I maintain this could deter a lot of worthy projects by a powerful newspaper getting the news in advance and clamping it down, whether or not it was a good proposal. It could be just an individual newsman not liking it.

And while we're on the subject, when we get to these open meetings, I may change my position if this goes through.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE MCINTYRE: I think if we consider initiative and referendum we must consider it as a very responsible act and we must consider it carefully before we act. I think that Proposal 1-106 takes this into consideration in its original form. I think that those that take the initiative and the referendum, propose it to the people, must think very carefully before they act. And I think this is the real root of the discussion and debate here. And I would propose that we defeat the amendment.

PRESIDENT WENSTROM: Any further discussion?

The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-106.

"Section 2. Petition. A petition to initiate or to refer a measure shall contain the full text of the measure and the names and post office addresses of at least twenty-five sponsors, one of whom shall be designated as the chairman."

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Kessel.

Delegate Cart, did you wish to speak?

Those in favor will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." I believe the "nays" have it.

DELEGATE KESSEL: Call for a division.

PRESIDENT WENSTROM: Call for division. That's a sufficient number. Those in favor of adopting the amendment will vote "aye," and those opposed will vote "nay." The Clerk will open the key, you will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The vote indicates 42 "ayes," and 48 "nays," eight delegates absent and not voting. The proposed amendment failed.

Delegate Omdahl.

DELEGATE OMDAHL: Mr. Chairman:

This has to be — we have to make a motion to temporarily suspend the rules? We haven't amended it?

PRESIDENT WENSTROM: Haven't amended it.

Is there any further discussion on Committee Proposal No. 1-106?

The question before the Convention is on the first passage, Committee Proposal 1-106. Those in favor of its passage will vote "aye," and those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses there were 72 "ayes," there were 18 "nays," eight delegates absent and not voting. Committee Proposal No. 1-106 has passed.

We will be on the —

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen

DELEGATE HAUGEN: Might we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order.

DELEGATE HAUGEN: I would like to get about three proposals off this list of ours before the week ends. I would like to ask permission to withdraw Delegate Proposal 2-62, which I introduced, Delegate Proposal 2-70 introduced by Delegate Burke, and I have permission to ask that it be withdrawn.

PRESIDENT WENSTROM: Delegate Haugen requests unanimous consent of the Convention to withdraw Delegate Proposals Nos. 2-62 and 2-70. Hearing no objection, your request is granted.

DELEGATE HAUGEN: Now, Mr. President, —

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: — I would like to move — I do move that Committee Proposal 1-117, which is on the calendar without recommendation, be indefinitely postponed. It was submitted by the committee as an alternate for 116, which was adopted this morning. I have the permission and the consent of the committee to ask for its indefinite postponement.

PRESIDENT WENSTROM: Delegate Haugen moves that Committee Proposal No. 1-117 be indefinitely postponed. Is it seconded?

DELEGATE ERICKSON: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Erickson.

Delegate Lander.

DELEGATE LANDER: Mr. President:

At three minutes to three this is, I imagine, a rather hopeless request. But I would like to request at least a divided vote on it so it could be recorded. The reason for this is that I voted for 1-116 although I preferred 1-117. This is with other people who had that preference and voted oppositely. We have not ever had an opportunity in order to reflect if we really preferred 117 to 116. I would

only say if you like 117, let's vote against postponing it indefinitely, and then we can discuss it again next week if necessary.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

We have passed 116. I would resist the motion. I think that we have accomplished what we have started out to do. The difference is not that great. We will be — if we pass this we will be only cluttering up our records. And so I would hope that the delegates will vote "no" on this motion.

PRESIDENT WENSTROM: Delegate Lander has moved —

DELEGATE HAUGEN: Lynn, you are opposing my motion.

DELEGATE AAS: Excuse me. Vote "yes" on this motion.

PRESIDENT WENSTROM: Now, Delegate Lander, as I understand it, you request a recorded vote on the motion to indefinitely postpone?

DELEGATE LANDER: Yes, sir.

PRESIDENT WENSTROM: Will ten delegates rise if you wish a recorded vote? That is sufficient.

DELEGATE KELSCH: Mr. President:

Will the Clerk read the proposal?

CHIEF CLERK GILBREATH: Committee Proposal No. 1-117, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 174 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created, both of which pertain to raising of revenues.

"SECTION 1. REPEAL.) Section 174 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Raising of Revenues. The legislative assembly shall provide for the raising of revenues sufficient to defray the expenses of the state for each year. The legislative assembly shall not levy an annual property tax based on value for state purposes except for state elementary and secondary public educational purposes and for not in excess of two years unless reenacted."

PRESIDENT WENSTROM: The question before the Convention is on Delegate Haugen's motion to indefinitely postpone the proposal we just heard read.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it.

DELEGATE LANDER: Mr. Chairman.

DELEGATE KELSCH: Mr. President:

A recorded vote was requested.

PRESIDENT WENSTROM: I'm sorry. Those in favor of indefinite postponement will vote "aye;" those opposed will vote "nay." The key will be opened and you will record your votes.

Has every delegate voted? Any delegate wish to change his vote? The key is closed. The vote — the roll call indicates 64 "ayes," 27 "nays," seven delegates absent and not voting. Committee Proposal No. 1-117 has been indefinitely postponed.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Continuing on the twelfth order, this is the last day to do this, I'll be brief. I move that we reconsider the action by which we passed Committee Proposal 1-72.

PRESIDENT WENSTROM: 1-72, Delegate Dobson?

DELEGATE DOBSON: Yes, sir.

PRESIDENT WENSTROM: Delegate Dobson moves that the Convention reconsider the action whereby we passed Delegate — or Committee Proposal 1-72.

DELEGATE HAUGEN: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Haugen.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: The reason I'm making this motion is because some officials of the news media of North Dakota have expressed concern about the amendment we attached to this bill when we passed it. The amendment was to insert the word "privacy". It's felt that this could cause some considerable problems for the news media. For example, if a newspaper printed a story about some person, that person could possibly go to the courts, say his privacy had been invaded. We're going to look for the support, I think, of the news media when we go to the special election. I don't think we want a provision in our Constitution which may subject them to nuisance lawsuits. That is why I move the reconsideration. If the motion carries, the proposal will be placed on the calendar, and the motion be made at a subsequent date to delete the word "privacy".

PRESIDENT WENSTROM: You heard the question. Any further discussion? The question before the Convention is on the motion to reconsider the action the Convention has previously taken on Committee Proposal No. 1-72.

Now inasmuch as this has passed the Convention, it will require a minimum of 50 votes to reconsider. In this case, we are going to open the key. Those in favor of reconsidering will vote "aye," those opposed will vote "nay." The key will be opened.

Has every delegate indicated his preference? Any delegate wish to change his vote? The vote is closed.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Are we still on the twelfth order?

PRESIDENT WENSTROM: We are, Delegate Pearce. But just wait until the vote is announced.

The vote indicates there were 51 "aye" votes, there were 39 "nays," there were eight delegates absent and not voting. So the motion to reconsider our action on Committee Proposal 1-72 has been passed.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I understand we are about to adjourn, so don't leave, I'm talking about money.

PRESIDENT WENSTROM: That is correct.

DELEGATE PEARCE: Several days ago I happened to receive a letter from the Higher Education Facility Commission dated January 19, 1972. The proposal which the Budget Committee has considered is to pass \$5,000 from our funds with \$10,000 so that the North Dakota Higher Education Facilities Commission of the state agency responsible for Title 1 of the Higher Education Act of 1965, community service of continuing education, can help publicize the produce of our work here. Since we have neither rules nor any specific statutory procedure for disbursing some moneys, I would like it if the Budget Committee would have the approval of the Convention to authorize expenditures of this \$5,000, which seems to us to be the most money we can get for that amount of money. And I would therefore move that the Budget Committee be authorized to allocate and eventually pay \$5,000 for this purpose.

DELEGATE McINTYRE: Second.

PRESIDENT WENSTROM: Been seconded by Delegate McIntyre, moved by Delegate Pearce, that the Budget Committee be able — be authorized to make an expenditure of \$5,000 for the purpose as indicated by Delegate Pearce.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President:

The other day when your Budget Committee considered this I cast the lone vote against the proposition on the grounds that at that time I was unable to receive an answer to the question of what part of the originally approved budget this expenditure would be made from. I'm wondering now if there's been any determination of that by anyone?

DELEGATE PEARCE: Delegate Baker, there hasn't been any determination. The fund that we have is not lined, except as we have lined in our budget. We have a flat \$600,000. It seemed to the majority of the committee that the decision where to charge it ought to wait a little while to see where we have the best balances.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

I understand a further motion is in order with regard to C.P. 1-72.

PRESIDENT WENSTROM: Well, Delegate Dobson, would you just hold up one second?

DELEGATE DOBSON: All right.

PRESIDENT WENSTROM: Any further discussion on Delegate Pearce's motion to authorize the expenditure of \$5,000? As many are in favor of the motion say "aye;" those opposed say "no." The "ayes" have it.

DELEGATE PEARCE: Thank you, Mr. President. Now before I lose the floor, I have one other money matter.

It has been suggested by numerous people that this Convention ought to have its picture taken and produced into a composite picture of all of the 98 delegates, such as the legislature has frequently done. We have obtained three bids to do that which would provide 110 11 by 14 of these pictures, one for every delegate, plus one 38 inches by 49 inches which would hang in some appropriate place if they will let us hang it somewhere. The bids, as they sometimes do, vary. One is for \$1,695, one is for \$1,670, and the third is for \$891. The Budget Committee has not had a chance to meet them because we just received the bids. I would like an expression from the Convention whether the Budget Committee should authorize a contract. We need to know now because there will be portraits taken out in the hall beginning probably Monday. And there will be six proofs furnished with retouching. So if you don't like how you look the first time, you can change it a little. But it will take about a week for the proofs to get back. So we have to do this quickly before we leave here.

So I would like to make this motion: That the Budget Committee be authorized to accept what in their judgment is the best bid if you wish to proceed. If you vote it down, why then I assume you don't wish the pictures to be taken.

DELEGATE CHRISTENSEN: Second.

PRESIDENT WENSTROM: It's been moved and seconded that the Budget Committee be authorized to take what they deem to be the better bid.

Delegate Baker.

DELEGATE BAKER: Mr. President:

I have the same question about this expenditure as I had about the other one. And if the answer is the same as I had about the other one, then I want to know what the purpose of a budget is in the first place.

DELEGATE PEARCE: Do I have to answer that?

PRESIDENT WENSTROM: Anyone answer the question?

DELEGATE PEARCE: Well, the only answer I can give is the same one I had. We are not limited in the amounts that we spend for specific things except the \$25 a day and the allowances. We have more than sufficient money to do this. But it seemed to the committee that we ought not to be picky at this stage until we see what our final expenses are. We don't know what things are costing us. For example, we have a budget amount for the Journal. And I would like to say that up to this morning before we started today we spent \$6,000 on the Journal. It cost us about \$21.40 a page. The cost will probably increase

because there will be more roll calls. And as you will notice, you can only get about two roll calls on a page. So the more we talk the more it costs. We don't know whether we will have a surplus or a no-plus in that line. This budget was adopted last April, and we're still learning to live with it.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I frankly can't see where any great public service is being served by this kind of an expenditure, and I intend to vote against it.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I feel exactly the same way as Delegate Maxwell.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: You can make it three.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I feel the same way. I don't think we should spend this money for pictures. There must be a better way to spend it.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I would much rather use my high school graduation picture.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the authorization for the expenditure of funds for the purpose of having pictures taken of the delegates to the Convention.

Delegate Meidinger.

DELEGATE MEIDINGER: Why don't you open the key and let us go home?

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question is on the motion. As many as are in favor of adopting the motion will say "aye," those opposed will say "no." The "ayes" have it.

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

I know the hour is getting late, but I miscounted the days on the time for reconsideration. I've just talked with Chairman Longmire of the Judicial Committee, and it is my intention to move that Committee Proposal 1-11 be reconsidered. As you recall, this is the judicial article. The Minority Report was turned down on Tuesday on a vote of 44-to-50. In the last minutes before the final vote was taken a proposal by Delegate Hill was turned down 46-to-48. It was our thinking at that time that it would be laid over until Wednesday and we would have some time to work on the amendments. However, it was moved to the top of the calendar and was passed before further refinement of Hill's amendment could be worked out. And now I haven't had a chance to talk to all the members of the Judiciary Committee, with the exception of a few, and I just talked with Chairman Longmire, and I think that if we could have this reconsidered that the committee could work out some acceptable amendment to the article. And this would then preclude a move to have this thing submitted to the Ballot Committee as a separate issue. We feel that we could save a lot of time if we could work out a suitable alternative to the Majority Report without having to go through the route of balloting for a separate side issue.

So at this time, Mr. Chairman, I would move that we reconsider our action on Committee Proposal 1-11.

PRESIDENT WENSTROM: Delegate Aubol moves we reconsider our action whereby Committee Proposal No. 1-11 was passed.

Do we have a second?

DELEGATE HOGHAUG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hoghaug.

DELEGATE KESSEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Before I would want to vote on that I want to know what the amendment or the proposal is. I wouldn't want to see this opened wide up again to go over everything. If they add a proposal somewhat in line with what we think, I would vote for the reconsideration. But just blindly voting for reconsideration, I couldn't do so.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President:

If the amendment prevails or the motion prevails it would be my thinking that as the Judicial Committee would get together and talk about this, there are two or three possible solutions to the problem as we see it. And I wouldn't attempt to go into all of them now. But it would be my thinking that we would not be opening the thing wide up again at all, we would stick just to this one area. We can't come to agreement in the committee on this one point, that then — we can then recommend that the body pass it as it was initially passed.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I wouldn't oppose the reconsideration. I don't know myself what the amendment is, and I don't know whether I'd be in favor of it or not. But if the Convention wants to reconsider it, our committee will give a new look at it for that one area only.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Unless Delegate Aubol can come out with a concrete statement other than the generalities he has dealt in in the brief moment this afternoon, I am going to ask that we resist his motion for the following reasons: Number one, it has been shown in the past couple of days of deliberation that we were all over the age of twenty-one when we considered Proposal 1-11. We voted on it accordingly. We all knew what we were doing when we voted on it for final passage. And I am certain that we all understood all provisions of this proposal as well as we have understood all of the other provisions of the proposals that we have voted final passage on. And for this reason I would ask that the motion be resisted unless a definite statement limiting the area and scope in which we are to review the issue would be forthcoming. I ask the delegates to keep in mind that we have considered this approximately since April 4, 1971, to present.

PRESIDENT WENSTROM: Anything further? Delegate Kessel.

DELEGATE KESSEL: I'm wondering, does this take a two-thirds vote today?

PRESIDENT WENSTROM: It is my understanding, Delegate Kessel, that it will come back by a vote of 50. Inasmuch as it was passed last Wednesday, it would be Thursday and Friday.

DELEGATE KESSEL: I would add that I certainly don't want to personally, being a member of this committee, preclude them from having another chance at it. But I thought if it took two-thirds today it would only take two-thirds Monday and they would be in a position to show what they had in mind. But if it takes two-thirds then it might make a different story.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I would yield to Delegate Gipp.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I would tend to consider Delegate Aubol's request very seriously. I know that we have discussed this quite a bit, as much as we could upon the floor. And I know that the committee has been over this again and again. I am on that committee. And I do think that as Mr. — as Delegate Aubol has explained it hopefully that we would be able to resolve the issue and bring

it back from Committee back to the floor. This seemed to be what Delegate Aubol indicated. I do think some consideration should be given. I hope that will be given by the floor here. Naturally, I think we leave the thing open again by bringing it back as we would if we do reconsider it. But I think it would be a wise choice.

PRESIDENT WENSTROM: The question is on the motion to reconsider.

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

Just in reply to Delegate Hartl, actually we are trying to save the Convention some money and the people some agony because we feel that this thing could be settled in a very simple manner. Then we won't have to go through this alternate proposal business and we can take care of this problem of the entry in one easy move.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I think we ought to remove the mystery here for the delegates, too.

As I understand what you wanted to propose, Delegate Aubol, was to work out something whereby you might be able to put two names on the ballot by a nominating commission when there was a place to be filled; is that correct?

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. Chairman:

That is one of the ideas that have been advanced. In fact, that was advanced by one of the members of our committee who is not a part of the Minority Report. But there are others that I think we could also consider.

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: The question is on the motion to reconsider. In that it will take at least 50 votes to reconsider, the key will be opened and you will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll call indicates 40 "ayes," 50 "nays," eight delegates absent and not voting. The motion to reconsider has failed.

The Chair will recognize Delegate Dobson.

DELEGATE DOBSON: I understand Committee Proposal 1-72 is now pending somewhere in limbo. Therefore, I move that it be placed at the top of the tenth order.

PRESIDENT WENSTROM: Delegate Dobson moves that Committee Proposal No. 1-72 you will recall was just recently, just moments ago, reconsidered, be placed at the top of the calendar.

Do I have a second?

DELEGATE DIEHL: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Diehl.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Committee Proposal 1-72 is now at the head of the calendar.

Delegate Cart.

DELEGATE CART: Mr. President:

At this time I ask unanimous consent to withdraw Delegate Proposal 2-67.

PRESIDENT WENSTROM: 2-67?

DELEGATE CART: 2-67.

PRESIDENT WENSTROM: Delegate Cart requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-67.

DELEGATE CART: I can give you a word of explanation. It was the battle which lost over Section 176.

PRESIDENT WENSTROM: Hearing no objection, your request is granted.

We'll be on the sixth order of business — Announcements. Are there any at the desk?

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Are we on the eighth order?

PRESIDENT WENSTROM: We are on the eighth order.

DELEGATE STANTON: I just have an announcement for all the members of the Legislative Functions Committee, and that is the dinner Sunday night is off for the time being. We will try to get something organized later.

PRESIDENT WENSTROM: Any further announcements? Hearing none, the Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: The desk is clear?

Calendar Committee meeting 8:45 A.M. on January — what will that be? — 31st.

I would then now move that we adjourn until 9:00 A.M. January 31st.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It has been moved and seconded that we do now adjourn until nine A.M. January 31st. As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. We are adjourned.

(The Plenary Session adjourned at 3:25 P.M., Friday, January 28, 1972, until 9:00 A.M., Monday, January 31, 1972.)

V O L U M E XXI

(January 31, 1972)

MORNING SESSION

(The twenty-first day of the Plenary Session commenced at 9:07 A.M., Monday, January 31, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is The Reverend Norman Anderson, with the Concordia Lutheran Church of Crosby, North Dakota. Reverend Anderson.

REV. NORMAN ANDERSON: Our Gracious God, we know of no better way to begin the work of this week than by resolving to do our best to serve You by seeking to serve the people of our State. Permit these men and women to understand that Your power has never been obstructed by difficulties nor Your love limited by the confusion of human plans. As these delegates bog down, help them to continue to move ahead. It is sometimes painful to decide what to keep of the old, which is also good, and it requires courage to consider and adopt the new and untried. Let no one be afraid of a new idea or unreceptive to a new thought, lest we pull down the shades of our minds and exclude Your light. Help these men and women to express their ideas, to listen to the ideas of others who differ from them, and then also help them to be humble, to think and listen to a third idea — Your idea.

Thank you for reassuring us that You constantly raise up men and women to meet the needs of Your people in every day. We thank You that You did not just reveal Yourself in the past, in 1889. We pray that You will match these people of our State to Your need of them. Help us to learn from that past; help us to anticipate the future for ourselves and for generations to come. And help us, also, to use wisely this present day. In Jesus' name, Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call.

The Clerk will open the key and you will record your presence.

Has every delegate indicated his presence? Delegate Litten, I don't believe — is your button lighted?

DELEGATE LITTEN: Yes, it is. Tom Roney is the one you're having trouble with.

PRESIDENT WENSTROM: We will close the key.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: I might make the point that I am present.

PRESIDENT WENSTROM: Roll call indicates there are 95 present and three absent.

Fellow Delegates, over the years I have heard of many people that couldn't make up their mind; but, Delegate Roney, this morning was the first time that I actually saw in print, right out in front of me, where he voted both "yes" and "no."
(Laughter)

We will be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 27th day of January, 1972, and recommends that the same be corrected as follows:

On page 309, line 16, delete the word "prevailed" and insert in lieu thereof the word "failed."

On page 311, line 26, delete the word "read" and insert in lieu thereof "reason".

And when so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Paulson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report of the Committee on Revision and Correction of the Journal.

Those in favor will vote "aye" — those in favor of the motion will vote "aye;" opposed "no." The "ayes" have it. The report's adopted.

We'll be on the eighth order of business — Communications and Announcements.

CHIEF CLERK GILBREATH: "Montana Constitutional Convention, State Capitol, Helena, Montana.

"The Honorable Frank A. Wenstrom
President, Constitutional Convention
State of North Dakota
State Capitol Building
Bismarck, North Dakota 58501
Dear President Wenstrom:

I received your good letter of January 20th together with a copy of Resolution C adopted by the North Dakota Constitutional Convention. The Resolution was duly read to the Montana Convention and ordered spread upon our journal. Floor discussion developed that the delegates perceived this to be a 'North Dakota Joke.'

We feel that our Convention, which of course is much younger than yours, is off to a good start. We are all enthusiastic and the delegates are approaching the difficult constitutional issues with open minds, but with lots of ammunition and we expect a good fight on many issues.

Many of us have studied your draft Constitution; we would certainly be appreciative of receiving a copy of your final effort and will be interested to observe how much of it remains after full debate. In many areas we feel North Dakota has certainly pioneered.

Again, we thank you for your greetings; we reciprocate with ours and we wish you well in the remaining days of your Convention.

Sincerely,
LEO GRAYBILL, JR.
President"

"MONTANA CONSTITUTIONAL CONVENTION
1971-1972

RESOLUTION No. 8

"A RESOLUTION SENDING GREETINGS OF THE MONTANA CONSTITUTIONAL CONVENTION TO THE CONSTITUTIONAL CONVENTION OF THE STATE OF NORTH DAKOTA.

"WHEREAS, on July 4, 1889, delegates to Constitutional Conventions met in the great states of Montana and North Dakota to draft constitutions to govern the new states preparing to join the Union, and

"WHEREAS, the following communication was received by the Montana Constitutional Convention of 1889 from the North Dakota Constitutional Convention:

' Bismarck, Dakota, July 4, 1889

'Constitutional Convention:

"The Constitutional Convention of North Dakota sends greeting, and bids you God-speed in your advance movement towards statehood and full American citizenship. May the four new stars about to be added to the national flag not lose in brilliancy through lack of care in laying the foundations of the states to be. Let Washington bring fruit and flowers — Montana, its precious metals — to add to the beauty and wealth of our nation; while the Dakotas will bring wheat and corn for the people of the world.

(Signed) F. B. Fancher, President'

"WHEREAS, the sister conventions proposed constitutions which the people approved in 1889 that have governed our states for 82 years, and

"WHEREAS, the conditions of life have changed greatly since we sister states adopted our present constitutions and because of this the citizens of Montana and North Dakota have voted for and called conventions to revitalize our basic documents, and

"WHEREAS, both conventions are now assembled and have undertaken the rewarding task of preparing proposed constitutions for consideration by their people.

"NOW THEREFORE, BE IT RESOLVED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF MONTANA:

"That the delegates to the Montana Constitutional Convention send fraternal greetings to the people of North Dakota and their delegates in convention assembled.

"That the delegates to the Montana Constitutional Convention congratulate the North Dakota Constitutional Convention and convey their wishes that the North Dakota Convention as well as the Montana Convention will have the ability to draft constitutions that will meet the approval of the people of our great states and serve as examples for all other states.

"BE IT FURTHER RESOLVED, that a copy of the resolution be sent to the President of the North Dakota Constitutional Convention.

"Leo Graybill, Jr. - President

"John H. Hoole - First Vice President

"Jean M. Bowman - Secretary

"ATTEST:

John Hanson - Chief Clerk"

PRESIDENT WENSTROM: Anything further under the eighth order?

We'll be on the fifth order. One more. We'll continue on the eighth order.

CHIEF CLERK GILBREATH: Delegate Wicks wishes to announce the Junior and Senior grades of the High School of Luverne, North Dakota, and their teachers, Mr. Ellingson and Mr. Grove, are in the gallery.

PRESIDENT WENSTROM: Will the pupils that are visiting our Convention this morning please rise and be recognized by the Convention? (Applause)

We'll be on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: A Majority of your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal No. 1-15 has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegates Devine, Engstrom, Fritzell, Jestrab, Lander, Larsen, Litten, Meidinger, Sanstead and Sullivan.

Delegate Meidinger, Chairman.

Delegate Meidinger moved that the Report of the Majority be adopted.

Mr. President: A Minority of your Committee on Education, Resources and Public Lands to whom was referred Committee Proposal 1-15 has had the same under consideration and recommends that the Majority Report be amended; and when so amended, recommends the same do pass.

Delegates Billey, Christensen, Griffin, Knudson, Peterson and Poulson.

Delegate Meidinger, Chairman.

Delegate Billey moved that the Report of the Minority be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Minority Report —

DELEGATE BILLEY: Mr. President.

PRESIDENT WENSTROM: — that the Report of the Minority be substituted for the Report of the Majority. Delegate Billey.

CHIEF CLERK GILBREATH: Just a minute. These reports are printed on pages 293, 294 and 295 of your Journal.

DELEGATE BILLEY: Mr. President.

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: Fellow delegates, before I go into a detailed explanation on this Minority Report, I'd like to make a few general comments about education and the writing of a constitution.

Nearly forty states have articles in their constitution dealing with education. These articles usually include a statement setting forth the responsibility of the state to provide a system of public education. You will note that our Committee has followed this pattern in Section 1. This section has the full support of our Committee.

The second part of any education article usually deals with organizational structure, and this is where our Committee has a difference of opinion.

You will recall last week we considered three proposals recommended by the Executive Functions Committee, each of them having a relation to our education section. Our Committee purposely delayed action on our committee reports until after those committee proposals were acted on. They included Committee Proposal 1-91, which repealed the provision in our present Constitution calling for the election of a Superintendent of Public Instruction;

Second, Committee Propostal 1-102, which provides for the election of certain state officials, but did not include the Superintendent of Public Instruction; and

Third, Committee Proposal 1-100, which authorizes the organization of our state government into no more than fifteen departments organized along broad functional lines.

During our discussion of the Minority and Majority Reports this morning on Committee Proposal 1-15, I think we should keep two questions in mind:

The first one: Should our new Constitution contain a provision establishing an organizational structure for education?

And, second, if your answer is "yes," then how much structure and how much detail should we provide?

I think now we should look at what our current situation is with respect to organizational structure.

Just to give you a little background: First, we have a constitutional provision for a Superintendent of Public Instruction.

Second, we have a constitutional provision providing for a Board of Higher Education.

Third, we have a Board of Public School Education, created by statute.

Then, fourth, we have a Board of Vocational Education, created by statute, the latter two boards being composed of the same members.

There appears to be quite a variance in the organizational structure of education from state-to-state, and I find a similar difference of opinion seems to exist among the delegates to this Convention.

However, I think we should consider what alternatives do we have in the area of organizational structure, and I mention just a few for your consideration:

First, our new Constitution can be silent in organizational structure. A model state constitution speaks only to the material that we have in our Section 1.

Second, we could adopt a revision of Article 54, dealing only with the Board of Higher Education. This was the approach in our original Committee Proposal 1-15. We would say nothing about the structure for the superintendent of Public Instruction, elementary and secondary education, or vocational education.

Third, we could provide for two constitutional boards; one for public school education, one for higher education, and leave the vocational board controlled by statute. This is the approach in the Majority Report.

Fourth, we could create a single board of education, such as Delegate Hill proposed in his Delegate Proposal 2-22, and similar to the Idaho approach, which I will explain later, and leave the details to be worked out by the Legislature.

Fifth, we could create one board or commission to spell out — and spell out some of the details of organization, which is the Minority Approach.

And, sixth, we could disregard all other states and compose a structure to fit the conditions and attitudes of North Dakota.

With this background, I would now like to begin on the Minority Report.

Superintendent of Public Instruction Peterson first suggested that we should take a long, hard look at education and consider the one-board approach, and I'd like to quote just a little bit from a letter he sent to our Committee, dated July 14th, wherein he states:

"There could be one board of education elected by the people from judicial districts, or on some other regional basis. The board would be responsive to the people and responsible for all education from kindergarten through the university.

"To more effectively and efficiently discharge its responsibilities, the state board of education should be divided into two committees or councils — one for elementary and secondary education, and one for education beyond the high school. Each

committee could be empowered to select its executive officers — one a superintendent of elementary and secondary schools, and the other, a chancellor of colleges and universities. The entire board would be in need of an executive officer who would carry a title such as that of Commissioner of Education.

“That board, with its two sub-boards or committees, with their respective boards or executive officers, could meet periodically as individual groups or committees and periodically as one state board of education. The organization of this state board of education should be left to the Legislature and/or the board itself.”

In developing the Minority Proposal, we did not happen to agree with this approach, because we think it is time for North Dakota to strengthen further vocational education as a part of our school system.

Considerable testimony was put into the record by Superintendent Peterson, Commissioner Raschke, and State Director of Vocational Education Carrol Burchinal. You will find this in your Committee minutes, if you want to review it.

If you will now refer to the Minority Report, copies of which have been placed on your desk, and we have just cited the pages in the Journal, and I will explain the various paragraphs.

Paragraph 1 establishes a State Commission of Education. It provides for the Legislative Assembly to determine membership from 15-to-21, the qualifications of the members, their term of office, and the manner of selection, either by appointment or election. Members selected for membership shall be appointed or elected to serve on a particular board.

We felt that we wouldn't want someone interested in higher education to serve on a board for elementary and secondary education, as an example; and, last, members would be removed in the same manner as for Governor.

Paragraph 2 provides for an equal division of that commission into three boards; one, Public Education Board; two, Vocational and Junior College Board; three, University and State College Board.

It also provides for joint committees. Some suggested areas for consideration of joint committees would be public relations with the Legislature, continuing education, and financing of education.

Paragraph 3 provides for the appointment of a Commissioner of Education. He would be the chief educational officer. He would be Executive Secretary to the Commission, head of the State Department of Education, and his term and duties would be prescribed by the Commission.

It also provides for three assistant commissioners. Each would be executive secretary to his board; each would head his branch of the Department of Education and each would be responsible to the Commissioner and his board.

Paragraph 4 charges the Commission with the responsibility for establishing goals, setting standards, and providing planning, coordination and evaluation of educational programs. It also charges each board with the general supervision over its particular area of education; and, third, it allows the Legislative Assembly to require the Commission to perform other educational duties and allows the Legislature authority to increase power of any board at any time.

Paragraph 5 authorizes the Legislative Assembly to assign the responsibility for operation and management of the state educational institutions to the appropriate board. Once the board — once a board receives such an assignment, it has full power and authority to run the institution, control expenditures of funds, and delegate the details of administration to its employees.

The sixth paragraph provides for a combined budget for all educational activities and, second, it requires an appropriation for all educational activities to be in one bill.

The balance of the Minority Report is the same as the Majority Report.

Now, what other steps — what are other states doing with this one-board concept?

During our committee work, we contacted five — New York, Pennsylvania, Michigan, Illinois and Idaho.

New York, of course, has the Board of Regents — 15 members — and they're elected. The Board of Regents appoints the Commissioner of Education and he

serves as the chief educational officer, and in New York we found that a great deal of the authority of the board is vested in this Commissioner of Education.

In Pennsylvania, they have a state board and their state board is divided into a council for basic education, a council for higher education and a committee for vocational education. I have a communication here that the Committee received from the Secretary of the Board, and I'd like to read a couple quotes from the letter.

In the first part, he says: "The powers of the State Board of Education stem from legislation, basically the Act of 1963 that created the Board."

PRESIDENT WENSTROM: Delegate Billey, I have a request here from a delegate who can't hear you. Would you hold your mike just a little bit closer?

DELEGATE BILLEY: Is this any better?

PRESIDENT WENSTROM: I think it is.

DELEGATE BILLEY: Okay. "The Board is responsible for policy for all of education, kindergarten through graduate school and beyond."

In the latter part, he states: "Within the elementary and secondary school structure, there are this year 516 school districts, each with its own school board, each with its own high school and with as many high schools, junior high schools, intermediate schools and elementary schools as the school districts deem necessary.

"I would certainly recommend to North Dakota a school system whereby all of education, kindergarten through graduate school and beyond, is under the policy direction of one State Board of Education and the administrative supervision of one department of education, which is the Pennsylvania structure."

Next we looked to Michigan, which is a fairly-new state, and it has a rather lengthy section on education; in fact, I, myself, was quite surprised that it was as long as it was, considering that when we write a new constitution, we try and keep it short.

In Michigan, the provision in the constitution called for a State Board of Education, and that board appoints the Superintendent of Public Instruction and he is the chief executive officer. There the board consists of eight members who are nominated and elected, just as they are in New York.

Now, Illinois, which has a constitution that we have looked to for several of our provisions — and I'll read this provision, because it's short.

Section 2 provides for a State Board of Education, and it reads:

"There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The board shall have such other duties and powers as provided by law.

"The State Board of Education shall appoint a chief educational officer."

We also contacted the State of Illinois, and I have some quotes from the letter from their secretary which may be of interest to you.

"I would respond by saying that our state has not yet had any experience with this type of board. It was an item which was greatly debated in the Education Committee of our Constitutional Convention and has, at least in theory, been left to the Illinois General Assembly to determine whether or not there will be a single board of education for students from kindergarten through graduate school or if the board of education will function only as a board for students in primary and secondary education."

As far as I know, this decision has not been made, and we do not have any great amount of experience from Illinois to use as a guideline. However, the last state I mentioned is Idaho, where they do have a similar constitutional provision in theirs, which reads:

"Board of Education. The general supervision of the state educational institutions and public school system of the state of Idaho, shall be vested in a state board of education, the membership, powers and duties of which shall be prescribed by law. The state superintendent of public instruction shall be ex officio member of said board."

We contacted the State Board and received a reply back, and I would like to read a couple of quotes for some additional information.

"Our board has seven members, appointed for five-year terms by the Governor, subject to approval by the State Senate." So they use the appointment method of selecting members.

Second, "If there is a major weakness to the single board approach, it is that the board is often overwhelmed by the amount of detail to be considered at each meeting. The major offsetting advantage to the single board approach is, of course, that the entire educational effort of the state can be planned and coordinated."

Then, in response to a question about whether he would recommend the Idaho system, his reply is:

"It would seem to me, however, that North Dakota and Idaho share many of the same problems, including our sparsity of population, a number of institutions of higher education which, in the best interest of the state, should articulate well with each other rather than be competitive and, of course, a relatively modest tax base which can be used for the support of public education at all levels."

Now, what type of popular support has there been in the State of North Dakota for this approach?

We had several legislators and individuals testifying in favor of the one-board approach at our hearing and at the special hearings that were conducted throughout the State. Second, the State School Boards Association last fall passed a resolution supporting the one-board idea.

The Governmental Survey Commission, in '41 recommended the creation of one department of education.

The School Administrators conducted a survey, the results of which were just released about the first of the year. The question that they were asked — and 150 were contacted — "Do you favor one over-all State Board of Education, or a continuation of the present set-up?"

94 of the 150, or 63 percent, favored the one-board concept.

And, fourth, and what I consider the most significant support for this idea, came from the weekly newspaper poll last fall. There were eight different weekly newspapers. Each sent out 200 questionnaires and covered the State from Kenmare to Lisbon in eight different areas. Based on the returns of about 500 of these questionnaires, that poll showed 49.1 percent in favor of the one-board concept, 38.7 percent against, 12.2 percent undecided. I believe this shows public sentiment favors this approach. People are unable to understand why we must maintain three separate boards and three separate departments for our educational system.

Now, I would like to close by pointing out some of the major differences between the Minority and Majority Reports.

First, the Minority Report provides flexibility in selecting commission members. The people may want to appoint them now, but at some date in the future they may want to elect them.

The Majority Report requires appointment.

Second, the Minority Report divides the commission into three boards — three distinct areas of education. The Majority Report divides the areas of education into two constitutional boards and leaves vocational education statutory. The question that I would raise: How long before the Legislature would place vocational education under one of the constitutional boards?

Third, the Minority Report creates a single department, with one executive officer and three major assistants — a team for better leadership in education. The Majority Report continues three separate departments. How will this fit into the new executive structure requiring only 15 departments?

Fourth, the Minority Report provides a commission for planning and coordination. The Majority Report continues three separate boards with no real requirement to work together.

Fifth, the Minority Report gives the Legislative Assembly flexibility in assigning responsibility for operation and management of institutions. A vocational education board, we believe, should have this responsibility at institutions where a majority of vocational education courses are taught.

The Majority Report gives the Board of Higher Education power to operate institutions of higher learning.

Sixth, the Minority Report requires one combined budget and one appropriations bill for all educational activities. The Majority Report keeps budgets and appropriations for three departments separately.

This concludes the explanation of the Minority Report, and I would yield the floor to the Majority for their explanation.

PRESIDENT WENSTROM: Do we have any further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, members of the Assembly:

I would certainly like to thank Delegate Billey on behalf of the Majority signers — the Majority Report — ten of us in number — for what I think was an excellent and a clear explanation and, also, I take the use of this time to delineate some of the hours of the Committee's discussion and deliberation.

Certainly our Committee looked upon this as its prime purpose and gave this report its most extensive time and the most extensive consideration of any of them that came before us. And more than that, I think we would want to say on the Majority that surely no one on that committee knows more about the single-board concept, although we rejected it, then Delegate Billey, and we would like that in the record, because we know of his hard work and of his great concern and of his devotion to that principle which he has just given us.

Now, we are going to divide our report as a Majority into several presentations, and I would simply like to again address myself to the similarities and differences between these two reports, and you do have the two-page handout sheets entitled "Reports of Substantive Committees," and the Majority Report, and, besides, the Journal, on page 293, would follow it, and I hope that the members will follow in those reports. I notice a couple members of the committees looking at Proposal 1-15 in their proposal book. That is not the document which, of course, is under discussion between the Majority and the Minority here today. The similarities are, of course, that we are dealing with public education and that preamble section, Section No. 1, is the same in both reports; so, in effect, we're talking about what remains, rather than the preamble section.

And a major difference is, of course, the creation of what was called in the Minority Report the State Commission of Education, with not less than 15 members and not more than 21 members, which we feel was an unwieldy, a large and oversized, exclusive board of education, and termed by educators the "umbrella board" — the big "umbrella board" that sits over the whole process of education, and we in the Majority rejected that overall, large, exclusive and, in our view, unwieldy board.

Now, Delegate Billey's proposal in the Minority Report does divide that large number of people into three groups — a group concerned with public school education, a group concerned with vocational education, and a group concerned with the Board of Higher — the current Board of Higher Education, the old Article 54 of our Constitution, and we do recognize that division and, as he pointed out, this is a distinct and separate break-up of the large group into smaller groups.

Now, at the same time, I think you will find that there's an inherent danger in that process, and that danger is that each of these separate boards within the large board become, in effect, special-interest pleaders — special-interest pleaders for their cause, for their particular part of education which they're serving, and we don't think that's advisable. We would rather have the separateness which is provided for with two boards in the Majority Report.

Secondly, we were concerned with another consideration, and that was that there should be equal status for the Board of Higher Education as it now is existing in the Constitution, for public school education. So, if you look at the Majority Report, you will find a separate Section 2, which creates a state board of public education which shall supervise a uniform system of elementary and secondary public education, and that's our difference, because our Section 1 and their Section 1 are the same.

Our Section 2 of the Majority says, "There shall be a state board of public education." That board, incidentally, is now created and existing in North Dakota statutes. However, we believe it should be in a constitutional provision.

So that's our program in Section 2. Beyond that, Mr. President, and members of the Assembly, I think we want more influence for elementary and secondary education. If there was one consensus of the Majority in that Committee, it was that we need more influence for elementary and secondary education, and that can be done by establishing our Majority Report, Section 2, a public school education board, and that board, in effect, then, would, as has been pointed out by Delegate Billey, take the place of the appointment — with the appointment of an administrative officer to be designated by title by them, and whose duties shall be defined by them for that individual.

Our second — our third concern was to maintain the control of education at the local level, and I think here the Minority has a particular problem with their proposal, because I think, in creating an over-all, inclusive, encompassing board, they have had to give that board the power to run all types of educational institutions and operations in the State of North Dakota. If you look at that Minority Report, the first sentence on page 2 says, "The commission shall establish goals, set standards, and provide planning, coordination and evaluation of educational programs." And I think there are people at the local level who would be very disturbed at that kind of suggestion coming to them from an over-inclusive, all-encompassing board.

At this time, Mr. President, I would yield the floor to a second presenter for the Majority — Delegate Engstrom. Delegate Engstrom.

PRESIDENT WENSTROM: The Chair will recognize Delegate Engstrom.

DELEGATE ENGSTROM: Mr. President, fellow delegates:

Our Committee spent a great deal of time in preparing these reports. Delegate Billey referred to messages to our Committee from the Superintendent of Public Instruction, and these came early in the months of our meetings as the Committee.

I would like to refer now to — for a moment to our November report, in which the Superintendent of Public Instruction apparently has had some change of heart, because he now questions why it is necessary to change the educational system at all, and, in effect, says that he would prefer that the present system be left as it is. The Director of Vocational Education was also present at our November meeting and he favored maintenance of the present system, and the Commissioner of Higher Education stated, too, that we should stick with the present system. He felt that creating an umbrella board would give no assurance that public education would receive more support from the Legislature than it does at the present time.

There has been some concern expressed as to whether or not there would be cooperation between these two boards as presented in the Majority Report. All three of the directors in the areas of education today admitted to us that they — there is excellent coordination at the present time, even though there is no single board. There has been no difficulty in coordinating the vocational education, public education and higher education. I feel that these areas would still be well-coordinated under a two-board system as presented in the Majority Report. I think this will largely be achieved by the interest and dedication of those persons who are on such a board.

The main differences between the Majority Report and the Minority Report are in the functions of the board as they relate to their areas. The Board of Higher Education, as noted, would supervise, operate and control state institutions of higher learning. The Board of Public Education would offer direction, support and supervise public instruction. This would retain the autonomy of the local school boards.

President Nixon, in his Message to Congress a week ago, alluded to this when he was speaking of federal aid to education. If you will remember, he stated that as federal aid to education is granted, one thing that must be definitely preserved is the autonomy of the local school board. This the two-board proposal of the Majority Report does.

I would request your support for the Majority Report.
Thank you.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President and fellow delegates:

The Minority Report, at first glance, does have appeal for those looking only

at theory. It looks good. But after months of study and testimony, as has been said, it was rejected by our Committee.

The basic question is: Why should there be a fundamental change now?

One delegate testified before our Committee that the record of the Board of Higher Education had been too successful. I wonder, can a board ever be too successful? I think the point was that this might rub off on other areas of education; but, again, it probably would not when used in a different context.

One big area of concern in the Minority Report is the statement that the Legislature may assign — or, if you please — “reassign” the management of a state educational institution to the appropriate board or committee at any time. This could be a shuffleboard type of operation, where institutions would pass from one side of administration to another at any time. People serving on an umbrella board would also have a full-time job keeping informed on all areas of education. The business of just higher education takes a lot of time. Consider then adding the vocational education for both secondary and post-secondary and, also, for continuing education, as well as adding the whole gamut of problems from kindergarten to high school with problems we know now and those we could not even visualize as being in existence, ten, twenty, thirty years from now. Other states having one umbrella board, of course, do not have comparative situations to North Dakota’s educational system.

Other problems to consider in this Minority Report are, of course, as has been mentioned, the local government of elementary and secondary education — a principle very dear to local communities. Also, would we want over half of our State’s budget to be under the control of one group of people?

The purpose of constitutional authority for higher education is clear: It is used to put the management and control of the State aggregate institutions beyond the dangers of vacillating policy and bipartisan ambition, and that would become a possibility in the Minority Report. It is vital that higher education remain as a constitutional board, as the people dictated, when you put Article 54 in the Constitution. We all want continuing good education for all levels of all people — the best possible education for North Dakota. Extreme caution should be exercised by the delegates before something happens here that causes a loss of autonomy of local school boards, as well as a reduction of the constitutional power for a strong, independent Board of Higher Education, a board which can continue to be free of political interference, and to go to something untried, when we know the situation existing is good and effective. I urge a “nay” vote on the Minority Report, and I yield to Delegate Lander.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: I’m sorry.

PRESIDENT WENSTROM: Delegate Litten, I believe you asked for the floor.

DELEGATE LITTEN: Well, Mr. President and fellow delegates, I didn’t mean to get myself interjected here, but I would like to make one or two very brief comments.

I believe almost everything that needs to be said has already been said; but there are two or three salient points that I would like to direct the attention of the delegates to.

In the first place, I submit to you ladies and gentlemen that we are talking about one of the most important parts of North Dakota’s Constitution. We’re talking about the quality of education on the one hand, and whether we like it or not, indirectly we have to consider that there are a lot of dollars that go into that quality educational system, and Delegate Jestrab just made mention of the fact that over half of the money appropriated from the General Fund of the State of North Dakota goes into education of one kind or another. This is true.

Delegate Billey a moment ago invited us to take a look at the current situation, and I believe that this is a good invitation. I, likewise, invite the delegates to take a closer look at the current situation. There’s no question but what North Dakota has a superb educational system insofar as higher education is concerned. There could be no quarrel with that statement.

I further submit to you ladies and gentlemen that North Dakota likewise has

an elementary and secondary system that has made great progress in recent years under the system that we have been operating for — under. My own conclusion is that, if we were to try to mix the ingredients of all of the various components and parts of elementary, secondary, vocational, special and higher education under one large, unmanageable board, divided into three or more — in this particular instance, three sub-committees — that we conceivably could have more or less a chaotic and probably a divisive development. Without doubt, the range and the magnitude and the scope of education in North Dakota is so great that I can't conceive that one board, which is the Minority Report, could get this job done as expertly and as efficiently as it has in the years gone by.

I urge that we do not adopt the Minority Report, and I hope that you will cast a red vote against it.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I'll waive, Mr. Chairman.

PRESIDENT WENSTROM: Any further discussion? Delegate Knudson.

DELEGATE KNUDSON: Mr. President, Fellow Delegates:

I'd like to speak briefly for the Minority Report. I think some of the speakers for the Majority Report have found threats in the Minority Report which do not really exist. Several people have mentioned that it would tend to take away local autonomy and local control. I would like to remind you that local school boards are creations of the State Legislature. Education is a state responsibility. The State has long ago delegated certain responsibilities to local boards. I do not feel that the Minority Report changes that at all. I suppose it's quite likely that we will continue to gravitate toward more state control as more of the financing comes from the State. This is something which is going to happen — something which is happening. More and more of the financing of elementary and secondary schools will come from the State, and this is one of the main reasons I am for this Minority Report.

I suppose everyone here knows that this is mostly Delegate Billey's proposal. It's been labeled as the "Billey Proposal" in the papers — in the news media ever since early summer, when it first came up. I got on this Minority bandwagon mainly because of the combined budget feature, which you find on page 2. I have been in the Legislature the past three sessions. I have seen the way educational financing is handled. The budget for the Board of Higher Education comes in as the first bill — House Bill 1,000, or Senate Bill 1,000 — or 2,001, in the alternate sessions. The respective appropriations committees go through the bill with a fine-tooth comb, and its final form is reached quite early. The financing for elementary and secondary education through the foundation program in the three sessions I have been present in this Legislature has been the last thing to be settled. It always ends up with a knock-down-drag-out conference committee fight over a relatively few dollars. I would like to see this whole thing coordinated, and I think it can be coordinated with this type of structure. The Legislature should not have all these battles brought to it. This should be more or less settled in one budget bill which should be presented to the Governor and the Legislative Assembly by the Commission. This should be settled within this Commission. This Commission, incidentally, would be very little larger than the two boards proposed by the Majority. As far as numbers go, there isn't very much difference. But there would be coordination and they would have to settle things between themselves, instead of coming to a Legislature and fighting in front of the appropriations committees.

The question was asked why a fundamental change now when the whole thing has been working so good? Well, I submit this is the time to make a fundamental change. This is when we are considering such things. It was mentioned that over half of the State's budget — half of the money appropriated from the General Fund — is spent for education. Why should this be handled by this small group? I'd like to point out that a budget of approximately the same size as the one spent for education is not handled very directly by the Legislature — the budget for the highway system is under the administration of one person — the Commissioner of Highways. So I don't think that argument carries too much weight.

Several different people in the field of education have come in and spoken to us along the line of "stick with the present system." I wonder if they don't feel a certain amount of threat to their present status in these various proposals. We've — our Committee — has considered many different angles. We've argued over many

different ways of setting up a structure for education, and we finally come in here with this final argument which we could not settle in Committee, and along the way different people have found different types of threats in what we were doing.

I'd like to refer, again, to the threat to local control. I think that's more or less of a boogie man that doesn't really exist in either one of these two proposals. No one wants to take away control from the local school boards.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Mr. Chairman, Fellow Delegates:

I speak — I speak for the Minority Report for a number of reasons. Perhaps the word "minority" is perhaps a misnomer, inasmuch as the public, when polled, has shown an intense interest in the approach to education. North Dakota has made great strides in school consolidation since the inception of the reorganization laws, and we have a small enough number of districts in this State to make the single-board approach far more acceptable than it would have been 15 or 20 years ago.

One of the features of a single board that appeals to me is perhaps the frustration you have experienced, as well as I have, when you want to find out just briefly who's in charge here, and after you have opened many doors, you still haven't found out. Under the single-board concept, the responsibility for all education in North Dakota is laid at the doorstep of one commission or one department — the buck stops there. And sometimes it's well to know where it stops.

Granted, we have gotten along in education and gotten along very well in the State of North Dakota, and I am in complete accord with the Majority, as I think our entire Committee is, particularly in the field of a constitutional board in higher education. A splendid job has been done. In fact, that's sort of been my guiding light — the accomplishments of that Board — and we'd like to transfer that conception to a single board. I see no threat to the local school boards. I'm sure many of you come from a small school district, like I do, and nobody threatens a local school board.

In closing, I would say, simply, that this is a new approach. It's an on-going approach. It's looking out on the other side of the hill. One of the ultimate achievements of this approach will be an opportunity for a board to look at all education, to coordinate all education, and whether a person adopts the present philosophy that we have in the State of North Dakota — I mean by that the way we're operating now — the Majority Report or this Minority Report, the ultimate goal of all of this is better education for all of our youngsters; and somehow I believe in this, and I am of the opinion, and I am quite strong in my belief, that one board dedicated to all education in the long run will pay bigger dividends to the true benefactors — your kids and mine. I urge your support of the Minority Report.

Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Jim Hougen.

DELEGATE HOUGEN: Yes, Mr. President and Fellow Delegates:

I find that I'm rather sympathetic to the Report of the Majority, but there is one thing that does concern me. It seems that the Minority Report has spoken quite specifically to the problem of vocational education; but I can't find too much in the Majority Report on vocational education. Could one of the Majority members of this Report answer this question, please?

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Yes. I'm happy that that question was asked, because I was going to talk on that; and as far as I'm concerned, it wasn't a placed question either. I think it was an honest one.

Okay. I was, however, unhappy that all the other Minority and Majority Reports got the TV cameras out. I didn't know whether to have my makeup on this morning, but I see it's just as well I didn't, because we didn't make it. (Laughter)

But I think that, because this matter of vocational education is of concern, I'm happy to speak on that. This, as you know, has been an area which has been long ignored in our country and in recent years it has become an extremely hot subject, especially as far as federal financing is concerned.

The Minority Report freezes vocational education into one of the groups. We contend, as members of the Majority Report, that the interest of the students in

vocational courses at all levels — and don't forget that vocational courses are rarely, if ever, the entire education of any one particular child at one time — they are much better served by creating constitutionally, as we are suggesting, the two boards which are based on levels of education. The Legislature can then, as they do now, by statute, provide for how vocational education can be handled from time to time. It is in a state of flux, but we must not forget that vocational education is a kind of education such as education in law or English or anything else. It is not a particular and distinct level of education. And thus we believe that the vocational education interests of all students can best be served by the adoption of the Majority Reports.

Then, fellow delegates, I would like to make one other comment, and that relates to the financing of education. I have not been in the Legislature, but I have been before the legislative committees for several years, seeking moneys for elementary and secondary education. That isn't an easy job; but, in fairness to the Legislature, we must realize that one of the reasons that it isn't an easy job is that we, on the local school district level, are not equal and we don't have the same — we do not have the same approach to the Legislature. In other words, some of us have more assets behind us, some of us have more kids, some of us have more land. We have as many arguments between school boards as we have from the school boards as a whole in the Legislature, which is one more reason and, I think — I feel very frustrated today with those of you who may have had this idea in your mind the first time today. It's a tremendous first-blush idea, because it sounds great — one board, one deal, one control, save money, great things! You study it as we have done for the last six months, and we would like to do it — I know many of us personally would think it's a great idea; but as we've looked and looked and looked, almost everybody, which includes all these people who have come before us and said, "Yes, I like one board," so we begin asking a few questions about how it would work, and no one ever gave us a satisfactory answer as to how it would work. It's a beautiful thing on a piece of paper; but that's it.

Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Haugen — Donnell.

DELEGATE HAUGEN: Mr. President, there is considerable concern among people who are interested in vocational education over the wording of the Majority Report, and I have been questioned over the week-end on two words that appear in the Majority Report. If you will look at the first line of page 2 of your printed Proposal, you will see that the wording is "supervise, operate and control" state-operated institutions of higher learning. In the mimeographed report of the Majority, which is the first — this is the first paragraph in Section 3, you will see that that is now worded "supervise, operate and control programs and state institutions of higher learning." In other words, the words "programs and" have been added to this report.

Now, vocational education, in my opinion, is an extremely important subject. It's so important that it should not be neglected or at least some specific understanding should be given on whatever we do about education. Some delegate in his explanation said there's considerable money available, and especially for vocational education, and that money is available through a state board of vocational education, which is now established by law. There are people who are interested in and concerned about the vocational educational program who feel that the insertion of these two words "programs and" may delete from their control the vocational education programs in the State.

I have not yet heard from a member of the Committee a discussion as to why those words are there. I would appreciate an explanation, and I might ask if I could be permitted then a short discussion afterwards, Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President.

Delegate Haugen, those two words took up a great deal of the Committee's time, and our intention with those words was to speak to the future, so that we would not strictly structure in the institutions of higher learning today. There were a number of things that crossed our minds, and certainly we are still open to suggestions as to what those words might be. We were thinking that, for instance, we had hearings in which we were told that the junior colleges were coming in for

more and more state funds and that perhaps at some time they would be under state control. These two words speak to that. Also, in the future of education, we know that great changes will perhaps be coming at a faster rate than they have, and we were speaking, then, to continuing programs of education, extension, and other forms of post-secondary education which may come to us which are not now on the scene. We are open to suggestions as to what better wording there could be, but we have spent a great deal of time on those words in the Committee.

PRESIDENT WENSTROM: Delegate Haugen, did that answer your question?

DELEGATE HAUGEN: Well, yes, Mr. President, but it also points up the feeling of insecurity of the people who are in control of the — who supervise the vocational education program of inserting these words. Chairman Meidinger said it was their hope or the expectation of the Committee that some day the junior colleges may come under the supervision of the Board of Higher Education. Now, the feeling of the vocational education people in the State is that prior to the establishment of a vocational education board, which is also the Public School Education — or Public School Board, that there was not the interest that there should have been among the higher educational institutions in vocational education, and it took another board and another type of control to bring our vocational education program to where it is today, and we don't want to see this growth endangered, and I would very much prefer that these words were not in — were not in; and if they are to be left in, then my feeling is that I would want to support the Minority Report, which gives equal force in the large committee to vocational education in junior colleges.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, just a slight correction to what Mr. Haugen said. It was not the Committee's hope that the junior colleges would be under state control, but a possibility that they might be in the future.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President.

I would like to respond in part to Delegate Haugen's question, and I spoke to him personally about this.

If the Minority Report is defeated and the Majority Report comes before the Committee — excuse me — before the Convention, I suspect that there may be a couple minor amendments to the Majority Report. One of them may address itself to the question that was raised as to the — by Delegate Haugen. The other one relates to whether the Legislature should be able to appoint — decide whether the Board of Public Education should be appointed or elected. So I would hope that this one word does not take away from the entire Majority Report, because there will be a little further action on the Majority Report.

Mr. President, if I may speak on another subject —

PRESIDENT WENSTROM: You may.

DELEGATE DEVINE: One further point there:

Delegate Billey pointed out, fairly, that the Majority Report does not intend to change the role of the three separate boards that we have now. The vocational education is a separate board. It's a creature of statute. Their department head requested that it remain so. We did not see a reason for a constitutional mandate for it, and so it is the Majority of the Committee's Report not to touch their position at this time.

I had one other question raised by a note passed to me by another delegate. He said, "Do you see any budgetary advantage in the Minority Report?" I would like to address myself to this, and it is to the contrary. I see an inherent danger in the Minority Report. They're asking for one appropriation, and say the Legislature — this battle that they have every two years — presuming this this battle is going to be resolved by this board. Now, here's the danger: We're proposing three boards of equal size, and these people are supposed to resolve these conflicts; but there's no guarantee that these boards are going to be — represent three equal thoughts or separation of thoughts. The immediate reaction is — and I'm not going to quote you any particular person — but the immediate reaction is three separate boards. Fine. We'll submit a couple of our members to this other board and we'll get our day in court that we haven't had for so many years. So we may find a 15 or 21-member board that may have 10, 12 or X number of members representing one

particular area of education, irregardless of what board they may serve on. So we're suggesting or injecting politics into the makeup of these boards. I don't think it is elected or appointed to represent a particular area of education. And so this battle is going to be fought before the boards and I don't think it should be fought there; I think this is a proper area for the Legislature to address itself — as to what the respective appropriations would be between these three areas of education. I would hate to see this decided by a 21-member board, particularly if they have twice-every-year terms. I don't think, like I say, if they're appointed or elected, you're going to remove it from the control of the people as far as appropriations, and I feel it's very important that the Legislature make the basic decision as to the division of the funds between these three areas of education.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Would Delegate Jestrab yield to a question?

DELEGATE JESTRAB: Yes, sir.

DELEGATE KESSEL: Delegate Jestrab, you have been a member of the Board of Higher Education for quite a number of years. Could you tell me approximately the time involved in that particular position, so far as you are concerned?

DELEGATE JESTRAB: Well, I am not a member of the Board now. I have not been for the last year-and-a-half, two years. I was on for sixteen years, and maybe I'm just slower, but it took me a lot of time — there's a three-day meeting every month, occasionally an extra meeting; there's a board meeting of the Committee — the Institutional Committee — to which you're assigned, at least once every month, I think; we went to one of the institutions as a three-member group to confer on building or finance, or something, and I had volumes of reading material. I think I must have spent close to a week every month on the work that I did; but, as I say, maybe I was slower, and I don't ever intend to be on a board of any kind of education again. I enjoyed serving; it cost me — I just, also — may I? I received a note from somebody here that said, "What is the amount of salary and expense for present Board members?" It cost me a lot of money to serve, because at the time I first served, I received seven dollars per diem — seven dollars for expenses — and my babysitter cost seven dollars a day. It cost me money to serve, but I'm glad I did.

DELEGATE KESSEL: Thank you. Might I now address a question to Delegate Billey?

DELEGATE BILLEY: Yes, sir.

DELEGATE KESSEL: Delegate Billey, if it takes approximately a week each month for one member on the Board, and you now coordinate all of this under a board of 15-to-21, would it be your intent that you create a full-time board on a full-time salary, or would you hope that you could find individuals that would serve on all of these boards and put in practically a full-time?

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: Mr. President.

Delegate Kessel and fellow delegates:

I would not envision that this would be a full-time professional board. I think the citizen representation could be continued and would envision probably maybe a three — three-day meeting to do the board's work and maybe a one-day gathering at the same time every other months for the full state board. But as far as the amount of work is concerned, I think that just depends on how you organize your work and how well you delegate details of administration to your executive officials.

DELEGATE KESSEL: Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President, on the Majority Report, on the second page, the fifth line down, in the last sentence it says, "The legislative assembly shall not reduce appropriations by the amount of any gift."

This, I think, is a good recommendation, because some institutions have been very fortunate over the years in receiving very substantial gifts. I don't find this in the Minority Report, and I'm wondering why it is left out or if it is covered in something I missed. Could someone in the Minority Report find that?

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: Delegate Unruh and Fellow Delegates:

I think it was probably left out as an oversight, and if the Convention would want to include it, it could be included when the amendments are considered. It doesn't really have any effect on the basic differences between the two reports.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Mr. President, I'd like to address a question to Mr. Devine, if I may.

PRESIDENT WENSTROM: Will Delegate Devine yield?

DELEGATE DEVINE: Yes.

PRESIDENT WENSTROM: You may direct your question.

DELEGATE THOMPSON: At this point I would have to support the Minority Report, unless you're going to explain to the Convention what the amendments are that are going to take care of the vocational interests.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President.

Delegate Thompson, it's difficult for me to say what the amendments are going to be, because the intent was to go back to the Committee, irregardless of what happened with the Minority or Majority. The concern with vocational people appears to revolve around this word "program" that was included in the Board of Higher Education, and it would be our intent to clarify it to show, and of course by statements on the records, that we do not intend that they take over vocational education simply because this word "program" is in there.

Now, I don't know if that answers your question as to vocational education. I think it was clear — or I hope it was clear — that we intentionally remained silent as to vocational education for about three reasons; one, this was their request; number two, it is a creature of statute. Now, there's nothing in the Constitution, of course about it, and we thought that this would provide the flexibility that they need in years to come.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson, please.

DELEGATE HENDRICKSON: Mr. President. I feel somewhat qualified to speak on this subject, although I was not a member of the Education Committee.

As you read from my report in the news about all of this — in my little book — I did attend the University two years ago. My area was counseling and guidance and student personnel work, and quite a bit of study about higher education and the public education. The area that I became most interested in was vocational education, and we had a number of months study in a couple courses in this area and, as I look at this Minority Report, which separates vocational study in the junior colleges, I feel it is a big step backwards. In vocational education, we have to start early. We have to start in the primary grades. It is not a separate area of study unto itself. It is not an area that we can start studying after we're in high school. The past years in the educational field the stereotype or the idea that we have given to our students is "You've got to go to higher education. There's no hope for you unless you go on with your education." We're all suffering from this now. We see these educated students that cannot get work and we see the need for skilled workers. But we have to change this idea way back in the primary grades. We have to give a certain pride in growing up to be a skilled worker. We have to introduce this idea into our elementary education. We have to change our textbooks so everyone doesn't grow up to be a doctor or a lawyer. We've got to put pride in this and we've got to do it early. We cannot take it and make it a separate — a separate educational field that you're going to start after they graduate from high school. Likewise, with your junior colleges, they have more of a relation with higher education. There's a continuity. You start studying in junior college and perhaps — and often usually you go on to higher education. So this cannot be taken apart from the higher educational field. This absolutely, as I say, would be a big step backwards as far as our continuing educational process is concerned.

It distresses me very much, although I know finances are important, but I look to the individual, first, and then let's find out how to finance education. But this separation would not be good for the individual student, for your children and my

grandchildren and children that are to come afterwards. It's really — it's against all that I have learned as far as the vocational education of the individual.

Just one other remark I have to make as I refer back to my recent education, and you find out as you go through college in your early forties, and you listen a lot more and you get rather enthused about this. We had a course on research — methods of research — and when a delegate stands up and tells me about their questionnaire or about the poll that they took, I have absolutely no faith in that. I learned that a questionnaire or a poll can often be how good were you at designing this poll to get the results you wanted, to get the responses you wanted. It might just prove to us that that particular delegate or those particular individuals fashioned a damn good questionnaire which would get the answers they wanted and not prove a thing as far as what people think.

PRESIDENT WENSTROM: The Chair will recognize Delegate Burke.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: I would like to direct a question to Delegate Devine.

PRESIDENT WENSTROM: Does Delegate Devine yield?

DELEGATE DEVINE: Delegate Devine yields.

DELEGATE BURKE: You mentioned, Delegate Devine, that there were three boards -- that there are presently three boards, but in checking the law, I find that the State Board of Public Education shall also be the State Board of Vocational Education; so, at the present time, they're not a separate state board of vocational education.

DELEGATE DEVINE: I don't know if that requires a response. The statement is true. Actually, there are more than three boards. There's a couple other boards that are mentioned in this, too. But we addressed it as three separate boards. There are three separate boards, even though the same people make up some of them, and this can be changed in years to come. What we tried to do was maintain the concept that there were three areas of education at this time and we did not intend to disturb them.

PRESIDENT WENSTROM: The Chair will recognize Delegate Peterson.

DELEGATE PETERSON: I thought I was getting my morning exercise for awhile
(Laughter)

I am a member of the Minority Report, and I do want to say that in Committee we worked very hard on the Majority Report, and I find no fault with it; it's very good. However, I think Jim Billey has an edge on — as regards the three-committee concept that he has, and I want to remind you this is not an umbrella board that he is proposing, and some of the others — I've jotted down answers here — the Committee — the whole Committee wants to improve the education system in North Dakota. I'm sure they all agree on that. We all do. And we are not complaining particularly about the status quo, but we do think, when we write a constitution, if there's any area in which we can improve it, this is what our responsibility is.

Now, another point mentioned was about special-interest pleaders going to the Legislature, and I'm wondering who really speaks for the secondary, the elementary and the vocational, and they mentioned vocational education. We do want to strengthen vocational education, and you will notice in the Majority Report vocational education is mentioned — the two words — where, in the other one, it is spelled out as a committee, and we felt that it should be on equal status, because it is getting — becoming increasingly important.

And one comment was that in Committee people had mentioned — had discussed the needs of better education in North Dakota. There is one thing they all said. They said we need something better. They didn't know what, but we need something better. Now, this was a mandate to our Committee to come up with something better, and in both our reports, we tried very hard to come up with something better and, hopefully, we do have something here for you.

Then there's one other point that talked about the number of people involved in committees here and there, and I was quite appalled to know — to hear that there are now 81 employees for secondary and elementary education. That's a lot of people, and that doesn't include all of the boards, and so forth. So, possibly, by get-

ting a different system, whereby there's a little better distribution, we might be able to equalize that number.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President, just one brief statement.

I share Delegate Donnell Haugen's concern about this wording on controlled programs, and I hope the Majority Report, when it becomes adopted, that somehow that can be amended.

But I do have one brief question to anyone on the Majority Report, and that is I see you say the Board of Public School Education "shall appoint an executive officer whose term and duties shall be prescribed by the board," and it is not mentioned as far as the Board of Higher Education is concerned. Is there a particular reason for that? Not the State Board of Higher Education. Is that right?

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President. I believe, if I'm correct, on the second page, at the very last sentence of the Board of Higher Education, "the board shall appoint an executive officer whose term and duties shall be prescribed by the board."

At least we tried to make them comparable. Is that all right?

DELEGATE CHASE: Okay.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President and members of the Convention:

Just a brief statement that in the last two sessions of the Legislature there have been some tremendous fights for getting more money for vocational education. So I share this concern that Delegate Thompson and others have about vocational education. But I do think that this can be remedied, and I do think that the Majority Report, with the two boards, could lend this strength, because the one board could — the one board on primary and secondary education could do what vocational education needs. I'm thinking of all the counselors that we send out to the different schools by the institutions of higher education and have been counseling youngsters and — you know, for higher education, rather than vocational education, and this — there have been some tremendous strides made in North Dakota in this area and, as has been mentioned, in this area there are federal funds available and there is a need to continue this improvement in vocational education, and I do agree strongly with the Majority Report, with the two boards, and not diluted down to the three-board level.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I may have a little different concern than that which has been presented so far, and that is in regard to the Majority Report wherein we say that "No money raised for support of public schools of the state shall be appropriated to or used for support of any sectarian school." And I agree with that in basic principle. I am, however, concerned by the number of children that are in any community where they are probably left without much support from anyone and that are those that require a special type of education, be that because of a physical disability or because of mental retardation.

Now, I don't know what is available probably to some of these youngsters, but I do know that they ought to have the support of someone, and I'm wondering why, or perhaps — perhaps some member of the Committee could tell me that if a school district is unable to provide the kind of services that a particular youngster might need, is it not possible for that school district, from a more economical point of view, to buy that service from someone, regardless of whether that happens to be a sectarian type of training or not? I think that — to me, it would seem to be good economics in some of the small districts, where it isn't possible, probably, to give the type of services to one particular child or several — maybe two or three — that it would be much more economical and a better business to perhaps buy this service, no matter where it might be available, and I'd like to address that to some member of the Committee, because I think it is an important thing for many retarded and probably physically-disabled children in our state.

PRESIDENT WENSTROM: Delegate Kundson.

DELEGATE KNUDSON: Mr. President, if I may have permission to speak again.

I should point out to Delegate Urdahl, and possibly others, that Section 1 is part of both reports. The Committee is united on Section 1. The third paragraph of Section 1, to which Delegate Urdahl refers, comes from our Present Constitution. The first sentence: "Schools and institutions so established shall be free from sectarian control." It is required in almost that exact wording by our Enabling Act, and the second sentence, "No money raised for support of public schools of the state shall be appropriated to or used for support of any sectarian school," is the language of our present Constitution. We considered at one of our early meetings — we considered a revised version of that sentence, which we thought actually said the same thing. This was regarded as a threat by some interests in the State, and they requested very strongly that we return to the original language.

Now, I didn't really speak to the point of Delegate Urdahl's concern at all, but I thought I should point out that Section 1 is a part of both reports.

PRESIDENT WENSTROM: Fellow Delegates, I think we've drifted off the question before the Convention slightly. It has been good discussion. However, I think we better get back on the main question — that of substituting the Minority Report for that of the Majority.

Delegate Sullivan.

DELEGATE SULLIVAN: Mr. President. Fellow Delegates:

I rise to support the position of the Majority and urge a "nay" vote on the Minority Report.

I'm very concerned with the attempt of the Minority to place three or four kinds of education under one umbrella board. The magic figure of 51.9 years of age has been mentioned on this board several times. I would like to address my remarks to those under 51.9 years of age. We should discuss how Article 54 happens to be in our Constitution. History has a bad habit of repeating itself, and in this case we should make sure that it doesn't do it again. It was on July 29, 1937, that the Langer Board of Administration dismissed seven veteran staff members at the North Dakota Agricultural College in Fargo. The college was promptly dropped from the North Central Association of Accreditation. It was after this that a group of concerned citizens circulated petitions for what we now know as Article 54. The people of this State passed it on June 28, 1938, with a 93,156 vote to 71,448.

Again, in 1968, the constitutional revisionists decided to take another crack at the State Board of Higher Education. In this measure they said that the Board should act in accordance with the law. The people voted this down by a 35,000 majority. I'm sure that the folks out over the State do not want us meddling with this tried and true State Board of Higher Education. Folks who have attended the National Association of Governing Boards meeting tell me that every other state and every other board is jealous of Article 54. It is second to none, and they all wish that they had it to operate under. It has stood the test of time. We have operated successfully under it since 1939, and I urge a "nay" vote on the Minority Report.

PRESIDENT WENSTROM: The Chair will recognize Delegate Larsen.

DELEGATE LARSEN: Well, Mr. President, Fellow Delegates:

We've heard discussions on both the Minority and Majority Reports. I think we've covered the area very well. But all I wish to say is that I find myself in support of the Majority Report. I feel that the welfare of our young people — our high school students — are very much at hand, and I'm very concerned about this because too often in my years as a schoolteacher — I worked in the elementary and secondary fields — I feel that we must maintain a strong local school board and a local school system, and I believe that the Majority Report will enable us to have this strong support. Because of this small community feeling of mine, I believe that the local school boards should control the local elective boards and run their own schools.

I urge you to vote against the adoption of the Minority Report.

Thank you.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President, the arguments on both sides of the question have been excellent, and it's too bad that we don't all have the option that Delegate Roney has of voting "yes" and "no" at the same time. (Laughter)

But Mrs. Jestrab was asked a question, as a former member of the Board of

Higher Education, and I know that there are some other Higher Education Board members here, and I was just — I was wondering if they'd be willing to give us their views on the two reports. Perhaps Delegate Sinner or Delegate Simonson.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I stayed out of the discussion because, as I think Delegate Knudson pointed out, rightly, I am too involved. I can only say that the success or failure of education depends largely on not the Board so much, I think, as the professional personnel involved, and it would be, you know, sheer hypocrisy to not point out that Mr. Burchinal and Ken Raschke are extremely capable people who want to work together, aren't trying to build kingdoms, and who are trying to work for the good of education.

We have a difficult situation in North Dakota. We're losing population and our situation is difficult by comparison with most states; and yet our State, while it contributes almost more per citizen to education than any state in the Nation, has retained one of the lowest per-student costs of any state in the Nation; and, again, I have to say that the success or failure doesn't depend so much on the Board as it does on the people that those boards hire.

The situation of vocational education is largely created by federal law. Federal law now requires an identification of vocational education alone, and I suspect that it is very subject to change, and I think that to not mold in a permanent response to that federal law is a good idea, and I think that was the intent of the Majority.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: I'd like my presence recorded, please.

PRESIDENT WENSTROM: Delegate Nicholas reports his presence.

DELEGATE BILLEY: Mr. President.

PRESIDENT WENSTROM: Delegate Billey.

DELEGATE BILLEY: Am I permitted to speak —

PRESIDENT WENSTROM: Yes, sir, you are.

DELEGATE BILLEY: — for a minute?

I know the Assembly wants to vote, and I do, too, and move on to other matters.

I would just like to say, in closing, that for those of you who are concerned about taking away the local control from the local public school districts, the Majority Report grants the same amount of authority to their Board of Public Education as the Minority Report, and as far as vocational education is concerned, there is nothing in the Minority that says that there will not be a vocational program on the elementary and secondary level.

In final summary, I'm sure that there are some questions in the minds of the delegates with respect to the language in both the Minority and Majority Report, but I would hope that your vote will be on the concept, and we can worry about polishing up the language when we consider it for first reading and first passage, and I would urge adoption of the Minority Report and request that we have a recorded roll call vote.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Minority Report; that the Report of the Minority be substituted for that of the Majority. A recorded roll call vote has been requested. Will ten delegates please rise? That is sufficient. A recorded roll call vote has been granted.

The question, again, before the Convention is on the adoption of the Minority Report; that the Minority Report be substituted for that of the Majority.

Those in favor of adopting the Minority Report will vote "aye;" those opposed will vote "nay."

The key will be opened. You will record your vote. Has every delegate voted? Are there any delegates seated in the corridor that should be in here on the floor? I see none. Any delegate wish to change his vote? The vote is closed.

Is Delegate Rosendahl here?

DELEGATE RUDE: Mr. President.

PRESIDENT WENSTROM: Delegate Rude.

DELEGATE RUDE: He left about an hour ago.

PRESIDENT WENSTROM: The reason I asked was because he's voted — it indicates that he is absent and that he voted.

DELEGATE RUDE: No one touched his key.

PRESIDENT WENSTROM: So I think we will open the key and re-record the vote. We will open — again, the question — I think you're aware of the question.

The key will be opened. Those in favor of adopting the Minority Report will vote "aye;" those opposed will vote "nay."

The key will be opened. You will record your vote.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: "Yes" and "no" has now been switched to Rosendahl's key. When I turned on my key, his turned on, also, and he's been absent.

PRESIDENT WENSTROM: I'm sorry there, Delegate Roney. The machine was running and I didn't hear you.

DELEGATE RONEY: Mr. President, when I turned on my key, it turned on Rosendahl's key. I assure you I have not turned on his key. (Laughter)

PRESIDENT WENSTROM: Delegate Roney, may I remark or make the statement that the Rule provides a severe penalty for that. (Laughter)

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mine didn't record that time.

PRESIDENT WENSTROM: How do you vote?

DELEGATE SCHEEL: I vote "nay."

PRESIDENT WENSTROM: The roll call indicates 28 "aye" votes, 67 "nay" votes, three delegates absent and not voting. The Minority Report has failed.

The Chair will recognize Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, I just wanted to say that the Majority harbors no false ideas about the profession of its handiwork, and if the Majority Report is adopted, we stand ready to listen to and add to and amend our Report.

PRESIDENT WENSTROM: The question before the Convention now is on the adoption of the Majority Report. Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor will say "aye;" those opposed "nay." The report is adopted.

We will be on the eighth order of business. Do you have any announcements?

It will be on the sixth order. The Majority Report will be on the sixth order of business tomorrow.

Do you have anything on the eighth order? Announce the school, will you, please?

CHIEF CLERK GILBREATH: Delegate Kelsch announces the seventh grade of Christ The King School of Mandan and their teacher, Mr. Messmer, are in the gallery.

Delegate Chase announces that the twelfth grade of the Public School of Washburn, North Dakota, and their teacher, Richard Triplett, are in the gallery.

PRESIDENT WENSTROM: Will the students from these schools please rise and be recognized by the delegates to the Convention? (Applause)

You have surely picked a good morning to visit the Convention. You have listened to the debate on the adopting of one — of two committee reports that were presented from the Committee on Education, and I'm sure that you also found them interesting.

The Chair will recognize Delegate Sinner.

DELEGATE SINNER: Mr. President, I rise on a point of personal privilege.

The story in the press on Saturday about tax exemptions and the role of the Catholic Conference in this issue here forces me to make a response.

I rise to express my regret and embarrassment that the Catholic Conference has brought pressure upon this Convention to place the language of specific tax exemptions in the new Constitution.

Nearly every delegate here believes that the details of tax exemptions have no business in a constitution. Many said so publicly. They know that people generally are sick and tired of the tax loopholes that develop from such constitutional language.

But I accept the collective wisdom of the Convention on the matter, in the face of the thinly-veiled threats to defeat the Constitution if we did otherwise.

What hurts is the fact that the Catholic Conference forced us into this compromising decision. What hurts even more is the fact that tax exemptions, of all things, should be the only issue that the Catholic Conference found to exert its pressure upon, when the issue of "legal help for the poor," "the death sentence," and so many others with moral and ethical implications have been before us.

It is with some reluctance that I make this statement, but the whole thing seemed so out of joint that I could not help but make some public response to the unfortunate public statement made last week-end.

Thank you.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I also rise on a point of personal privilege.

Mr. President:

I rise to express my amazement at the statement found in the Saturday newspapers by a lobbyist. I did not consider my vote against 1-97 as an attempt to subvert the concept of separation of church and state. But I am glad that this lobbyist and the group he represents are so interested in the principle of separation of church and state. I am sure that the future legislators and the people of North Dakota are happy that this lobbyist and the group which he represents have such an interest in the principle of separation of church and state, particularly in regard to funds for a certain form of education.

Thank you.

PRESIDENT WENSTROM: We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Delegate Peters would like to announce that Fred Krause, Jr., former Grant and Sioux County Senator, is a visitor in the chambers today.

PRESIDENT WENSTROM: Would former Senator Krause please advance to the rail and be recognized by the Convention? Delegate Krause. (Applause)

The Chair will declare a ten-minute recess.

(The Session recessed at 11:00 A.M. until 11:20 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

The Convention will please be in order.

The Chair will recognize Delegate Pearce. We'll be on the twelfth order of business.

DELEGATE PEARCE: Mr. President.

If you'll turn to page 343 of the Journal, which is the last page. On Friday afternoon, I moved that the Budget Committee be authorized to allocate and eventually pay \$5,000 for the purpose of matching funds of the North Dakota Higher Education Facilities Commission. This passed on a voice vote. The powers that be felt that it should have been a roll call vote.

Unless somebody requires some more explanation, I would only point out that this is in furtherance of one of the objects that we are required by the law under which we are operating to fund.

I would at this time again move that the Budget Committee be authorized to allocate, and that there be spent from Convention funds, the sum of \$5,000 for the purpose of such matching.

DELEGATE LONGMIRE: Second the motion.

PRESIDENT WENSTROM: Seconded by Delegate Longmire.

Delegate Fritzell.

DELEGATE FRITZELL: I think the publicity over the week-end intimated, Delegate Pearce, that we were having matching funds, five thousand for five thousand, and I'm sure I'm right when I'm saying we're putting up five thousand and getting ten thousand.

DELEGATE PEARCE: That is correct. Not only are we putting five thousand up for ten thousand dollars, there will be the services of a number of people whose salaries do not come out of the fifteen thousand.

PRESIDENT WENSTROM: The question before the Convention — and, fellow delegates, we find no place in the book that says that we should have a roll call vote on — whenever we spend moneys; however, we have followed that policy, and I inadvertently took this on a roll call vote Friday, where, because of our own policy, we should have had a recorded vote.

So at this time I'm going to ask that we open the key, that you record your vote. Those in favor of appropriating the funds will vote "aye;" those opposed will vote "nay." The key will be opened.

Has every delegate voted? Any delegate wish to change? The vote is closed.

The roll call indicates 87 "ayes," 3 "nays," eight delegates absent and not voting. So the roll call indicates the willingness of the Convention to appropriate the funds.

Delegate Pearce.

DELEGATE PEARCE: Mr. President:

Also on Friday afternoon I moved that the Budget Committee be authorized to accept the best bid to prepare a composite picture of the Constitutional Convention, which prevailed on a voice vote. At that time we had three bids, one of which was about — I don't have it in front of me at the moment — I believe it was \$891. The other two bids were over \$1800. Various people have checked on that matter, interviewed the low bidder on Saturday, and it would appear that they can do the work. Therefore, in order to put the matter before the Convention, I would again move that the Budget Committee be authorized to spend and that there be spent and approved from Convention funds the sum of \$1,000 for the purpose of taking pictures — a composite picture of the Convention.

Do I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I'll vote against this motion, but I would like to have cleared up, first of all, Delegate Pearce: Will this be just a composite picture or pictures to the individual delegates?

DELEGATE PEARCE: This is intended to be very similar to the pictures that each session of the Legislature has taken. Each delegate's picture will be separate — a small picture, like a one-column cut — but it will all be arranged in a composite very similar to the list or directory that the Bankers Association has made as a complimentary donation to the delegates. There will be one large one, as I said Friday, but each delegate will get — I think it's an eleven-by-fourteen copy of this picture.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President. I think, for historical purposes, we should have a picture; but considering the AP story that was published this week-end, I think some people get the idea that we're frittering away the taxpayers' money on this purpose. I know it costs me substantially more than \$25 a day to be working on something that produces some income, and I wouldn't be reluctant at all to spend another \$10 out of my pocket to pay for this picture; but I certainly don't want any more burdens placed on the Convention appropriation that don't deal with the substantive issues, and I'm going to vote against spending the money for this purpose.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President and ladies:

I mentioned the other day I'd rather use my high school graduation picture;

but I am against this for two reasons: Not only the money, but you find an awful lot of confusion when this photographer comes up here. He lists certain times and certain days the A's will be there and B's will be there, and busy as we're supposed to be now in the next few days, I don't think we have any business in taking this time off and interrupting our schedule to have these pictures taken.

PRESIDENT WENSTROM: Further discussion? Delegate Dobson.

DELEGATE DOBSON: Will Delegate Pearce yield to a question?

DELEGATE PEARCE: It depends on what it is; but I'll yield anyway.

(Laughter)

DELEGATE DOBSON: Delegate Pearce, does the budgetary situation appear to be such that at the end of the Convention we will have adequate moneys for a public information program and, also, that a sum may be refunded to the State Treasury?

DELEGATE PEARCE: That is very possible and indeed probable.

I may say somebody, I think, ought to support this matter. As a person obviously interested in history, I think it ought to be a part of the archives. If we do it on a ten-dollar basis, there are going to be some blank spaces, and we don't want any blanks. Furthermore, I would suggest that it might almost be a fraud on the voters if Earl Rundle uses his graduation picture. (Laughter)

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HENDRICKSON: I agree with the one that have mentioned that this is something that will be looked for by historians. As they listen to our tapes, I'm sure they're going to want a good idea of what we looked like at the time the Convention was held. A number of the men now, I think, look differently now that beards have come and gone.

I don't think I'm inaccurate in saying we definitely want this picture. If you're worried about money, let's think a little bit about when you make a motion to please put that in the record or in the Journal, it costs \$21 every time we have a page. I think, if you are a little concerned about the money being spent, you'd think twice before you sort of off-handed make that motion, just so your political record might look good along the way. (Laughter and Applause)

PRESIDENT WENSTROM: Delegate Longmire, did you wish the floor?

(Delegate Longmire shook his head.)

(Laughter)

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I agree with the — my fellow delegate from Grand Forks in connection with this. I think we're a little too sensitive here for comments. In the Legislature, if we don't get some criticism on almost every vote we make, we figure we're not getting the proper publicity. I certainly feel that, for the small amount here that it costs in comparison with our other expense, and from the historical value, that we should proceed with this picture, and I hope that some of the delegates who are a little more sensitive than others won't worry about some slight criticism of a small expenditure of this kind.

PRESIDENT WENSTROM: Further discussion? The question is before the Convention — Delegate Cart.

DELEGATE CART: Well, Mr. President, up in the gallery — wherever it may be now — I have a picture of myself when I was a gay, young blade, and now, as a decrepit old man, I think the comparison should be there, also. (Laughter)

PRESIDENT WENSTROM: Any further discussion? Hearing none, those in favor of the expenditure of funds for having a picture taken of the delegates to the Convention will vote "aye," and those opposed will vote "nay."

The key will be opened. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? Delegate Burke, does your place light up? It doesn't on my board.

DELEGATE BURKE: It has, Mr. President. The button is on.

PRESIDENT WENSTROM: Thank you. The key will be closed.

Delegate Litten, did yours light up?

DELEGATE LITTEN: Yes.

PRESIDENT WENSTROM: Roll call discloses 71 "ayes," 23 "nays," four delegates absent and not voting. We will have the pictures taken.

Delegate Pearce.

DELEGATE PEARCE: Mr. President, I would like, seriously, to request all delegates now, regardless of how you voted, to have your pictures taken. We don't want to have to print blanks.

PRESIDENT WENSTROM: The Chair would like to go to the eighth order of business for announcements.

Under the eighth order, for the Committee on Photography, we're going to name Delegate Decker, Delegate Bender and Delegate Gipp. I would further like to make these announcements of committee appointments at this time:

To the Committee on Coordination and Transition, I would like to name Delegate Thompson, and to the Committee on Style and Drafting, I would like to name two additional members — Delegate Kelsch and Delegate Kretschmar.

DELEGATE NOTHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NOTHING: Mr. President, could we be on the twelfth order?

PRESIDENT WENSTROM: I beg your pardon?

DELEGATE NOTHING: Could we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE NOTHING: Mr. President, Fellow Delegates:

At this time I would move that the Convention reconsider its action whereby it passed Committee Proposal No. 1-86 last Monday, and if I get a second, I'll explain why.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

DELEGATE NOTHING: Mr. President and Fellow Delegates:

This has been an issue that came before us and passed by a rather substantial majority, with a rather minimal debate. There are times when the Attorney General's office is required to rule on various matters relating to our current Constitution and, also, of course, our courts are. At times it's necessary for them to go to the committee records and, also, the Convention debate to determine just exactly what the intent of the body was. It would be my hope that the Convention reconsider its action so that we may bring this matter back before the Convention for the debate that the subject, I think, merits. If the motion is passed, it would be my hope that it be placed at the foot of the calendar, so that within the next 24 hours, it could come up for a full debate.

PRESIDENT WENSTROM: Any further discussion on the question to be reconsidered?

Delegate Kessel.

DELEGATE KESSEL: Mr. President, I would hope that the delegates would give this opportunity to reconsider this. I am satisfied in my own mind that this was passed hurriedly and not enough of the ramifications were considered, and I'm hoping that it be allowed back to the floor so every delegate could get more information on this.

Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Thompson.

DELEGATE THOMPSON: I understand that there can be a plea made at this time, but I would ask the Convention to vote "no" on this, if for no other reason than to help generate interest in the 18-to-21-year-old people to check on what we're doing here, and if it would be decided that it be put on an alternate, I would favor that.

PRESIDENT WENSTROM: Further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I would support the move to reconsider. If the Supreme Court at some future date had to rule on the intent of the motion or the

Committee Proposal 1-86, and they took the transcript of the information that we had in committee, compare it with the dialogue on the floor, and later compare it with press reports, I doubt that they could believe that it was the same issue. I think we need more dialogue on this thing, so we can understand what it is to be voted on, and I would agree with Delegate Thompson that it is a good alternate proposal. I think we have to clarify the issues.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I, also, support the motion for reconsideration. Across the State there seems to be a flurry of concern about this measure, and I think we should take a second look at it.

PRESIDENT WENSTROM: Further discussion? Delegate Gipp.

DELEGATE GIPP: Mr. President, I would support the motion for reconsideration, also. I do think that it is a very vital issue. I do think that we did not have enough discussion or debate on the issue the other day, and I do think, for the record and for posterity's sake and for history and for the legal matters that would someday arise perhaps on this issue, that this should be well-discussed by this body.

PRESIDENT WENSTROM: Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President, I also support the motion to reconsider, even though I don't know all the details of what might be in the offing.

PRESIDENT WENSTROM: The question — Delegate Christensen.

DELEGATE CHRISTENSEN: I would also support this thought of reconsideration here, but I do feel that this is a matter that we should settle here and now.

PRESIDENT WENSTROM: Anything further?

The question before the Convention is on the motion to reconsider Delegate Proposal 1-86. Now, inasmuch as this will take a two-thirds vote and this is a proposal that has been passed by the Convention, we're going to have the board — the key opened and you will indicate your wishes.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: I know Delegate Burbidge has a very firm mind on the issue, but his position on taking the pictures is sort of ridiculous!

PRESIDENT WENSTROM: Delegate Burke, I noticed on my board here that it was still showing red, and I didn't know whether to comment on it or not. I'm glad you did.
(Laughter)

Anything further?

The question, then, is on the motion to reconsider, and those that favor reconsideration will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

Delegate Jestrab, have you voted? This board must be going haywire!

DELEGATE JESTRAB: Mr. Chairman, Jestrab votes "aye."

PRESIDENT WENSTROM: Does any delegate wish to change his vote?

The key is closed. The roll call indicates 80 "aye" votes, 14 "nay" votes, four delegates absent and not voting. Committee Proposal 1-86 has been reconsidered.

Delegate Nothing.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NOTHING: Mr. President, I would then move that Proposal 1-86 be placed at the foot of the calendar.

PRESIDENT WENSTROM: Delegate Nothing moves that Committee Proposal 1-86 be placed at the foot of the calendar. Do I have a second?

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: Delegate Chase. Delegate Baker.

DELEGATE BAKER: Mr. President, I'm wondering about the technical situation. If the Chair is satisfied, I am. I was kind of thinking it may have been in the possession of the Committee on Style and Drafting.

PRESIDENT WENSTROM: Delegate Baker, I believe we have a rule to the effect that when they're in the Committee on Style and Drafting, they're deemed to be in the possession of the Convention. I believe there was a rule adopted some days ago to that effect. So you get away from making that one extra motion.

The question before the Convention is that Committee Proposal No. 1-86 be placed at the foot of the calendar. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and 1-86 is placed at the foot of the calendar.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Committee Proposal 1-27 the other day was — we thought we needed it in regard to another proposal, and I believe it was referred back to the Executive Functions Committee.

Now, I didn't realize until today that we needed a motion, probably, to get it back here again. We don't need the proposal. I'd like to get it back here before the Convention. We didn't amend — we didn't do anything with it. What kind of a motion do you want? This has already been passed, several days ago.

PRESIDENT WENSTROM: Has it been passed, Delegate Hernet?

DELEGATE HERNETT: Sure. We got it back to the Style and Drafting. That's where it was.

PRESIDENT WENSTROM: Well, then, Delegate Hernet, if you have nothing you wish to do with the report, why don't you send it back to Style and Drafting? That would be my suggestion.

DELEGATE HERNETT. Well, I can sure do that. How do you do it?

PRESIDENT WENSTROM: Make a motion.

DELEGATE HERNETT: I thought it went there automatically.

PRESIDENT WENSTROM: Where is it now?

CHIEF CLERK GILBREATH: In Executive Functions.

PRESIDENT WENSTROM: In Executive Functions?

DELEGATE HERNETT: Yeah.

PRESIDENT WENSTROM: Do you so move?

DELEGATE HERNETT: All right. I move that Committee Proposal 1-27 be referred to the Committee on Style and Drafting.

PRESIDENT WENSTROM: Delegate Hernet moves that the Committee Proposal No. 1-27, which is in the possession of the Executive Functions Committee, be referred to the Committee on Style and Drafting. A second?

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hendrickson.

Any further discussion? Hearing none, as many as are in favor of the motion will vote "aye;" opposed "no." The "ayes" have it and Committee Proposal 1-27 will be returned to the Committee on Style and Drafting.

We'll be on the eighth order of business.

CHIEF CLERK GILBREATH: An announcement:

There's a hockey game, Concordia College versus St. John's University, Tuesday, February 1st, 7:30 P.M., at the Bismarck Civic Center. The reserved seats are \$2.50, general admission \$2.00, students \$1.25, and children under twelve, fifty cents. Tickets can be obtained at the Civic Center or at the Lucas Store. The game is sponsored by the Bismarck Lions Club, and any of its net profits will go to sight conservation.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President, the Style and Drafting Committee will have a luncheon meeting down in G-7. Lunch will be provided, but you have to pay for it.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I believe the twelfth — we are on the twelfth order?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE RUNDLE: Is this the proper place they're withdrawn?

PRESIDENT WENSTROM: That's correct.

DELEGATE RUNDLE: Mr. President, I ask unanimous consent to withdraw Proposal No. 2-51.

PRESIDENT WENSTROM: Delegate Rundle requests the unanimous consent of the Convention to withdraw Delegate Proposal 2-51.

Any objection? Hearing none, the request is granted.

Fellow delegates, we have arrived at that place in our schedule where we come to paying out the expense vouchers, being that this is the last day of the month, and I'm going to ask that our Executive Director come in and again explain this procedure to the Convention.

Is Dean Bard available?

It seems, fellow delegates, that there are always a number of questions and things pertaining to these expense vouchers, and I think, if Dean would again go through the routine, I think it would help all of us. Dean?

MR. DEAN BARD, Executive Director: Thank you, Mr. President. We have, several days ago, passed out travel vouchers, which we wish that the delegates would complete. Now, the travel vouchers for the month of January we will be checking on February 1st, which is tomorrow, and if any of you have not received your travel vouchers, please stop in the office and pick one up in case you have lost yours or you didn't get it.

Now, one of the things we're going to need on the travel vouchers is we're going to need your receipts for lodging this time, and this is going to cause some complication, I know, because some of you will have paid for lodging through to the end of the Convention, which would be probably the middle of February or the end of February. Now, since we have to have a receipt before we can reimburse you for lodging, this can be handled, if you have paid in this manner, in one of two ways: One, you can wait and put in the receipt with the voucher at the end of the Convention, and we would prefer you handle it this way. Now, if you want to get reimbursed for part of it, then it will be necessary that you get your receipt broken down, and I suppose the only way you could do this would be to go back to your landlord and to have him give you a separate receipt for the month of January, and then give you a receipt for the rest of February. I know that there are several delegates that have paid for the full amount of lodging through to the end of the Convention, and I only mention this because it will cause a little bit of a problem in that respect, and you have those two alternatives — to get separate receipts or to wait until the end of the Convention.

Another thing that we're asking, in order to enable us this time to pay correctly for quarters allowance, is that you show the time of the day that you arrived at your home residence, when you're traveling home. By the same token, we ask that when you leave home to come back to Bismarck, that you show the time of day that you arrive at your residence here in Bismarck.

Let me again mention that, so we make sure we get this straight. We want the time of day that you arrive at home, when you are traveling to your home, and we want the time of day that, when you're coming back, you arrive in Bismarck. The reason, of course — the reason for that is that we need to know in order to pay you the correct quarters allowance, because you get paid for the time you're on the road until you reach home, and you get paid, of course, when you leave to come back.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Where do you want us to put this?

MR. BARD: Delegate Omdahl, if you would put this information under the "Points Covered by Travel" portion on your voucher, and that's the portion which is indicated with a 2 — the first column on the left — "Points Covered by Travel." If you'll just put that information in there.

Now, the only other thing. Be sure and sign the voucher and, if you would have it available tomorrow, the pages will pick it up, and by doing it in this manner, we will be able to get our vouchers in during the week, and then the Accounts and

Purchases people have indicated that, if we get them in this week, we should get the checks back the forepart of next week, and I know that a number of people are interested in getting paid. It's been a long time coming for the quarters and the lodging expenses.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, I'd like to address a question to Director Bard.

Now, in the case — well, this is my own case. I pay my hotel when I check out every Friday to return to Minot, and should I go and get a receipt like for today, or just turn in a voucher up until the end of last week? Now that should be the 29th.

MR. BARD: Mr. President. I think, Delegate Cart, the best way to handle that would be, of course, to turn in the vouchers that you have up to date, and then turn in up to the end of the week, which would be the — is that the 29th?

DELEGATE CART: Well, that's the 29th.

MR. BARD: Yes. I think that would be the best way to handle it — to turn it in up to the —

DELEGATE CART: And then the rest on the next one?

MR. BARD: Then the rest can go on the next one, yes.

Just one further thing, Mr. President, and that is if anyone needs any help with the voucher, please check with Mary Alice in our office. I'm sure she'd be happy to help you.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President.

I'd like to ask you a question, Dean.

If I understood you correctly, you said that we get paid for the time that we drive home. In other words, you wanted the time we arrive home. Now, you turned around then and said that we put down the time that we arrive back here. Now, am I to understand then that you get paid for the time driving home and not paid for the time driving back?

MR. BARD: Delegate Trenbeath, I'm glad you called that to my attention. I was, apparently, in error the first time. What we're looking for is the time that you arrive at home, when you leave here, because you're getting paid for the travel time. We're looking for the time you leave home, when you come back, because, again, we want to pay you for the quarters allowance for your travel time, and if I indicated otherwise in my first statement, I apologize.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: May I ask two questions?

Dean, I never — I got stuck in the snow and I never did arrive home.

(Laughter)

If I put the voucher in I was five miles short, are you going to pay me for an hour-and-a-half of shoveling, instead of five miles, or —

MR. BARD: Delegate Rundle, there will be some special situations like this that will take special care, and we'll try and work that out with you on an individual basis.

PRESIDENT WENSTROM: Any further comment? Any further questions? If not, why thank you very much, Dean, for coming in and discussing this with the delegates.

Anything else under the eighth order?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: When are we going to reconvene? I'd like to know that, so I can announce when the Resolutions Committee will meet.

PRESIDENT WENSTROM: The intention of the Chair is to call the Convention back to order at 1:30.

DELEGATE SCHEEL: Then I would like to announce a meeting of the Resolutions Committee at the west balcony room up here, at 1:10.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: The Executive Functions Committee will meet in their regular meeting room, and bring your lunch with you — right now as soon as we recess.

PRESIDENT WENSTROM: Any further announcements? Hearing none, the Convention will be in recess until 1:30.

(The Session recessed at 11:55 A.M. until 1:30 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:30 P.M., Monday, January 31, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Will the Convention please come to order?

We'll be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-83 has had the same under consideration and recommends that the same be indefinitely postponed, such proposal having been incorporated into Committee Proposal No. 1-85.

Delegate Maxwell, Chairman.

Delegate Maxwell moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-83; that the Proposal be indefinitely postponed.

Is there any discussion? Delegate Lamb.

DELEGATE LAMB: Mr. President.

1-83, as you recall, a few nights ago we had quite a lengthy discussion on it. It's been taken back with 1-85. We have amendments coming on 1-85 that will take care of the matter covered in 1-83, and that's why we requested indefinite postponement.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the Committee Report; that Committee Proposal No. 1-83 be indefinitely postponed.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Preamble, Bill of Rights and Suffrage to whom was referred Committee Proposal No. 1-85 has had the same under consideration and recommends that the same be amended, and when so amended, recommends the same do pass.

Delegate Maxwell, Chairman.

Delegate Maxwell moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of Committee Report on Proposal No. 1-85; that the proposal be amended and, after being amended, that it be given a do pass.

Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-85 will be on the sixth order of business tomorrow.

We will be on the tenth order of business. First for consideration is Committee Proposal No. 1-72.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-72, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 22 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created, which pertains to courts being open.

"SECTION 1. REPEAL.) Section 22 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"All courts shall be open, and every man for any injury done him in his lands, goods, person, privacy or reputation shall have remedy by due process of law, and right and justice administered without denial or delay."

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I have an amendment at the desk, if the Clerk would please read it.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-72 is as follows:

In line 11 of the engossed proposal, following the word "person" delete ", privacy."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Delegate Sanstead seconded.

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Delegates:

This word "privacy" was inserted in this bill when it went through on the floor, and I'm sure that we are delving into a field in which we really don't know the impact of this one particular word. The individual does have a right to privacy, if that is the original question, and it has been proven in law; but we don't know exactly what "privacy" means and, again, by simply throwing it into a constitution, we are creating an impact. We don't know where it might stop. I think that the rights of the individual are well-protected in the proposal as it stands, without this new word.

In the newspaper business, there is a question if the paper could be sued at any time a person's name was mentioned, unless it was taken right out of a court record. We don't know. We don't think that it is a good proposition, inviting lawsuits when the impact is unknown. The right of privacy just recently has been the subject of lawsuits. Generally, the decisions are such that they're right there, but it is not very broadly defined, and we think that we would do well to stay away from it at this particular time, and I trust that the amendment will be approved.

PRESIDENT WENSTROM: Any further discussion? Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I would urge that the delegates resist the amendment. If you look at the section, what we're saying in that section in this proposal is that the courts shall be open for injury done to one's lands, to a person's goods, to the person himself, to the person's reputation and, by amendment last Wednesday night, we added the word to the person's "privacy". We're saying that he shall have a remedy for injury done by due process of law.

Now, the old Constitution has the words "lands, goods and reputation," and the change we're considering is whether or not we deem the matter of privacy to be sufficient or as important as damage to lands or damage to goods.

Now, the question is raised: What is the right to privacy? I think our attention was drawn to the right in this country by Judge Brandeis about fifty years ago. Some of the legal scholars define it as a right to be let alone or the right to be free from unwarranted publicity. What is actionable or what would be damage would be to seek to recover for unwarranted appropriation or an exploitation of one's personality or the publicizing of a person's private affairs with which the public has no legitimate concern.

On reconsideration, I think Delegate Dobson mentioned that the libel and slander laws would protect you. I submit that does not in the protection of privacy. Libel and slander go to reputation. The truth is a defense. The protection of privacy goes to the person's individual peace of mind or the assurance that he will be free from intrusions that cause a substantial mental distress or being exposed to the public. Fifteen states, as far as I can determine — at least fifteen states, either by court decision or by statute, established a right to privacy. Some of the recent states are Arizona, Florida, Indiana, Michigan and Alabama. Some of the courts

have said — the courts have held, that have established this right, have done it under the concept that we all have a right to liberty, that part of liberty is the freedom from unwarranted publicity. The Supreme Courts have spoken on the subject, saying we must balance on the one hand the person's right to his privacy versus the right of the general public to public news. In determining whether the private right is violated, we don't — we don't want to concern ourselves with unreal sensibilities of people, but the test is: Is the publication liable to cause mental distress to an ordinary person in the same kind of circumstance? The truth may be spoken about all matters of public interest and matters of a private nature in which the public has an interest. Now, the right can be limited or waived. It's waived by a person — by a pose for a picture. I waive any complaint that my picture may be published as I appear and act in public, as I'm doing now. I waive any rights by my consent to this conduct as to what I might say or do. Persons in the news — public figures, for instance, running for office — all waive the rights of privacy as to that conduct. One legal authority has put it this way — it concerns the freedom of the press: "The constitutional guarantee of freedom of the press is qualified by the right of privacy, and the press, like any individual citizen, must not abuse its constitutional rights or overlook its obligation to others."

Now, what's happened in North Dakota on this right? There's been concern there would be frivolous suits. Well, let me say that our North Dakota Supreme Court, on May 28th of 1970, has presented to it for the first time in the history of this State the question of invasion of the right of privacy. The case is **Volk v. Auto-Dine Corporation**, in which a Mrs. Volk of the City of Bismarck had given her picture and name to a coal slaw that she — to the company that she used to work for, and a suit was brought. Her name was later used in advertising. She did not succeed in the case. But let me call your attention to what our court said, and I'll quote:

"Whether a tort action lies in North Dakota for an invasion of a person's right of privacy has not been previously considered by this Court. Assuming that a cause of action exists for violation of a person's right of privacy in North Dakota, but without deciding such issue, such an action will not lie in the instant case." And then they go on to say because she consented or waived her rights to privacy. So this is the first time. The case held two things; first, this is the first time this had been submitted. Our court does not know, because the statute was silent in this State whether we have such a right, and I submit to you that we can do one of two things; we could not speak to the subject, and then let a firebrand court establish the right at some future date, or we 98 delegates — and this is our function, I believe — can speak to it and state simply that every citizen of the State who has been damaged in his privacy has a right to his privacy by a right of redress in the courts, and I don't think we need fear what that means. I think we would have reasonable balance and I urge that you defeat the proposed amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: The Preamble, Bill of Rights and Suffrage Committee studied Section 22 over a matter of several months. They did not recommend inclusion of the word "privacy." As has been noted, it was added on the floor, without too much consideration at the time.

I can't see what good the inclusion of this word is going to do, and it would lead to a lot of nuisance-type lawsuits, charging invasion of privacy by a newspaper, television station or radio station — any publication. We have all heard of the wealthy recluse, Howard Hughes. He does not seek or want publicity. Yet he is the subject of a good deal of publicity. It seems to me, under a provision such as this, that he would at least have ground to charge invasion of privacy. That's a good example of a nuisance lawsuit. Everyone is protected in this Constitution from libel or slander or injury done to your reputation. Every person is responsible for what he writes or speaks. We don't need this. So I urge you to support the amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I feel that my next-door neighbor is entitled to counsel, too, here. I would not so much object to guaranteeing in the Constitution that a man could bring a lawsuit for an injury to his privacy if I knew what his privacy was. Again, I perhaps should have introduced a proposal to define all kinds of terms, although I'm sure that in those early days of the Convention I wouldn't have remembered to put in all of the terms that we have been debating about since that time. We have striven at great length sometimes here for clear and definite meaning to terms that we put in. Every word in the Constitution, as well as the sequence of those words, is going to be a subject of court scrutiny in the years to come. Then we come to a word that is a relatively new one, that perhaps we may think we understand; but then, in the light of subsequent events, what does a man's "privacy" consist of?"

Now there are certain things that a man does that I probably won't mention at the moment that would obviously be concerning his privacy. I suppose we should put "her" in, too, in modern language. But when we get beyond those acts, we're in a realm of complete indefiniteness. Clearly, the Legislature, without this word in the Constitution, has the clear power to grant a right of privacy to individuals and to surround it with such definitions and such language as to be understandable what we are doing. Here we have a word that would seek to mean something sometime in the future, without any way of knowing what it means, and I would challenge the Court to search the records and the verbatim transcript of this Convention to enlighten it as to what the word "privacy" means. Even those who are in favor of keeping it in have surrounded it with all kinds of qualifying terms, and that's exactly what the courts and the Legislature may do and exactly what I think the Constitution should not; and, therefore, I would strongly support the amendment to take out the word "privacy."

PRESIDENT WENSTROM: Any further discussion? Delegate Devine.

DELEGATE DEVINE: Mr. President, I hesitate to speak, because I'm not particularly well-prepared, but I would speak in opposition to the amendment.

To answer the question raised by Delegate Pearce, I think "privacy" can be well defined as the word "reputation." It may take a period of time in the courts, but I think the courts are capable of defining this term, if it needs it.

We speak to the effect it may have on newspapers and such others — TV and the rest of it. I feel that there's other rights, other than the newspaper. Does my home have a right to be secure from wiretap or some other artificial things that we spoke to in the Bill of Rights that would be inadmissible for purposes of trial, but not for the purposes of privacy? This is one area. And we have seen or heard any number of abuses by credit companies. So this amendment speaks to organizations other than the Fourth Estate, and I would like to see it retained. I think it's a valuable right to an individual and one that is being frequently abused in the latter years.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I speak against the amendment, too. I think the case that has been mentioned by Delegate Dobson is a clear case of what people have had to do to get away and to protect their privacy. There is no other way but to completely hide to develop and to establish the privacy that they seek.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Mr. President.

The question of freedom of the press in the Constitution has been given unlimited — and I use the word advisedly — freedom to publish what they may, and I think this is a matter that needs to be left there for the protection of the individual. We have already allowed people to come into court to protect their individual environment, and I think this is a more important right than that.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President, I rise to oppose the amendment. In regard to the comment made by Delegate Dobson that the Preamble, Bill of Rights and Suffrage Committee had this proposal under consideration and did add "privacy" in there, there were a lot of proposals we had under consideration and didn't add a lot of things that are added on the floor here; so it is not a valid argument.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I support the amendment for the reason that I

think the word "privacy" is just extra verbiage. In order to have a cause of action, you must have an injury, and certainly if you are injured in your privacy, you're injured in your person and you do have a right the way it is written to do that, without the right of privacy.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Paulson.

Hearing no further discussion —

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: It might be construed that those of us speaking at this particular time could be classified as having a conflict of interest, myself being in the news media. But I can see some real grounds for concern with the word "privacy" in this particular section. I also can see some real concern as far as the word's concerned and the intent of it in 1-72. Now, I supported this word "privacy" in our first vote for the very reasons that were brought out here; yet, this afternoon, and even though I am in the news media — perhaps my conflict of interest is getting the best of me — I'm going to support the amendment. I feel that the word "privacy" has a specific meaning — one that will not conflict with my particular view of my particular position in the news media.

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle?

(Delegate Rundle shook his head.)

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Paulson. Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay."

The "noes" have it. The amendment lost.

The question before the Convention is on the passage of Committee Proposal No. 1-72. Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted?

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, the board doesn't seem to hold our vote. I don't know if we should close it and try it again. It doesn't seem to hold our vote.

PRESIDENT WENSTROM: It does kind of look like the northern lights.

DELEGATE KELSCH: Can we hold the key over, Mr. President? Will that do?

PRESIDENT WENSTROM: Run that one through and try it again.

We will open the key again and see what happens. Again we will vote on the question on Proposal 1-72.

CHIEF CLERK GILBREATH: If we hold them, will it work? All right.

PRESIDENT WENSTROM: Delegate Jestrab — oh, that's right. You don't have it. There's something wrong there.

Has every delegate voted? Any delegate wish to change his vote?

The vote is closed.

CHIEF CLERK GILBREATH: Let's open it and hold it until the machine is done recording, and see whether that works.

PRESIDENT WENSTROM: We're voting again, delegates, just in case you don't know.

CHIEF CLERK GILBREATH: If you'll hold the button until the machine is completely done counting. Let's see whether that will work. I'm going to close the key.

PRESIDENT WENSTROM: We'll take a roll call.

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, I think everybody has seen there were only four "noes." I think it would be unnecessary to go through the time of running the roll call.

PRESIDENT WENSTROM: We have to have it for the Journal, Delegate Hubrig, although I agree with you that that was a nice suggestion.

CHIEF CLERK GILBREATH: I'd love it!

(The roll call was taken on the question as follows:)

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: Aye.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: Aye.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: No.

CHIEF CLERK GILBREATH: Bassingthwaite.

DELEGATE BASSINGTHWAITE: Aye.

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: Aye.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: Aye.

CHIEF CLERK GILBREATH: Benz.

DELEGATE BENZ: Aye.

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Aye.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: Aye.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Aye.

CHIEF CLERK GILBREATH: Birkeland.

DELEGATE BIRKELAND: Aye.

CHIEF CLERK GILBREATH: Brakke.

DELEGATE BRAKKE: Aye.

CHIEF CLERK GILBREATH: Burbidge.

DELEGATE BURBIDGE: Aye.

CHIEF CLERK GILBREATH: Burke.

DELEGATE BURKE: Aye.

CHIEF CLERK GILBREATH: Butler.

(No response.)

CHIEF CLERK GILBREATH: Byrne.

DELEGATE BYRNE: Aye.

CHIEF CLERK GILBREATH: Cart.

(No response.)

CHIEF CLERK GILBREATH: Chase.

DELEGATE CHASE: Aye.

CHIEF CLERK GILBREATH: Christensen.

DELEGATE CHRISTENSEN: Aye.

CHIEF CLERK GILBREATH: Daniels.

DELEGATE DANIELS: Aye.

CHIEF CLERK GILBREATH: Dawson.

DELEGATE DAWSON: Aye.

CHIEF CLERK GILBREATH: Decker.

DELEGATE DECKER: Aye.

CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Aye.
CHIEF CLERK GILBREATH: Diehl.
DELEGATE DIEHL: Aye.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: No.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Aye.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Aye.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Aye.
CHIEF CLERK GILBREATH: Fallgatter.
DELEGATE FALLGATTER: Aye.
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Aye.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Aye.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Aye.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Aye.
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Aye.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Aye.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Aye.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Aye.
CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: Aye.
CHIEF CLERK GILBREATH: Hernettt.
DELEGATE HERNETT: Aye.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Aye.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Aye.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Aye.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: Aye.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: Aye.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Aye.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Aye.

CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Aye.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Aye.
CHIEF CLERK GILBREATH: Knudson.
(No response.)
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Aye.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Aye.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Aye.
CHIEF CLERK GILBREATH: Lander.
(No response.)
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Aye.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Aye.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Aye.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Yea.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Aye.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Aye.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: Aye.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Aye.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Aye.
CHIEF CLERK GILBREATH: Nething.
DELEGATE NETHING: Aye.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Aye.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: Aye.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: Aye.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: No.
CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: Aye.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peters?
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Aye.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Aye.

CHIEF CLERK GILBREATH: Quam.
 DELEGATE QUAM: Aye.
 CHIEF CLERK GILBREATH: Roney.
 DELEGATE RONEY: Aye.
 CHIEF CLERK GILBREATH: Rosendahl.
 (No response.)
 CHIEF CLERK GILBREATH: Rude.
 DELEGATE RUDE: Aye.
 CHIEF CLERK GILBREATH: Rundle.
 DELEGATE RUNDLE: Yea.
 CHIEF CLERK GILBREATH: Sanstead.
 DELEGATE SANSTEAD: Aye.
 CHIEF CLERK GILBREATH: Saugstad.
 DELEGATE SAUGSTAD: Aye.
 CHIEF CLERK GILBREATH: Scheel.
 DELEGATE SCHEEL: Aye.
 CHIEF CLERK GILBREATH: Schmit.
 DELEGATE SCHMIT: Aye.
 CHIEF CLERK GILBREATH: Simonson.
 DELEGATE SIMONSON: Aye.
 CHIEF CLERK GILBREATH: Sinner.
 DELEGATE SINNER: Aye.
 CHIEF CLERK GILBREATH: Solberg.
 DELEGATE SOLBERG: Aye.
 CHIEF CLERK GILBREATH: Sondreal.
 DELEGATE SONDREAL: Aye.
 CHIEF CLERK GILBREATH: Stanton.
 DELEGATE STANTON: Aye.
 CHIEF CLERK GILBREATH: Sullivan.
 DELEGATE SULLIVAN: No.
 CHIEF CLERK GILBREATH: Thompson.
 DELEGATE THOMPSON: Aye.
 CHIEF CLERK GILBREATH: Trenbeath.
 DELEGATE TRENBEATH: Aye.
 CHIEF CLERK GILBREATH: Tudor.
 (No response.)
 CHIEF CLERK GILBREATH: Unruh.
 DELEGATE UNRUH: Aye.
 CHIEF CLERK GILBREATH: Urdahl.
 DELEGATE URDAHL: Aye.
 CHIEF CLERK GILBREATH: Vogel.
 DELEGATE VOGEL: Aye.
 CHIEF CLERK GILBREATH: Wallin.
 DELEGATE WALLIN: Aye.
 CHIEF CLERK GILBREATH: Warner.
 DELEGATE WARNER: Aye.
 CHIEF CLERK GILBREATH: Wicks.
 DELEGATE WICKS: Aye.
 CHIEF CLERK GILBREATH: Wenstrom.
 PRESIDENT WENSTROM: Aye.
 DELEGATE CART: Cart votes "aye."
 PRESIDENT WENSTROM: The roll call discloses 89 "ayes," 4 "nays," five delegates absent and not voting.

Committee Proposal 1-72 has passed.

Next for consideration, Committee Proposal 1-89.

CHIEF CLERK GILBREATH: Committee Proposal 1-89, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 14 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to eminent domain.

"SECTION 1. REPEAL.) Section 14 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner and the interests of the general public and without just compensation having first been made to or estimated just compensation paid into court for the owner."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE SCHMIT: Mr. President.

PRESIDENT WENSTROM: Delegate Schmit.

DELEGATE SCHMIT: Fellow Delegates, there's the amendment or as amended on the sixth order on your desks, just for clarification as it now reads. Committee Proposal 1-89, you understand, is a repeal of the old Section 14. Committee Proposal 1-89 deals with eminent domain and it caused the subcommittee of the Bill of Rights Committee much concern. We realize that when you are taking property from people, you're dealing with a very delicate problem. Section 14, as in our present Constitution, protects the rights of the property owners and provides for quick taking of property by a state department, agencies and political subdivisions. The subcommittee made a great effort to write a new section which included a provision for arbitration and quick take for other than State political subdivisions. After discussing what we had done in full committee, it was decided unanimously that we're getting too legislative and what we would submit Committee Proposal 1-89 as originally amended for your approval.

1-89 is simply a statement to protect the rights of the property owner.

Mr. President, fellow delegates, the Bill of Rights Committee felt it would be unwise to relieve people of their property by the quick-take method and lock it in the Constitution.

Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I thought I'd refrain from making my amendment until the committee discussed more fully just exactly what the Committee Report contained, but if they — evidently they're waiting for me to offer the amendment. I have an amendment at the desk. I hope, Roy, you still remember it. It's called the "Last Proposed Amendment to Committee Proposal 1-89." It's been getting pretty moldy over the days here.

CHIEF CLERK GILBREATH: The last —

DELEGATE TRENBEATH: The "Last Proposed Amendment." It's spelled that way — or titled that way. Could it be read from the desk?

CHIEF CLERK GILBREATH: This is the one with necessary?"

DELEGATE TRENBEATH: No. No. That's another amendment that I think a lawyer is attempting to get in there. (Laughter)

PRESIDENT WENSTROM: Okay.

CHIEF CLERK GILBREATH: Okay. Proposed amendment to Committee Proposal 1-89:

Delete everything in lines 10 through 14 of the engrossed proposal and insert in lieu thereof the following:

“Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner. Provided, however, the state, its political subdivisions and corporations which require right-of-way for transportation, communication, and the transmission of power and materials for public service may take possession of said right-of-way upon depositing an offer of just compensation with the District Court in the county in which the right-of-way is located. Just compensation shall be determined by a jury unless a jury is waived. Only the state and its political subdivisions acquiring property by eminent domain may claim offsetting benefits.”

Renumber the lines accordingly.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I propose — I move that amendment, and if I can get a second, I'll do the explaining.

DELEGATE ERICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Erickson.

DELEGATE TRENBEATH: Well, Mr. President and fellow delegates:

I — evidently the board was trying to tell us something in regard to the word “privacy” and I don't know what it will try to tell us when it concerns property. But as was mentioned on the floor the other day, when we rewrote Article I, we did want — we left out one important part of that Section 1, I believe, and that states that — or says something like this: “All men have certain inalienable rights, among which are acquiring and possessing property,” and I believe that this section here is exactly what concerns a lot of us. I know there were some reservations in the Committee itself. Now, I believe one of the most important basic rights of this country is the right to own and retain property. The very foundation of any democracy, I believe, is protection of this right, or it just wouldn't be in our Bill of Rights. But I believe there's one great weakness in this regard in the Committee Proposal. It leaves the Legislature to provide what property can be acquired with the so-called quick-take method, and it leaves it solely up to the Legislature, and this is what I'm against, and it's a procedure by which immediate possession of property can be had by just depositing an offer to purchase with the court, and the property owner's only defense being if the compensation is just and the necessity proper. Now that could be a pretty vicious tool. The owner does not have his day in court in regard to many other reasons of unreasonable take, such as the location, whether the plan is right or whether the area is right or what the future effects might be of that project upon himself. And certainly the citizen must have greater protection in the taking of his property than just the price he receives for it. I'm a little reminded of the plaque hanging on the wall in the President's office, and it states, “A man's life, liberty and property are not safe while the legislature is in session.”

So here we are in Convention, I believe giving the Legislature some unknown properties in this instance in regard to taking of property. I know other states have spelled out very clearly in what various circumstances the quick-take procedure can be used and how it can be used. Our present Constitution clearly states that the State and its political subdivisions can use the quick-take method for a right-of-way, such as roads and pipelines. I know it doesn't mention pipelines, but our Attorney General has construed that pipelines can fall into this right-of-way provision. Private corporations can provide a deposit in court, but the owner does have recourse for other than just the price.

My amendment, Delegates, spells out what the State and its political subdivisions can quick-take for the future. These are acquisitions that you could eyeball-in, so to speak, and just know what the future effects are going to be on your remaining property or on property in the future, and all their acquisitions by the State gives the property owner his opportunity in court on other than just price. My legislative peers feel that they would propose a quick-take procedure on too broad a range, and in many instances a vast majority of the legislators do not know nor have any chance of knowing the circumstances that exist in some of the other parts of the State. There are such situations in existence presently in my part of the State, where property owners objected, and that they ought to have their day in court and now are losing their property from the effects of just what a quick-take procedure can do to them, and they got no recourse to recover.

Now, I can say that other things could happen where this quick-take method can be envisioned, and I just believe that we can't leave this thing up to the Legislature on this board a scope. I think it has to be spelled out in these circumstances, and we'll all recognize that the quick-take method can and should be used. So this amendment is similar and makes some improvement on our present Constitution. It's similar to other state constitutions, and I certainly hope and believe that this amendment should be passed that I'm offering, and that you will vote for it.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I have an amendment to the amendment.

PRESIDENT WENSTROM: We have an amendment to the amendment.

CHIEF CLERK GILBREATH: Delegate Thompson, are you just adding the word "necessary"?

(Delegate Thompson nodded.)

CHIEF CLERK GILBREATH: Okay. The proposed amendment to the amendment is:

After the first — in the first line of the amendment, after the words "damaged for" insert the word "necessary".

Then the first sentence would read: "Private property shall not be taken or damaged for necessary public use without just compensation having been first made to or paid into court for the owner."

PRESIDENT WENSTROM: Do we have a second to the amendment?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I add this word for fear that the Convention will pass the amendment relative to my committee's proposal, and we won't get back to it, and I hope that this word will help take care of the — one of the major thoughts that my committee had. We sincerely felt that in cases other than for right-of-way purposes, that the public should have the right to tell municipalities or the other agencies having to prove that what they were taking was necessary for the public use. I'd like to cite an example, if I may.

In my county, one agency along the big lake has taken three or four miles south of it for public use. Now, this property is probably the best property for development for cottages that there will be on the big lake and, therefore, it would have the highest possible value for tax purposes, and of course if it is held by a nontaxable agency, there will be no tax there. Now, that seems simple. But what it actually affects is these following agencies: It affects the Township Planning Board, it affects the Township Board, it affects the County, it affects the Tri-County Park Board, and it possibly affects the City's Park Board and the City of Devils Lake's tax structure, if it expands out that far. This board that's taking this property has not had to justify to anyone the reason for it. They just came up with a plan and said, "Okay, people, here's where we're taking it."

I'll give you an example of the value of that property. One gentlemen platted eight lots on the lake shore and sold them for \$2500 apiece. Now, these lots are 100-by-700 feet. In addition to that, those acres immediately behind he sold for \$1,000 an acre; so you can see that it will really be some taxable property that the County is going to lose. Therefore, I feel that, if Grant's proposal is adopted, that the word "necessary" should be in there so that these agencies would have to prove the necessity of their taking before the taking. I talked to some of the people about what they would have to do, and they probably would have to hold a public hearing in order to develop to the public the necessity of the taking and of the use before they actually took it. Maybe it would take a two-week hearing; but they're spending many more weeks than that in lawsuits on condemnation and things like that, which wouldn't have to be done if they would prove the necessity.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment to the amendment.

Delegate Pearce.

DELEGATE PEARCE: Mr. President.

I have, over a good many years, been on both sides of condemnation cases, and I am bothered by the insertion of the word "necessary" at this point. Certainly the right of eminent domain has to exist in our modern society. It has to exist in almost any society. The right of eminent domain belongs to the sovereignty of the state through its legislature. It devolves that sovereignty upon certain others who operate in the public interest. Rural electric cooperatives, generating and transmission cooperatives, as well as investor-owned utility companies share it. Counties, cities, the State, townships, other public agencies share it. There are other things apart, and so forth.

Now, the problem to me, as a lawyer, is where is this necessity proven? Delegate Thompson says a public hearing; but what happens at the public hearing? You know how well public hearings are attended. This is a public hearing. And who votes? Do a majority of the people who make a public hearing vote one way or another, or are we going to leave that determination of necessity to the boards — the public agencies that we already have? Otherwise, maybe it's the jury.

Now, are we going to leave the necessity of something in a particular place because we're talking now about specific property? I can well remember defending a farmer who lived adjacent to one of the not-very-large towns in North Dakota and the city decided maybe — maybe the Health Department prodded them — that they had to build a sewage lagoon. It so happened that the board felt that the obvious place was right fairly close to my client's house. He was understandably rather unhappy to have that sewage lagoon up here. We had no way of changing the decision in the court proceedings. We were shooting for as much money as we could get for the damage to his land. But if the jury had said, "No, that's not the place for the sewage lagoon," then what would the board have had to have done? Picked another place somewhere in the vicinity. It would have been simply another farmer who owned land outside of the city, and the jury then would have said yes or no. Finally, we might have made the whole round and that circle is closed, and then the city would have had to go another mile out, or something of that kind. The thing points up the necessity that in all of these eminent domain things, the individual rights of the individual where this is situated are impaired. That's what the Constitution has always said that he's entitled to just compensation — whatever the jury feels is right. But it has to give some place, and we cannot, without destroying eminent domain, without which we cannot function in this society, without leaving that decision up to the agency that has the right to exercise the power of eminent domain. Anything else is going to throw it into confusion. That's why I feel constrained to be against the insertion of the word "necessary."

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I will agree with Delegate Pearce in what he says, but I disagree with its conclusion. Our Committee this summer dealt with this a great length and they concluded, first, that the only thing on eminent domain was to decide how much the damages are — a material consideration. But as we discussed this thing more and more, we began to realize that there's more involved here than "you pay your money and you get your property;" that somehow or another there has to grow up around us a legal procedure that can deal with the problem of necessity, and if you deal with the implication of necessity and think about it more and more, you'll realize that in this part of the twentieth century we have come to a point where there is more than money involved, where the necessity of one government agency as compared with another one has to be somehow dealt with, where the people themselves have some protection on the necessity, as well as on the cost and taking, and so forth. I think we are faced here — somehow either the legal machinery has to grow up — either as authorized by the Legislature or a part of the courts that can deal with the problem of necessity and can do it without waiting four years to do it. But we here are dealing with human rights. This is a part of the Bill of Rights, and certainly there is more involved here than money alone.

PRESIDENT WENSTROM: Any further discussion? Delegate Saugstad.

DELEGATE SAUGSTAD: I rise in support of the amendment to the last proposed amendment and, also, the last proposed amendment.

The word "necessary," of course, is in the original Proposal 1-89. My comments are this:

A few years ago I was privileged to attend a seminar on eminent domain put on by the Southwestern Legal Foundation, which was held in Dallas, Texas. The thing — the one thing that made a very vivid and lasting impression on myself was this: That virtually all of the discussion — and this discussion was generally led by eminent scholars in this field — usually instructors in some of our larger law schools — but virtually everything was aimed at easing the way for the condemnor — that is, the agency doing the — making the condemnation — and the pleadings were for more police powers for the condemning agency and to make it easier and simpler to acquire property through eminent domain. Virtually nothing was ever said about the rights, privileges and feelings of the owner of the private property being taken.

Thank you.

PRESIDENT WENSTROM: Any further discussion? Delegate Thompson.

DELEGATE THOMPSON: One further statement, Mr. President.

It isn't as bad as it sounds. Normally, under condemnation proceedings, the property is bought and paid for without any kind of fight, and certainly that remains true, even if you add the word "necessary," because if the agency can buy this property, then they can do with it what they want, without having any kind of hearing or proving anything. I don't think that that's a problem that we would have here any more than they have now.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wonder if Delegate Thompson would answer a question.

DELEGATE THOMPSON, who do you view would be the agency or who would decide whether the attempted take was a necessary public use? Would that be the State agency, the Legislature or the court itself that's trying the case?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Undoubtedly, the word is going to have to be defined and, after it is defined, I'm sure we can determine who can construe the word. Even if we had to go to the courts, that doesn't scare me any. I think it's a privilege and a right that a property owner ought to have.

PRESIDENT WENSTROM: Any further discussion? Delegate Burke.

DELEGATE BURKE: Would Delegate Thompson yield for a question?

PRESIDENT WENSTROM: Delegate Thompson, do you yield?

(Delegate Thompson nodded.)

DELEGATE BURKE: I was wondering, Delegate Thompson, to advance Delegate Pearce's worry about who shall determine, I was wondering if in the fourth line from the bottom, if the change in fact couldn't be achieved after the sentence starting "Just compensation and necessary public use shall be determined by a jury." Wouldn't that then define the agency who would determine the public use?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I would hesitate to put it in that part of the section, because just prior to that is that part that deals with quick-take, which I'm very much in favor of in those instances. I wouldn't hesitate at all to have it put in the first sentence, if you would want to do that.

PRESIDENT WENSTROM: Further discussion? Delegate Schmit.

DELEGATE SCHMIT: Mr. President, would Delegate Thompson yield to another question, please?

DELEGATE THOMPSON: Yes.

DELEGATE SCHMIT: When you amend the amendment with the word "necessary," aren't you, in effect, in many cases doing away with the quick take? And what effect would that have?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Certainly that's true, ordinarily, but in this instance, it says "Provided, however," and then it goes on to provide for the quick take. I don't think that this — adding the word "necessary" — would bother that at all.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Thompson. Those in favor of adopting will vote "aye;" and those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay."

The Chair is in doubt. We can't open the key, either, can we? We'll try to vote again.

As many as are in favor of adopting the amendment will say "aye;" those opposed will say "nay."

The "ayes" have it. The amendment is adopted.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I must rise in opposition to the amendment, and certainly what has been said so far in this discussion has laid the groundwork for what I want to state.

After six months of listening to the complaints of people in the exercise of eminent domain, we've heard over and over again the same thing that Delegate Thompson has told us about, Delegate Pearce has told us about, Delegate Trenbeath and Delegate Burbidge. So we have come to the conclusion that when we're talking about eminent domain, whose rights are we going to talk about? Whose rights are paramount? The right of police power, the right of the city, the right of the Highway Department, the right of the corporations, or the right of the property owner? I can assure you the Committee feels just as strongly as Delegate Trenbeath feels about the right of the property owner, and I think now — and I want to be sure that I'm not out of order — I am talking against the amendment; but in order to do this, I must justify, it seems to me, the position of the Committee on our Proposal 1-89. Then I must show you why we do not agree with the amendment.

Now, first of all, I think we have to keep this one point in mind: Whether you accept the Report of the Committee, which is a statement of principles, as Delegate Schmit has brought out, protecting the property owner, or whether you accept the amendment as proposed by Delegates Trenbeath, Pearce and Kelsch, which protects the property owner to a degree, but which also incorporates quick take, and of course protects these agencies who will use eminent domain — regardless of which you accept, this will be a part of the Bill of Rights — the Declaration of Rights that enunciates the rights of people.

Now, if that is what we're thinking about, then we shouldn't be concerned about how the Highway Department operates under eminent domain. We shouldn't be concerned with the limitations we place on the cities or the corporations, as it seems to us our entire concern should be for the rights of people. And, as Delegate Trenbeath has said, "people" in this instance means the rights of these property owners. And for that reason, this Committee, after struggling with it — and believe me, "struggling" is the right word — for months, we have come to the conclusion that in the Bill of Rights, the Declaration of Rights, all we should say is an enunciation of the rights of these property owners.

Now, in believing that we followed the example of the present Section 14 — I hope you have it before you — there will be few things we'll vote on much more important than this. So let's look at Section 14.

Section 14, as it was originally written, started out, as we do in our Proposal, as Delegate Trenbeath does in his amendment, with the words "Private property shall not be taken or damaged for public use." Then what does it say? Without

now reading the whole thing, will you look for the key words? In the second line — “without just compensation.” Come down about four lines, and you find “until full compensation,” and then if you come down just before the amendment — remember, the first half was as it was originally written — the second half is the amendment, and it begins by saying “which compensation.” Now, when this Constitution was written, the original version was one sentence, 85 words, but the emphasis — there’s no question about that — the emphasis was solely on compensation for the owner. That’s all they said. That’s all they said for — well, over 65 years. Compensation for the owner was the important thing. Now, we’ve gone farther than that, if you look at our proposal. We say protecting the property rights of the owner, protecting the interests of the public, and then compensation. So we think we’re justified in stating principles. This was all that the Constitution said about eminent domain.

There was one other section in the Constitution, and I might say we have worked very closely with the Education Committee and the subcommittee that was appointed on Section 134, and we have satisfied them that we have stated the rights of the property owner.

Now, then, in 1956 an amendment was adopted and what did that do? It gave the states — the state departments, the municipalities, the right that it had never had before — quick take; in other words, it could take possession of the property first and settle the damages afterwards.

Now, this amendment went into detail. It specified that it could only be the State, its departments, its agencies or political subdivisions. Then it went on to specify that they could only use that quick take if they were seeking right-of-way. Then it went on to specify that if they took this, it had to do two things; it had to make an offer, it had to deposit the amount in the court. Then it went on protecting the rights of the property owner, saying that the court would have to notify him, and then the property owner could go to court.

Now that’s the amendment that was adopted in 1956. And one of the first questions that Chairman Maxwell asked us when we started was: Is this legislation? Well, a Judge of the Supreme Court answered it for us when he said this amendment is self-executing; it doesn’t need any statutory law to carry out.

Now, the Highway Department and the League of Municipalities came to us and urged us to keep this section as it was. But we heard over and over again the stories that have been enunciated today — the criticism against it — these people who come in and tell us what’s happened to them. Most of the criticism we found was directed against the quick take. They said in many instances the take is just too quick. They say there’s no way of protecting the property rights of the owner, and those property rights you can’t measure in dollar damages. They say there’s no way of protecting the public and that, of course, is the thing that Delegate Thompson has talked about. The necessity of taking is not in this, and if you’re thinking about the rights of the property owner, it certainly should be. And that’s why we have felt so strongly that something must be done about this quick take.

Now, I don’t think there’s a single member of our committee who doesn’t agree that there is justification for quick take. We wouldn’t have 94, we wouldn’t have 29, we wouldn’t have these civic projects if these agencies had not been able to avail themselves of that right to take the property first and settle the damages afterwards. So we do believe in it. But we have more faith in the Legislature than Delegate Trenbeath has. We think it must be left to the Legislature to meet these existing conditions and to satisfy these criticisms. So our Committee — and I think we’re unanimous in it — we believe that you should take the amendment of 1956 out of the Constitution — out of the Constitution, and certainly out of the Bill of Rights, and leave it to the Legislature. We think the time has come for the Legislature to take a good, quick look and a hard look at what has happened to this right that they have given away to these government agencies. Maybe the Legislature would want to curtail it. Maybe they want to extend it. The Aeronautics Commission came to us and they wanted it for the airfields. But whatever the Legislature would do, we feel sure that it will correct the inequities of quick take and any inequities there may be in the statutory law.

And then we have another reason why we think it’s so imperative at this time. Delegate Trenbeath has mentioned some of the problems — some of the things that you may have to look forward to — pipelines. In talking this over

with Delegate Trenbeath, and I can assure you there isn't anyone that has a greater concern for people than Delegate Trenbeath, we have discussed the matter with him; but in discussing it with him, he said we might have to look forward to pipelines carrying farm products. Think of the Garrison Diversion. Think of what that's going to need in the way of farmland to carry it out! The communities in the eastern part of the State are demanding gas — natural gas. They tell us it won't be long before your telephone lines and power lines have to go underground. Urban renewal has just started. Public recreation areas are being demanded. Well, that sounds very exciting. But if you're a property owner in North Dakota don't you think we have to be a little bit worried? Every one of these projects is going to need either easements or property. Every one of them, you can be sure, will be accomplished by the aid of eminent domain, and maybe with quick take. So we think the time has come when the Legislature will have to take a look at quick take, correct the inequities; and so we are asking that you accept our proposal, which guarantees the right of individuals, which recommends that Amendment 56 be repealed, and then look to the Legislature for correction.

Now, I'm not going to cover the amendment which is proposed. Delegate Maxwell will cover the provisions of this amendment. But after he has told you the provisions, we would just ask you: Do you want to put this amendment — legislation? It goes way beyond the Amendment 56. It will be just as self-executing. It will tie the hands of the Legislature just as surely. We ask you: Do you want that in the Constitution? And do you think it belongs in the Bill of Rights?

And now, Mr. President, may I yield to Delegate Maxwell?

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President.

This proposed amendment has borrowed and adopted and enlarged all of the inherent faults in present Section 14. It is too long and detailed. It has legislative matter, and the detail it contains does not protect the individual as the Bill of Rights normally should; but quite the contrary. The government, Mr. President, is the servant — not the master of the people — and that is what the Constitution should address itself to — making individual rights safe — not to describing and setting up of procedures as to how the citizen must submit to the will of the government or, as is in this proposed amendment, also to the will of a private corporation.

The legislative detail in the proposed amendment now before us has greatly enlarged the so-called quick take about which Delegate Trenbeath is so concerned. He's concerned about it, but he would enlarge it. The quick take does not protect the landowner. It works to his disadvantage. The amendment allows an owner to be immediately dispossessed of his property or an easement imposed upon it overnight, without negotiation, without even a prior offer being made. At least the present Section 14 requires that a prior offer be made. And as imperfect as it was, it did give at least that much more protection to the landowner than does the present proposed amendment. It permits the taking of property by merely depositing in court what the acquiring agency unilaterally determines is an adequate amount of just compensation. Now this obviously benefits the acquiring agency, rather than the landowner.

Now, is this the stuff for a bill of rights? And I am particularly alarmed about one aspect of this amendment, which, standing alone, would justify your negative vote on the amendment. Notice — notice how it has vastly increased the scope of this quick take. Look who can get into the act now, other than the State and political subdivisions, as under the present section. Private corporations get in; railroads, power companies, telephone companies, oil companies, pipelines. Think about it! Is that the kind of power against the people that we want to cement into this Constitution? I rather think not. If we must have a choice between this amendment and the old Constitution, let's go back to the old Section 14, with all of its defects, rather than accept what is now proposed.

I urge you to vote against the amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President and Delegates:

I have heard two eloquent talks, and I certainly appreciate the sincerity by both. What I have proposed in this amendment does not go beyond the present Constitution to any degree; especially that this was voted in as recently as 1956. My amendment only applies to right-of-way — to right-of-way, is all, for roads, for pipelines and for electric power utility lines or materials lines. That is all. In fact, the present Constitution, in a determination by the Attorney General's office, has gone far beyond the word "roads" when they used the word "right-of-way". In Devils Lake they needed to build a pipeline for their water supply here a few years ago. They construed that to be a right-of-way. That's no broader than what I have put in when I use the word "pipelines". They went further than that in other instances on the word "right-of-way." So I really haven't broadened anything. All I have said was that these things that require a right-of-way, that we can simply see that need to be done, regardless of whether it's a political subdivision or a private corporation, including our REA's, which they're doing primarily right now by the quick take. I have said nothing that has brought in much more than there really is right now. But what the present situation is with the Committee Proposal is it leaves it to the Legislature to provide for quick take; far beyond what I have spelled out here. They can do anything. They might wish to give it to the municipal airports, and I think probably they should allow the quick take in this respect. There might be many delegates here — many people that feel an airport right alongside up against the city should be used or acquired by the quick take method. The property owners and those surrounding might think this should be further out for the noise aspect, or something else. All my amendments do is spell out what they can quick take, and it isn't very far beyond what is presently in our Constitution; in fact, I think the Attorney General would provide that the right-of-way could be acquired right now, under our present Constitution that was voted in 1956 on the word "right-of-way" for these things that I just have spelled out. So, people, I most certainly have not broadened this thing to any extent at all. I'm trying to protect the property owner on these other things that can be used as far as the quick take is concerned, and so they have their day in court beyond just what the price they're going to be receiving for the property.

PRESIDENT WENSTROM: Any further discussion? The question — Delegate Pearce.

DELEGATE PEARCE: Mr. President, I feel constrained to point out that you can't give quick take to the Legislature. If you don't have it in the Constitution you can't have any quick take. That's the reason why the Constitution was amended in 1956 — to make it possible to have any quick take at all.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: This is an extremely complicated field. I wonder if the Committee on their proposal — I'm assuming, and if I took this wrongly, correct me; but on the last line, where you have amended it, you say "without just compensation having first been made." That, of course, is the way the present Constitution read, and that's why they came in with the quick-take amendment. But then you add the words "or estimated just compensation paid into court for the owner." Now, do you view the addition of the words "estimated just compensation paid into court" as being the same thing as quick take?

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: At the request of the Highway Department — they asked us to put in "estimated just compensation" — for just that reason. Whether they now believe that you must have the statutory legislation to carry it out, I don't know. But they did believe that the words "estimated just" should be put in, and I'm sure they are looking forward to possibly statutory enactment of quick take, and for that reason would like "estimated just" in the Constitution.

DELEGATE TRENBEATH: Yes — Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Just one more word.

My understanding was that those words were used so the Legislature could provide quick take on anything, if they so desired. Now, if that isn't right, why then some of my statements have been wrong and, also, Mrs. Geelan's because I'm sure that that's what those words were supposed to have meant.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, I wonder — the word "corporations" bothers me. Would you give me some examples of what you're speaking to here when you're talking about "corporations"?

DELEGATE TRENBEATH: Yes. Mr. President.

Yes, Delegate Fritzell. It just provides for the right-of-way; not any other property, but just the right-of-way for these things that I spelled out right in here, and that's communication lines, transportation lines and pipelines to deliver materials which could be coal, grain, or anything else.

DELEGATE FRITZELL: Mr. President.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Would this be private corporations — oil companies, gas companies, and this type of thing? That disturbs me.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I wasn't specifically asked, but I would like to answer Delegate Fritzell's question. Only corporations that are given the power of eminent domain by the statute have it. For the most part, those corporations are public utilities under the supervision and control of the Public Service Commission. For a common carrier pipeline or any pipeline to have the right of eminent domain in North Dakota, you must be a common carrier pipeline. That means that you are under the complete control of the Public Service Commission and that you must get a Certificate of Public Convenience and Necessity in order to construct. The same is true for electric companies which are privately-owned.

The Rural Electric Cooperatives, which, of course, are privately-owned, too, they have the power of eminent domain for their lands. The generating and transmission cooperatives, which, of course, are privately owned, also have the right of eminent domain and for the building of power lines. All of these public agencies which share the power of eminent domain are granted that power by statute. They would not be granted such a power by this constitutional provision, and under that they are also then, for the most part, the investor-owned utilities, as they are called, which includes pipelines and gas lines, are under the control of the Public Service Commission.

Now, does that answer your question?

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President.

In one way, it does, but — in fact, I hate to be so absolutely ignorant on this; but as far as I understood, the Public Service Commission then has no jurisdiction over the REC's. Now, if that's true, then I've been misled in this way, and I don't know where I am at here.

DELEGATE PEARCE: That is true — the Public Service Commission does not have jurisdiction over the REC's. However, they are treated in the law as serving a public purpose and, for that reason, were originally given, and still have, the power of eminent domain.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, I'm wondering if Delegate Maxwell would yield to a question.

PRESIDENT WENSTROM: Does Delegate Maxwell yield to a question?

DELEGATE MAXWELL: I'll try to answer it.

PRESIDENT WENSTROM: He yields.

DELEGATE BURKE: Delegate Maxwell, was it the thinking of your Committee that the Committee Proposal as presented would require or enable any citizen, no matter who the taker was, to question the taking, the engineering, and things of that sort, or did your proposal contemplate the Legislature granting the quick take of some farms?

DELEGATE MAXWELL: The Committee Proposal does contemplate the Legislature acting on the matter of quick take. Is that suitable?

DELEGATE BURKE: Thank you.

PRESIDENT WENSTROM: Anything further? Delegate Schmit.

DELEGATE SCHMIT: Mr. President, I think if there's any doubt about whether the Legislature could grant quick take, just a small amendment authorizing that in our proposal would do it. I wonder if Mr. Trenbeath would yield to one question, please?

DELEGATE TRENBEATH: Surely.

DELEGATE SCHMIT: About midway down on your proposal, where the language reads "communication, and the transmission of power and materials for public service," could this material mean drainage water?

DELEGATE TRENBEATH: No not — not in ordinary ditches, so to speak. It would mean anything which is in a closed pipeline, so to speak. It would include, even, I suppose, sewer lines and water lines of a city, and also included in that would be such as these things we can look ahead to, which would be grain pipelines, coal pipelines, and this kind of thing.

DELEGATE SCHMIT: Thank you.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hubrig.

DELEGATE HUBRIG: Could I ask Delegate Trenbeath a question in regard to pipelines?

PRESIDENT WENSTROM: Does Delegate Trenbeath yield?

DELEGATE TRENBEATH: I'll try.

DELEGATE HUBRIG: Would this include the crude oil lines, as well as the natural gas lines?

DELEGATE TRENBEATH: Yes.

DELEGATE HUBRIG: Standard Oil's crude oil line would be included in this?

DELEGATE TRENBEATH: That's right, just like they are now.

DELEGATE HUBRIG: So it would be a private corporation?

DELEGATE TRENBEATH: Yes.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention —

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President and Fellow Delegates:

I'm a little bit confused. As I understand, the original committee proposal was brought to us with the committee's feeling that the Legislature should provide for quick take in the areas that we currently have, and then it's been said that unless we provide the quick take in the Constitution, the Legislature has no authority; and to me, the two positions are just exactly opposite. I don't know quite which way to vote. I'm interested in the language as the proposal says. I'm interested in having quick take limited, as we have it, and I'm interested in the property owner being protected so that public use would have to be shown, and apparently I'd have no alternative but to vote "no" on the next two amendments and the proposal itself. If somebody could give me a reason to vote "yes," I'd appreciate it.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I don't know if I can help any, but the point, to briefly state it under the old Constitution, no property can be taken without first determining the damages. That meant they could never take possession until there was first a trial. Then, in '56, we amended it to exempt right-of-way for highways.

Now, the Trenbeath amendment is someplace in between, I think, what the old Constitution did and what the Committee Proposal does. The Trenbeath amendment grants right-of-way not only to the Highway Department, but to all utilities or any agency needing right-of-way that the Legislature might say "You're entitled

to take right-of-way." So you grant the quick take to all these for right-of-way only. Any other taking, such as a park, for parking lots or airports, would have to first go to trial on the question of damages. They couldn't take possession until you had the trial.

Now, the Committee — the Committee comes out — and I'm not too sure it's a bad idea, after hearing it explained — and they're saying, "We won't state in the Constitution whether you'll have a quick take or not; we're simply stating the principle that there must be just compensation and the property rights protected."

Now, the Legislature could be narrower, I think, as Judge Maxwell pointed out. The Legislature might well not give the quick take to cooperatives or to private power companies. On the other hand I think, as this is written, it says that no property shall be taken without first — just compensation first having been paid to, or estimated just compensation, and we use the words that are in your amendments. You have to pick that up on your little slip when you use the words "estimated just compensation." I think we're saying to the Legislature, "We're not going to tell you who shall have a quick take or whether there should be any quick take." It's conceivable the Legislature could say there won't be any. It's conceivable they could say that all property could be taken by quick take. But I think, if we vote for Trenbeath's amendment, we're expanding the quick take — that's true; but only to itemize. If you go with the Committee's proposal, you're saying "This is in the hands of the Legislature." If they want to give quick take for airports, they can; if they don't think it can be done, it won't. So that's our particular vote here — whether you want to leave it to the Legislature and the people in that arena, as opposed to this body, then I think you should support the Committee. I think, if you want to expand it somewhat over the old Constitution as to right-of-way, then, of course, you support the Trenbeath amendment.

I think we have to allow some latitude. I don't think you can go back to the old Constitution before we amended and say you have to first try the question, because if you left it there, we would stop all progress as to highways and many other agencies that need right-of-way.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: First, I think we should clear one thing up. It was not the Committee that said you have to put quick take in the Constitution. If I remember correctly, that was Delegate Pearce who said that. Now, Delegate Pearce's reasoning went on then to say that eminent domain had to be under the sovereignty of the State. Now, I find it hard to believe that if eminent domain is under the sovereignty of the State, which certainly means the Legislative Assembly, as well as the Constitution, why can't the Legislative Assembly then interpret eminent domain with a quick-take provision? I don't see why it has to be in the Constitution. So I would hope that you do support the Committee and that we do leave this matter of interpretation to the Legislature.

PRESIDENT WENSTROM: The Chair will recognize Delegate O'Toole.

DELEGATE O'TOOLE: Mr. President.

Fellow Delegates: Before we get on to the vote, I want to point out that the Committee very strongly emphasizes the property rights and the necessity for public use, and our stand is that in the Bill of Rights, this is a necessary type of right to be stated. We have no question that at some time or another the quick take is necessary, as everybody is saying. But the Trenbeath amendment does not even take into consideration the private property protection clause and the public use and the public — or the property rights of the owner, and I think this is the thing that we're really voting on right at the present time — actually not the quick take, but the rights of the individual.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Fellow Delegates, I well appreciate what Delegate O'Toole has just said, except that the right of quick take is just as important to the people through a political subdivision as the other may be, and my only concern is that someplace along the way we can permit it. I presume that, if we adopt 1-89 as proposed, with the amendments that are in the book, and if, in fact, this would

permit the Legislature to provide a quick take based on the words "estimated just compensation," I think this is where they're hanging it — is that correct? — that then the Legislature also could enact legislation as Delegate Trenbeath has proposed, which would limit it to certain utilities and certain corporations related to the item, and this being the fact, I believe I would have to encourage defeat of the amendment and vote for 1-89.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. President.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: As we talk about quick take here, I think we have to define it a little further. It is not instant take. In the Committee Proposal, as I read it, and apparently some members of the Committee disagree with this, we still have to prove the necessary public use in the interests of the general public, and that may take a little while. Until legal machinery is drawn up and is in use for taking it, it may take a little longer than we want it to. And so, temporarily, we probably are a little bit holding back the right of eminent domain, which we all know is necessary; but certainly machinery has to develop to decide what is in the interest of the general public and what is necessary and that machinery doesn't have to be so terribly, terribly time-consuming that the public interest is violated by it. But it is something new, and a new challenge that we're throwing on our public agencies. Perhaps it's our courts; perhaps it's our Legislature. But I think we have to recognize this: Now what are the interests of the general public when the Highway Department says it will put a road through a park? Both are public uses. Doesn't someone have to make a decision that this road is in the interests of the general public?

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as amended — the amendment offered by Delegate Trenbeath.

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed will say "nay."

The "noes" have it and the amendment lost.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I don't have my amendment written, but it is very simple and I think we can understand it.

I move that after the word "compensation" on line 12 of the Trenbeath printed proposal as it is before me — I assume that would jibe with the engrossed proposal — we add the words "for all damages" and then in the amendment that after the word "compensation" we add "for all damages" — and if I can get a second to the motion, I'll explain why.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Delegate Longmire, are you — you're making reference to the printed proposal as it is in the book?

DELEGATE LONGMIRE: Yes. I don't have the engrossed proposal before me, but I understand the first amendment or the first words that are entered do jibe with the engrossed proposal.

Now, the second amendment won't jibe with the printed one, because you have amended this and you have added the words "estimated just compensation." Now, I just want to add the same words after "compensation" in the amendment.

PRESIDENT WENSTROM: Delegate Longmire, just a moment. There seems to be a little confusion here at the desk.

DELEGATE LONGMIRE: Mr. President, I have the engrossed copy before me, I understand. Is that right, Delegate Pearce? Yes. If they haven't been able to detect it there in the proper place, I can reoffer my amendment.

CHIEF CLERK GILBREATH: Then that would read, "without just compensation for all damages having first been made to, or estimated just compensation for all damages paid into"?

DELEGATE LONGMIRE: Yes. Speaking on the amendment, Mr. President,

at the present time I represent about eight or ten different property owners in condemnation cases. Many states in the Union allow compensation for special damages or special value that this property has to the property owner. The State of North Dakota does not do that. The only thing a property owner can collect now is fair market value of his property when it's taken by condemnation proceedings. Well, I contend that fair market value in many instances is not actual and complete damages to the property owner. I mention one case in particular.

There's a little corporation there — a nonprofit corporation of the Grand Forks City Mission. We went into court and, fortunately, the jury gave us more than what was being offered. But we have not been able to locate another building or another place of any kind, because this was in an area of the City where the people did not object. Now, everyplace we tried to go in the City, the people have objected, saying, "Well, this is a fine organization. You're helping the poor. You're helping people — needy people. But you build it on the other side of town or you go on the other side of town." And when we have inquired as to buying property in other parts of town, we have to pay much more than the fair market value that we — the test we were under in relocating. As a result, we've been put out of business, at least temporarily, and have not been able to locate. By adding these words "for all damages," it seems to me that we then would have to pay, or the agency condemning the property would then have to pay for special values that that property has to the property owners for damages in moving and different things of that kind, and relocating, that we do not get adequate compensation for at this time. I think, if you added those three words, you would be adding more to the rights of the individual property owner.

PRESIDENT WENSTROM: Any further discussion on the amendment as offered by Delegate Longmire?

Hearing none, would the Clerk again read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-89 is as follows:

Line 12 of the engrossed proposal, following the word "compensation" insert the words "for all damages".

Line 13 in the engrossed proposal, following the word "compensation" insert the words "for all damages".

And renumber the lines accordingly.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Longmire. Those in favor will vote "aye;" those opposed will vote "no."

Those in favor of adopting the amendment will say "aye;" those opposed say "no." The "ayes" have it. The amendment is adopted.

DELEGATE PEARCE: Mr. President.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: We are on 1-89 now as it has been amended?

PRESIDENT WENSTROM: As it has been amended; yes, sir.

DELEGATE PEARCE: The words "without protecting the property rights of the owner" to me are exactly contrary to the idea of eminent domain. The property rights of an owner include the right of exclusive possession. If you are to protect that right, it necessarily means that you must protect his right to continued exclusive possession. If you are to take an easement across that property for right-of-way or to take any portion of it for a public park or a highway or a school building, you are necessarily and inevitably interfering with the property rights of that owner; and if the language "without protecting the property rights of the owner" is not taken out, you have eliminated the possibility of eminent domain. Therefore — I only got part of it written — I would propose an amendment by striking out all of line 11, after the word "use," so that the words stricken out would be "without protecting the property rights of the owner and".

Now, this is highly important because of all the kinds of eminent domain that are exercised. The right of eminent domain is defined by its very nature adverse to the property rights of the owner, and if we leave the language in as it is now, you can't do it. And I move that amendment.

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: It's been moved — the amendment has been moved by Delegate Pearce, and it's been seconded by Delegate Nething.

DELEGATE PEARCE: Excuse me, Mr. Chairman — Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I must amend my own amendment, as Delegate Maxwell points out. The little slip, which, I think, is in your book, adds the words "the interests of the general public and"; so my amendment necessarily will strike out the balance of line 11 as it is printed in the book, including the words "the interests of the general public and", for the same reasons explained.

PRESIDENT WENSTROM: Will the Clerk read the amendment that is now before us?

CHIEF CLERK GILBREATH: The proposed amendment to Proposal No. 1-89:

In line 11 of the engrossed proposal, following the word — words "public use" delete "without protecting the property rights of the owner and".

In line 12 of the engrossed proposal, delete the words "the interests of the general public and".

It would then read: "Private property shall not be taken or damaged for necessary public use without just compensation having first been made to, or estimated just compensation paid into court for the owner" and "for all damages."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: My neighbor here is a lot more schooled in this than I am, and he asked me one question. If we take this out, doesn't the proposal then become automatically acceptable — or acceptable for quick take?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I don't think you can conclude that. I'd have to agree with Delegate Pearce that you cannot take a man's property and at the same time protect that property right. There's a conflict between the sovereign wanting the land and the owner wanting the land. If you take it out, we're just saying that property may be damaged for necessary use, either by having the compensation first determined, which would be the trial in advance of the taking, or just compensation paid into court, estimated. We're saying, then, that — we're not really saying whether it would be quick take or not; we're leaving it up to the Legislature.

Now, I think as it is written with the Pearce amendment, I think that the landowner could challenge the question of whether or not the proposed taking is necessary, because we've added the words "necessary public use" and the method to do that would be to bring an injunction action against the authority that's trying to take it. The problem with the injunction action in the past — I think one of the reasons for the many complaints for the quick take in the old Constitution was that that specifically said they could take possession upon depositing or making the offer and depositing. So there was never any time involved. The Highway Department would be out and would be leading up to the requirement for the right-of-way before you'd ever get to court. Now, I presume, unless someone feels otherwise, that the way this is now written with the Pearce amendment, that the Legislature could say — and where they do allow the deposit of estimated just compensation in court, they could put a delay period on there, and then would say, "Even though you deposited just compensation, you couldn't actually take possession for, say, sixty or ninety days," which would be plenty of time for the landowner to engage counsel and bring an injunction action to test the question, "Is this taking necessary?"

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I don't exactly agree with these two previous distinguished attorneys with respect to the advisability of taking that clause out, and I reached that decision on this basis: That many times when these people — or when the property owners' property is being taken, they don't have anyplace to go right away; it will take them some time to find a place to go, and unless you leave that word in there of protecting the property rights, it would seem to me there could be

abuse of kicking them out right away, without in the event it being in there, of course, as to how long they could retain their possession of the property. I think those words would be necessary to protect any special condition that that property owner might have that maybe some — it wouldn't happen in all cases, and I think we should keep those words in for that reason, and I oppose the amendment.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Mr. President, I was going to rise in opposition to the amendment, and I can rise now much more confidently bolstered by an opinion from as eminent a lawyer as Delegate Longmire. I certainly urge that you defeat the amendment.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I think I'm going on the subject because I'm going to urge you to defeat the amendment. Is this an amendment to an amendment? This is just an amendment.

I urge you to defeat the amendment and the entire Proposal. I think — and go back to the section in the old Constitution. I'm urging you to defeat the amendment.

PRESIDENT WENSTROM: That's all right. That far you can go. (Laughter)

Anything further? The question is on the amendment as offered by Delegate Pearce. Those in favor of adopting the amendment will vote "aye;" and those opposed will vote "nay."

Those in favor of adopting the amendment will say "aye;" those opposed will say "no."

The "noes" have it. The amendment lost.

DELEGATE PEARCE: Division, Mr. President.

PRESIDENT WENSTROM: Delegate Pearce, did you request a division?

DELEGATE PEARCE: I request a division.

PRESIDENT WENSTROM: Delegate Pearce requests a division. Let's see now. How are we going to do this?

Those that are in favor of adopting the amendment will please rise. Stand long enough so we can count.

Delegate Nicholas, we're voting on the adoption of this amendment on a division.

Do you have them? Now, if you folks will be seated. Those that are opposed will please rise.

There isn't any question who won. The amendment has been defeated.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I wonder if I might inquire of Delegate Pearce.

Delegate Pearce, I wonder if the objection might be removed if you struck the word "property" and just left it "without protecting the rights of the owner." I wonder if the Committee would object to that.

DELEGATE PEARCE: Well, I don't believe the Committee would object to anything, as long as it's not an amendment. (Laughter)

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: Yes, Mr. President. Fellow Delegates:

I haven't entered into this discussion before because, quite frankly, I don't know what's going on, and the only reason I'm talking right now is I don't know what's going on. It seems to me that we have two thoughts, and I'm sure that they're both well-qualified — both talks are well-thought-out; but I just can't keep up with this. I would suggest, Mr. President, that Delegates Pearce, Kelsch and Trenbeath get together with Delegates Maxwell, Geelan and Thompson and see if they can't offer something that I can understand, because I can't go back home now and tell anybody why I voted, and I sat down on the last amendment for both votes.

I'm serious about my — about my proposal, and I think that there are quite a few that don't know what's going on.

PRESIDENT WENSTROM: The question before the Convention is on the —

DELEGATE LITTEN: Mr. President.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Well, I'll recognize Delegate Litten.

DELEGATE LITTEN: Mr. President, I think there are a lot of us who are in the same boat as Delegate Hougen, and I know we spent an hour on this already, but we're in a legal jungle right now that many of us don't understand, and we don't want to make a mistake. It would seem to me, in spite of the investment we've already got in 1-89, we would be well-advised to place it on the bottom of the calendar and follow the suggestion Delegate Hougen made and place it on the bottom of the calendar and work our way out.

PRESIDENT WENSTROM: Delegate Litten and Fellow Delegates:

If you do nothing with this Proposal as it is right now, it has been amended, so it will automatically be on the tenth order tomorrow. Unless you move to suspend the rules and vote on it immediately, it will automatically go to the tenth order for tomorrow.

So I think that is adequate time. So with that, unless there are further amendments to be made to this offer — to this proposal at this time — Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, there was some concern here, I think, on the part of some delegates that — whether or not the Legislature would have a right to provide legislation for the quick take. I would suggest a further minor amendment, so that I think that would remove any doubt as to whether or not the Legislature did have such power, by — after the word "owner" at the end of the whole proposal as it's been engrossed — I think the last word on the engrossed proposal is "owner," is it not? — add the words "as provided by law" — and I think that would remove any doubt as to whether or not the Legislature would have authority to set up the details of this quick-take situation.

PRESIDENT WENSTROM: Do you so move, Delegate Longmire? Do you offer an amendment?

DELEGATE LONGMIRE: Yes, I move that amendment, Mr. President.

PRESIDENT WENSTROM: Then do we have a second?

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kelsch.

The question is on the further amendment as offered by Delegate Longmire — that after the word "owner" we insert the words "as provided by law."

Do you have the amendment? The question before the Convention is on the amendment as offered by Delegate Longmire — that after the word "owner" in the last line, that we add "as provided by law."

Is there any discussion? Hearing none —

DELEGATE BURBIDGE: Mr. Chairman.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Yes. Just a question here. I'm confused by the amendment.

Delegate Longmire — I don't know if I read this amendment right. When you say that this will give the Legislature quick take, I think the amendment as it stands now only talks about the manner in which just compensation shall be paid. I don't think that that amendment answers the question as to the question of quick take.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, the reason for the amendment was to remove some doubt that existed on the part of some delegates as to whether the Legislature would be empowered to provide legislation to supplement this section of our Constitution, and those words were added to clarify that, so that it would show our intent that the Legislature could supplement this business about paying this money into court and provide for the quick-take method as far as right-of-ways are concerned.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: My question is in repetition with Delegate Aubol's.

It would seem there is some question as to whether or not we are talking about the procedure for taking or whether or not we're talking about the right of eminent domain, and I think Delegate Longmire spoke on that.

DELEGATE WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President, I would ask Chairman Maxwell: As this has been amended, should it still be in the right area? Doesn't this make it another issue? Excuse me.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I believe that in its present form as amended, that certainly does belong in the Bill of Rights.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Longmire.

Hearing no further discussion —

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Did everyone understand exactly what Delegate Aubol and what Delegate Burbidge were referring to? I hope they did, because if they did — all it refers to is all that's paid into court.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: It seems to me that it's time to move for further consideration and that this be laid over one Convention day so the attorneys can get together on just where this bill is and what this amendment should be. I've been confused a long time. If you people on the Calendar Committee will remember, this morning I said something to the effect that any time you get two lawyers to agree on the same thing, we've just about reached the millennium.

PRESIDENT WENSTROM: Delegate Haugen, there's a simple way to have this laid over until the tenth order tomorrow; simply defeat the amendment — either way — defeat the amendment or if you pass the amendment. Unless someone gets up and moves, and can pass, to suspend the rules, and so forth, it will automatically go to the tenth order tomorrow.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Yes.

DELEGATE LONGMIRE: I certainly do not intend to move at this time to suspend the rules and I don't see anybody else jumping up to do it. I think, if we pass this amendment, it will be on the tenth order, as you stated, and it will be in the Journal the way the amendments occur, and we'll all have time to study it and act on it tomorrow, without any further motion.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Longmire.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I suppose the easy thing to do would be not to say anything; but I don't see any reason to pass this amendment, because we're going to have to delete it tomorrow anyway. There's no periods in that sentence at all; and so, therefore "as provided by law" defeats the whole purpose of the statement, as far as I see it, because then the Legislature can go back and provide for everything.

PRESIDENT WENSTROM: Anything further?

Those in favor of adopting the amendment will vote "aye;" and those opposed will vote "no."

As many as are in favor of adopting the amendment will vote "aye" — let's do that over.

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay."

The "noes" have it. The amendment lost.

Any further — anything further to be done with Proposal No. 1-89 as amended?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President, I would suggest that a copy of the bill as it has now been amended be placed on the desk of each delegate before we vote on it tomorrow.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been moved and seconded that a copy of the bill as now amended —or of the Proposal as now amended be prepared and placed on the desk of each delegate for tomorrow's session.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it and that will be carried out.

At this time I think it would be a very fine time to take about a ten-minute break.

CHIEF CLERK GILBREATH: Before you go, could I please ask you to try and vote? The voting machine people are in the back and they want to watch what happens or what doesn't happen. Maybe they can fix it. So I'm going to open the key and if you could please vote.

DELEGATE KWAKO: Which way? (Laughter)

CHIEF CLERK GILBREATH: It doesn't make any difference. Hold your keys over and I will now close it.

PRESIDENT WENSTROM: We will be in recess for ten minutes. We will be in recess until 3:45.

(The Session recessed at 3:34 P.M. until 3:56 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

Will the Convention please come to order?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: In view of the progress that we have made on today's calendar on the tenth order, I feel that it is absolutely essential that we have an evening session. I would, therefore, suggest that we run now until about 5:30 and recess for an hour-and-a-half or two hours and come back for another couple of hours' work.

PRESIDENT WENSTROM: Someone suggested that one of the requirements in order to adjourn this evening would be that we get eleven proposals off, like we did Friday. So, with that, I think it would take considerably more than two hours, and it has been suggested that we work until four in the morning. But, in all seriousness though, I think that what Delegate Saugstad has said merits a lot of thought and consideration, and I think that's what we'll have to do.

We will be on the tenth order of business.

Next for consideration is Committee Proposal No. 1-93.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-93, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 146 of the constitution of the state of North Dakota, which pertains to the controlling of prices, be repealed.

"SECTION 1. REPEAL.) Section 146 of the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: Any discussion? Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates:

This is part of the original Committee Proposal 1-20, I think. It's so old that I practically have forgotten what it's all about.

Section 146 of the present Constitution provides that "Any combination between individuals, corporations, associations, or either having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful" — and so on.

The Section — as far as could be determined, this is one annotated case. It's not particularly used and it is an area, we feel, that is primarily that of legislation. There has been legislation both on the State and Federal level providing for price-fixing and this type of thing. We felt that this section should be repealed. It appears that the section as it now stands would prohibit such organizations as the NFO and possibly the Farmers Union and the Farm Bureau from operating.

We attempted to try to rework this section and provide for some consumer protection, and we kicked it around starting last summer, up until last week, and really couldn't come up with anything that was very meaningful. It's the Committee's recommendation that this section be deleted.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, I think you'd get the most bang for your buck today if you voted immediately.

PRESIDENT WENSTROM: The question is on the passage of Committee Proposal No. 1-93. Those in favor of its passage will vote "aye;" those opposed will vote "nay." The Clerk will open the key and we hope the machine will — is it turned off?

CHIEF CLERK GILBREATH: The machine is turned off.

Aas.

DELEGATE AAS: Aye.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: Aye.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: Aye.

CHIEF CLERK GILBREATH: Bassingthwaite.

DELEGATE BASSINGTHWAITE: Aye.

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: Aye.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: Aye.

CHIEF CLERK GILBREATH: Benz.

DELEGATE BENZ: Aye.

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Aye.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: Aye.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Aye.

CHIEF CLERK GILBREATH: Birkeland.

DELEGATE BIRKELAND: Aye.

CHIEF CLERK GILBREATH: Brakke.

DELEGATE BRAKKE: Aye.

CHIEF CLERK GILBREATH: Burbidge.

DELEGATE BURBIDGE: Aye.

CHIEF CLERK GILBREATH: Burke.

DELEGATE BURKE: Aye.

CHIEF CLERK GILBREATH: Butler.

(No response.)

CHIEF CLERK GILBREATH: Byrne.

DELEGATE BYRNE: Aye.

CHIEF CLERK GILBREATH: Cart.

DELEGATE CART: Aye.

CHIEF CLERK GILBREATH: Chase.

DELEGATE CHASE: Aye.

CHIEF CLERK GILBREATH: Christensen.
DELEGATE CHRISTENSEN: Aye.
CHIEF CLERK GILBREATH: Daniels.
DELEGATE DANIELS: Aye.
CHIEF CLERK GILBREATH: Dawson.
DELEGATE DAWSON: Aye.
CHIEF CLERK GILBREATH: Decker.
DELEGATE DECKER: Aye.
CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Aye.
CHIEF CLERK GILBREATH: Diehl.
DELEGATE DIEHL: Aye.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Aye.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Aye.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Aye.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Aye.
CHIEF CLERK GILBREATH: Fallgatter.
(No response.)
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Aye.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Aye.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Aye.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Aye.
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Aye.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Aye.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Aye.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Aye.
CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: Aye.
CHIEF CLERK GILBREATH: Hernet.
DELEGATE HERNETT: Aye.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Aye.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Aye.
CHIEF CLERK GILBREATH: Hougen.

DELEGATE HOUGEN: Aye.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: Aye.
CHIEF CLERK GILBREATH: Hickie — Huckle.
DELEGATE HUCKLE: Aye.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Aye.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Aye.
CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Aye.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Aye.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Aye.
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Aye.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Aye.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Aye.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Aye.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Aye.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Aye.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Aye.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Aye.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Aye.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Aye.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: Aye.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Aye.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Aye.
CHIEF CLERK GILBREATH: Nething.
DELEGATE NETHING: Aye.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Aye.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: Aye.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: Aye.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Aye.

CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: Aye.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Aye.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Aye.
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: Aye.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Aye.
CHIEF CLERK GILBREATH: Rosendahl.
(No response.)
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Aye.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: Aye.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SANSTEAD: Aye.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Aye.
CHIEF CLERK GILBREATH: Scheel.
(No response.)
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: Aye.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: Aye.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: Aye.
CHIEF CLERK GILBREATH: Solberg.
DELEGATE SOLBERG: Aye.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDREAL: Aye.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: Aye.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: Aye.
CHIEF CLERK GILBREATH: Thompson.
DELEGATE THOMPSON: Aye.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: Aye.
CHIEF CLERK GILBREATH: Tudor.
(No response.)
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: Aye.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: Aye.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: Aye.
CHIEF CLERK GILBREATH: Wallin.
DELEGATE WALLIN: Aye.

CHIEF CLERK GILBREATH: Warner.

DELEGATE WARNER: Aye.

CHIEF CLERK GILBREATH: Wicks.

DELEGATE WICKS: Aye.

CHIEF CLERK GILBREATH: Wenstrom.

PRESIDENT WENSTROM: Aye.

DELEGATE POULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: I'd like to apologize on that last vote. After the debate on 1-89, I'm really not sure whether I am here or not; but I voted "aye."

PRESIDENT WENSTROM: The roll call discloses 93 "ayes," no "nays," five delegates absent and not voting.

So Proposal No. 1-93 has passed.

I hope, Fellow Delegates, that you realize that the process of voting this way is like they do in the Congress of the United States; so we have elevated ourselves to that position (Laughter)

Next for consideration —

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: At this time, if there's no objection, I'm going to move that Committee Proposal 1-25, 1-26 and 1-120 be moved to the head of the calendar. Those are two of those pink ones you see in your book here. We have amended them. They have been before us before, and we've had subcommittees on these, and I think these are proposals that we could handle this afternoon. So I'll make that as a motion.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Hernet moves, and Delegate Litten seconds the motion, that Committee Proposal 1-25, 1-26 and 1-120 be moved to the head of the calendar.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the three proposals as listed will be moved to the head of the calendar.

First for discussion, Committee Proposal No. 1-25.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-25, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 79 and 80 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to the veto power of the governor, be created.

"SECTION 1. REPEAL.) Section 79 and 80 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Governor — Veto Power.

"a) Every bill passed by the legislative assembly shall be presented to the governor for his signature. If the governor signs the bill it shall become law.

"b) The governor may veto a bill passed by the legislative assembly. He may veto or reduce items in appropriation bills. Portions of the bill not vetoed or reduced shall become law.

"c) The governor shall return any vetoed item or bill with a statement of his objections to the house in which it originated for reconsideration. That house shall immediately enter the governor's objections upon its journal. If that house by a record vote of two-thirds of its elected members passes a vetoed item or bill, it shall immediately be delivered to the other house. If it is then approved by a record vote of two-thirds of the elected members of the second house, it shall become law. Any reduced item shall follow the same procedure as a vetoed item or bill, except if it is passed by a record vote of a majority of the elected members of both houses it shall become law.

“d) While the legislature is in session, a bill becomes law if the governor neither signs nor vetoes it within five days, Sundays excepted, after its delivery to him. If the legislature is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him.”

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

I'm just going to refresh your memory a little bit about 1-25. On January 14th, we passed it 87-to-5; however, we did reconsider our action and at that time our attention was devoted to the matter of the reducing items in appropriation bills by the governor, and there was a further amendment later on relating to whether or not the appropriation for the operation of the Legislative Assembly should be immune from veto.

Now, the bill that's before you — and I'll just go over it a little, section by section; but Section a, as it stands originally was that we provide — the bill must be presented to the governor for signature, and if he does sign it, of course it becomes law. Section b says that the governor can veto any bill passed by the Legislative Assembly and that he may veto or reduce items in an appropriation bill.

Now, earlier we had talked about the matter of using the word “veto,” “strike” or “reduce,” and of course the language, we think, is better, because when we say “veto an item,” that would be the same as striking an item, that the governor currently can do. The new language and the language that was the subject of discussion before, which at one time we amended out of it, is the matter of reducing an item.

Now, Fellow Delegates, I have with me two appropriation measures, and I want to refer to them to show you the importance of the governor being able to reduce an item, as well as to veto a particular item. The Poultry Improvement Board, for example, had an item in its — their entire appropriation, consisting of six lines; the first line, the salary and wages; second line, fees and services, and so on down the line. Now, if the governor felt that the appropriation by the Legislature was too high on salary and wages, there was no way he could reduce this particular item under our current Constitution. He would have to strike the entire salaries and wages item.

Now, what has brought this about is the way that the Legislature passes their appropriation bills. The entire budget comes before the Appropriations Committee in a rather complete form, and they know exactly what salaries and wages they're referring to and the positions. However, when it comes before the Legislature in bill form, that is not the case. Therefore, because of this, we feel it is important that the governor be able to reduce a particular item.

I also have here House Bill 1001, which is the higher education appropriation. It consists of some six pages. For example, the University of North Dakota — we have their entire budget of 15 million dollars, which includes less fees and services — excuse me — less the money that comes in. But, at any rate, there's salaries and wages of \$18,041,064. Well, the governor, if he felt there was something in there that he did not want to have, would have no way to reduce that appropriation. He would have to strike the whole thing. In addition to providing that reduction item, we have provided that any item so reduced by the governor will then be submitted to the Legislature again, just as a vetoed item would be, or a vetoed bill. A vetoed item or a vetoed bill would require two-thirds to override. A reduced item would require a majority of the Legislature to override.

The second change that we made in the bill was the removing of the immunity of the legislative appropriation from veto by the governor. There's some feeling that the Legislature itself should be treated no differently than any of the other budgets and the joint committee — a subcommittee of the Legislative Functions and Executive Functions Committee — do recommend at this time that that be deleted. We think now that we've met all of the problems that came up when 1-25 was initially passed and amended, and it is recommended to you now for a do pass.

PRESIDENT WENSTROM: Is there any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-25. Those in favor will vote “aye;” those opposed will vote “nay.”

The Clerk will proceed with the roll call.
CHIEF CLERK GILBREATH: Aas.
DELEGATE AAS: Aye.
CHIEF CLERK GILBREATH: Aubol.
DELEGATE AUBOL: Aye.
CHIEF CLERK GILBREATH: Baker.
DELEGATE BAKER: Aye.
CHIEF CLERK GILBREATH: Bassingthwaite.
DELEGATE BASSINGTHWAITE: Aye.
CHIEF CLERK GILBREATH: Bender.
DELEGATE BENDER: Aye.
CHIEF CLERK GILBREATH: Benson.
DELEGATE BENSON: Aye.
CHIEF CLERK GILBREATH: Benz.
DELEGATE BENZ: Aye.
CHIEF CLERK GILBREATH: Berg.
DELEGATE BERG: Aye.
CHIEF CLERK GILBREATH: Billey.
DELEGATE BILLEY: Aye.
CHIEF CLERK GILBREATH: Binek.
DELEGATE BINEK: Aye.
CHIEF CLERK GILBREATH: Birkeland.
DELEGATE BIRKELAND: Aye.
CHIEF CLERK GILBREATH: Brakke.
DELEGATE BRAKKE: Aye.
CHIEF CLERK GILBREATH: Burbidge.
DELEGATE BURBIDGE: Aye.
CHIEF CLERK GILBREATH: Burke.
DELEGATE BURKE: Aye.
CHIEF CLERK GILBREATH: Butler.
(No response)
CHIEF CLERK GILBREATH: Byrne.
DELEGATE BYRNE: Aye.
CHIEF CLERK GILBREATH: Cart.
DELEGATE CART: Aye.
CHIEF CLERK GILBREATH: Chase.
DELEGATE CHASE: Aye.
CHIEF CLERK GILBREATH: Christensen.
DELEGATE CHRISTENSEN: Aye.
CHIEF CLERK GILBREATH: Daniels.
DELEGATE DANIELS: Aye.
CHIEF CLERK GILBREATH: Dawson.
DELEGATE DAWSON: Aye.
CHIEF CLERK GILBREATH: Decker.
DELEGATE DECKER: Aye.
CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Aye.
CHIEF CLERK GILBREATH: Diehl.
DELEGATE DIEHL: Aye.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Aye.
CHIEF CLERK GILBREATH: Engelter.

DELEGATE ENGELTER: Aye.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Aye.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Aye.
CHIEF CLERK GILBREATH: Fallgatter.
(No response.)
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Aye.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Aye.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Aye.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Aye.
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Aye.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Aye.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Aye.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Aye.
CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: Aye.
CHIEF CLERK GILBREATH: Hernet.
DELEGATE HERNETT: Aye.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Aye.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Aye.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Aye.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: Aye.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: Aye.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Aye.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Aye.
CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Aye.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Aye.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Aye.
CHIEF CLERK GILBREATH: Kretschmar.

DELEGATE KRETSCHMAR: Aye.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Aye.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Aye.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Aye.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Aye.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Aye.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Aye.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Aye.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Aye.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Aye.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: Aye.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Aye.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Aye.
CHIEF CLERK GILBREATH: Nething.
DELEGATE NETHING: Aye.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Aye.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: Aye.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: Aye.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Aye.
CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: Aye.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Aye.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Here — I mean "aye."
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: Aye.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Aye.
CHIEF CLERK GILBREATH: Rosendahl.
(No response.)
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Aye.
CHIEF CLERK GILBREATH: Rundle.

DELEGATE RUNDLE: Aye.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SANSTEAD: Aye.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Aye.
CHIEF CLERK GILBREATH: Scheel.
DELEGATE SCHEEL: Aye.
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: Aye.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: Aye.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: Aye.
CHIEF CLERK GILBREATH: Solberg.
DELEGATE SOLBERG: Aye.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDREAL: Aye.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: Aye.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: Aye.
CHIEF CLERK GILBREATH: Thompson.
DELEGATE THOMPSON: Aye.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: Aye.
CHIEF CLERK GILBREATH: Tudor.
(No response.)
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: Aye.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: Aye.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: Aye.
CHIEF CLERK GILBREATH: Wallin.
DELEGATE WALLIN: Aye.
CHIEF CLERK GILBREATH: Warner.
DELEGATE WARNER: Aye.
CHIEF CLERK GILBREATH: Wicks.
DELEGATE WICKS: Aye.
CHIEF CLERK GILBREATH: Wenstrom.
PRESIDENT WENSTROM: Aye.

PRESIDENT WENSTROM: The roll call discloses 94 "ayes," no "nays," four delegates absent and not voting.

Committee Proposal No. 1-25 has passed.

Next for consideration. Committee Proposal No. 1-26.

CHIEF CLERK GILBREATH: Committee Proposal No. 1- —

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President, I wonder if I could move that we waive the reading of 1-26, inasmuch as it has been read previously and because this is another one we took action on previously and sent back to the Committee. I would so move.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Nething moves that we dispense with the reading of Committee Proposal No. 1-26. It's seconded by Delegate Kwako.

Is there any discussion?

Hearing none, as many as are in favor — Delegate Vogel.

DELEGATE VOGEL: No.

PRESIDENT WENSTROM: Hearing no further discussion, as many as are in favor of the motion will say "aye;" against or opposed "no." The "ayes" have it, and we will dispense with the reading of 1-26.

Is there any discussion?

DELEGATE VOGEL: Mr. President.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: Mr. Nething has said this is another one that was sent back to the Committee to clear up some cloudiness in the language, in part. While we were at it, we made one small amendment. In part c, in line 19, we changed the words "is disqualified" to "fails to disqualify" — "fails to qualify," which we thought were more exact, at the end of line 19 there. But over in Section 4 there was a little doubt about what the language used previously meant. You'll find that language on page 2 of 1-26 — the white 1-26 — which is directly ahead of the pink number. In line — I think that this language says what we thought we had said the first time around. In line 5, we have changed the language to read, "to determine absence and disability of the governor or governor-elect and to determine" — and the rest is the same as the first Section b — d was. In other words, we have added the words — just that one phrase giving the Supreme Court jurisdiction to determine absence and disability of the governor or governor-elect, as well as the rest of it.

This proposal pertains solely to procedures which shall be used in determining whether the governor or the governor-elect is able to fulfill his duties or to take office again after a disability, and it pertains only to the governor. At the time that this was returned, there was a conference committee, and it was decided that the procedures for determining whether other officers were able to carry out their duties should be taken care of in another proposal, which is Proposal 1-120, which will be discussed next. This one pertains solely to the succession — gubernatorial succession.

PRESIDENT WENSTROM: Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President. Did the amendment that we considered previously pass — the one that dealt with Section d?

DELEGATE VOGEL: I'm sorry. I don't know. It was returned to committee. I don't know that it was passed. Was it passed?

DELEGATE NETHING: Mr. President, I maybe could answer that.

Delegate Aubol. I believe you are talking about the amendment that's in the book. Yeah. Right. We approved that about three or four days ago, and then we had it — we didn't intend to have it reprinted. We intended to have it retyped and distributed, but that's — it was approved, and that's the reason the language is on the pink sheet there.

PRESIDENT WENSTROM: Delegate Nething, just a point of clarification.

It would be right to say that the proposal as before us is a reprint and — in that pink sheet; is that right?

DELEGATE NETHING: Yes, the pink sheet shows the proposal as amended.

PRESIDENT WENSTROM: The way it is before the Convention now?

DELEGATE NETHING: That's correct.

PRESIDENT WENSTROM: Does that answer your question, Delegate Aubol?

DELEGATE AUBOL: Yes, Mr. President. I do, however have one further question, and that has to do with that line 6, where you state, "The Supreme Court shall have original, exclusive and final jurisdiction to determine absence and disability of the governor or governor-elect."

I wonder, how does the governor-elect fit into this article?

DELEGATE VOGEL: Should something happen to the governor-elect between the time that he is elected and the time that he is inducted into office — about six weeks-to-two months later.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal 1-26. Those in favor will vote "aye;" those opposed will vote "no."

The Clerk will open the — no, he won't.

CHIEF CLERK GILBREATH: He'd like to

PRESIDENT WENSTROM: He will take roll call.

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: Aye.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: No.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: Aye.

CHIEF CLERK GILBREATH: Bassingthwaite.

DELEGATE BASSINGTHWAITE: Aye.

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: Aye.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: Aye.

CHIEF CLERK GILBREATH: Benz.

DELEGATE BENZ: Aye.

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Aye.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: Aye.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Aye.

CHIEF CLERK GILBREATH: Birkeland.

DELEGATE BIRKELAND: Aye.

CHIEF CLERK GILBREATH: Brakke.

DELEGATE BRAKKE: Aye.

CHIEF CLERK GILBREATH: Burbidge.

DELEGATE BURBIDGE: Aye.

CHIEF CLERK GILBREATH: Burke.

DELEGATE BURKE: Aye.

CHIEF CLERK GILBREATH: Butler.

(No response.)

CHIEF CLERK GILBREATH: Byrne.

DELEGATE BYRNE: Aye.

CHIEF CLERK GILBREATH: Cart.

DELEGATE CART: Aye.

CHIEF CLERK GILBREATH: Chase.

DELEGATE CHASE: Aye.

CHIEF CLERK GILBREATH: Christensen.

DELEGATE CHRISTENSEN: Aye.

CHIEF CLERK GILBREATH: Daniels.

DELEGATE DANIELS: Aye.

CHIEF CLERK GILBREATH: Dawson.

DELEGATE DAWSON: Aye.

CHIEF CLERK GILBREATH: Decker.

DELEGATE DECKER: Aye.

CHIEF CLERK GILBREATH: Devine.

DELEGATE DEVINE: Aye.

CHIEF CLERK GILBREATH: Diehl.
DELEGATE DIEHL: Aye.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Aye.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Aye.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Aye.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Aye.
CHIEF CLERK GILBREATH: Fallgatter.
DELEGATE FALLGATTER: Aye.
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Aye.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Aye.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Aye.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Aye.
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Aye.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Aye.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Aye.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Aye.
CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: Aye.
CHIEF CLERK GILBREATH: Hernettt.
DELEGATE HERNETT: Aye.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Aye.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Aye.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Aye.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: Aye.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: Aye.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Aye.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Aye.
CHIEF CLERK GILBREATH: Kessel.

DELEGATE KESSEL: Aye.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Aye.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Aye.
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Aye.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Aye.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Aye.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Aye.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Aye.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Aye.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Aye.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Aye.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Aye.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Aye.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: Aye.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Aye.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Aye.
CHIEF CLERK GILBREATH: Nething.
DELEGATE NETHING: Aye.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Aye.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: Aye.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: Aye.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Aye.
CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: Aye.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Aye.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Aye.
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: Aye.

CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Aye.
CHIEF CLERK GILBREATH: Rosendahl.
(No response.)
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Aye.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: Aye.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SANSTEAD: Aye.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Aye.
CHIEF CLERK GILBREATH: Scheel.
DELEGATE SCHEEL: Aye.
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: Aye.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: Aye.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: Aye.
CHIEF CLERK GILBREATH: Solberg.
DELEGATE SOLBERG: Aye.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDREAL: Aye.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: Aye.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: Aye.
CHIEF CLERK GILBREATH: Thompson.
DELEGATE THOMPSON: Aye.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: Aye.
CHIEF CLERK GILBREATH: Tudor.
(No response.)
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: Aye.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: Aye.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: Aye.
CHIEF CLERK GILBREATH: Wallin.
DELEGATE WALLIN: Aye.
CHIEF CLERK GILBREATH: Warner.
DELEGATE WARNER: Aye.
CHIEF CLERK GILBREATH: Wicks.
DELEGATE WICKS: Aye.
CHIEF CLERK GILBREATH: Wenstrom.
PRESIDENT WENSTROM: Aye.
DELEGATE AUBOL: Mr. President.
PRESIDENT WENSTROM: Delegate Aubol.
DELEGATE AUBOL: Under the procedure we're working on now, do I have
the opportunity to change my vote?

PRESIDENT WENSTROM: You can change your vote.

DELEGATE AUBOL: I would change my vote to "aye." I have a chance to read it.

PRESIDENT WENSTROM: Delegate Aubol changes the vote from "nay" to "aye." As long as you change it before the vote is announced.

Delegate Larsen, how do you vote?

DELEGATE LARSEN: Aye.

PRESIDENT WENSTROM: He votes "aye."

The roll call discloses 95 "ayes," there were no "nays," absent and not voting were three. So Committee Proposal No. 1-26 has passed.

Next for consideration, Committee Proposal No. 1-120.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President, this is another one that's been — that was read when it was brought in on amendment and, therefore, I would move that we dispense with the reading of 1-120.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Nothing moves that we dispense with the reading of Proposal No. 1-120. It's been seconded by Delegate Litten.

Any discussion? As many as are in favor of the motion will say "aye;" opposed "no." We'll dispense with the reading of the Proposal.

Delegate Nothing.

DELEGATE NETHING: Mr. President. Fellow Delegates:

Committee Proposal 1-120 deals with the subject of removal from office for all elected and appointed officers of the State and its political subdivisions, other than its judicial officers.

Now, the reason judicial officers are excluded is because there is a particular provision that applies to them in the judicial article. The grounds for removal are as may be provided by law for the following reasons: Crimes, corrupt, conduct, malfeasance or because of chronic and continuing inability to perform the duties of office.

Beginning on line 12 you will note that "Proceedings for removal of state executive officers shall be commenced as provided by law in the Supreme Court of the state, which court shall have original, exclusive, and final jurisdiction."

The purpose for inserting that clause is so that for any of the other officers, that the Legislature may provide which court will have jurisdiction. This would be your municipal officers or your county officers, township officers, and so on.

Now, I would like to direct your attention to Committee Proposal 1-33, which we passed on January 11, and in Article II there, Section 23, lines 12 through 15, in that particular Proposal we have — we make subject to removal all officers that were not liable to impeachment. In other words, all officers who were not elected. If you approve this Proposal 1-120, which now encompasses all elected and appointed officers, except as I pointed out, then we will move to return 1-33 for the elimination of lines 12 through 15. So we're putting it all in one section, and this was worked out, again, by a joint sub-committee of the Executive Functions and Legislative Functions. We think it's a good provision and urge your approval.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-120.

Hearing no further discussion — Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I'd like to ask Mr. Nothing a question.

DELEGATE NETHING: Yes sir.

DELEGATE PAULSON: Mr. Nothing, as I recall in the Board of Education provision this morning, we did provide that those appointees should be removed in a manner providing for the removal of the governor. Do you recall that or have you checked against that one?

DELEGATE NETHING: I'd like to yield to someone on the Education Committee. I am not familiar with it.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: The language says here the members of the Board may be removed for the same reasons and in the same manner provided for removal of the governor.

DELEGATE PAULSON: Mr. Chairman, I'd like to ask, then, Mr. Nething: When we come to the Board provision tomorrow, would it be in good order to adopt this system to the Board's removal, rather than the governorship impeachment, et cetera?

DELEGATE NETHING: This would be, I think, the consensus of our — the two committees that worked on this. It would be just a minor amendment at that point.

PRESIDENT WENSTROM: Any further discussion?

The question — Delegate Sinner.

DELEGATE SINNER: Mr. President. I wonder if the sentence that's in one of the legislative sections — I can't remember which one — that says that the Legislature shall be the sole judge of the qualifications of its members — might be in conflict here. If a law were in effect which would demonstrate a legislator to be unqualified, and yet the Legislature itself saw fit to suggest that he was qualified — are the two sections in conflict?

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President. Fellow Delegates:

It would be my thought that the provision in the legislative article would govern prior to the time that they are seated in office. In other words, they would set the qualifications up to that point, and then, for removal purposes and for the reasons as outlined here, this provision would govern.

PRESIDENT WENSTROM: Any further discussion?

The question is on the first passage of Committee Proposal No. 1-120. Those in favor will vote "aye;" those opposed will vote "no."

The Clerk will proceed with the roll call.

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: Aye.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: Aye.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: Aye.

CHIEF CLERK GILBREATH: Bassingthwaite.

DELEGATE BASSINGTHWAITE: Aye.

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: Aye.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: Aye.

CHIEF CLERK GILBREATH: Benz.

DELEGATE BENZ: Aye.

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Aye.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: Aye.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Aye.

CHIEF CLERK GILBREATH: Birkeland.

DELEGATE BIRKELAND: Aye.

CHIEF CLERK GILBREATH: Brakke.

DELEGATE BRAKKE: Aye.
CHIEF CLERK GILBREATH: Burbidge.
DELEGATE BURBIDGE: Aye.
CHIEF CLERK GILBREATH: Burke.
DELEGATE BURKE: Aye.
CHIEF CLERK GILBREATH: Butler.
(No response.)
CHIEF CLERK GILBREATH: Bryne.
DELEGATE BRYNE: Aye.
CHIEF CLERK GILBREATH: Cart.
DELEGATE CART: Aye.
CHIEF CLERK GILBREATH: Chase.
DELEGATE CHASE: Aye.
CHIEF CLERK GILBREATH: Christensen.
DELEGATE CHRISTENSEN: Aye.
CHIEF CLERK GILBREATH: Daniels.
DELEGATE DANIELS: Aye.
CHIEF CLERK GILBREATH: Dawson.
DELEGATE DAWSON: Aye.
CHIEF CLERK GILBREATH: Decker.
DELEGATE DECKER: Aye.
CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Aye.
CHIEF CLERK GILBREATH: Diehl .
DELEGATE DIEHL: Aye.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Aye.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Aye.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Aye.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Aye.
CHIEF CLERK GILBREATH: Fallgatter.
DELEGATE FALLGATTER: Aye.
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Aye.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Aye.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Aye.
CHIEF CLERK GILBREATH: Gipp.
(No response.)
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Aye.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Aye.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Aye.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Aye.

CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: Aye.
CHIEF CLERK GILBREATH: Hernett.
DELEGATE HERNETT: Aye.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Aye.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Aye.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Aye.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: Aye.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: Aye.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Aye.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Aye.
CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Aye.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Aye.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Aye.
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Aye.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Aye.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Aye.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Aye.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Aye.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Aye.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Aye.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Aye.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Aye.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Aye.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: Aye.
CHIEF CLERK GILBREATH: Meidinger.

DELEGATE MEIDINGER: Aye.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Aye.
CHIEF CLERK GILBREATH: Nething.
DELEGATE NETHING: Aye.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Aye.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: No.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: No.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Aye.
CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: Aye.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Aye.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Aye.
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: Aye.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Aye.
CHIEF CLERK GILBREATH: Rosendahl.
(No response.)
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Aye.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: Aye.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SAUGSTAD: Aye.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Aye.
CHIEF CLERK GILBREATH: Scheel.
DELEGATE SCHEEL: Aye.
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: Aye.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: Aye.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: Aye.
CHIEF CLERK GILBREATH: Solberg.
DELEGATE SOLBERG: Aye.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDREAL: Aye.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: Aye.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: Aye.

CHIEF CLERK GILBREATH: Thompson.
DELEGATE THOMPSON: Aye.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: Aye.
CHIEF CLERK GILBREATH: Tudor.
(No response.)
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: Aye.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: Aye.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: Aye.
CHIEF CLERK GILBREATH: Wallin.
DELEGATE WALLIN: Aye.
CHIEF CLERK GILBREATH: Warner.
DELEGATE WARNER: Aye.
CHIEF CLERK GILBREATH: Wicks.
DELEGATE WICKS: Aye.
CHIEF CLERK GILBREATH: Wenstrom.
PRESIDENT WENSTROM: Aye.
Delegate Rundle, how did you vote?
DELEGATE RUNDLE: "Aye" — I think.
DELEGATE GIPP: Mr. President.
PRESIDENT WENSTROM: Delegate Gipp.
DELEGATE GIPP: Gipp votes "aye."
PRESIDENT WENSTROM: Delegate Gipp votes "aye."
The roll call discloses 93 "ayes," 2 "nays," three delegates absent and not voting.
Committee Proposal No. 1-120 has passed.
DELEGATE SOLBERG: Mr. President.
PRESIDENT WENSTROM: Delegate Solberg.
DELEGATE SOLBERG: May I make an observation that the Delegates to this Convention are not colorblind and their favorite color is pink. (Laughter)
PRESIDENT WENSTROM: Delegate O'Toole.
DELEGATE O'TOOLE: Mr. President, may I explain my vote?
PRESIDENT WENSTROM: Certainly.
DELEGATE O'TOOLE: In re-reading this and just as they were starting to take the roll call, it occurred to me the possibility, in the second paragraph, that it would be very restrictive for the governor if he had appointed officers, and that it would have to resort back to some complicated Supreme Court decision, that I felt it would be too restrictive on that matter because it says, "removal of state executive officers."
PRESIDENT WENSTROM: Next for consideration is Committee Proposal No. 1-76.
CHIEF CLERK GILBREATH: Committee Proposal No. 1-76, introduced by Committee on Legislative Functions:
"Be it resolved by the North Dakota Constitutional Convention that section 50 of Article II of the constitution of the state of North Dakota be repealed; and that a new section 15 of Article II of the constitution of the state of North Dakota be created; both of which pertain to the openness of legislative sessions.
"SECTION 1. REPEAL.) Section 50 of Article II of the constitution of the state of North Dakota is hereby repealed.
"SECTION 2.) Section 15 of Article II of the constitution of the state of North Dakota is hereby created to read as follows:

"All sessions of the legislative assembly, the committee of the whole, and the meetings of legislative committees shall be open and public."

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, this Proposal has been laid over once on account of my being sick once last week, and once on account of Delegate Butler not being here, and I understand he won't be here the rest of the week, and unless somebody has some other information, I suggest we proceed.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President, Delegate Butler called me on Sunday regarding other matters, and he did say that he was not going to be here for this purpose and that he didn't expect it to be held up; however, he did have an amendment that has been distributed to everyone that has his name on the upper right-hand corner, and I believe it's at the desk, and I would move the amendment at this time.

PRESIDENT WENSTROM: Delegate Nothing moves the amendment.

DELEGATE KNUDSON: Second.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-76:

After the period in line 13 insert the following:

"For the purpose of confirming gubernatorial appointments or conducting other specific business as ought to be kept secret, however either house may by majority vote of its members- elect close its deliberations to the public."

Renumber the lines accordingly.

PRESIDENT WENSTROM: For the record, the motion was seconded by Delegate Knudson.

Delegate Nothing.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I think probably Delegate Paulson could explain his opposition better than I could, but since we don't want him talking on both sides of the question, why I'll attempt to explain what Delegate Butler was attempting to do in this amendment.

As many of you know, there are a variety of appointments that come before the Senate, at which time the Senate has resolved itself into executive session for consideration of the same. Needless to say, 1-76 would prohibit this, and there are some — and this amendment would permit this to be done within — "for the purpose of confirming gubernatorial appointments or conducting other specific business as ought to be kept secret, however, either house may by majority vote of its members-elect close its deliberations to the public."

Now, I think there may be another amendment or two involving other areas. But, in this particular area, where the Senate is involved, the matter of discussing the merits of an individual and his ability for holding a particular job could be such that it might cause embarrassment to the particular individual when needless — as we all know, to get good people to serve in government, we want to do everything we can to encourage them. Senator Butler mentioned to me, and I certainly concur, that as a practical matter if we are to prohibit this being done, eventually these meetings will be held downtown, where they will be closed, or at somebody's residence, or something of this nature, and then the decision made on the floor will be such just for public edification and not as to the merits at all. I think the proposed amendment does have some consideration, and I would urge your approval of it.

PRESIDENT WENSTROM: Any further discussion? Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. The Legislative Functions Committee did not bring forth its proposal simply as a matter — as an exercise in good-heartedness. Essentially, we, the people, elect the legislators to do our business. We, the constitutional delegates, are proposing that we go to a very extensive appointive system. Now, all of you have had experience in this session. You know that primarily the business of this Convention is accomplished in the committee sessions. This is what the intent of the proposal is — to let the public witness what the legislators do. Any time we give permission to keep secret those things which the legis-

lators think should be kept secret, we give them a wide-open privilege to keep the public out, either by indirection or by vote, if the public forces them to go that way.

I cannot understand how this Convention could go to a very wide-open appointive system for the executive branch and then permit the Legislature to approve those appointees in secret. Any time anybody permits his name to go before the Legislature as an appointee of the governor, his record is as open and should be as open to the public as to the Legislature for examination. He has put himself into the political circle and his record should be examined. By the same token, the Legislature should be able to give good substantial reason for turning down any appointee, rather than some behind-the-door reason, which leaves the thing wide open to speculation and probably could do more damage to the individual involved than an open examination and an open vote. I am quite sure that when you see people come to Bismarck to present their testimony before committees, that they do feel bad when the committee says, "Well, now it's time for executive session. Will the witnesses please leave?" Under our proposal, the chairman and the Legislature would have full control. The people could give their testimony, but then they could sit back and see what the Legislature and committee members did with the testimony that is presented.

I think that this is a strong proposal for open government. It didn't come out of the committee; it came from a member of the Legislature. The original proposal comes from Delegate Rundle, and it virtually is a duplicate of his Delegate Proposal which was examined by our Committee, and I urge the defeat of the amendment and the approval of the Proposal.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, would Delegate Nothing yield to a question?

DELEGATE NOTHING: Okay.

DELEGATE DEVINE: I realize that Delegate Nothing is here on the spot. But would you give me an illustration of the impact of the second line of the amendment — "other specific business as ought to be kept secret"? Could you give me some examples?

DELEGATE NOTHING: I really can't. It was Delegate Butler's language, and perhaps somebody else on the Committee — they might have discussed it in the Committee. If somebody might answer the question, not necessarily being for or against it.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I think I could give an indirect example of what I think Delegate Butler is trying to get at here, although I'm not in complete accord with his amendment.

I think something — some other consideration should be given of it. But many times during the legislative session a whole list of names comes before the Senate for confirmation — people that are officials that the governor is appointing. Now, as a general rule, those go right through without any difficulty. Someone who knows the person in the body gets up and gives their qualifications and all, and we are in executive session and have been in past years, at least. Occasionally however, there is something derogatory that will come out about that official and will cause, probably, the Senate not to confirm the appointment. Maybe this was not even known by the governor at the time. And there is — has been some feeling that that person should not be exposed to the public, if he's not going to get the job for something that may or may not be true; but at least it was brought out at the time of the hearing. That is one example where a complete, open hearing might be unfair to the person who is being considered.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, pursuing that, I can understand the first sentence and why it's there. The second sentence, I understand, is also from Section 50 of the present Constitution, and I was just wondering, as a practice does the Legislature ever go into executive session for subjects other than appointments?

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The Legislature, in open session, when they meet in plenary session, cannot go into secret session except they have interpreted the words "executive session" as requiring the elimination of all people from the gallery and from the press desks, and this is in the Senate for the approval of appointees to the Board of Higher Education and a couple of others. But we are going into a brand new system and those appointees, not only for the Board of Education, we're establishing, should be examined by committees and in public, just as a nominee for the U. S. Supreme Court is examined in public and by the committees of the U. S. Senate. The major bodies cannot go into executive session for any of the normal transactions of passing bills and discussing resolutions. Their committees, however, have undertaken the privilege of exempting — of closing the doors to the public and to the press whenever they so feel like it. That is generally when there is a hot subject coming up and they would rather not have anybody looking over their shoulder and determining how they are going to handle the public's business. This is where the secrecy in the Legislature does crop up from time to time. It's been pretty good in recent years. But there is always the possibility that the critical business will be handled behind closed doors, and closed doors are the general rule on the conference committees between House and Senate, and that general rule would be eliminated by this provision; in other words, a conference committee would have to admit anybody who wished to watch them in their deliberations. Of course that doesn't mean that they have to take testimony or anything else, but there would be no secret or unexplainable conference committee reports.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, there is a case, albeit a weak one, for allowing the Senate to go into executive session to consider gubernatorial appointments. The case is even weaker now that we're proposing this new Constitution to confer broad new appointive powers on the governor.

As to the second line of the proposed amendment, I pose this question: When is "other specific business" in a legislative session ever such as ought to be kept secret from the public? These are the people's representatives. They should operate in the open.

Mr. President, the vote in committee on Committee Proposal 1-76 was 17 "aye," 1 "nay," and 2 absent.

I urge you to reject the amendment. It would render the entire section meaningless and inoperative.

PRESIDENT WENSTROM: Delegate Hoffner. I'm sorry — go ahead.

DELEGATE HOFFNER: Mr. President. I also hope that the amendment is defeated. We kicked this around in Committee quite a bit. Every person that goes before the public to be elected — his record is open to the public, and I don't see any reason why appointed officials should not be open to the public.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Mr. President, I think it's a very good thing that we provided 80 days for the Legislature. I'm not naive enough to realize that if these people want to go into executive session, they'll just recess their meeting and meet downtown and have a party and vote on it there, and then come back again. I'm against both the amendment and the proposal.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President and Fellow Delegates:

Well, I introduced essentially the same proposal, okayed the change in the committee — or, that is, I okay it now, and it's all right.

Let's go back to Section 50 in the old Constitution, and here's one case where I don't think the old Constitution was so good. You can just imagine sitting in that old chamber, most of the boys with beards and whiskers, and someone got up, brought in the proposition — he said, "The sessions of each house and of the committee of the whole shall be open. So we have to compromise." Here comes an amendment and it ends up "shall be open unless the business is such as ought to be kept secret."

Now, this is really compromised! They just change it completely, and that's what the amendment would do. And I could add a little bit to how the Legislature's been working — how the House has been working. Lots of chairmen still have executive — or some chairmen still have executive sessions. As a whole, there weren't very many executive sessions in the House that I knew about. One Committee I was on didn't have the executive session at all. We heard the lawyers and the lobbyists and the witnesses, and we went right ahead and voted on it. No one seemed to be hurt, and I can't see why this body, which is the most open convention I've ever attended — or meeting — of course there have been some smoky rooms, but I don't think any business has been transacted. I think that this is a good example of why the Legislature should be non-secretive. I hope that the amendment is defeated and the proposal passed.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I was going to suggest or move that we also — that we have 2-12 read. Actually, these two proposals deal with the very same subject — the same problems arise, the same type of amendments would apply, one having come through the Legislative Committee relates to open meetings of the Legislature, and the other deals with all government agencies with regard to open meetings, and I think it might be helpful if we could move this up right behind — or at least it be read now, so the delegates would know when they tamper with one, they could consider the other one, as to what they're going to do, because the very same issues are present in both of them. I don't know how — we can't consider them simultaneously, but we can have them one right after the other. So I would move that 2-12 be moved up immediately following this proposal.

PRESIDENT WENSTROM: Delegate Kelsch, I think you would have to reverse the procedure. I think you should move it up first — read it first, and then move it up. I think, if it is the wish of the Convention that you move it immediately below this one, why then I think we can do that.

DELEGATE KELSCH: Or we could move it ahead of this one and consider it. I move it be put immediately below this one, Mr. President.

PRESIDENT WENSTROM: And it is number what?

DELEGATE KELSCH: 2-12.

DELEGATE CHRISTENSEN: Mr. Chairman, was the suggestion to move it ahead of the one that we now have — 2-12?

DELEGATE KELSCH: Well, I'll move it ahead of the one that we're considering now.

DELEGATE CHRISTENSEN: I'll second that motion.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I would oppose that proposal. We've debated this subject. There's a world of difference between the elected representatives of the people doing the public's business and the appointive boards and agencies, which takes in all other — many different concepts, and the arguments are in some degree, but I think we should handle the legislative one first, set policy for that branch, and then take a look at the next one. I would oppose changing the order of business, as long as we have 1-76 before us now.

PRESIDENT WENSTROM: The Chair will concur in the argument as presented by Delegate Paulson, inasmuch as we do have an amendment to a particular proposal before the Convention.

The amendment before the Convention is that offered by Delegate Nothing on behalf of Delegate Butler.

The question before the Convention is on the adoption of the amendment. Any further discussion? Hearing none, those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will vote "aye;" those opposed "nay." The "noes" have it and the amendment lost.

Now we're back on Committee Proposal No. 1-76.

Now, Delegate Hernet, you have asked for the floor — I believe this is the third time — so maybe I'd better listen.

DELEGATE HERNETT: No, it's the second time.

I'd like to talk — ask a question on 1-76. I have no quarrel with this type of a thing, I think the Committee should know. I've been a committee chairman for a long time in the Senate. I do wonder, though, about tape recorders and television cameras, and so on, at a committee hearing. What do the proponents of this measure feel is the — where can you draw the line on this type of a thing?

Now, I've been requested at different times and at different sessions of the Legislature to allow tape recorders at our committee hearings and have been asked to allow television cameras. I've been asked to move our hearings to larger rooms to allow television cameras to be there. What I'm wondering: Is there anyplace in this, if this is passed, for a committee chairman in the Legislature, or the Legislature itself, to make any determination of what in some cases that I know of and one in particular in the last session, where it became a nuisance and I had to say "no" as to tape recorders — someplace or other, I think we should — legislators should have something to say about how far this thing should go.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: If I may answer that question.

In Committee Proposal 1-70, which has passed, Section 13 provides that "Each house shall have the power to determine the rules of proceedings and punish its members or other persons for contempt or disorderly behavior in its presence." It seems to me that confers on the Legislature the power to determine by rule such matters as the presence of cameras and tape recorders.

DELEGATE HERNETT: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I don't think that's answering my question. Could we rule — is that your interpretation, then, that we could rule that we would have no television cameras and no tape recorders in committee hearings?

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The Committee on Legislative Functions did not attempt to go into what the Committee did. As I pointed out, the committee is in full control of the proceedings within the committee room. It will recognize the witnesses from time to time, but once that the committee decides to go into its own discussion, from that point on the public and the press are simply audience. There is no attempt to establish in this provision a mandate that television cameras are a part of the scenery, either in the chambers or in the committee deal, or tape recorders, or anything else. Each of those things will have to be decided by the Legislature itself, and I'm quite sure that there will be no different rules than prevailed in the past, and it would be strictly up to the Legislature to handle it the way it is best for them and for the public.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. I'm sure that everyone here agrees that the tape recorder hasn't interfered with our deliberations in committee hearings, and possibly in the future the Legislature is going to be doing the same thing — record all proceedings in committee meetings and then an individual can't come in and take part of it and take it out and say this is what this person said, and take it out of context, because the record will be there. I don't think this is going to be too much of a problem. The Legislative Procedure and Arrangements Committee has installed some lighting in the chamber here and are encouraging more coverage of the deliberations, and in committee meetings, as well as in the chamber.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Delegate Hernet, it wasn't the intent of my proposal, and this one follows it closely, to cut down the power of the chairman to run his committee, and I wasn't so concerned with the press and the other media as I was with citizens. For instance, I've been on a committee when some neighbors and friends of mine came down and testified at a hearing, and then were very politely but forcibly shown the door. I was highly embarrassed. They had every right to be there. They had driven a long way. And I don't think the

intent — I know my intent wasn't to stop the committee chairmen from closing down the television cameras or tape recorders, if they were making noise, or anything like that, the same as now applies in most courtrooms, where the judge can — has pretty much control in case they're bothering; and cameras the same way, in a lot of cases. At least this wasn't the intent.

PRESIDENT WENSTROM: Further discussion? The question before the Convention, for first passage of Committee Proposal No. 1-76.

Those in favor of its adoption will vote "aye;" those opposed will vote "no."

We have been requested to try the machine, so we're going to. The Clerk will open the key and we will try the automatic roll call.

Has every delegate voted? Any delegate wish to change his vote?

You will close the key.

Delegate Knudson, how do you vote?

DELEGATE KNUDSON: Aye.

PRESIDENT WENSTROM: Knudson votes "aye."

DELEGATE KETCHUM: Aye.

PRESIDENT WENSTROM: The roll call discloses 87 "ayes" 7 "nays," four delegates absent and not voting. Committee Proposal No. 1-76 has been passed.

DELEGATE LITTEN: Mr. President.

DELEGATE CHRISTENSEN: Mr. President.

PRESIDENT WENSTROM: Delegate Christensen.

DELEGATE CHRISTENSEN: Did we move to hear 2-12 at this time?

PRESIDENT WENSTROM: You did move, but I ruled the motion out of order, and if you wish to bring it back, you will have to —

DELEGATE CHRISTENSEN: I will so move now, if its in order.

PRESIDENT WENSTROM: Delegate Christensen moves that Delegate Proposal 2-12 be placed at the head of the calendar. Do I have a second?

DELEGATE McINTYRE: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate McIntyre.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Delegate Proposal No. 2-12 is now at the head of the calendar.

DELEGATE CHRISTENSEN: I have an amendment at the desk. Would you read it, please?

PRESIDENT WENSTROM: We will read the proposal first.

CHIEF CLERK GILBREATH: Delegate Proposal No. 2-12, introduced by Delegate Rundle:

"Be it resolved by the North Dakota Constitutional Convention that a new section of the constitution of the state of North Dakota be created, requiring that governmental meetings be open to the public.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The meetings of all governmental and executive bodies, boards, bureaus, commissions or agencies of the state, or any of its political subdivisions, shall be open and public."

DELEGATE CHRISTENSEN: I now have an amendment at the desk.

PRESIDENT WENSTROM: Delegate Christensen.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 2-12.

On line 9 of the engrossed proposal, after the word "public" and before the period, insert the following: ", except when privileged, confidential, or personal and intimate information involving a specific individual or family is under consideration and revealed in discussion."

PRESIDENT WENSTROM: May we have a second?

DELEGATE DEVINE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Devine.

DELEGATE CHRISTENSEN: This privileged and confidential information that I refer to in this amendment would include but not be limited to information regarding possibly an individual's physical or his mental health, his birth status, including parenthood of a child born out of wedlock, or his possible subsequent adoption. It would include marital problems, juveniles in conflict with the law, the financial status of individuals, the dependency of individuals, and similar information which would constitute what I believe is an invasion of privacy if it were made open to the public.

I would like to refer to Chapter 50-24 of the Code. Section 50-24-31 of the North Dakota Century Code, pertaining to confidentiality in public welfare operations:

"All applications, information, and records concerning any applicant or recipient of assistance to aged, blind, or disabled under the provisions of this chapter shall be confidential and shall not be disclosed nor used for any purpose not directly connected with the administration of assistance to the aged, blind, or disabled; except that upon the personal written request of any elected public official the records of the names, addresses, and amounts of assistance shall be open for his inspection by the state or county welfare board. Such information shall not be used for any political or commercial purpose or made public in any manner."

It also provides for the fact that the violation of this would make a person or persons guilty of a misdemeanor.

Now, I think this is a very simple matter of just protecting — to keep from constituting the invasion of privacy of any individual, if we're thinking of the individual.

Now, this law that I referred to actually, I believe, was enacted to put North Dakota in compliance with the federal requirement as it pertains to the Social Security Administration. So, in deference to this state law and in propriety in protecting individual human rights, I ask you to support this amendment.

PRESIDENT WENSTROM: The question is on the amendment. Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

The Committee — I wasn't on the Committee, and I believe Chairman Maxwell told me to appear and talk about it, so I thought maybe I ought to mention a word here.

There are a lot of — there are several amendments, and everyone that's offered them has been good enough to leave one here, and I have no objection to some of the amendments. However, the most — the best amendment, in my opinion, didn't get in first, and I don't know what to do about this. But I can see that this — I would like to explain, first, that we took out the courts. I had originally had one include courts, and there were so many exemptions that had to be in that I withdrew that the other day — separation, divorce, and all that. And then the Committee put the word "executive bodies" in here to make sure this didn't include the courts, and I agree, and I have no objection to any further amendments; but I — I would like to figure out a way to hear Mrs. Jestrab's amendment, first, and the only way I can see is to urge the defeat of this one.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President.

I would like to call the body's attention to the fact that while the Tax Commissioner is a single individual, the Supreme Court of this State has held that it is a governmental agency. If you have a dispute about your income tax with the Tax Commissioner, there are circumstances under which you are entitled to a hearing.

It is conceivable that that hearing could then be public. I think the former Tax Commissioner, to my right, would agree with me on that.

PRESIDENT WENSTROM: Any further discussion? Delegate Jestrab.

DELEGATE JESTRAB: Mr. President, I do have an amendment in to this proposal, and I do not object to Mr. Christensen's proposal at all, except that mine would say that there shall be a privilege for individual natural persons whose rights are being considered, if that person requests the meeting be closed, and I would explain that, if this is debated. Otherwise, I think it would be included in Mr. Christensen's motion.

DELEGATE CHRISTENSEN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Christensen.

DELEGATE CHRISTENSEN: I became aware of her amendment — Mrs. Jestrab's amendment — after I offered mine; but I — I really feel in my amendment, where I include the wordage "personal and intimate information," I think it would include what she's driving at.

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Well, Delegate Christensen, I was wondering if you objected to the amendment just mentioned, which said "if requested by the individual."

Now, there's quite a difference there. If the individual requests that it be a closed meeting in cases like that, I have no objection; but I have sort of an objection to the chairman or the head of the department closing any meeting, if the person involved doesn't care.

DELEGATE POULSON: Mr. Chairman.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I believe that we would have to have similar language to Delegate Christensen's amendment in order to comply with the federal statutes with respect to welfare and some of these other programs. I don't believe that if we only excluded it at the request of the person involved, it would comply with the federal statute, and that being true, I believe I remember vaguely this law which we passed, and we were told that we had to pass it or they would hold up the matching funds that they were to pay us and, as a matter of fact, I think they did hold for about a month, until we got something passed here at the Legislature. I can think of other needs for the passage of some similar limitation. Many times a school board may be considering some complaints that may be false against a teacher about her activities, or something of that kind. She may come in and show that these complaints are completely false, and the school board take no action about it. But even the fact that a person is accused sometimes like that, whether it be proved or not proved, make their position much more difficult, particularly in this case with children, and so forth, if these are completely open and publicized. I do think we ought to have some limitation, such as that suggested by Delegate Christensen.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Mr. Chairman and Fellow Delegates:

I support Delegate Christensen's proposed amendment because I can see many times where the individual involved might not even be there, that — particularly, as Mr. Christensen pointed out, in the case of welfare adjudications. The board undoubtedly has a large caseload. The information that they're discussing relative to people is confidential. It is intimate. The people involved perhaps don't even know that there is a hearing on their particular case that day, and I think it would be an invasion of their right if this were a public meeting, and I endorse and urge the adoption of Delegate Christensen's proposed amendment.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Mr. President, I speak in favor of Delegate Christensen's amendment, too, and I think I speak particularly from the view of welfare. I couldn't with any conscience, approve open-to-public meetings of our welfare board meetings. People are on welfare through very adverse circumstances to begin with. Maybe there are very, very few who should be exposed; but certainly not at the expense of the majority. It's humiliating enough to be on welfare and I think to expose these people to the public is just needless and very cruel, and I would speak for this amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, I feel that Delegate Christensen's amendment should either be rejected or amended for the reason that the language in the last line, "and revealed in discussion," renders it defective. The way this proposal would read on its face, if this amendment is attached to it, is that a meeting would be open and public, except when information is under consideration and revealed in discussion. So the way it would read is that the meeting is open until

all such information is revealed. By that time, the cat is out of the bag, and I don't think this is its intent; but that's the way it reads.

PRESIDENT WENSTROM: Delegate Christensen.

DELEGATE CHRISTENSEN: I believe that Mr. Dobson — or Delegate Dobson is correct. For that reason, I would make an amendment to the amendment by putting a period after the word "consideration" and deleting the rest of the sentence.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Just one moment, please while we get the amendment.

Now, do I have a second to Delegate Christensen's amendment?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Now, will you read the amendment, please, Mr. Clerk?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment:
Delete the words "and revealed in discussion."

PRESIDENT WENSTROM: You have heard the amendment to the amendment, and seconded by Delegate Litten. Any further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I yield to Delegate Rundle.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President I have no objection — in fact, I think I'll vote for the amendment.

PRESIDENT WENSTROM: The question is on the amendment to the amendment. All in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

Now we're back on the amendment as amended.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I have an amendment at the desk that I offer as an amendment. Is that in order now?

PRESIDENT WENSTROM: If you have a further amendment to this amendment, it is in order.

DELEGATE JESTRAB: Yes. I would delete the period after the word "consideration" and add, as is on my printed proposal at the desk, "unless an individual natural person whose rights are being considered requests that the meeting be closed."

PRESIDENT WENSTROM: We have a further amendment to the amendment.

DELEGATE JESTRAB: I withdraw the amendment, Mr. President. I confused the issue, and I will, Mr. President, until this issue is resolved.

PRESIDENT WENSTROM: Delegate Jestrab has requested that she may withdraw the amendment. Your request is granted.

DELEGATE DOBSON: Mr. President.

DELEGATE BYRNE: Mr. President.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: I'd like to direct a question to Delegate Paulson.

PRESIDENT WENSTROM: Will Delegate Paulson yield?

DELEGATE PAULSON: Yes.

DELEGATE BYRNE: I would like to get his opinion on this matter.

We have just passed previous Committee Proposal 1-76. I'm wondering about the compatibility of these two. In its present form, does not Proposal No. 2-12 take away what we were trying to acquire in Proposal 1-76? For example, before an executive session of the Senate, that the individual who was nominated states that he wishes to have the meeting private, why the meeting is going to be private, isn't it, under 2-12?

DELEGATE PAULSON: I will refer the question to Judge Maxwell.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I think I can explain that. This proposal deals only with the executive branch, and I know at present it says "governmental and executive." Now that "and" crept in there somewhere, and it should not be there, and I'm going to amend to delete that "and" so it will apply only to the executive branch and not to the legislative branch.

DELEGATE BYRNE: Thank you.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: If I may take the floor one more time.

First in reply to Delegate Byrne's question: The people affected by Proposal 1-76 have, by reason of their appointment to high office, become public figures. I think what's under discussion here are private individuals who are welfare clients or who have a tax case, or something like that. Now, I don't know where this amending process is leading us or where we're going to end up; but it was brought out earlier that a tax hearing maybe should be closed. Under the Christensen amendment, as well as the Jestrab proposal, you could close a tax hearing for an individual, but not for a corporation, and I would suggest that further amending is in order.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Christensen.

If there's no further discussion, those in favor of adopting the amendment will say "aye;" those opposed "no."

The "ayes" have it and the amendment is adopted.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Just last spring I had an occasion to review the secrecy and confidentiality of laws that we have in the State, and I think that we're talking about more than just the tax hearings and, as Delegate Dobson has pointed out, as 2-12 presently stands, we're only talking about specific individuals or families. Well, there are a number of business records that are in the state government. There are the corporate income tax hearings that could be opened, because that's not a specific individual or family. There are business records in the Workmen's Compensation Bureau and the Unemployment Compensation Division which are subject to hearings and proceedings of various kinds that I'm not sure we would care to make public either.

The reason that it seems to me that it makes sense for us to consider 1-76 was that it pertained to the Legislative Assembly, and there is nobody that can tell the Legislative Assembly what to do, except the Constitution. However, when it comes to the executive branch of the government, the Legislature can establish secrecy and confidentiality statutes to determine what records ought to be public and which ought to be private. I think this Convention is being snookered into considering another legislative matter. We look at the statute books of the State and we find that this has been a matter of legislative concern for years in the past. Why, suddenly, has it become a constitutional question? I think that the number of exceptions and deviations that are going to be necessary to protect everybody's rights and the rights of business people are such that it ought to be left a legislative matter and 2-12 ought to be defeated.

PRESIDENT WENSTROM: Any further discussion? Delegate Benson.

DELEGATE BENSON: Mr. Chairman, I've been waiting for a speech like that, and I certainly agree with Delegate Omdahl.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: In order to put a Baptist climax on this, may I say Amen?
(Laughter)

DELEGATE CHRISTENSEN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Christensen.

DELEGATE CHRISTENSEN: I would move that we suspend the rules —

PRESIDENT WENSTROM: Delegate Christensen moves that the rules be suspended and that Committee Proposal No. — or Delegate Proposal No. 2-12 be deemed properly engrossed and placed on the calendar for first passage as amended.

DELEGATE CHRISTENSEN: Thank you.

PRESIDENT WENSTROM: Delegate Maxwell.

Delegate Maxwell, did you wish the floor?

DELEGATE MAXWELL: Yes, Mr. President.

Delegate Christensen got in ahead of that amendment that I intended to offer to delete the word “and.” I wonder if you would withdraw your motion just for a moment.

DELEGATE CHRISTENSEN: In deference to Delegate Maxwell, I’ll do that.

PRESIDENT WENSTROM: The request is granted. Delegate Maxwell. You may offer your amendment, Delegate Maxwell.

DELEGATE MAXWELL: The amendment is being typed at the desk.

PRESIDENT WENSTROM: Thank you.

Will you read it?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 2-12:

In line 7 of the amended engrossed bill, following the word “governmental” delete the word “and”.

PRESIDENT WENSTROM: You have heard the reading of the amendment of Delegate Maxwell.

DELEGATE MAXWELL: I move the adoption of the amendment, Mr. President.

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: It’s been seconded by Delegate Kelsch.

The question before the Convention is on the adoption of the amendment as offered by Delegate Maxwell. Any discussion?

Hearing none, as many as are in favor of adopting the amendment will say “aye;” those opposed “no.”

The “ayes” have it. The amendment is adopted.

Delegate Christensen.

DELEGATE CHRISTENSEN: I now move that the rules be suspended; that the Proposal be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Christensen moves that the rules be suspended, that Committee Proposal 2-12 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

As many as are in favor of the motion — Delegate Devine.

DELEGATE DEVINE: Mr. President, I would speak in opposition to the motion. I would like to sit on this one, at least if not until after dinner — if not until tomorrow, until after we come back tonight. I hate to see a stampede here on something that may require just a little bit of thought.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I would urge anybody who would like to kill this proposal and send it back to the Legislature, where it belongs, that they vote “aye” on this motion and vote “nay” on it when it comes to passage.

PRESIDENT WENSTROM: The question is on the motion to suspend the rules.

As many as are in favor of the motion will say “aye;” those opposed “no.” The “ayes” have it.

The question before the Convention — Delegate Omdahl — or Aubol.

DELEGATE AUBOL: Mr. President, would the Clerk read the amendment now, or the Proposal, as it has been amended, so we know what we’re talking about?

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: "SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The meetings of all government executive bodies, boards, bureaus, commissions or agencies of the state, or any of its political subdivisions shall be open and public, except when privileged, confidential, or personal and intimate information involving a specific individual or family is under consideration."

PRESIDENT WENSTROM: The question —

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President, the committee — before it was amended, I supported the proposal; but with this amendment, I cannot support it because it says "personal and intimate information." Now, this means that, say, a city commission questioning the propriety of one of the members of the city commission, he can then ask for the meeting to be closed, and I think you're getting away from the original intent of the whole thing.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM : Delegate Dobson.

DELEGATE DOBSON: I questioned earlier whether this amendment would leave corporations. The way it stands now, if you have a hearing before the Workmen's Compensation Commission, it can be closed when you are discussing the worker, but will have to be thrown open and the business records of the corporation laid on the public record when the corporation in question is under consideration. So I think it's totally defective the way it is right now.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, I'm going to call attention to another situation that's going to arise. This would cover the Public Service Commission, which is semi-judicial. Apparently you have excluded the courts from this provision, but the Public Service Commission must take evidence under oath and then, after all evidence is in, the three of them sit down and try to hammer out a conclusion. It may be a divided decision, but do you want the public in there when they sit down there and discuss those things and try to make a determination like that? If you do, you might just as well open up the Supreme Court or the jury box.

PRESIDENT WENSTROM: The question before the Convention is on the first passage of Delegate Proposal No. 2-12 as amended.

Those in favor will vote "aye." Those opposed will vote "nay."

The Clerk will open the key. We will see if it works.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll call discloses 19 "ayes," 75 "nays," four delegates absent and not voting. Delegate Proposal No. 2-12 has been defeated.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE LAMB: Mr. President, I request unanimous consent to withdraw Delegate Proposal 2-64, which is not necessary because the Committee on Coordination can take care of this situation.

PRESIDENT WENSTROM: Delegate Lamb requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-64.

Hearing no objection, the request is granted.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that the Convention reconsider its action on 1-44. If I get a second, I'll explain why.

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Delegate Longmire moves that the Convention

reconsider its action on Committee Proposal No. 1-44. Seconded by Delegate Fallgatter.

DELEGATE LONGMIRE: Mr. President, I don't intend to take the time of the Convention at this late hour to go into detail as to some of the objections of Committee Proposal 1-44, except to say that I think it is in a mess at this time. It does need some further consideration. I think, if we get it back for reconsideration, we can make some amendments that all of us can go along with. I did not have an opportunity to consider this, as I'm sure other delegates didn't when it was before us the other day. I do not think we discussed the outcome or the conditions that could develop under this proposal the way we passed it clearly enough. I have had many delegates contact me to say that had they known it was the way it was in the proposal at the time, they would not have voted for it. So I can see no harm in our getting this back and giving some further consideration to perhaps amending it in such a way that all of us can support the proposal. I hope we do pass this motion to reconsider.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This proposal is not easy to understand, but it will work, and I would like to ask Delegate Longmire what his amendments are.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I do not intend to offer those amendments at the moment, but they are being prepared at the present time, and I had hoped, if this motion does pass, that we will move this to the foot of the calendar and I will have those amendments in writing tomorrow.

I might state that some of the conditions that worry me and, I think, these amendments will have to cover this, and answering your question generally, one of the main things is that a legislator could, for a considerable period of time, be serving a district when he is not even a resident of that district, if you have a reapportionment plan.

Another condition is this: That when we go on to a four-year basis for the House members, and I certainly have no objection to that, if a House member in the midst of his term decided to run for the Senate, he could do that. If he were elected, then you would have to come back and have a special election to fill the House member's seat. These and many other things, I think, will have to be taken care of by proper amendments, which I hope to offer, if this motion passes.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I wonder if Delegate Longmire would yield to a short question here?

DELEGATE LONGMIRE: I certainly will.

DELEGATE McINTYRE: Delegate Longmire, just to simplify Delegate Dobson's question and your answer:

Do your amendments deal with both sections of 1-44 or just one or the other?

DELEGATE LONGMIRE: Well, so far they would only deal with the second section; but I would have no objection, certainly, to giving further consideration to the four-year term for House members, because I know that with some delegates, they feel that that should not be changed from the two years; so I — in my own amendment, I have left that intact, however.

PRESIDENT WENSTROM: Any further discussion? The question — Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Delegates:

I think that the issue is fairly-well resolved. We have gone on the record for four-year terms. As a matter of fact, nobody would actually be representing a district which he didn't live in. What would happen under the system would be that the boundaries of a person's term would not change — of a Senator or a House member's district would not change until the term expired, and at the time that his term expired, the boundaries would change and then he would either be in a new district or he would have to run in another district. It's a simple operation. We are not providing anything except that when a person is elected, he will not be removed

from office by the whim of a reapportionment commission; he will stay in office for his full term.

DELEGATE NETHING: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I'd like to urge reconsideration of this for the simple reason that I disagree with the explanation that Delegate Paulson has just given you; that if you are entitled to another legislator or more than one and don't have them, you are certainly in violation of the federal law and as I understand it, the purpose of Delegate Longmire's amendment is to cure this, and I think we should bring it back and cure it.

PRESIDENT WENSTROM: The question before the Convention is on the motion to reconsider Delegate — or Committee Proposal No. 1-44. Now, in that this is going to require a minimum of 50 votes, the key will be opened and you will record your vote.

Those in favor will vote —of adopting the motion to reconsider, will vote "aye." Those opposed will vote "no."

The key will be opened. Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll indicates 73 "yes" votes, 21 "no" votes, four delegates absent and not voting.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: I'm sure you're anxious to recess, Mr. President, but before you do, I'd like to — if we're on the twelfth order, I would like to move three of these proposals up to the top of the calendar that are conceivably controversial. We talked to the Chair and the committee, and the three I'm talking about are 1-36, 1-75 and 1-88, and with your permission, Mr. President, I'd like to move those three to the top of the calendar.

DELEGATE THOMPSON: Second.

PRESIDENT WENSTROM: The numbers again, Delegate Litten?

DELEGATE LITTEN: 1-36 1-75 and 1-88.

PRESIDENT WENSTROM: Delegate Litten has moved. Do I have a second?

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nething, that Committee Proposal No. 1-36, 1-75 and 1-88 be placed at the head of the calendar.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and those will be at the head of the calendar.

Anything further at the desk? Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, are we still on the twelfth order?

PRESIDENT WENSTROM: We'll be on the twelfth order.

DELEGATE HOGHAUG: I'm not sure if this is the right place or not, but I have a suggestion, and if it has merit, I will move — today we passed two proposals with all members present voting "aye," and my suggestion is that the record — the Journal could show that "all members present voted 'aye.' The following members were absent and not voting," and then list the members that were not voting. I think this could save several pages in our Journal. If this is a proper time and place, I'll make that motion.

PRESIDENT WENSTROM: Delegate Hoghaug, I don't believe that is in order. I don't believe that we can do it that way. I think that the — I think that the statute provides the specific way that we have to indicate how each delegate voted, and for that reason I don't believe that is in order.

I will check with the Attorney General's office, or something like that, and see if we can do it; but I don't think we can do it.

DELEGATE HOGHAUG: We may not have another opportunity; that's why I wanted to do it now, with all members voting "aye." But thank you for your consideration.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that 1-44 be placed at the foot of the calendar.

PRESIDENT WENSTROM: Delegate Longmire moves that Delegate — Committee Proposal 1-44 be placed at the foot of the calendar. Do I have a second?

DELEGATE PETERSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Peterson.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it and 1-44 is now at the foot of the calendar.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Don't we have a committee report? There should be one there someplace.

PRESIDENT WENSTROM: Which one do you make reference to, Delegate Hernet?

DELEGATE HERNETT: Well, that's part of 1-100 which we were trying to get out at noon.

PRESIDENT WENSTROM: Which committee?

DELEGATE HERNETT: Executive Functions.

PRESIDENT WENSTROM: Executive Functions? I don't believe we have it at the desk, Delegate Hernet.

DELEGATE HERNETT: Well, I will try and get it.

PRESIDENT WENSTROM: We are about to recess. Would the delegates rather work and then — suppose we took a 15-minute recess right now and then come back and, say, work until 7:00 or 7:30 — something like that — and then not come back later?

I do think that it is necessary, though, that you do get up and walk around and stretch, and one thing-another. I do think that this is good. So the Chair — we'll be in recess until six o'clock. We'll recess until six o'clock.

(The Session recessed at 5:48 P.M. until 6:05 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

Will the Convention please come to order?

We'll be on the fifth order of business — Adoption of Committee Reports.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Executive Functions to whom was referred Committee Proposal No. 1-100 Except Section 1 (a) and Section 2 has had the same under consideration and recommends that the same be amended, and when so amended, recommends the same do pass.

Delegate Hernet, Chairman.

Delegate Hernet moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Proposal No. 1-100, except for Section 1(a) and Section 2; that the report — request that the Proposal be amended, and after it be amended, that it be given a do pass.

As many as are in favor of the motion will say "aye," opposed say "no."

The "ayes" have it and the report's adopted and will be on the sixth order of business tomorrow.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: Could we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE NICHOLAS: Mr. President, I would like you to refer to Committee Proposal 1-79. This is the — I'd like you to have it reconsidered. I'd like it brought back, and I move to have it reconsidered.

PRESIDENT WENSTROM: When did we pass it, do you remember, Delegate Nicholas?

DELEGATE NICHOLAS: It's been out for two days, I believe.

DELEGATE CHRISTENSEN: The 24th; one week ago.

DELEGATE NICHOLAS: 1-79.

PRESIDENT WENSTROM: 1-79?

DELEGATE NICHOLAS: 1-79.

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: Delegate Nicholas moves that we reconsider our action whereby Committee Proposal 1-79 was passed. Do we have a second?

DELEGATE BURKE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Burke.

DELEGATE NICHOLAS: Mr. President, I talked with Mr. Scherr of the wildlife group and explained why I had objections to this before, and I would like this moved and reconsidered, and there's excess wordage here. The original Section 1 was not favorable to many people here, and I believe that I have a section here that I can propose, if I have a chance to put this back on the tenth order and have it amended, that will be favorable to all parties concerned.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DECKER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Will Delegate Nicholas yield to a question?

DELEGATE NICHOLAS: Yes, sir.

DELEGATE DECKER: Would you give your amendment or your proposal?

DELEGATE NICHOLAS: Yes, I will. It will briefly read: "No law shall abridge the right of a citizen to keep and bear arms."

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, I would resist this motion on the grounds that that's a collective right and what we did in our proposal here, we spelled out just exactly what we wanted, and I think it's better to leave it so the people really understand what they have.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NICHOLAS: Yes. I can't agree with that, because I believe in spelling these out. You've got too many areas that need not be in there. This one guarantees the citizen a basic right, whether it be a collective right or what right it is. I personally feel this is wrong, and I — I think the people would be better able to understand it in one short sentence.

PRESIDENT WENSTROM: Any further discussion?

The question is on the motion to reconsider Committee Proposal No. 1-79. In that this will take a vote of 66 delegates to reconsider, the key will be opened and you will record your vote.

Those in favor of reconsideration will vote "aye," and those opposed will vote "nay."

The key will be opened and you will record your preference.

Has every delegate voted? Any delegate wish to change his vote?

The key is closed.

There were 45 "ayes," there were 44 "nays," nine delegates absent and not voting. The motion to reconsider failed.

First for consideration, Committee Proposal No. 1-36.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-36, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that section 202 of Article XV to the constitution of the state of North Dakota and Article 88 of the amendments thereto, be repealed; and that sections 25 and 26 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the manner in which the constitution may be altered.

"SECTION 1. REPEAL.) Section 202 of Article XV of the constitution of the state of North Dakota, and Article 88 of the amendments thereto, are hereby repealed.

"SECTION 2.) Sections 25 and 26 of Article II to the constitution of the state of North Dakota are hereby created to read as follows:

"ARTICLE II

"Section 25. Any constitutional amendment may be proposed by the legislative assembly and, if the same shall be agreed upon by a roll call vote of three-fifths of the members elected to each house, it shall be submitted to the electors at the next general election. If a majority of votes cast thereon are affirmative, the amendment shall be effective thirty days after the election.

"Section 26. The legislative assembly may by law at any time submit for a vote of the people the question: 'shall a constitutional convention be called?' If the question has not been submitted once in any thirty year period, the secretary of state shall place it on the ballot at the next general election. If a majority of the votes cast thereon are affirmative, the legislative assembly shall provide for the election of delegates to, and the holding of such convention."

PRESIDENT WENSTROM: Is there any discussion? Delegate Hendrickson.

DELEGATE HENDRICKSON: There's an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendments to Committee Proposal 1-36.

In line 20, after the word "election" insert the following:

"unless a later date is specified in the amendment".

Renumber the lines accordingly.

PRESIDENT WENSTROM: Any discussion?

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I believe this amendment would cover the questions that were asked when this was up on the sixth order. At that time I had asked whether the amendment would have to go in force in 30 days, and this, I think, would cover that situation and it could go in at another time.

PRESIDENT WENSTROM: May I have a second to the proposed amendment?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Kwako.

Any further discussion? Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Delegates:

I think this amendment is completely unnecessary. If an amendment can carry an effective date, the effective date prevails, just as long as it's more than 30 days after the election. So no provision has to be made for it, and it would avoid the amendment.

PRESIDENT WENSTROM: Any further discussion? The question is on the adoption of the amendment as offered by Delegate Hendrickson.

As many as are in favor of adopting the amendment will say "aye;" those opposed will say "no." Those in favor of adopting the amendment will say "aye;" those opposed say "no."

The Chair is in doubt. We will open the key.

Those in favor will vote "aye;" those opposed will vote "nay," and the key will be opened and you will record your vote.

Has every delegate voted? Any delegate wish to change? The key is closed.

There were 40 "ayes," 40 "nays," nine delegates absent and not voting. The amendment failed.

We're on the Committee Proposal 1-36.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Well, thanks for the vote of confidence to the committee. This is the way the committee felt all the time. I don't believe there's anything else to say on this particular proposal. We did discuss it the other day on the sixth order.

PRESIDENT WENSTROM: The question before the Convention is on the first passage of Committee Proposal No. 1-36.

Delegate Cart.

DELEGATE CART: Mr. President, I think this proposal should be soundly defeated. We've gotten along for a half-century, at least, with a majority vote being only required to submit a constitutional amendment through the legislative process, and I see no sound reason for stepping that up to a two-thirds requirement.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Just to clarify: That's been amended to three-fifths.

DELEGATE CART: I accept the correction and still oppose it. (Laughter)

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. Chairman. Ladies and Gentlemen:

After all the extreme amount of work we've given the Legislature, and everyone says we have such confidence in the Legislature, I agree with Delegate Cart. I don't see why we should get conservative on this and make it a 60 percent vote.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: I move an amendment. It's very simple. It can be at the desk in thirty seconds. Instead of "two-thirds," delete "two-thirds" and put "majority vote."

PRESIDENT WENSTROM: Delegate Rundle moves an amendment.

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Omdahl.

The Clerk will read the amendment. Will you read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-36:

On page 1 of the engrossed proposal, in line 17, delete "three-fifths" and insert in lieu thereof "a majority".

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This is the same amendment offered by Delegate Omdahl the other day. That amendment was soundly defeated for some very good reasons I'll not repeat. I urge you to reject this one, too.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment by Delegate Rundle.

As many as are in favor of adopting it will vote "aye;" those opposed "no."

The "noes" have it.

The question before the Convention, if there's no further discussion is the adoption of Committee Proposal No. 1-36. If no further discussion, those in favor will vote "aye;" those opposed will vote "nay."

The key will be opened. You will record your vote.

Has every delegate voted? Any delegate wish to change?

The vote is closed.

The roll call discloses 80 "ayes," 13 "nays," five delegates absent and not voting.

Committee Proposal No. 1-36 has passed.

Next for consideration, Committee Proposal 1-75.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-75, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 42, 67, 68, 69 and 70 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 9, 20 and 21 of Article II of the constitution of the state of North Dakota be created; all of which pertain to the legislative process.

"SECTION 1. REPEAL.) Sections 42, 67, 68, 69 and 70 of Article II of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Sections 9, 20 and 21 of Article II of the constitution of the state of North Dakota are hereby created to read as follows:

“Section 9. The members of the legislative assembly shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions, and in going to or returning from the same. For words used in any speech or debate in the assembly, they shall not be questioned in any other place.

“Section 20. Every act passed by the legislative assembly shall take effect on July 1 after its filing with the secretary of state or ninety days after said filing, whichever comes later, unless the legislative assembly by a separate vote of two-thirds of the members elected shall declare it an emergency measure, which declaration shall be set forth in the act. An emergency measure shall take effect and be in force from and after its filing with the secretary of state or on a date specified in the measure. Every act passed by a special session of the legislature shall take effect on a date specified in the act.

“Section 21. The legislative assembly shall pass all laws necessary to carry into effect the provisions of this constitution. No local or special laws shall be enacted, nor shall the legislative assembly indirectly enact such special or local laws by the partial repeal of a general law, but laws repealing local or special laws may be passed.”

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: We made a change now to abolish the crime of treason in the State, so, with the indulgence of the Convention, I would like to move that in line 14, that the word “treason,” be deleted. “treason,”

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

It's been moved and seconded — the amendment by Delegate Kelsch. Is that amendment at the desk?

CHIEF CLERK GILBREATH: We've got it. Do you want it read?

PRESIDENT WENSTROM: Yes, why don't you read it?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-75 is as follows:

On page 1, line 14, delete the following: “treason,” and renumber the lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the amendment. Any discussion?

Hearing none, as many as are in favor of adopting the amendment will say “aye;” opposed “no.” The “ayes” have it and the amendment's adopted.

DELEGATE KELSCH: Mr. President, if I may now discuss the proposal.

With this proposal, we are repealing the old Section 42 of the Constitution, which is really Section 9 almost verbatim, and of course this is the section that makes the legislators — gives them privilege from arrest during their attendance and in going to and from the assembly, except for felony or breach of the peace, and also protects them against libel and slander laws by providing they shall not be questioned in any other place for debate that may occur in the chambers of the Legislative Assembly. So we're repealing Section 67 of the old Constitution, and that's now incorporated in Section 20. Section 67 established times during which laws would take effect and provide for emergency measures.

Now, you will note that we do two things in this that are slightly different. First of all we provided that an act will take effect on July 1st after its filing with the Secretary of State. The first change: We have now made the effective date the filing date. The Committee felt that these things should be — they are filed ultimately, and now that we have open sessions and could run through two years, we're making July 1st after the filing the effective date, and we also had a further clause that “or ninety days after the filing, whichever comes later.” Now, the reason for these words was that if the Legislature were to meet in May, there's not ninety days between the time when a bill would be filed and July 1st. We wanted to be sure that a ninety-day period was preserved to protect the right of referendum. So any laws that might be passed in the three months preceding, or the ninety days preceding July 1st, would come into effect a little later than

July 1st; otherwise, July 1st would be the effective date of all laws, and the reason for this delay, in the case of a few bills that might be passed at that time, is to not prejudice the right of referendum, so that anybody that wanted to refer that and circulate petitions, they still could, and it would not come into effect until after the referral.

We also retained the concept of the emergency measure, but have added the feature that will require a separate vote on the emergency. Under the present rules, if two-thirds of the members of both houses vote on the bill and it has an emergency clause on it, it will be an emergency law and will take effect immediately, and we felt that some legislators might like to vote in favor of a proposition, but not see it become a — not see it go into effect as an emergency measure; so that this will be a slight change in procedure and we actually will have to have two votes on the emergency measure. The first vote will be in favor of the bill itself; the second vote, by separate vote, "Are you in favor of the emergency character?" We feel this will cut down on some of the emergency laws that have been passed, and that this is a good thing to avoid that. Only real emergencies should be voted on and declared as emergencies.

Section 68 simply says — the old Section 68 said the Legislature shall pass all laws necessary to carry into effect the Constitution. We cover that in Section 21.

Section 69, which we're repealing, was a general prohibition against the passage of local or special laws, and in the old Constitution there are 35 instances where, back in the early — the first Convention felt that the Legislature should not deal with local problems where the laws had general application, and our committee felt, rather than to try to repeal such an extensive list — the list is so broad — it is our feeling that the old section actually repealed all special laws — that we simply would say that, and we say that in Section 21 that "No local or special laws shall be enacted."

And then we pick up Section 70 — that you cannot have the effect of enacting a special law by repealing a part of another law. So we feel that we do — we picked up the old language in the Constitution. We thought it was essential. With the change of not listing what special laws are prohibited, we're just making a general prohibition against all special or local laws.

If there are any questions, I'd be glad to try to answer them.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: What is the parliamentary situation?

PRESIDENT WENSTROM: At the moment, we have Committee Proposal No. 1-74 — 75 before the Convention with an amendment, and the amendment was adopted. So that is the position of the particular proposal.

DELEGATE KELSCH: Mr. President, maybe I should — unless there are some amendments suggested, I was going to wait and see if anybody wanted to amend it, first.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I had a question for Delegate Kelsch. It has been called to my attention — I know there's some difficulty in determining what's a general law and what's a special law, and I notice in Section 131 of our Constitution it says, relating to municipal — or corporations other than municipal, it says, "by special law, except in the case of . . . educational, penal or reformatory corporations," and things like this. I wonder if a law passed regarding the penitentiary, the Industrial or State School, and these other places, are those special laws or are those considered to be general laws, because there — I see there's a couple cases annotated after that section, but I think there may be some problem with those kinds of laws being special laws. I'm not certain, however.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: That question — we're aware of that question. It's my feeling, and, I believe, the feeling of Delegate Pearce, who is not here at this time, that the old Section 131, which we picked up and already passed — and I do — I think does talk about a special law — that it was unnecessary to do that. That section deals with the granting of franchises to corporations, basically, and of course

we don't do that any more in the State of North Dakota, and I can't see any reason why we should any more now. It's my belief that a law that establishes the cities, penitentiary, or a school of higher education is not a special law, because it applies to. General citizens have equal rights to go to the pen or go to the college; so I don't think that we really need that in 131, and I would favor a later amendment of it or deletion of it, because I think that — I favor just a general prohibition. I don't think you have to except state institutions from it, although I don't know if that's the unanimous feeling of some lawyers.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, in response to Delegate Hill's question, Section 1 of Committee Proposal 1-20 addresses itself specifically to the question that he raised, including penitentiaries and such.

PRESIDENT WENSTROM: Section 120?

DELEGATE DEVINE: Excuse me. Section 1 of Committee Proposal 1-20. That's the old section that dealt with special laws for the penitentiary and the reform school and the rest of it, and Section 1 has been adopted by the Convention.

PRESIDENT WENSTROM: Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President, this question does not have to do with special laws or general laws, but I can't imagine that the committee got through Section 9 on legislative immunity without some question. I'm not a legislator, but just what does this Section 9 provide to the legislators so far as fringe benefits?

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: We did discuss it at some length, and it is our feeling that if you're going to have a legislative branch of government that's free from the possible dominance of an executive — you understand the legislators have a couple sergeants-at-arms, and that's all, and if you're going to preserve forever the freedom of that body from the executive which has, of course, a force of arms both in terms of militia and Highway Patrol and sheriffs' offices, and the like, that we need to state, as the old Constitution did, that legislators, while attending, formally should be free from arrest, and in past history legislators have been arrested. You could be held for several hours, to miss a vote. Now, we recognize that certain types of crimes can't be immune, and legislators shouldn't be immune from them. Now, all we're saying is, "privileged from arrest during their attendance at the sessions." We are not saying immune from prosecution.

Now, to exceptions — felony and breach of the peace. If he's rowdy, if he's disturbing the peace, he's not protected. If he commits a felony, he's not protected. He may be arrested — or she may be arrested and incarcerated. If he commits any other crime while the Legislature is in session, a complaint could be served on him. The accusation could be made, but he could not be arrested and his freedom taken while in session. Now, as soon as they're not in session, he can, of course, be arrested and charged and prosecuted. This is not an immunity statute; it's just immunity from arrest while in session.

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President, would Delegate Kelsch yield to a question?

Section 9, "For words used in any speech or debate in the assembly, they shall not be questioned in any other place."

How about a spouse?

(Laughter)

PRESIDENT WENSTROM: Further discussion? The question —

DELEGATE KELSCH: Mr. President, if there's no further question or discussion, I would move that Proposal 1-75 be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Kelsch moves that the rules be suspended and that Committee Proposal No. 1-75 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-75 is before the Convention for first passage.

Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

The vote is closed. The roll call discloses 90 "ayes," 1 "nay," seven delegates absent and not voting. Committee Proposal No. 1-75 has passed.

Next for consideration, Committee Proposal No. 1-88.

CHIEF CLERK GILBREATH: Committee Proposal 1-88, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 38, 40, 43, 44, 51, 54, 57, 59, 60 and 62 of Article II section 199 of Article XIV and Article 75 of the amendments to the constitution of the state of North Dakota be repealed.

"(SECTION 1. REPEAL.) Sections 38, 40, 43, 44, 51, 54, 57, 59, 60 and 62 of Article II, section 199 of Article XIV and Article 75 of the amendments to the constitution of the state of North Dakota are hereby repealed."

PRESIDENT WENSTROM: Any discussion?

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: This is an omnibus deletion proposal made by the Legislative Functions Committee. As I recall, it's one proposal made by the Legislative Committee in which we were unanimous in our approval, so we submitted it that way. All of the other sections, outside of these, that we have dealt with have been either deleted or continued in the proposals that we have already acted on. So, in order to clear the slate of those sections of the old Constitution, may I give this brief explanation of each one and hurry it along?

Section 38 in the old Constitution, this deals with bribery and perjury and is now part of the new section on legislative ethics, which was passed — 1-34.

40 is also a part of this legislative package proposal that has been adopted.

43 is also a part of the legislative ethics proposal, 1-34.

The old Section 44, with a gubernatorial writ of election, has been continued in the executive powers of the governor in the new proposals.

51 — this section prohibits adjournment by one house for more than three days without the consent of the other. This has been made a part of the legislative functions in the new document.

54 of the old Constitution was a voice vote; in other words, a vote in all elections to be made by the Legislative Assembly, and this we have taken out. But after the machine work this afternoon, maybe we should have kept it in — who knows! But we have taken this out because we feel that this is a part of the rules of the legislative body, that they can — they show by constitutional division the registered or recorded votes, and there are some that can be by voice, particularly in the election in their own assemblies.

57 — a bill can originate in one House and can be amended by the other. This has been taken out and is a part of the rules of the legislative body and continued in the legislative section.

59, providing for an enacting clause, has been deleted.

60 — prohibition against introduction of appropriation bills after the fortieth day. We have deleted that because a new proposal now is a continuous session and it would be difficult for a legislative body, say during the fortieth day, and they set their own rules.

62 has been deleted and directs a general appropriation bill to include a judicial and executive branch of government and also included is interest on public debt and public schools, and these have all been handled by separate proposals, and we ask the deletion of 62.

199 of Article XIV has been deleted, and the lieutenant governor now is assuming a new position under the proposals that we have adopted and, therefore, part of the administrative reorganization, and, therefore, 199 could be deleted.

Article 75, adopted in June of 1962, provides for continuity of state government in case of attack, and we have deleted this because of other things that have happened in the federal system and in the state system that makes this probably impractical.

That's a brief description of each of those that we, under this omnibus pro-

posal, feel should be — need to be deleted because others have been taken care of in the proposals that have already been adopted.

PRESIDENT WENSTROM: Are there any questions?

The question before the Convention is on first passage of Committee Proposal No. 1-88. Those in favor of its adoption will vote "aye," and those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed. The roll call discloses 91 "ayes;" there were no "nays," seven delegates absent and not voting. Committee Proposal 1-88 has passed.

Next for consideration is Committee Proposal No. 1-104.

DELEGATE BYRNE: Mr. President.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: I move that consideration of Committee Proposal 1-104 be laid over until tomorrow.

The reason I request this — I know that the consideration of it will probably take some time. Delegate Pearce, who is not here at the present time, wishes to speak on the bill, and I, therefore, move that it be held over until tomorrow.

PRESIDENT WENSTROM: Delegate Byrne moves that Committee Proposal No. 1-104 be placed at the foot of the calendar. Do I have a second?

DELEGATE BIRKELAND: Second.

PRESIDENT WENSTROM: Seconded by Delegate Birkeland.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal 1-104 is at the foot of the calendar.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If this is a proper time, we have a technical change we'd like to do on one proposal that we have already passed. If we could be on the twelfth order — unless you want to continue on the calendar.

PRESIDENT WENSTROM: On one proposal that we have already passed?

DELEGATE KELSCH: Yes. Some changes we would have to make because of some other work we have done.

PRESIDENT WENSTROM: Is it substantive, so that the Style and Drafting Committee can't do it?

DELEGATE KELSCH: I understand Style and Drafting can't do it.

PRESIDENT WENSTROM: Then I think we'll have to move to reconsider and bring it back.

DELEGATE KELSCH: Mr. President, then I move that we reconsider the action by which we passed Committee Proposal 1-33. If I get a second, I'll explain.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: 1-33. And the second was by Delegate Stanton. Delegate Kelsch.

DELEGATE KELSCH: Mr. President, as a result of the subcommittee's work on removal of officers and the introduction of Proposal 1-120, which we just passed earlier this afternoon, the Section 23 in Proposal 1-33 is no longer needed and it should be just simply deleted. It's covered by 1-120. And so there's an amendment at the desk. I think Delegate Nething's name appears at the top of it, and if the Clerk would read the amendment.

PRESIDENT WENSTROM: Well, Delegate Kelsch, we have to get the —

DELEGATE KELSCH: Pardon me?

PRESIDENT WENSTROM: We have to get the proposal before the Convention, in that we have passed it. We have to have at least 50 votes in order to bring it back.

How long ago was it?

DELEGATE KELSCH: Mr. President, this is some time ago.

PRESIDENT WENSTROM: Well, then we have to have 66 votes, if it's more than two-and-a-half days.

The question before the Convention is on Delegate Kelsch's motion that we reconsider the action whereby Committee Proposal No. 1-33 was passed. Any further discussion?

Hearing none, the Clerk will open the key. You will indicate your wishes.

Has every delegate voted? Any delegate wish to change? Hearing none, the key is closed.

The vote indicates there were 87 "ayes," there were no "nays," 11 delegates absent and not voting.

Committee Proposal No. 1-33 has been reconsidered. It is now before the Convention.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, then I would move that on the engrossed Proposal 1-33, we delete all of lines 14 through 17.

PRESIDENT WENSTROM: Is the amendment at the desk?

CHIEF CLERK GILBREATH: Mm-hmm — we've got it.

DELEGATE LITTEN: Second.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, the lines I've given are not the way they read in your book. In your book they would be lines 12 through 15, and the reason for that: We had made some amendments; but what we're actually doing is simply deleting the Section 23, leaving 24 intact, and the reason for it is we now have that same subject covered, we think, in a better way in Proposal 1-120.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Kelsch.

Is there any discussion? Any further discussion? The question then will be on the adoption of the amendment.

Those in favor of its adoption will vote "aye," those opposed will vote "nay."

As many as are — Delegate Erickson.

DELEGATE ERICKSON: Mr. President, I think you're going to have to further delete there on line 7 of the bill. You've got Section 23 too. You're going to have to delete that also.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The desk did not catch this on line — I'm not sure if it's line 8 of the engrossed —

CHIEF CLERK GILBREATH: Line 10.

DELEGATE KELSCH: Line 10. Delete the "s" on the word "section," delete the numeral "23" and the word "and".

If you've got that one, then move up to line — move up to line 2 and delete the "s" on the word "section", the numerals "23" and the word "and".

PRESIDENT WENSTROM: Do you have the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-33.

In line 3 of the engrossed proposal, delete the word "sections 23 and" and insert in lieu thereof the word "section".

In line 10 of the engrossed proposal, delete the words "Sections 23 and" and insert in lieu thereof the word "Section".

Renumber the lines accordingly.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Kelsch.

As many as are in favor of adopting the amendment will say "aye," those opposed "no."

The "ayes" have it and the amendments are adopted.

DELEGATE KELSCH: Mr. President, I again move that the Proposal 1-33 be

deemed — that the rules be suspended, that the Proposal be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Kelsch moves that the rules be suspended, that Committee Proposal 1-33 be deemed properly re-engrossed, and placed on the calendar for first passage as amended.

Any further discussion?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

As many as are in favor of the motion will say "aye;" those opposed "no."

The "ayes" have it. Committee Proposal No. 1-33 is again before the Convention as amended.

The question is on the first passage of Committee Proposal No. 1-33 as amended. Those in favor of adopting or passage, will vote "aye," and those opposed will vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll call discloses 89 "ayes," there were no "nays," there were nine delegates absent and not voting.

Committee Proposal No. 1-33 has passed.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Is Delegate — Committee Proposal 1-99 at the top of the calendar right now? Oh! Okay.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I would now move that Committee Proposal 1-99 be moved below Committee Proposal 1-44. If I have a second, I'll explain why.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Moved by Delegate Sinner that Committee Proposal No. 1-99 be placed below Committee Proposal No. 1-44. Delegate Sinner.

DELEGATE SINNER: Mr. President, there are some factions or part of the committee that wants to move some amendments to 1-99 that feels that its action — its amendment depends on what action is taken on 1-44 and, therefore, would like to wait.

PRESIDENT WENSTROM: The question is moving Committee Proposal 1-99 to a position on the calendar immediately below Committee Proposal 1-44.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and it will be moved below 1-44.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, just a brief comment there, and maybe I should ask that we be on the eighth order momentarily.

This afternoon, we passed 1-25, 1-26, 1-120, and now we've reconsidered 1-33, and all those four proposals were passed with only two dissenting votes, and I say that's the work of the conference committee, and I think we should give them a round of applause. (Applause)

PRESIDENT WENSTROM: Next for consideration, Committee Proposal No. 1-118.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-118, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to having a justiciable right to an electoral system not prejudicial to his candidacy, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

“Every candidate for public office shall have a justiciable right to an electoral system that is not prejudicial to his candidacy.”

PRESIDENT WENSTROM: Any discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I'm indebted to the Committee on Preamble, Bill of Rights and Suffrage for letting this thing live as long as it has. I feel that there is real merit in this proposal, and I think that our value of this proposal will depend on how important we think elections are in a democratic society. And, to me, I feel very seriously about the importance of elections. We all know that there are — through extensive research and studies, that there can be considerable bias in a ballot arrangement or election procedure. Now, it must be admitted that in almost all cases these biases are against third parties, and I want to make it clear at the outset that I have no designs on a third party. There are enough third-party people running loose in the country already. But we find, as we go through the election laws of many states, that there are biases built into the electoral system. For instance, it will happen quite often, when you have a number of candidates that are running for a similar position, such as multi-member senate or house districts or in primary elections where names might be arranged as required by law in alphabetical order or in the order in which the persons filed for office, and we know that positions on the ballot make a lot of difference as to whether or not the candidate is going to survive or whether he's going to get any votes at all. Now, there have been some court cases that state that a candidate himself, even though this bias exists in the arrangement of the ballot or in the administrative procedures that are set up to carry out the election, that the candidate himself does not have a basis to challenge the election. As long as his name was on the ballot, the courts have refused to say that the election was prejudicial to his candidacy; therefore, he has no standing.

Now, I haven't been able to think of a lot of situations in North Dakota where we have prejudicial situations, and I don't know if evils that we might have can be corrected under this proposal, if it is adopted; but I think we should keep in mind that we are proposing a constitution that should last for fifty or sixty or seventy years, and according to Delegate Dobson, it ought to last at least a hundred. But — so I think we ought to look to the future and we ought to say we believe in fair elections in North Dakota and we want this to be a principle in our Constitution. We have had several situations in recent years — one that you will probably recall was an election in a primary in Fargo in which there were five candidates running for four positions on the ballot. Because of the arrangement of the ballot, one of the candidates was defeated in the primary. I don't know if this principle would give many grounds to go to court and get it corrected, but at least that possibility would be there.

1970 we had a Congressional race in which one candidate lost by three votes, and yet there was no recourse for him to get a recount with that small of a margin, which could have ended by the losing candidate going to Congress for a two-year period, at least.

Now those — now, we'll get a little closer to home: Those of you who were nominated by the Nominating Commission, of which a majority sits in this body, had a prejudicial advantage over those who challenged, just because the law that specified how the candidates were to be placed on the ballot gave those nominees a prejudicial advantage, and I think that, if you want to be honest about it, that it did give you an advantage to be placed the way the law said that you should be placed. Under this proposal, those who were challengers would have ground for contesting the arrangement on the ballot.

Now, some of the committee members were sort of concerned that this was going to open up a whole new field of litigation. Well, the burden would still be on the candidate to come in and prove that the election was prejudicial. And so I think that's going to be a difficult thing to prove. But in cases where it is provable, I think that the procedure ought to be available, because if the election is prejudiced and if the wrong guy got elected, it seems to me that we are permitting a subversion or a diversion of the true democratic principle.

Some may be concerned that this is going to disrupt elections. Some say, “Are we going to have to have recounts afterwards? Are we going to test?” And I ad-

mit that there might be some inconvenience, depending on what the courts might rule, that grow out of this; but if the wrong guy has the office, you see, is he really entitled to the office? Shouldn't there be some inconvenience by which the right man gets the office in a final analysis?

Some delegates have been concerned with the word "justiciable." Now, there's a reason for that word. Even though most of our rights are justiciable, there's a particular reason for the word "justiciable" in this case. You'll find that in the legislative article, it says that the Legislature shall be the judge of the qualifications and election of its own members. And so a person who challenges an election to the Legislature would have to go to the legislative body, unless this word "justiciable" were in there; and I think that a losing candidate ought to have a right to go to court, where you do not have parties to the cause involved in deciding who is going to be entitled to be seated. I think this is a constitutional matter. I don't think this is a legislative matter, because the Legislature writes the law that might be prejudicial. Therefore, in order to protect ourselves from prejudicial laws, I think we need constitutional protection, and it is for that reason I urge your support for Committee Proposal 1-118.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: May I ask a question?

Delegate Omdahl, does your measure stop with the actual voting mechanism — placement on the ballot and so forth — or does it go farther — perhaps into the party organization or into the actual structure of the district, as far as multi versus single-member, and so forth?

DELEGATE OMDAHL: No, Delegate Unruh, I believe that the — if you're concerned about whether or not the multi-member districts could be contested under this, I do not — if we adopt the recommendations that are coming in on the reapportionment commission, I cannot see that there would be sufficient grounds to attack the multi-member districts as they are going to be proposed. That isn't where you find the evils that I'm talking about. They usually develop in primaries or where there are numbers of candidates and the arrangements of names for numbers of candidates, and we don't have a great number of problems in this area at the present time; but, as I said, we're writing a constitution for a long time, and I think this principle ought to be established.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, will Delegate Omdahl yield to a question?

DELEGATE OMDAHL: One?

DELEGATE DEVINE: Just one

What's the status of this section if the proposal as to multi districts is not approved?

DELEGATE OMDAHL: I don't think that 1-118 would affect it any differently than the equal-protection clause of the Federal Constitution at the present time, and when you — when you get down to the multi-member districts, as small as we've got them in North Dakota, the question as to their validity in terms of the equal-protection clause is quite removed; that is, I think if you were going to challenge the multi-member districts, that you'd be better off going to equal protection under the Fourteenth Amendment than to try to go here. The burden of proof would have to be the same, if it was there at all.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. Delegates:

I am quite sure that Mr. Omdahl is building a real problem for the State, because what he's going to do is get a ballot and you're going to rotate those columns in every third precinct and the Democrat column will be number one in at least a third of the state when we get through here. I think he's going to get things so horsed-up that he's going to foul up the whole election, and I think we'll be bet-

ter off if we straighten out the troubles when they develop and not try to let them develop.

DELEGATE OMDAHL: Mr. President, I'd like to try to answer that question. (Laughter)

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I disagree with Delegate Paulson on this. I don't think he could prove there's a prejudicial arrangement on the ballot. As I recall, the Democrats did have the left-hand column in 1966 and it didn't help them a bit.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I'd like to ask a question of Delegate Omdahl, if I may.

As I look at this, it would eliminate the incumbent from using the word "re-elect" as opposed to the challenger having to use the word "elect" on his political advertising, and things like this. Would you agree with that?

DELEGATE OMDAHL: No, I wouldn't agree with that. It seems to me that we're talking about the electoral system, which is prescribed by law, and I don't think there are laws that you can use "elect" and "re-elect" — that's up to individuals. We're talking about the electoral system as provided by the government itself.

PRESIDENT WENSTROM: Further discussion?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, would Delegate Omdahl yield to another question?

DELEGATE OMDAHL: Naturally.

DELEGATE DECKER: I was just wondering: Would you feel it was prejudicial if you or if the court system were changed to the merit system and you had delegates or the people proposed by a commission and they were put on the ballot?

DELEGATE OMDAHL: Yes I would. And that's one of the reasons I had reservation about this business of when — when we were debating the judicial article — this business of having one of the candidates designated as being a commission endorsee.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. No question, but I can't quite see how this is consistent with Delegate Omdahl's story about only Norwegians can be elected, because if I'm a Norwegian, it's prejudicial against me. (Laughter)

DELEGATE OMDAHL: He asked me a question, Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Even though I realize that my nationality might be in jeopardy in this case, I must agree with Mr. Rundle that maybe we'll have to run the Norwegians off the ballot. (Laughter)

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention — Delegate Sinner.

DELEGATE SINNER: Mr. President. Delegate Miller has twice asked me if the Legislative Functions Committee provided any mechanisms for the solution of ties in legislative races, and we haven't as such; however, the language in one of the proposals — and I can't at the moment remember which one — provides that the Legislative Assembly shall be the sole judge of qualifications of its members.

Now, I suppose that in consideration of this proposal right here, that question may come up. Can any member of the Committee help me answer this question that's been raised?

Lloyd, do you have any comment on that?

DELEGATE OMDAHL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I don't think that this would help you resolve ties in legislative races, unless you could prove that the tie was created by prejudicial circumstances, and I don't see how you could plead that under the normal tie situation.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention, first passage of Committee Proposal No. 1-118.

Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll call discloses 57 "ayes," 33 "nays," eight delegates absent and not voting. Committee Proposal No. 1-118 has passed.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I would move that the absent members be excused.

PRESIDENT WENSTROM: Delegate Saugstad moves that the absent delegates be excused.

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: The motion was seconded by Delegate Longmire.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the absent delegates are excused.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, may we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order of business.

DELEGATE MAXWELL: I would like to announce a meeting of the Bill of Rights Committee for tomorrow morning at 8:30. 8:30. And there we will sing the old refrain of what to do with eminent domain. (Laughter)

PRESIDENT WENSTROM: Any further announcements under the eighth order?

I believe Delegate Maxwell's announcement couldn't even be tied!

Anything further? We're about to adjourn. Delegate Saugstad.

DELEGATE SAUGSTAD: Is the desk clear? I would move that we now adjourn until 9:00 A.M., February 1st.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Saugstad moves we now adjourn until 9:00 A.M., February 1st.

As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it and we will be adjourned until nine in the morning.

(The Plenary Session adjourned at 7:15 P.M., Monday, January 31, 1972, until 9:00 A.M., Tuesday, February 1, 1972.)

VOLUME XXII

(February 1, 1972)

MORNING SESSION

(The twenty-second day of the Plenary Session commenced at 9:08 A.M., Tuesday, February 1, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Will the Convention come to order?

Our Chaplain for this morning is The Reverend Walter C. Ellingson, St. George's Episcopal Church of Bismarck.

REV. WALTER C. ELLINGSON: Almighty God, who has given us this good land for our heritage, we humbly ask that we may always prove ourselves a people mindful of Your favor and intent upon doing Your will.

Guide and direct those assembled here today as they struggle with the responsibility given to them by the people of this State. Help them to make proper decisions for the welfare of each person in the State. And particularly grant to each citizen of the State a true sense of thanks and appreciation for their labors and effort.

All this we ask in Your name, who granted to us the freedom and ability to make proper and just decisions for ourselves and our fellow men. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call. The Clerk will open the key. You will record your presence.

Has every delegate recorded his presence? The key is closed.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Devine announces his presence.

PRESIDENT WENSTROM: Delegate Devine is present.

The roll call discloses 96 present, two absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 28th day of January, 1972, and recommends that the same be corrected as follows:

On page 342, line 18 delete the numeral "1-107" and insert in lieu thereof "1-106".

On page 330 line 48, delete the word "moved" and insert in lieu thereof the word "announced".

And when so corrected, recommends that the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report from the Committee on Correction and Revision of the Journal.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the report is adopted.

We'll be on the sixth order of business — Amendments.

CHIEF CLERK GILBREATH: Delegate Meidinger has moved that the amendments to Committee Proposal 1-15, as recommended by the Majority of the Committee on Education, Resources and Public Lands, and as printed on pages 293 and 294 of the Journal, be adopted.

The amendments are —

DELEGATE MEIDINGER: Mr. President, may I speak to that?

PRESIDENT WENSTROM: Delegate Meidinger — excuse me. Are you through reading, Chief Clerk?

CHIEF CLERK GILBREATH: No, I haven't read them.

The amendments are:

On page 1 delete lines 13 through 25.

On page 2, delete lines 1 through 22, and insert in lieu thereof the following:

"Section 1. The legislative assembly shall provide for a uniform system of free public education.

"The legislative assembly shall take other steps necessary to prevent illiteracy and to provide for special education and vocational education.

"Schools and institutions so established shall be free from sectarian control. No money raised for support of public schools of the state shall be appropriated to or used for support of any sectarian school.

"Section 2. There shall be a state board of public education which shall supervise a uniform system of elementary and secondary public education, and shall perform other duties as provided by law.

"The board shall consist of nine members, with staggered seven-year terms, appointed by the governor, and confirmed by the Senate in a manner provided by law. The members of the board may be removed for the same reasons and in the same manner provided for removal of the governor.

"The board shall appoint an executive officer whose term and duties shall be prescribed by the board.

"Section 3. There shall be a state board of higher education which shall have full power, responsibility and authority to supervise, operate and control programs and state institutions of higher learning, and shall perform other duties as provided by law.

"The legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

"The board shall consist of nine members, with staggered seven-year terms, appointed by the governor, and confirmed by the senate in a manner prescribed by law. The members of the board may be removed for the same reasons and in the same manner provided for removal of the governor.

"The board shall have control of the expenditure of all funds belonging to and appropriated to such institutions and shall present a single unified budget request to the legislative assembly. Appropriations for all institutions and for the board shall be contained in one legislative measure. The legislative assembly shall not reduce appropriations by the amount of any gift.

"The budgets and appropriation measure for the agricultural experiment stations and their substations and the cooperative extension divisions may be separate from those of state educational institutions.

"The board shall have the power to delegate to its employees details of administration of the institutions under its control.

"The board shall appoint an executive officer whose term and duties shall be prescribed by the board."

And renumber the lines and sections accordingly.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. The Committee on Education intends to meet during the noon hour, perhaps from 12:00 to 1:30. We do have a couple of minor amendments. We would appreciate it, if anyone here has any suggestions, that we might take them under consideration at that time and save a considerable amount of time on the floor here.

PRESIDENT WENSTROM: The question is on the adoption of the amendments to Committee Proposal 1-15.

The question is on the adoption. As many as are in favor of adopting the amendments will say "aye;" those opposed "no."

The "ayes" have it. The amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Maxwell has moved that the amendments to Committee Proposal 1-85, as recommended by the Committee on Preamble, Bill of Rights and Suffrage, and as printed on pages 350 and 351 of the Journal, be adopted. The amendments are:

In line 1 of the title of the engrossed proposal, after the numeral "126", insert a comma and delete the word "and" and after the numeral "128" insert "and 129".

In line 8 of the proposal, after the numeral "126", insert a comma.

In line 9 delete "and" and after the numeral "128" insert "and 129".

Delete all of line 14 through 25.

On page 2 delete all of lines 1 through 4 and insert in lieu thereof the following:

"The legislative assembly shall by law provide that the general election of the state be held biennially.

"Every citizen of the United States who has attained the age of eighteen and who shall have been a resident in the state six months, in the county ninety days and in the precinct thirty days preceding an election shall be a qualified elector. When a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moved until he establishes voting residence in the precinct to which he moved. The legislative assembly shall by law provide rules for determining residency, other than physical presence, for voting eligibility. No elector shall be deemed to have lost his residency for voting eligibility solely by reason of his absence from the state.

"The legislative assembly shall insure secrecy in voting, provided for absentee voting, provide for administration of elections and the nominations of candidates."

And renumber the lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the proposed amendments. Is there any discussion?

Hearing none, the question is on the adoption of the amendments to Committee Proposal 1-85. As many as are in favor of adopting the amendments will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted.

CHIEF CLERK GILBREATH: Delegate Hernettt has moved that the amendments to Committee Proposal 1-100, except for Section 1(a) and Section 2, as recommended by the Committee on Executive Functions and as printed on page 358 of the Journal, be adopted.

The amendments are:

Delete all of lines 15 through 21 and insert in lieu thereof the following:

"(b) The governor may, for more effective administration, make changes in the allocation of functions, powers, and duties among and within the executive departments, other than those departments headed by constitutionally elective officers. When these changes affect existing laws, the changes shall be set forth in executive orders and submitted on the same day to both houses of the legislative assembly. The legislative assembly shall have thirty session days in which to disapprove the orders. If they are not disapproved by a majority of the elected members of either house, they shall have the force of law when filed with the secretary of state unless a later date is provided in the order."

Renumber the lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the amendment to Committee Proposal 1-100 — that is, Section (b). Delegate Hernettt.

DELEGATE HERNETT: Mr. President, this language is all new and it replaces old Section (b) and old 1-100, and it will be explained on the floor tomorrow, on the tenth order of business.

PRESIDENT WENSTROM: Is there any further discussion?

The question is on the adoption of the amendment to Committee Proposal 1-100, Section (b).

As many as are in favor of adopting the amendments will say "aye;" opposed "no."

The "ayes" have it. The amendments are adopted.

We'll be on the tenth order of business.

First for consideration, Committee Proposal No. 1-119.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-119, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 7 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to jury trial.

"SECTION 1. REPEAL.) Section 7 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The right of trial by jury shall be secured to all, and remain inviolate. A person accused of an offense punishable by imprisonment in a penitentiary has the right to trial by a jury of twelve, whose verdict must be unanimous. In all other criminal cases, in civil cases and in juvenile delinquency proceedings the legislature may regulate the size of the jury and the number required for a verdict."

PRESIDENT WENSTROM: You have heard the reading of the Proposal. Is there any discussion?

Is there any discussion?

DELEGATE THOMPSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-119.

In line 14, following the first word "cases", insert the word "and", and following the second word "cases", insert a period and delete the remainder of the line.

In line 15 delete the word "and" and insert the word "the".

PRESIDENT WENSTROM: Do I have a second? Seconded by Delegate Devine.

Is there any discussion? Delegate Thompson.

DELEGATE THOMPSON: Mr. Chairman, in the Committee, I have to admit I am in the minority of one. I suppose I have to leave this to the persuasive plea of the proponent in his convincing the Committee that juveniles, at all stages, whether they be in juvenile court or not, should be entitled to a jury trial.

Now, in the Committee, I'm alone, but the Committee was also presented with letters from the Judicial Council, which was almost unanimous in its decision, from the juvenile authorities and from all of the rehabilitative agencies in the State. These various presentations suggested that, if we did provide for a trial for juveniles in juvenile delinquency proceedings, we would, in effect, be destroying the juvenile laws, so that there could be no rehabilitation. And, incidentally, that's really what they're provided for.

Now, as far back as 1899 we started with our juvenile court, and up until 1966 there had never been any real test of this matter, and following 1966, there have been seven or eight very major cases which have, in effect, provided that juveniles are entitled to many more things than they were before under the juvenile court proceedings. At this time now, a child has the right to notice of the charges against him. He has a right to counsel, the right to confront his accusers, and he has the right of the privilege of self-incrimination. Those things he didn't have before. So I think that we have developed this juvenile court proceedings to such an extent that it is now not only protecting the juvenile, but it's allowing him to rehabilitate.

Now, let me explain to you that I'm not against a juvenile having a jury whenever he's going to be incarcerated as a penalty. Now, this doesn't include Mandan, incidentally, because it's been determined by our Supreme Court that placing a child in Mandan is for the purpose of rehabilitation and treatment. I do feel that, if he's going to be treated as an adult, that he should have a jury and he does have that proceedings — or that right now. But I feel very strongly that if we create, in effect, an unforgivable situation between a parent and a child by allowing the child to have a jury trial, we are then destroying the rights that this child has toward rehabilitation. And, incidentally, in many instances a person can waive a jury trial, but when you look at it as far as a juvenile is concerned, you then have to consider, "Well, is this child mature enough so that he can understand the proceedings?" And if he is not mature enough the way this thing reads, he'd have a jury trial as a matter of right and he could not waive it, and if a court were to appoint a guardian to waive the jury trial for him, which probably isn't legal, then you have a situation where the court is appointing a guardian who is going to do what the court wants, which, I don't think, is the legal situation.

We have only one situation in the State of North Dakota which is an analogy, and that is on your Indian reservations you have children who are not afforded

the rights of the juvenile proceedings in the State of North Dakota because, of course, the State of North Dakota does not have civil jurisdiction on the Indian reservations, and our Supreme Court has held that juvenile proceedings are civil in nature, and I can assure you, from the experience that I have had with these children on the Indian reservation, they don't like this situation. They don't like to have a criminal record started for them from the time that they're ten-to-twelve years old, which remains as a record for them until they're — well, until they die.

I, therefore, urge you to adopt the amendment.

PRESIDENT WENSTROM: The Chair will recognize Delegate Warner.

DELEGATE WARNER: Mr. President, Fellow Delegates:

I rise in support of the amendment. This — if the Committee Proposal is adopted, it is not a step forward; it is a step backward. We destroy the entire purpose of juvenile courts and juvenile procedure. I urge that you support the amendment.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President.

A number of delegates have come here with an idea or a proposal that is very dear to them. Delegate Fritzell had a deep concern about the state of our environment, and she was able to transmit that concern to the delegates and we approved a proposal designed to preserve our environment. And Delegate O'Toole was troubled about the rights of citizens in trying to deal with a labyrinth of government bureaus and agencies; so, to help rescue the private citizen frustrated by official red tape or indifference, he sold us on the idea of an ombudsman. And then, to the surprise of many, last night, on justiciable elections, Delegate Omdahl came through with flying colors.

I, too, have my crusade. I want to extend the right of a trial by jury to that 50 percent of our people accused of crime who are now denied that right. We're accustomed to thinking that everyone accused of committing a crime in this State is guaranteed the safeguard of a jury trial, if he wants one. Not so. Nearly half of those charged with crime and thus faced with the loss of their liberty are denied a jury trial under the present interpretation of the jury trial provision of our Constitution. It depends entirely upon the age of the accused. If the accused is 18 years and one day old, he can have a jury pass upon the issue of his guilt or innocence. If he is 18 minus one day, he must go to juvenile court, and there is no jury trial in that court. There the question of guilt is decided in secret, informal hearings, behind locked doors, by a judge. This is the same judge, incidentally, who sat down with the juvenile supervisor a few days beforehand and heard a one-sided version of all the facts, including everything derogatory about the juvenile, and then authorized the action to be started. Then at the hearing on guilt or innocence, this same judge is supposed to decide, impartially, of course, whether he acted foolishly in the first instance. And regardless of the judge's known prejudices, regardless of his qualifications or lack of them, regardless of his loftier standards of rectitude, regardless of splenetic temperament, the juvenile must submit his disputed question of guilt or innocence to that judge for decision. He cannot have another judge. He cannot have a jury trial. A possible penalty of up to two years' loss of liberty by commitment to the reform school hangs in the balance in these proceedings. It strikes me as intolerably unjust that there is no alternative open to the juvenile accused. He must tender his fate to that one individual judge in a secret session, where the judge's decision is protected by the cloak of secrecy. If that individual is one that a black robe has turned into a martinet — and there are those, believe me — it is little better than a star chamber proceeding. The recorded cases will attest to this.

And I say that the availability of a jury for a juvenile, if they want one and they select one in consultation with their attorney, would be entirely consistent with fundamental safeguards that all citizens should have when charged with crime and when liberty is at stake; and it would also present a wholesome alternative to trial by judge, and a sensible and needed checkmate on possible judicial ethics. I want to see all citizens — not just some — guaranteed a jury trial, and I ask you to help me make that a reality in North Dakota by voting against the amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE THOMPSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I want to correct the amendment, if I may. Instead of the word "period", it should be "comma" and then you don't need a capital "T" and with the approval of my second, I'd like to change the amendment to read that way; otherwise you won't have a complete sentence.

PRESIDENT WENSTROM: Does the second approve?

DELEGATE DEVINE: The second approves.

PRESIDENT WENSTROM: I think you should read it.

CHIEF CLERK GILBREATH: Then the last sentence would read: "In all other criminal cases and in civil cases, the legislature may regulate the size of the jury and the number required for a verdict."

DELEGATE THOMPSON: Yes.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. Fellow Delegates:

Even though I seconded the amendment, I was not prepared — I'm not prepared to speak of it. I did not realize it was coming up at this time; but as soon as it came before the body, I recognize what I suggest as an inherent danger to the entire juvenile system. I very strongly support the amendment. I feel that extending a juvenile — or the jury trial to the juveniles would — well, like I say, destroy the system. I spend about half my time as State's Attorney of Nelson County working with juveniles. I'm very much concerned about them. I've spent considerable time trying to come up with new ways in which to handle them and protect the disposition of those kids who get in trouble. I can't think of anything that would do a kid more wrong in a community — particularly a small community — that to have a jury trial and bring out the things that you have to bring out in a trial. When you start dealing with some of these 13, 14 and 15-year-old girls and boys, you run into some rather shocking things, and I think it would completely destroy this child's chance of ever returning to the community in the event that you succeeded in a conviction. I don't think these kids would be capable of dealing with the pressures that they would receive if many of these proceedings were made public. And this, in effect, what you are doing — is making them public through the jury system.

Now, I realize that Delegate Maxwell suggested that some of the judges may be biased. Quite frankly, I have more faith in the judiciary than that. I've taken a number of these cases before a District Judge and felt that they've been fair, even when they've held against me, and they do so frequently. These judges, I have found, make you prove the case. They have the right to counsel. These juveniles aren't without legal remedies. They have an attorney representing them there. They keep you honest.

So I would strongly object to the Committee Proposal and recommend that the amendment be supported.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President. I have a question for Delegate Thompson.

Under your amendment, could the Legislature provide for jury trials for juveniles? It seems that they perhaps could. But this doesn't appear in the Constitution. I wonder if that's correct.

DELEGATE THOMPSON: The only way — Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: The only way they could do that would be — I suppose the Legislature could provide for a jury trial but I imagine they could now provide for jury trials, but they'd have to change the juvenile court proceeding in order to do that.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Would Delegate Maxwell yield to a question?

PRESIDENT WENSTROM: Delegate Maxwell?

DELEGATE MAXWELL: Certainly.

DELEGATE POULSON: Delegate Maxwell, if it would become an eventuality that we would have jury trials for all juvenile offenders who so requested it, would the judge still have the power of determining the length and type of sentence?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Oh, yes, that would still be entirely within the discretion of the judge as to how the matter should be disposed of once guilt were established by a decision of a jury. I would visualize that if a jury requested — if a jury were requested in juvenile court, and the case could be transferred for trial in a normal fashion and thereafter returned to juvenile court for disposition, this could be very simply had.

DELEGATE POULSON: Would the Delegate yield to another question?

DELEGATE MAXWELL: Certainly.

DELEGATE POULSON: Would this in any way alter the privacy that is now a part of the juvenile hearings, particularly on minor matters? What I'm driving at — the question in my mind is: If the juvenile were arrested and was a suspect in a hubcap case, which perhaps in my opinion would be a minor — a minor thing, he would probably get a little probation and be remanded to the custody of his parents. But maybe to this youngster or his parents, this was the end of the world, and he was 15 years old and he had this jury trial — a full-blown jury trial, as I see it. Would this then take away the privacy of the hearing as we now have it?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: The juvenile and his counsel and his parents would have to elect whether or not to go into the juvenile court and stay there, with all of its privacy, or to go into a regular court and have a jury determine his guilt or innocence. They couldn't have both. They'd have to select between the two, and I think that's all right. If the question of guilt is a close one and they'd rather have a jury pass on it than a judge, then a juvenile should have that right to have a jury pass on it, rather than a judge.

And I might say, under present statutes, even if the trial is held in adult court, there is a statute that has been on the books for many, many years that permits the court to limit those who are in attendance and thus try to secure some privacy. In your hubcap cases, that normally would be disposed of, as are 95 percent of the cases in my court — they never get to me; they are handled by the juvenile supervisor on what is called an "informal adjustment" basis, and that, of course, is strictly private; and if the juvenile makes an admission, which they almost invariably do, then they're placed on probation for 90 days, and that's usually the end of the case, unless they misbehave meanwhile.

DELEGATE POULSON: Thank you.

DELEGATE AAS: Mr. President.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President.

Fellow delegates, I rise to support the amendment. Delegate Maxwell, as well as all the other brother judges in the State, not only have the natural property of being natural fathers, but they have also been artificially determined to be, as juvenile judges, the father of the country in regard to juveniles.

Now, the child population of the United States is roughly one-third of all the population and the arrest statistics for juveniles account for about 25 percent of the apprehended-offender population, and the caseload in our juvenile courts is roughly 700,000 cases a year.

Now, juvenile court — the main function is not to determine the guilt or innocence of the juvenile offender, although that is one of the duties. The main duty is that the juvenile court recognizes a special obligation for the protection and development of children as they move toward adulthood. Under our present law, all persons under the age of 18 are regarded as juveniles. Now, a juvenile court, at his discretion, may transfer for adult treatment those of the age of 16 or over, and I understand that there is a move among the juvenile judges to lower this discretionary age to 14 in the future by legislative act.

Now, we've heard the expression "This will destroy our juvenile court system." But no one has explained how it will.

Now, when you have a jury trial, the proceedings become a pure adversary proceedings, with lawyer against lawyer, with cross-examination of specialists in psychiatry, sociologists, and we do not have the atmosphere necessary for the wide opinions which should be given to the court for the rehabilitation of this child.

Now, knowing Delegate Maxwell as I do, and his calm and sensitive nature, I have no fear that his court would be transferred into a star chamber proceeding, and my opinion of most of the trial judges — juvenile judges of the State — is exactly the same. And for that reason, I support the amendment.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

I, too, rise in support of the amendment.

A couple of points that have not been covered: I think all of you should know that under our Uniform Juvenile Court Act that any time there is a hearing before the juvenile court, that the right of counsel is available to the juvenile involved. This also includes the right of counsel provided by the State, if the juvenile — the family of the juvenile is unable to afford counsel for them. It's not a situation where the child sits there with the judge and the commissioner and his parents alone.

It's been some time since I was an Assistant State's Attorney in our county, but when I was, I participated in many of these hearings, and the cases that I was involved in, it appeared to me that the court was very careful to see to it that the juvenile's rights were not only protected, but that everything that could possibly be favorable to the juvenile was brought out.

Now, under the new Juvenile Court Act, as I understand it, the sentence is not to the State Training School, but it's to a Youth Authority, and they can, as judges have indicated to me, treat the youngster as they best determine, which could be a week, while the judge might have felt a longer term, or whatever it might be. In addition to this, you might have got the impression that what the judge says is final; however, there are provisions for appeal to the Supreme Court, and I thought that you — based on what was said, I thought it — it appeared to me that this was not the case; however, it is.

Now, I'd like to talk to you about a practical matter — with the jury situation. In the larger cities, they have a jury term every month. I'm speaking of Fargo, Grand Forks, Bismarck and Minot. In the City of Jamestown, they have a jury term twice a year — in March and November of each year. In the smaller county seats, they may or may not ever have a jury term. What the effect of this would be, if we were to approve this measure as it stands, I really don't know, but it would seem that we might be — we might thwart the real intent of handling juveniles as we do with the juvenile court today. It would be very simple to demand a jury trial and wait and wait and wait until a jury is called.

Now, in some counties they have kind of a rule of thumb that they're not going to call a jury because of the expense involved, unless they have, say, five cases. It costs considerable money to call a jury nowadays. The jurors are paid \$20 a day, plus their mileage to and from the courthouse. So it's not — I'm not so sure we're helping the matter of handling juveniles in this case. I think we really would be hindering them, and that's the reason that I'm going to support the amendment.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, Fellow Delegates:

I knew this a long time ago, and I shouldn't probably judge my experience in the Thirties and make it applicable until today; but I worked in the Welfare Department in Minneapolis for four years and I was in juvenile proceedings quite often, and they became very emotional cases, and I would hesitate very, very much to have any type of a jury make a decision that would affect a juvenile for the rest of his life, and I feel only the judge could have the expertise; and so I support the amendment. However, at first I felt — I go back to — right, again, at first I was inclined to support Delegate Maxwell; but in natural experience, I can't help but feel that it won't work.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

It might sound very well to offer our juveniles a jury trial guaranteed in our Constitution, but I think, in reality, this is a wrong approach to handling juveniles.

In 1969, the North Dakota Legislature adopted the Uniform Juvenile Court Act. At the same time, the North Dakota Legislature adopted the State Youth Authority, which is another uniform act. In the same session, the North Dakota Legislature adopted the Interstate Compact on Juveniles. These are three uniform acts which are the direction that all the courts in the United States seem to be moving in. They are recommendations made by authorities in the field of juvenile law. They are recommendations made by our own authority in the State of North Dakota, in Judge Burdick, who is renowned in the field of uniform law and in uniform application of laws.

We have had good juvenile laws developed in the State of North Dakota. The juvenile court proceedings which we have protect the child in every way possible. It does much more than any of the proceedings we could have or hope to have under a jury system. The child is not treated as a criminal. The child is treated as someone that needs to be trained, needs to be helped and needs to get some of the benefits to which he is entitled. We have special classifications under our uniform code system. We define the various acts and we do not define them as a criminal act until a last resort. They are not classified in that way; and I will ask you: If we're going to reduce it to a jury trial, what other alternative would we have? This is a step backwards. It is a wrong direction to move. I recommend that we support the amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I would like to ask Delegate Thompson and Delegate Maxwell, please, to repeat — and I think it has been said before — what is mandatory and/or what is optional as far as the jury trial is concerned, either under the amendment or under the committee proposal. I'm a little confused on that.

PRESIDENT WENSTROM: Delegate Thompson, can you give Delegate Lander some information that he has requested?

DELEGATE THOMPSON: I'll try. Under our criminal laws as they stand now, a criminal is entitled to a jury as a matter of right; however, he has the right to waive, if he is capable of doing so. Now, that includes mentally and the fact that he is mature enough to understand the proceedings that are being brought against him. Now, that same rule applies to juveniles, if this is to be considered a criminal hearing. So then you must look at this, say, 14-year-old, and does he understand? Can he understand the proceedings against him? And then, can he waive? And if he doesn't understand the proceedings, then he can't waive and it would be against his constitutional rights to waive the jury for him. So if there was a conviction, he could appeal on the basis that his constitutional rights were violated and have a conviction overturned — if that explains it.

PRESIDENT WENSTROM: Delegate Maxwell, now do you have any further comment to make to Delegate Lander's request for information?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I can only state that, in my view, Delegate Thompson is incorrect in his assumption that every case must be submitted to a jury. We've got to remember that the juvenile court system is an innovation in our American jurisprudence and that it has only been seventy years since we've had any experience with it. Prior to that time, juveniles were handled exactly like adults; they appeared in criminal court, like the rest, and for centuries before that, that was the practice, and the problems and the worries and the concerns of Delegate Thompson certainly never bothered anyone during the course of all of those centuries, and I'm sure they would not if a juvenile has an opportunity to have a jury trial. It would be strictly at the option of the juvenile himself as to whether or not he wanted to go into adult court and there have the one single issue of his guilt or innocence determined by a jury.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, to further add a little confusion to the situation, I can think of a position between these two that might be worthy of consideration; that in juvenile cases, the jury will be deemed to have been waived unless requested.

Now, in serving as a State's Attorney and in defending some juveniles in recent years, I can think of a few cases where I felt the judge was a little prejudiced and where I would rather have had my client's future determined by a jury. I think it would be, in some instances, good to have the privilege to go to a jury, if you wanted to do so. But in 95 percent or more of the cases, as indicated, probably you won't want a jury; and if there is any interest in what I've said here, I have an amendment that could be put in very rapidly, which would take care of it, which would give the juvenile a trial by jury, if he requested it through his attorney. If he did not request it, he would be deemed to have waived his trial by jury.

PRESIDENT WENSTROM: Any further discussion? Delegate Hill.

DELEGATE HILL: I'd like to ask Judge Maxwell:

Our discussion has centered on the question of whether a juvenile should be entitled to a jury trial or not. The first sentence in the old Section 7 of this proposal says "The right of trial by jury shall be secured to all." It doesn't say anything about age. Could you explain that sentence to us?

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. Yes. To me, that sentence is quite clear, and to me, all persons shall include — including juveniles; but the Supreme Court of this State has very recently added a comma after "all" and added the words "except juveniles." They have declared that a juvenile is not included in the word "all." Therefore, that is why I feel that the language of the present proposal is necessary to rectify that.

DELEGATE HILL: Well, would the amendment then take care of it? Would the amendment guarantee that juveniles don't have the right to jury trials?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Yes, that is correct. That is my interpretation of it.

PRESIDENT WENSTROM: Any further — Delegate Devine.

DELEGATE DEVINE: Will Delegate Longmire yield to a question?

DELEGATE LONGMIRE: Yes.

DELEGATE DEVINE: Mr. President.

Delegate Longmire, what would be the situation in what your thinking is if the juvenile wanted the trial, come hell or high water, irregardless of what his or her attorney might think?

DELEGATE LONGMIRE: Well, I think a good attorney would come to an understanding with the parents and the juvenile before it reached that far, and that certainly, if the juvenile continued to want a jury trial, in spite of the advice from his attorney and his parents, why let him have one.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Well, I would suggest then it doesn't add anything, because I think all of us who have been in the business of seeing juveniles who were on a personal vendetta, more often than not against a mother or father, or both, and would like a jury trial to embarrass them, and we're right back into the situations that we were concerned about before.

PRESIDENT WENSTROM: Any further discussion? Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, do I have the privilege of speaking again?

PRESIDENT WENSTROM: Yes, sir, you do.

DELEGATE MAXWELL: I'd like to speak to the proposition that jury trials will destroy the juvenile court system, and I say that is not correct. I say it will strengthen it. I think we should take off the fancy embroidery of theoretical purpose and look at the nakedness of practical performance in the juvenile court. I have indicated that this was a newcomer on the scene. It purports to substitute, as indicated by Delegate Burke, paternalism and benevolence for constitutional procedures. Well, what has been the result?

The U. S. Supreme Court has recently harshly censured the performance of juvenile courts in this country, and I'm inclined to join in that reproach.

Before we start worrying about preserving something, we should consider whether or not it is deserving of preservation and just what does the juvenile court system have to commend itself? Soaring juvenile delinquency rates. High incidence of repeaters and recidivism. Fifteen-year-olds hold the record as the age group committing the most crimes. Sixteen-year-olds are a close second.

I indict the juvenile court system on three counts:

Count 1. It has deprived a substantial portion of Americans of fundamental rights supposedly guaranteed in the Bill of Rights.

Count 2: Its informality and secrecy lead to abuses and miscarriages of justice; and

Count 3. It has a miserable record of accomplishment in dealing with juvenile unlawfulness and misbehavior.

During the 70 years of its existence, the story has often been told, as it has been this morning, of its lofty and humane objectives. Its supporters have related how paternal judges, utilizing the many tools of the behavioral sciences, could, by means of private and informal flexible proceedings, rescue erring youngsters from a downward career. But recently — recently the story of its imperfections is being heard loud and clear. In 1967 a blue ribbon President's Commission on Law Enforcement said this: "Studies conducted by the Commission, legislative inquiries in various states, and reports by informed observers compel the conclusion that the great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency or in bringing justice and compassion to the child offender."

And author Howard Jacobs, in a Pulitzer Prize-winning series called "Crises in the Courts," which appeared in the **Christian Science Monitor**, said this: "What I saw in the nation's juvenile courts can only be described as shocking."

And in the recent United States Supreme Court it was observed, "While there can be no doubt of the original laudible purpose of the juvenile courts, studies and critiques in recent years raised serious questions as to whether actual performance measures well enough against theoretical purpose. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he neither gets the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."

And then, in the famous **Gault** case, the court said: "The high crime rates among juveniles could not lead us to conclude that the absence of constitutional protections reduces crime or that the juvenile system functioning free of constitutional inhibitions, as it has largely done, is effective to reduce crime and rehabilitate juvenile offenders."

The performance of the juvenile courts was seen to have fallen far short of theory. Substitution of loose informality for constitutional protections not only fails to deal effectively with delinquency and with recidivism, but it tended to nourish the abuse of authority by those administering juvenile justice. Firstly, "justice as usual" had not worked. The claimed benevolent tone of the juvenile court has not produced the results as promised. It has failed. And substituting benevolence for rights is a poor business in any case.

Justice Brandeis, who was quoted by Delegate Kelsch yesterday, once said that, "Personal liberty is in greatest jeopardy when the government's purposes are benevolent." He said, "The greatest dangers to liberty lurk in insidious encroachment by men of zeal well-meaning, but without understanding." It is not going to weaken the juvenile court system by affording a juvenile, who requests it, a jury trial. If anything, it will give it added strength and statute that constitutional safeguards inherently tend to confer. I ask you to defeat this amendment.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President.

Mr. President, unbelievable as it may seem, a delegate asked me to express my opinion.

It seems to me that there are — there may be many who agree, as I believe Judge Maxwell believes, that the juvenile system has not worked, is not working and does not do justice to the child. There may be much in what he says.

We have a system for determining the guilt or innocence of persons accused of transgressing the law. Those cases are all criminal cases, and over the centuries we evolved a system of determining that fact by a jury. The jury does not determine the law. It does not fix the punishment, except in extremely rare situations. It simply determines the facts. The State says that the defendant broke the law — he robbed the bank or he stole or he murdered, or whatever may be the crime. The jury, after listening to the evidence in an adversary proceeding, say "Yes, he did." or "No, he didn't," and they only use two, three words in all this decision making — "guilty" or "not guilty."

Now, the juvenile court idea says that a youth — a juvenile — should not be subjected to this same public scrutiny and this raw decision "yes" or "no;" that there are mitigating circumstances, different than the mitigating circumstances that determine the fixing of a penalty and, for better or worse, society has decided it will treat its juveniles in a different manner.

Now, in my opinion, you can't mix the two. You have to make a choice. You can't have in-camera proceedings, with all of the allowances and the maybes and the ifs that you have in a juvenile court, if you're going to put this in front of a jury, because I do not conceive how a jury trial can be less than public. Even if the doors are locked after the jury is formed, there are too many people in that courtroom and too many people know what happened for it to ever remain secret. Almost nothing remains a secret forever.

One of the inherent parts of jury trials is publicity. You get people on a jury who, presumably know nothing about the facts — completely unprejudiced, unbiased, ignorant of the situation when the trial commences. That's what you're trying to get at. Also, you're trying to get a complete cross-section of the community — rich and poor, educated and ignorant — a cross-section, which is what some of us are, from all sides.

Now, to me, I would believe that, if you believe in the special treatment of juveniles and if you believe that they are a class who are entitled to different considerations, then you should vote for the amendment and eliminate jury trials — make sure that we don't have them, the same as we are now. For better or worse that's the system.

Now, if you want to eliminate that system and put the ten-year-old on the same footing as the thirty-year-old — Did he commit a crime or didn't he? — because what can a jury decide in a juvenile case, except that fact? Surely you're not going to ask a jury to determine whether this young lad needs a different environment or if he needs treatment or if he needs something else. You can't substitute the jurors for the wisdom of the judge. You're simply going to give the jury the same type of questions that you do with the thirty-year-old man who was accused of committing a crime, and the jury will say "guilty" or "not guilty," and then you still leave it all up to the judge. What's he going to do about it?

Now, what's the point of having that jury unless the judge does just exactly what he does with any other criminal — adult criminal? Sentence him or suspend the sentence in his wisdom, as he does with all the rest of them.

So, to me, the choice is clear. If you don't want separate treatment for juveniles, then you say "Yes, jury trials. We'll put them back in the pot with everybody else."

I have other objections to this proposal, which, I think would be out of order now, and that is the possibility of reducing jury size; but I assume I'll have a chance to speak when that matter comes up.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: May I respond just a little bit?

The same U. S. Supreme Court that has been quoted in the — a case that was decided in 1968, said this — and I think we all agree with it and I think that's been brought out so far — and I quote:

"Meager as has been the hope for advancing in the juvenile field, the alternative" — referring to juries — "would be regressive, would lose what has been gained, and would tend once again to place the juvenile squarely in the routine of the criminal process."

The U. S. Supreme Court, in fact, has said this: "The juvenile court is not merely

a social agency, yet, by the same token, it will not be allowed to turn into a juvenile criminal court; it must be given the tools it needs to perform its historic mission — rehabilitation of the minor — if it is to survive.”

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Mr. President.

Fellow delegates, I think we've moved a long way in this Convention in granting additional benefits and rights to young people. I think yesterday we, on reconsideration of a bill that had previously passed over-whelmingly, we began to realize maybe — that maybe there has to be some differences in rights and privileges by age.

I support this amendment because this is the first issue in this Constitution that I have observed almost unanimous opinion by lawyers on a single issue.

(Laughter)

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

I did want to say that three years ago I worked on the Juvenile Court Act, and I sincerely believe that the Juvenile Court Act, which we have in the State of North Dakota, is not compatible with jury trials for juveniles. It just is not compatible at all. Now you have heard from one North Dakota District Judge in Delegate Maxwell. I do not believe that he speaks for all of the judges in the District Courts in North Dakota by any means. At least in 1969, they were in near unanimous agreement that we should have the Uniform Juvenile Court proceedings and I might also say that the Supreme Court decisions and the comments that were made do not reflect what is going on in the juvenile court proceedings.

I sincerely support the amendment made by Delegate Thompson.

PRESIDENT WENSTROM: The question before the Convention —

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: Will Delegate Maxwell yield to a question?

DELEGATE MAXWELL: I will.

DELEGATE SIMONSON: I don't know if I read the report right. Do I see in here a deterrent possibly for less juvenile delinquency proceedings, if we leave the majority report as it is? Will it in any way benefit the parent and the juvenile? The juvenile at this point, apparently, does not fear publicity in any other area. So I don't really buy the publicity fear that has been brought out.

Is there a deterrent factor in here somewhere that may reduce the juvenile delinquency proceedings as we now have them?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I don't think it will have any effect whatsoever as far as deterrent is concerned.

Mr. President, while I'm on my feet, may I fire another fusillade?

PRESIDENT WENSTROM: Yes, sir. You may proceed.

DELEGATE MAXWELL: I merely wanted to state that Delegate Aas is correct that I, apparently, stand alone among District Court judges in my position on this. I don't regard that as particularly hurtful to the cause I espouse, however.

(Laughter)

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Judge Maxwell for a question, please.

DELEGATE MAXWELL: Yes.

PRESIDENT WENSTROM: Does Delegate Maxwell yield?

DELEGATE MAXWELL: I will.

DELEGATE MILLER: Sir, you made a statement awhile ago that disturbs me, and maybe I'm being quite naive. But in referring to Section 7, where the rights of trial by jury shall be secured to all — and if I remember correctly you said that the Supreme Court has inserted a comma and put in “except juveniles.” If this, sir, is true, maybe our complete endeavor here is a lesson in futility. If this can be changed at the whim of the Court, then what do we expect to resolve here?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Well, I said that the effect of that ruling of the Supreme Court was to insert a comma and put "except juveniles," and that is exactly the effect of it. But I think that, if the proposal in its present form is passed by this body, and with the record of this debate, that the Supreme Court will see quite clearly what the intention of the Constitution is and will be in the future as far as jury trials for juveniles is concerned.

PRESIDENT WENSTROM: Further discussion?

Delegate Peterson.

DELEGATE PETERSON: In listening to this debate, there is one point that seems to be appearing over and over again, and it disturbs me a great deal.

I have come to the conclusion that possibly the only reason for a jury trial is because it involves more people, and this, I would imagine, would be to the protection of the child and it would be a deterrent on the judge, because he would be aware that more people would be informed of the proceedings. And I have a question of Judge Maxwell, please.

PRESIDENT WENSTROM: Does Judge Maxwell yield to a question?

DELEGATE MAXWELL: Surely.

DELEGATE PETERSON: Is this true, in your opinion, sir, that the more people that are present — it would be helpful to the child, and is it true — the statement just made by Delegate Pearce — that the judge's decision will be made regardless — or I mean he will arrive, probably, at the same decision, whether there was a jury trial or not?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I think that public trials are very important in our constitutional system.

As to Delegate Pearce's comment that you must have one or the other, I disagree, and I disagree very strongly. The beauty and the good of the juvenile court system is in the dispositional phase, after guilt has been determined; and having a jury trial would in no way effect or influence the way that the judge can dispose of the case, and that is where all of the good and the social sciences and all of the good of the psychiatrists and all of the help that can be afforded to the juvenile can be felt. And I can't see where merely determining the one issue of guilt or innocence by a jury is going to in any way affect the dispositional phase of the juvenile court.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, as a layman not altogether familiar with this whole question, I have a cousin who lives in Canada, who was involved in a car accident in which three teenagers were killed, and there had obviously been a lot of drinking going on, as had happened for sometime in the community. The family insists to this day that this boy was not driving the car. I don't honestly know whether or not he had a jury trial, because I don't know what the system is in Canada. But he was given a very, very heavy sentence.

Is it my understanding that, under our present arrangement, this 17-year-old boy could not have demanded a jury trial in North Dakota and gotten it? Is that correct?

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, if that's addressed to me, that's right, he could not have demanded a jury trial and gotten it in that case, if that case had arisen in North Dakota. He could not have gotten it, unless the judge under some very rigid restrictions, could on his own waive it out of juvenile court; but the election would not be with the juvenile — it is with the judge alone — and then only if the judge determines, after a hearing, that the juvenile could not respond to what the — to the juvenile court system — that there was nothing in it for him — he was incorrigible and hopeless as far as the juvenile court system is concerned. And I have never, in dealing in the Juvenile Court Act, ever found a case in which I could waive it, under the law of the Juvenile Court Act, into adulthood.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: Judge Maxwell, in a case like that, of manslaughter, a District Judge would waive — declare him as an adult and have him tried in regular court.

(Delegate Maxwell shook his head.)

DELEGATE WARNER: It's been done!

DELEGATE SINNER: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Whatever case could be made for that boy — he got, I think, a ten-year sentence, and it was a gross miscarriage of justice, at least from what I know of the case, and I'm not saying I think that a jury would have been necessarily more fair, but it was an established fact that there was a bitter feeling in the community because of some other accidents, and this boy caught the brunt of the entire punishment. So I think that there's a great deal to be said in what Judge Maxwell is saying.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates:

I vowed this morning that I would not get up and make any statement on this issue. Delegate Maxwell had me practically convinced that he had a good theory; but as a parent, I certainly would prefer to have my juvenile appear before a juvenile court.

As State's Attorney of our county for over twenty years, I have dealt with many, many juveniles. My primary concern was with their welfare. In every case I have found that the District Judge who sat as a juvenile judge also had that in mind. In every case in which the juvenile commissioner went out and investigated all of the facts, he or she seemed to lean over backwards to give this juvenile a fair shake. I cannot, under any circumstances, conceive of any District Court in the State of North Dakota that would or should be considered a star chamber. I have felt that they have done a tremendous job. The statistics given to us are like the pictures that were shown to us the other evening from the City of Chicago — a maligning of the judicial system — not one iota related to the State of North Dakota.

The statistics given by Delegate Maxwell again probably refer to Chicago and New York and other states. As I could see, not one matter pertained to the State of North Dakota. I make this statement merely to uphold the judicial system of the State of North Dakota. The Judges who have been sitting as juvenile courts have done an outstanding job — no star chamber, or anything of the kind.

Thank you.

PRESIDENT WENSTROM: Delegate Jim Hougen.

DELEGATE HOUGEN: Yes, Mr. President and Fellow Delegates:

I think that — or feel that we're getting off on the wrong track, and I hope I can get across what I want to say.

It seems to me right now that I am acting as a juror, and I'd have to decide for maybe the next twenty, thirty-to-fourty years on either one of two issues, and that is that either a juvenile is served better by the juvenile court or a juvenile is not served better by the juvenile court, and I don't think this is the correct decision that we should make. In fact, I don't think we have any right to make it.

I think what we have to speak to is the fact: Does a juvenile have a right to a trial jury?

As a parent of many teenagers — most of them are still juveniles — I say absolutely I have a right as a parent to demand that my child, if he is a juvenile, have a trial by jury.

Now, I am quite sure that I would not want to do this, feeling that the juvenile court system as we have it today in North Dakota is best for the juvenile; but I don't believe that this delegation has a right to say, "No, a juvenile cannot have a trial by jury." And if we accept this amendment, I think we are going far over the bounds which we should go.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I don't know what we're really afraid of here. What are we really afraid of in giving the juvenile the right to a jury trial? Certainly his

rights should be protected, just as everyone else's. There are exceptions in every case on both sides of the fence. I can't see how we, as delegates to the Constitutional Convention, can sit, as Delegate Hougen would have it and what he has said — that we were acting as a jury here. This amendment would not allow a juvenile, for any reason, under any circumstances, the right to a jury trial. Now, I don't know how we can advocate that kind of class discrimination.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Apparently, through all of the talking that has gone on, some of you have not understood that in juvenile court proceedings we are not determining whether or not this child has committed a crime; we are determining only whether or not he needs help and what agency should help him.

Now, Judge Maxwell does not agree with the three District Judges in my district, because in many instances juveniles who are being charged with a crime have been waived into District Court and have been treated as adults there, and that is now possible and it does go on. So, what we're not determining in the juvenile court is whether or not they have committed a crime; it's whether or not we can help them, and that's the whole theory of the juvenile court system.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President. Fellow Delegates:

Earlier you heard Judge Maxwell explain what he thought are the faults of the juvenile court system, and I concur with many of the things that he said, and that is the reason that we adopted the Uniform Juvenile Court Act. That is, the Legislature adopted it in 1969.

Now, the question was raised about an incident in Canada, and attempted to equate to what we're talking about, when I don't know if any of you know what kind of a court system they have up there. I don't. So I would ask that you not get too alarmed by what happened, because we're not here to judge what they did was right or wrong. However, had that happened in North Dakota, Section 27-20-34 of the pocket supplement provides when a case may be transferred to other courts, and it has five subsections, and you may — if you have the Code near you, you might like to read those — one of which requires that if the child — the child must be sixteen years or more of age at the time of the alleged conduct. So, in this particular case of a 17-year-old in an automobile accident, as Judge Warner says, this would be a case that would be transferred to a District Court and, incidentally, the last paragraph of that says: "If the case is transferred to a court in which the judge who conducted the hearing is also the judge, he is likewise disqualified from presiding in the prosecution." So it's not that same judge transferring the case and turning around and hearing the case, as some might believe. I honestly believe that we have provisions for a jury trial in those cases where the juvenile court judge decides that it should be a jury trial and should be — the juvenile right now to go to a jury should be waived and subject him to a jury trial. Again, the section is 27-30-24, if you'd like to read it in detail exactly when the case can be transferred.

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, I've listened to this argument in the committee meetings. I've got my own feelings. I've got six children. If I felt that they sincerely wanted — one of them got in trouble and wanted a jury trial, and after I talked to an attorney and the attorney suggests that they have a jury trial, I would certainly go along with having a jury trial for the youth. But, like as has been mentioned here this morning, it would be up to the parent and the attorney to determine if that youth should have a jury trial, and I think this is what is provided for in the provision that is being discussed this morning here.

But we have to take another look at it. There was mentioned about the cost — what it might cost; and how long it takes to get a jury trial in some counties. Are we putting dollar signs against humanity, or what? And this is what it looks like to some thinking here this morning. But if the juvenile system was so good, how come we do have as many cases of juvenile delinquency as we have today? I think that we are — that everyone in this State should be entitled to a jury trial, if he so wishes. I don't think we should stand and discuss this morning what's good about the juvenile court system or the other court system. I think it's a right that a person has,

if he wants a jury trial. I feel that some parents would prefer a jury trial. Leave it come out in the open. I would rather see a decision come out of a jury that my child was guilty or not guilty, rather than have the public walk around the streets and put a bunch of false rumors out that the child was before the juvenile court. Why have the false rumors against the child on the streets, in the schools? Why not bring the truth out in the open? Are we scared of the truth? I would rather have my child be out in the open, with the truth, rather than have a bunch of false rumors passed around the streets.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

I wasn't going to get into the scene here, but I think I have to stand and state that I support the proposed amendment by Delegate Thompson, and I think this probably, more than anything, I think, muddles or confuses — to separate the proceedings. Originally, the juvenile, for any crime, was treated as an adult. And then we decided that that wasn't working. Our criminal restraints on adults hasn't worked too well over the years, Delegate Maxwell, so we developed the juvenile system, and it is said that a juvenile cannot commit a crime. He may do an act that we declare to be a crime, but his conduct is not criminal; and to avoid the stigma of the crime, we have made the proceedings secret. The emphasis was on rehabilitation. What should be done with the juvenile?

Now, if you muddle it and say that in the juvenile proceedings there must be a jury trial, then I think, as Delegate Pearce said, you have gone back — you have undone the juvenile system. We're back treating juveniles and adults alike, with a public trial.

Now, our present juvenile law does provide that a juvenile — as Delegate Nothing pointed out — does provide that a juvenile may, in certain cases, ask for a public trial — ask to be treated as an adult. Now, those are very limited circumstances and I think rightfully so, because one of the grounds for being what we call an "unruly child" is that the child is habitually disobedient of the reasonable lawful commands of his parents. Now, if we give a right to a jury trial in that kind of question, can you imagine the trial? The child against parent; the parents' lawyer and the child's lawyer. Was the command reasonable? Was it fair? Is the child really unruly? The child can ask, and a hearing will be had, for a public trial, and the conditions are that they be over sixteen, that the judge have cause to believe he committed the criminal act, that he is not amenable to rehabilitation or treatment as a juvenile. It goes on then — he's not also mentally retarded; that the interests of the community require that the child be placed in legal restraint or discipline. So that route is there. That route is there, and I really feel that, if we include the jury trial in it, we're saying to the Legislature, "Forget the juvenile court system." I think it really is the end of it. I think we've got a separate system, and I don't think that we, in this Constitution, should abolish that system with the Committee's Proposal.

Now, if we felt that the child should more readily be able to ask to not be treated as a juvenile, to ask to be treated as an adult, to go into the adult court system, that's a question for the Legislature to decide, to require a hearing and to loosen the limitation on his right to do that. I don't think we should do that in this Convention, though.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President, I still, like Delegate Hougen — I still am a little bit in the dark here. I don't see where we have to — I don't see the real clear delineation between having to choose between a juvenile court system and our adult court system as being the case here. I'm just wondering where the danger lies in this thing. Is it because we feel that some attorney may talk a juvenile into going into court for a jury trial when, in reality, his own best interests would have been that he should not, or is it that the judge is not schooled in juvenile rehabilitation because he's no longer a juvenile judge? Those are two questions that I have. Is the judge not schooled in rehabilitating the juvenile — the ordinary judge that would try a case by a jury or preside over a case by a jury? And is it the danger that an attorney might talk a juvenile into taking his case to a jury when his better interests would have been served by having not done so?

Those are two questions that anybody might answer.

PRESIDENT WENSTROM: Can anyone answer the questions as presented by Delegate Scheel?

DELEGATE BURBIDGE: Mr. President — Delegate Burbidge.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I think Delegate Scheel and Delegate Hougen have come to the meat of the situation, and sitting in committee for some time, listening to this, I, too, asked these same questions. Isn't basically the problem whether the youth should have the option of taking his case to the court or going to the youthful proceedings, which most of us agree are good? And the problem that I came up with is this: Who makes that decision? Frequently the problem is between the child and his parents. So, therefore, it would be difficult for the parents to make the decision. And is the youth old enough to really understand the implications of his choice? Somewhere the problem lays in the decision-making process here. Is the youth well able to make the best choice, or is any agent for him well able to make the best choice? This is the question before us.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I, too, wasn't going to say anything; but all the lawyers have spoken and I think maybe some of the rest of us should say a word.

When I was young, wild oats was our principal trouble in the wheat situation, and I never wound up in juvenile court. I raised three children, all of whom are probably far more successful than I am, and they never were in junior — I mean in juvenile court. What I can't understand — I just can't understand how we can say that an 18-year-old can be in the Legislature, he can be a Senator, a 21-year-old can be a governor; but so help me, we have to be careful that he doesn't have to face a jury. I think he should have the right, if he desires it. In fact, I think we coddle the juveniles a little too much, and I, too, was in the Legislature and on a committee which considered that famous Juvenile Court Act about that thick (illustrating), and one judge came in and said he was sorry, but he hadn't used it yet — he didn't know, really. He hadn't used it. So I'm going to support the original and object to the amendment.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Mr. President. Fellow Delegates:

I think we've had an excellent discussion on this problem this morning. I think anything that might be said in addition to what already has been said is going to be redundant.

With that thought in mind, I move the previous question.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: The previous question has been moved. May I have five delegates second? Scheel, Christensen, Stanton, Devine and Knudson second.

The previous question has been moved, which means we vote immediately on the question before the assembly. The question now is on the adoption of the motion of the previous question.

DELEGATE WARNER: Mr. President, could we have a recorded division?

PRESIDENT WENSTROM: On the previous question? You may, if you wish.

The previous question has been moved.

As many as are in favor of adopting the previous question will say "aye;" those opposed say "no."

The "ayes" have it and the motion is adopted.

We are now on the proposed amendment as offered by Delegate Thompson.

DELEGATE WARNER: May I now request that it be a recorded division?

PRESIDENT WENSTROM: You may request a recorded vote at this time. If ten delegates will rise, we will have a recorded vote.

That is a sufficient number.

The question before the Convention is on the adoption of the amendment as

offered by Delegate Thompson. Those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 55 "ayes," 39 "nays," four delegates absent and not voting. The amendment has been adopted.

Any further discussion? Delegate Thompson.

DELEGATE THOMPSON: I now move that the rules be suspended, that the Proposal be re-engrossed and placed on the calendar.

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: Delegate Thompson moves that the rules be suspended, that Committee Proposal No. 1-119 be deemed properly re-engrossed, that it be placed on the calendar for first passage as amended. Seconded by Delegate Baker.

As many as are in favor of the motion — Delegate Pearce.

DELEGATE PEARCE: Mr. President. May I speak against the motion? The reason I do not want it to come to a vote right now is because we have had a lot of discussion on one portion of this. We have had no discussion so far of the effect of the third sentence, which would permit the Legislature to reduce the size of juries in all civil cases. I think that should be thought about a little bit, Delegates, rather than continuing to debate this question, and that's why I oppose suspending the rules and let it go over in normal course to the next day.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the motion to suspend the rules, deem the Committee Proposal properly re-engrossed and placed on the calendar for first passage as amended.

As many as are in favor of adopting the motion say "aye," opposed "no."

I believe the "noes" have it. The "noes" do have it.

The Committee Proposal 1-119 is before the Convention as amended.

At this time the Chair will declare a 15-minute recess.

DELEGATE LONGMIRE: Mr. President, may I make an announcement before we scatter?

PRESIDENT WENSTROM: I think — we will hold just one bit. We have a number of students here that we would like to recognize, too.

Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, if we could have a 15-minute recess — I don't recall what you called — but I believe our Committee could get together and perhaps save a lot of time for the Convention. We know that there are at least three amendments to 1-12 — the next proposal we have before us, and I'd like to announce a meeting immediately of the Judiciary Committee in our usual place, and ask Delegate Omdahl and any others that have amendments to offer to 1-12 to meet with us. Perhaps we can agree on the amendments and save a lot of time of debate here on the floor.

PRESIDENT WENSTROM: Will you read the announcements from the desk?

CHIEF CLERK GILBREATH: Delegate O'Toole would like to announce that the adult Basic Education Class of the United Tribes Employment Training Center of Bismarck, North Dakota, and their teacher, Patrick Johnsen, are in the gallery.

Delegate Wicks would like to announce the Fifth Grade of the Jefferson School of Valley City, North Dakota, and their teacher, Mr. Barry Bjornson with 64 students, are in the gallery.

Delegate Kelsch would like to announce that there are 33 students from the Seventh Grade of the Christ The King School of Mandan, North Dakota, and their teacher, Mr. Messmer, in the gallery.

Delegate Kelsch would like to announce there are 56 students from the Sixth Grade of Mary Stark Custer School of Mandan, North Dakota, and their teachers, Ron Reiersen and Rena Brucker, in the gallery.

There is a group of League of Women Voters of Fargo and West Fargo, with Donna Chalimonczyk as President.

PRESIDENT WENSTROM: Will the visiting people in the gallery — the students, as well as the other visitors — please rise and be recognized by the Convention? (Applause)

To our visitors, we do wish to welcome you to the Convention. We think that you have listened to one of the more important of the debates that we have had. We hope you enjoyed it. We hope that you will continue your interest in government because it will be only a few short years that you will be down on the floor of this assembly room, representing the people of North Dakota, either in the House or in the Senate.

Again, welcome to the Convention. Now we'll recess.

(The Session recessed at 10:48 A.M. until 11:11 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: May I explain my vote on the last —

PRESIDENT WENSTROM: On the last question?

DELEGATE O'TOOLE: — on the last question?

PRESIDENT WENSTROM: If you wish.

DELEGATE O'TOOLE: I think that while I did not enter into the discussion on the floor, I certainly involved myself and entered into it very greatly in Committee. I'm greatly concerned, as many of the other people were, about destroying the juvenile court system, and I voted for the amendment primarily because I did not want to destroy the system; but, also, I think it should be considered as a directive to the Legislature to correct this inequity that Judge Maxwell has certainly pointed out to us.

In the four criteria that were listed for juvenile hearings, these all must be met and in many cases they cannot be met, and I think there is an inequity there and I hope that the Legislature will see this as a directive for correction of that inequity.

Thank you.

PRESIDENT WENSTROM: Will the sergeant-at-arms inform Delegate Longmire's committee that the Convention is in session?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I'd like to move that we reconsider our actions on —

PRESIDENT WENSTROM: Delegate Sinner, we're still considering Committee Proposal No. 1-119. I know they didn't suspend the rules, so it's right back where it was. How do we know there won't be more amendments coming on from the floor? That's my point.

If there is no further consideration to be given to Committee Proposal No. 1-119, then it will be held over and go on the tenth order of business for tomorrow.

Now, Delegate Sinner.

DELEGATE SINNER: Mr. President, I'll move that we reconsider our action on Committee Proposal No. 1-70. If I can have a second, I'll explain why.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: 1-70. And it was seconded by Delegate Kwako. Delegate Sinner.

DELEGATE SINNER: Mr. President. If you'll look on the printed page, you will find that in Section 12 it says "Each house shall be the judge of the election returns and the qualifications of its own members." That's been pointed out by Delegate Miller and, as mentioned last evening, that we don't actually provide for any other machinery for settling a tie, except for the partisan vote of the Legislature. Delegate Miller makes a good case, I think, to demonstrate that the people in the district aren't very happy about the partisan decision on the tie vote in their district on the Legislature itself, and I think he feels, and I'm inclined to agree with him that we should have the drawing of lots to decide who wins a tie vote for a legislative election, and if it is the wish of the Convention that we include that language

— that's the reason for moving reconsideration — then they should support the motion. If they think that the Legislature should decide ties for legislative races, then they should turn the motion down and it will stand as it is.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: That brings up a thought in my mind.

Supposing the two nominees who end up in a tie decide to contest the election and we have the Legislature decide, or flip a coin, or something, and decide who the winner is, and then the election committee decides the other way? It's got to be decided in that manner —

PRESIDENT WENSTROM: For the information of the delegates that have been in committee meeting and just returned to the Convention, the question before the Convention is on a motion to reconsider Committee Proposal No. 1-70 as offered by Delegate Sinner.

Now, Delegate Sinner, I'm going to ask that you repeat your remarks there for the benefit of this group that was out.

DELEGATE SINNER: Mr. President and Fellow Delegates:

The question is whether or not we should provide language to break a tie vote in a legislative race. Under the present language, and the language of the old Constitution, for that matter, the Legislature decides who wins a tie vote, and if you think, as some of us do, that a tie vote should be broken by the drawing of lots and not by the political vote of the Legislature, then you should support the motion to reconsider. If you think that it should stay — to be decided by the Legislature — then you should vote against the motion.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. President, I'd like to ask Delegate Sinner a question.

Mr. Sinner, under what conditions could the Legislature ever break a tie vote by a political consideration? If they recount the ballots and there's still a tie, there is no way for the Legislature to determine the outcome on a partisan vote. They might determine the outcome on a partisan vote over which ballots are properly counted, but not to break the tie.

DELEGATE SINNER: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I'm not positive about the exact answer to your question. Theoretically — as a matter of fact, they are decided on a partisan basis.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President and Delegates:

Delegate Sinner's question only covers the problem that I'm concerned about partially, and I'm thinking of cases that have happened in the Legislature of North Dakota in years past, and some of you who are a mite older will remember where there have been some flagrant abuses of political powers in determining who shall get a seat and who shall not; and I'm thinking not so much, Delegate Paulson, of those where there was an actual tie; the problem that I'm concerned about is the one where, through — well, political maneuvers, the Legislature determines which votes are valid and which are not, and there are some laws that are pretty specific that, if you want to get right down to the nit picking about it, you could legally declare certain ballots invalid, even though — and having sat on election boards a number of times, it's always been the practice in our little precinct to allow a ballot if the intent is clear, and it isn't always completely legal, I presume, but if the voter's intent is clear, we allow it.

Now, when you get into a body like this or like the Legislature or the Senate, then you run into those situations where, in order for a political party — and it's happened both ways — they do get right down to the nuts and bolts of this and declare some of them invalid because the intent may be clear, but it's not exactly legally done, and I presume that they are following the law, but they can twist this around and it's — some of these cases that have happened, you could smell them clear up to Bantry; so I'm kind of perturbed about how this can be resolved.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I'm not sure yet I understand the amendment of Delegate Sinner. Is that —

PRESIDENT WENSTROM: It's not an amendment, Delegate Longmire. It's a motion to reconsider.

DELEGATE LONGMIRE: Oh!

PRESIDENT WENSTROM: It's a motion to reconsider the action whereby we passed Committee Proposal No. 1-70.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I object, Mr. President, to these motions for reconsideration without having any idea what kind of amendment is going to be proposed. So I'm going to oppose it.

Now, I think the thing Delegate Miller was talking about was the 1955 special election for the State Senate in McLean County. That was a unique situation all right; but, nonetheless, in every legislative body each house is to judge the election returns and the qualifications of its own members.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. Fellow Delegates, the amendment would be just to add to Section 12 of 1-70 these words: "and in case of a tie, the winner shall be determined by lot."

Now it may be right what Delegate Paulson says — that there would be a tie when they got through counting. The majority party would make sure of that. And if there was a tie, maybe they would agree by lot. But this would be stating to the Legislature that if the count of the election is tied, that they would determine the result by lot and not by the force of a partisan decision.

Now, to get at Delegate Miller's problem we've either got to say as the Constitution said in the past, that the Legislature shall determine the qualifications of its members, and if that's the place where it's to be decided, then it's a legislative process. To get at his problem, I think we'd have to go much further and provide for a court procedure, which we had not contemplated, and it's not covered in 1-70.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the motion to reconsider Convention action on Committee Proposal No. 1-70.

Delegate Sinner.

DELEGATE SINNER: Mr. President, I believe it takes two-thirds to reconsider this. I believe it was the 18th day.

PRESIDENT WENSTROM: It does take two-thirds to reconsider.

Inasmuch as it requires 66 votes to reconsider this matter, we are going to vote by opening the key.

Delegate Kessel.

DELEGATE KESSEL: Before we vote, I was wondering if there are any other delegates, besides Delegate Kelsch, that have any other proposals. I would hate to be coerced into voting for reconsideration based on this one amendment and then have the floor flooded with many others. I think any other delegates that have proposals should expose their hands at this time.

PRESIDENT WENSTROM: Are there further —

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: While I don't have anything prepared, if we could have this reconsidered or laid over or put to the foot of the calendar, where we would be allowed a little time, I would certainly like to get together with some of these constitutional experts and try to arrange something whereby this situation I referred to could be resolved, and I like Delegate Kelsch's idea of resorting to the — having the recourse in the courts in the real abuses in this.

PRESIDENT WENSTROM: Well, Delegate Miller, if you'll pardon this, but I'm sure that you have recourse in the courts now.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Delegates:

I really don't think that it's necessary now to try to break a tie when we've had the same provision in the Constitution for 82 years, and I think we'll get along for another 82 years without changing it. I oppose reconsideration at this time.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I just want to say that, as far as I know, I have no other intent or any other amendments and I don't know of any others.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: I speak with rather mixed emotions on this. I do not have the editorial available, but Delegate Cart could possibly recall this.

Approximately back in 1932 there was another individual by the name of Hartl who, as a qualified elector, found himself in a position of having earned a tie vote for his seat, and by lot he drew an ace — a low card. The opposition by lot drew a deuce. The cigar smoke in the room became heavier as Mr. Sellie, the opponent, drew next a 4. The election was determined by lot — the Hartl having drawn a king.

I agree with Mr. Paulson we have used the same system before. It possibly does have problems. It has been proven that it can work; and for these reasons, I will resist the motion at this time.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President, I don't like to belabor this, but I would certainly ask you delegates to go with us on reconsidering this. The fact that we have had a built-in abuse for 80 years is certainly the best argument I can think of for doing something about it. I don't think it would be difficult. It shouldn't take much time. What we have in mind — I don't see how it can be controversial in any way — it's merely a matter of a little change in language to clear up something that has been abusive in the past.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I hope the delegates provide the two-thirds vote to reconsider 1-70. If you'll remember, yesterday you reconsidered a bill — 1-44 — and I didn't object to reconsidering that, although I'd have liked to have, and we were told that possibly the only change that would be made is in Section 5, and now I see an amendment would amend the whole proposal, and I think the delegates, after reconsidering all of this, will still have a majority to pass these proposals. I don't have any fear of it.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the motion to reconsider Delegate Proposal No. 1-70.

We will open the key and you will record your wishes.

Has every delegate voted? Any delegate wish to change? The key is closed.

There were 70 "ayes," which is a sufficient number to reconsider. So Committee Proposal No. 1-70 is before the Convention.

Delegate Sinner, what do you wish to do with it?

DELEGATE SINNER: Mr. President. I move that Committee Proposal 1-70 be placed at the bottom of the calendar.

PRESIDENT WENSTROM: Delegate Sinner moves that Committee Proposal No. 1-70 be placed at the foot of the calendar. Do I have a second?

DELEGATE PETERSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Peterson.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-70 is placed at the foot of the calendar.

Next for consideration, Committee Proposal No. 1-12.

CHIEF CLERK GILBREATH: Committee Proposal No. —

DELEGATE LONGMIRE: Mr. President — oh, excuse me.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-12, introduced by Committee on Judicial Functions and Political Subdivisions.

"Be it resolved by the North Dakota Constitutional Convention that sections 130, 166, 167, 168, 169, 170, 172 and 173 of the constitution of the state of North Dakota be repealed; and that article XII of the constitution of the state of North Dakota be created; all of which pertain to political subdivisions.

"SECTION 1. REPEAL.) Sections 130, 166, 167, 168, 169, 170, 172 and 173 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Article XII to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XII "POLITICAL SUBDIVISIONS

"Section 1. Purpose.

"The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum of functional duplications.

"Section 2. Political Subdivisions.

"The legislature shall provide by law for the establishment of all political subdivisions and provide for the government thereof. Each political subdivision shall have and exercise such powers as provided by law.

"Section 3. Counties.

"The several counties of the state of North Dakota as they now exist are hereby declared to be counties of the state of North Dakota.

"Section 4. County Seats.

"The legislature shall provide by law for changing county seats within organized counties, but it shall have no power to remove the county seat of any organized county.

"Section 5. Boundaries.

"Methods and standards by which all or any portion of a county or counties may be annexed, merged, consolidated, reclassified or dissolved, shall be as provided by law. No portion of any county or counties shall be annexed, merged, consolidated, or dissolved unless a majority of the electors of each such affected county or counties voting on such question shall approve of the annexation, merger, consolidation, or dissolution.

"Section 6. Home Rule.

"The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon. The legislative assembly shall not be restricted in granting home rule powers to cities by limitation on debts of cities contained in this constitution.

"Section 7. Optional Forms.

"The legislature shall also provide by law for optional forms of government for counties, but no such optional form of government shall become operative in any county until submitted to the electors thereof at a special or general election, and approved by a majority of those voting thereon.

"Until one of the optional forms of county government is adopted by any county, the fiscal affairs of the county shall be transacted by a board of county commissioners as provided by law.

"Section 8. County Services.

"Each county shall provide the functions of law enforcement, administrative and fiscal services, recording and registration services, education services and such other governmental services or functions as may be provided by law.

"All elective county offices, or any combinations thereof, as they now exist shall continue to be elective county offices for four-year terms until any such offices shall be eliminated at a countywide referendum by a majority vote of the electors voting on the question or by adoption of a home rule charter.

"Such referendum elections shall be provided for by law, and shall be manda-

tory in each county at the first statewide election next following two years after the effective date of this constitution and at least every ten years thereafter.

"Whenever any office is eliminated, the county governing body may provide for such services.

"Section 9. Referendum.

"Questions as to the form of government to be adopted by any county or as to the elimination of county offices may be placed upon a referendum ballot either by a vote of not less than two-thirds of the county governing board or upon petition of electors of the county equal to at least fifteen percent of the total number of voters of the county who voted for governor at the last gubernatorial election, or as otherwise provided by law.

"Section 10. Service Agreements.

"Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any political subdivision with any other political subdivision, with the state or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may transfer to the county in which it is located any of its powers or functions unless prohibited by law or home rule charter, and may in like manner revoke the transfer.

"Section 11. Mutual Services.

"The right to enter into mutually beneficial service arrangements between the Indian Tribes and state agencies or political subdivisions of the state shall be recognized."

(President Wenstrom called Second Vice President Saugstad to the rostrum to preside.)

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: The delegates will note the proposal that's in your book. It has been changed somewhat; however, there are only three sections that were changed materially from those sections, and we did place on your desk some time ago the new portion of the Proposal as it was amended by our Committee.

Now, I'm happy to report that we did make some progress on some proposed amendments by Delegate Omdahl in meeting with him at the recess. However, I think at this time the best procedure would be to have the people from our Committee that are assigned to these respective sections briefly explain them to you, and then there will be some further amendments, one of which we agreed to in our Committee that will be covered by Delegate Omdahl. In fact, we think his amendment was a good amendment.

So, at this time, Mr. President, I would like to recognize those, first of all, who have been assigned to the first section. I have forgotten just who it was, but no doubt you will remember. Delegate Hougen, I believe you were on the first part — are you not?

VICE PRESIDENT SAUGSTAD: Delegate Wallin.

DELEGATE WALLIN: Mr. President, I have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Committee Proposal 1-12.

DELEGATE Wallin moves that the engrossed Committee Proposal be amended as follows:

On page 1, line 1, following the first comma, insert the following: "150,".

On page 1, line 7, following the first comma, insert the following: "150,".

And renumber the lines accordingly.

DELEGATE LONGMIRE: Second the motion.

VICE PRESIDENT SAUGSTAD: Seconded by Longmire.

DELEGATE WALLIN: Thank you.

Mr. President, the reason that we omitted repeal of Section 150 is that it was not assigned to our Committee on Judicial Functions; but it is included in our Section 8. I would explain where each of the repealing sections are found in our new Article XII.

Section 130, which had to do with home rule in cities and villages, is now found in Section 267.

Section 166, pertaining to boundaries, remains in Section 3 — our original Section 3.

Section 167, providing for organizing of new counties and seats thereof, is now provided in new Section 2, 5 and 8.

Section 168, which provided for changes in boundaries, is now in new Section 2, 3 and 5.

Section 169 had to do with the changing of county seats and is now in new Section 4.

Section 170 provided for optional forms of county government and is now in Section 7.

Section 171 — this was repealed on June 23, 1940.

Section 172 provided that until one of the option forms of government was adopted by the county commissioners, and so on — is now in Section 7; and old Section 173 is now provided in Section 8.

I will now yield to Delegate Hougen.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: We voted on the motion to amend, and I move the question on that now.

VICE PRESIDENT SAUGSTAD: Is there any further discussion on the amendment by Delegate Wallin?

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: Mr. President, I only point out that the repeal of 150 is already in Proposal 1-15, which was before the body and which had been referred to our Committee. If we want to repeal it twice, it's probably harmless; but —

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: We felt it would be all right to repeal it again, because it flares up in our Section 2, and that's procedural. It won't be in the main body anyhow. We might just as well let the people vote on it.

VICE PRESIDENT SAUGSTAD: Is there any further discussion? The desk will read the amendment, please.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-12:

On page 1, line 1, following the first comma, insert the following: "150,".

On page 1, line 7, following the first comma, insert the following: "150,".

VICE PRESIDENT SAUGSTAD: The question now is on the motion of Delegate Wallin. All in favor signify by saying "aye;" opposed "no." The "ayes" have it. The motion is carried.

Now, I believe, Delegate Hougen.

DELEGATE HOUGEN: Yes, Mr. President.

Fellow delegates, Committee Proposal 1-12 is the section that deals with political subdivisions. Our Proposed Section No. 1 is new. It is not contained in the old Constitution. We have already been told that perhaps this is not necessary, and the Committee would agree that it does not have to be included, but we still think that it should be included. Everyone seems to be feeling or feels that higher authorities are trying to do away with local government. In our Section 1, it states just simply that "The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum of functional duplications." And we feel that this Section No. 1 backs up the rest of the sections in our Proposal.

Section No. 2 is listed as "Political Subdivisions." That takes the place of part of old Sections 130, 167 and 168. All we are saying here is that, "The legislature shall provide by law for the establishment of all political subdivisions and provide for the government thereof."

Our Section 3 is titled "Counties." This takes the place of old Section 166 and 168, and it states simply that the counties of North Dakota that now exist still exist under the new Constitution.

Our Section 4 refers to county seats, and this takes the place of Section 169 of the old Constitution, and it says simply that the Legislature shall provide for the — provide by law for the county seats, but in no way can it delete or change a county seat unless the people in this county vote for that change.

I would now yield to Delegate Rundle.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

Section 5 — Delegate Longmire, is that what we're on?

DELEGATE LONGMIRE: Yes.

DELEGATE RUNDLE: I was just catching Cain about it.

Section 5 — I would hesitate to say it's simple or noncontroversial — I hope so — but it means exactly the way it reads: "Methods and standards by which all or any portion of a county or counties may be annexed, merged, consolidated, reclassified or dissolved, shall be as provided by law. No portion of any county or counties shall be annexed, merged, consolidated, or dissolved unless a majority of the electors of each such affected county or counties voting on such question shall approve of the annexation, merger, consolidation, or dissolution."

The Committee took the standpoint that the counties could do as they pleased. If they wanted a high tax to remain small, they could do it. If they wanted to change, they could do that, also. No one was forcing them. And this is about the sum of Section 5.

VICE PRESIDENT SAUGSTAD: Delegate Kretschmar.

DELEGATE KRETSCHMAR: Mr. President and Convention Delegates:

Section 6 of the Committee's Proposal deals with the concept of Home Rule.

Home Rule is a rather new idea for local government in North Dakota, having first been placed in our present Constitution by an amendment in 1966. The Committee's Proposal follows fairly closely the language of that amendment, but does increase home rule or broaden home rule to take in counties. This was not included in the 1966 amendment, which only provided for cities and villages. The Legislature has provided the procedures for adopting home rule in cities. In Chapter 40-05.1 of the Century Code, and by the Committee's Proposal, it would do so, also, for counties.

I might point out that the Committee was not unanimous in this concept of broadening home rule by applying it to counties; but the majority did feel that this was a modern, up-to-date tool that local governments could use and that counties should be allowed to use this in the future. It was the Committee's feeling that the Legislature would also provide, as it has for cities, that a home rule charter could only be adopted by a majority vote in the county or the city where the home rule charter was proposed.

There are going to be certain amendments to this section, and the Committee, at its recent meeting, went along with these amendments and will have some more explanation of the amendments and the home rule section at that time.

I would now yield to Delegate Kessel on the next section.

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: Section 7 of our Proposal eliminates the old Section 170 and, also, the old Section 172. It doesn't make too much of a change. In addition to the home rule, which will be provided under Section 6, old 170 provided for other optional forms, and it provided that one of them shall be the County Manager. The old section also provided for a 55 percent majority. Our new section, Section 6, provides for a majority, instead of 55 percent. We do not specify County Manager as it does in the old section, and old Section 172 provides that until an optional form of government is voted in by the county, that the governing body shall be the Board of County Commissioners. This is also retained in our Section 7.

Section 8: This was one of the sections which perhaps created the most discussion and the most number of people appearing before our committees. The old Section 173 as amended named all of the county officers — the Register of Deeds, County Auditor, Treasurer, State's Attorney, County Judge and Clerk of the District Court, and provided that the counties of 15,000 population or less, that the County Judge shall also be the Clerk of the District Court, and in counties of 6,000 population or

less, the Register of Deeds was also to be the County Judge and the Clerk of the District Court.

We have — also, the old Section 150, which was brought in by amendment — an amendment, referred to the County Superintendent of Schools. We have taken all of these officers into consideration in accordance with our Section 3, where we provided that all the counties shall exist as they now are. We thought that we should do the same in this particular section. Our emphasis in this section is on county services and not so much officers; but we did retain all of the officers, including the County Superintendent of Schools, as they now exist, and we felt that this should be up to the people of the county to eliminate any of the officers. We recognized that perhaps in the next number of years, the County Superintendent of Schools will be eliminated in many of their counties. Perhaps some of the other officers. But we felt that the county that was paying the bill, and the people therein, should have this option.

We, as I said, emphasized the services, rather than the officers, for this reason: That if an officer is eliminated, then, in the last section we provide that the county governing board may provide for such services. We can see, perhaps, elimination of the County Superintendent of Schools in two or three counties, and then the County Board can promptly hire the County Superintendent of the fourth county, and they'd provide the services — not necessarily the office. But, again, it's up to the people of these various counties to make the elimination.

We have done away with this classification of counties of 15,000 and under and 6,000 and under, because we felt that this should not be part of the Constitution; that we should allow the elimination of the officers by the people. And another reason is that in counties, for instance, of 6,000 population and under, there is an inconsistency with the present officers. We have county courts with increased jurisdiction, which the law provides must be a lawyer. If this particular section which now is in existence would be left, then it would be an impossibility for the Register of Deeds to also be the County Judge and the Clerk of the District Court. He would not qualify. And I said, our main purpose is to allow the county board to provide the services, if the people decide to eliminate, as is provided in the next section.

I now yield to Delegate Aubol.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Mr. President.

Section 9 is entitled "Referendum" and it says "Questions as to the form of government to be adopted by any county or as to the elimination of county offices may be placed upon a referendum ballot either by a vote of not less than two-thirds of the county governing board or upon petition of electors of the county equal to at least fifteen percent of the total number of voters of the county who voted for governor at the last gubernatorial election, or as otherwise provided by law."

Section 9 refers to the area of county government found in Sections 6, 7 and 8 of our Proposal. The concept of Section 9 was originally found in Section 170, where our present Constitution refers to the people's power to put the question as to optional forms of government on the ballot. We have expanded this concept somewhat to provide the people with additional power to put questions as to their county's form of government on the ballot. Specifically, the people and the commissioners now have power to deal with questions of home rule, optional forms of government and internal alignment of offices in the counties that retain the present method of government.

I now yield to Delegate Gipp.

VICE PRESIDENT SAUGSTAD: Delegate Gipp.

DELEGATE GIPP: Yes. Mr. President.

Sections 10 and 11 are the two sections that I'm covering on 1-12.

The Committee was unanimous in their passage of these two sections, both of which pertain to service agreements.

Section 10 itself, and Section 11, are both new sections. You will not find any of these correlative with respect to the old Constitution.

Section 10 basically allows political subdivisions to better find services as the need may arise over the years, and this was the feeling and the thought of the Committee. It basically allows political subdivisions of the State to make agreements with

other subdivisions for the administration of functions or powers. For example, a need may arise to combine a particular service for two counties to pay, for example, for a county superintendent. This would be possible under Section 10. The section also allows political subdivisions to revoke the transfer of any power previously given. It notes here, "A political subdivision may transfer to the county in which it is located any of its powers or functions unless prohibited by law or home rule charter, and may in like manner revoke the transfer."

We did provide for the provision of law here as far as governing this basic article here.

Section 11 basically deals with mutual services between any-sized state agencies or political subdivisions of the State. Now, you may ask the question, "Why isn't Section 11 in Section 10?" We attempted to word Section 11 into Section 10. We ran into a series of problems as to identification with respect to Section 11, and the end result was we had a separate section. Both Section 10 and Section 11 are not mandatory statements. They basically allow — are allowance-type statements, somewhat permissive in nature.

Section 11, as I mentioned, is not a mandatory statement. It recognizes — it either forces the hand of the State, if they decide to go into contractor relationships. It does require flexibility as far as growth and as far as circumstances in the future might predict. It does not restrict either party, but it does pertain to mutually beneficial service arrangements between the Indian Tribes and state agencies or political subdivisions.

In brief, that's the coverage on 10 and 11.

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman, I again ask you to refer to Section 8. I neglected one important point.

This section further provides that there shall be a county-wide election or referendum, the first one to be two years after the — within two years — the state-wide election, after two years of the adoption of this Constitution, and then every ten years thereafter, the thinking behind that being that we want to force the people of the county to look at their government periodically and to go about doing it accordingly.

Thank you.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Gipp.

DELEGATE GIPP: Yes, Mr. President. I think maybe — I don't know whether I mentioned this or not with respect to Section 10: We drew a good deal of our information from the Alaska Constitution with respect to Section 10 and used this as a model for drawing up Section 10, in case you're wondering where — what sources we might have drawn upon.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: I think it would be prudent to have a piece of Scripture as we approach this problem.

Proverbs: "... but the simple pass on and are punished." And so I shall proceed.

The Committee was very cordial and kind with me. They could have murdered me down there in the Gold Room and done away with all their problems; but they were very tolerant in talking out some of my proposed amendments to a certain extent. So I'm not going to move the deletion of Section 1, even though I don't think it serves any particularly useful purpose in the Constitution. We'll let some other purist who doesn't want some extraneous language take care of that one, if they want to. However, at this time I would like to ask the Desk to read the amendment for item No. 2, which would propose the deletion of Section 5, after which I shall address myself to that.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-12:

On page 2 of the engrossed proposal, delete lines 5 through 12.

And renumber the lines accordingly.

DELEGATE OMDAHL: Now, Mr. President —

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: This may sound like a very reactionary approach for

a political science professor, because we are supposed to be very nebulous and ready to change the world, to turn it upside down, and what I'm proposing here is that since Section 3 provides that the counties that now exist are forever hereby declared to be counties and shall continue to be counties, unless otherwise changed, by removing Section 5, I am making it impossible to ever consolidate a county. We have had a tremendous regionalization scare in this State and counties have become very concerned over whether or not they're going to continue to exist, and of course I'm one who believes that, if we have to do it over again, we certainly would not have 53 counties, because we have over 20 counties that have a population below 5,000. And from an economic standpoint and a service standpoint, both, I think it would be very difficult to justify the creation of new counties that small in this day and age. The problem is, however, that we don't have it to do over again, and we've got to live with what we've got and, if we're going to get the counties that do exist to be more progressive and more willing to adopt the modern forms of government and going to inter-county cooperative agreements, we're going to have to give them the absolute assurance that they shall be continued to be in existence.

Now, by removing Section 5, we're going to guarantee to them that they shall always have their counties. I remember in the last session of the Legislature — and I get my reports by reading in the newspapers, like everyone else — that there was a good proposal that had been studied, I believe, by the Legislative Council, which recommended that counties cooperate and share welfare offices, because the cost had become what had been deemed administratively excessive but the counties came to the State Legislature and said, "We're against this proposal because what it's going to lead to is regionalization and we're going to lose our counties."

Now, this is just one small example of how concerned they are. And so I — I think that by leaving — by just leaving the option there that they're going to be abolished and leaving them in doubt as to whether or not they're going to forestall any future consolidations, that they'll refuse to join together in any kind of cooperative agreements, and the little benefit that we could gain by leaving this in the Constitution would be more than offset by the removal of the impediments to modernization of county government.

Now, Section 5, I dare say, will never be used. All we have to do is look to what has happened in other states, and there are counties in other states that are much smaller than Slope, Billings, and small counties of this State — counties of five and six and seven hundred people, and they're still there; and my contention is that you're not going to get rid of any of these counties for a hundred years, even with Section 5. And so I say that the assurance we can give the counties by taking this section out is worth it, in that in the future they will be more progressive and more willing to change and adopt new ideas, if they are given a guarantee that they shall continue to exist.

I'd hate to go as far as California; but in the State of California, the County of Los Angeles in California, they have cities that have no operating departments; they've got a mayor and a council, and that's all; they've got no police department, no fire department, no parks department; they contract to buy all their services from the County of Los Angeles, and some of these cities are very big; but they have local government — they control those cities. The council decides what kind of services it wants and how much it's willing to pay. Maybe sometime in the future our counties would be willing to go this far and say, "We cannot afford to have a sheriff by ourselves. Let's share the sheriff with the next county. We can't afford a County Superintendent of Schools by ourselves. Let's share one with the next county." They're not going to do that as long as there's any feeling at all that they might be consolidated, and some day in the future I think, if we would give them this assurance that they shall continue, that you might eventually have counties — they will elect their county commissioners and they'll elect their — whatever other officials they might need, and they shall make policy and they shall buy services from the counties around them, and I think it will cut costs and, in the long run, we'd gain more by saying the counties forever shall exist, you know, with all the inadequacies they might have today, and we'll see a better development of county government in the future.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, the Committee felt that Delegate Omdahl misinterpreted the Scripture that he quoted from, Proverbs, when he appeared before us. We felt that exactly the opposite result would be as a result of putting this section into the Constitution. It would encourage counties to annex to other counties or to annex part of their territory to another county or consolidate or otherwise change their boundaries. We felt that this section should be there clearly for their use, if they desired to do it. Certainly we have other methods or other sections in our proposal here for changing their services, changing their offices, eliminating their offices; all of those are still there; but we felt in the event that some counties should want to annex to another one or that a part of a county wanted to annex to the other one, we should provide the machinery there for them to do that, and you can see the machinery is set there. It has to be voted on by a majority of the people of both counties or both areas that are affected with respect to it. For those reasons, we felt we would not be doing our duty to this Convention if we did not leave Section 5 in for whatever use it might be used out there in the future.

VICE PRESIDENT SAUGSTAD: I believe that I failed to have a second to Omdahl's motion. Who would second it?

DELEGATE LONGMIRE: I'll second his motion for the purpose of discussion.

DELEGATE PAULSON: Second.

VICE PRESIDENT SAUGSTAD: Delegate Paulson seconds the motion.

All right, Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

I forgot, possibly, to mention one thing in Section 5. It now calls for a 55 percent vote, in an amendment to the Constitution June 25, 1940. So it takes a 55 percent vote at the moment, and we reduced that to 50 to make it easier in case they wanted to, and I couldn't quite keep up with Delegate Omdahl's — well, the Scripture I did understand somewhat, but I couldn't keep up with his theory that this would hurt. We're giving the counties the absolute control of their own destinies. They do as they please. Where the counties would be so terrifically against this, if this Constitution would say there will be no county less than 10,000, or name them that had to be consolidated, then they would be very agitated. But we're leaving it up to the majority vote of the people in each county or in each part of the county, and we couldn't see too much unfairness or unwise ness in that. I think the section is all right.

DELEGATE KRETSCHMAR: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kretschmar.

DELEGATE KRETSCHMAR: Mr. President and Convention Delegates:

I think that the adoption of this amendment would remove a measure of flexibility from our proposal. The counties should be allowed to annex or consolidate or do whatever they wish, if they so choose, and we have provided the protection which the counties want, especially the smaller counties, of requiring any such move to be approved by a majority vote. The adoption of the amendment would remove this possibility of change for the counties and would put a measure of rigidity in the Constitution that I believe should not be there.

I would oppose this amendment.

DELEGATE McINTYRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate McIntyre.

DELEGATE McINTYRE: I wonder if either the Committee or Delegate Omdahl could answer this question.

Let's suppose that a couple of these counties took this option and consolidated or annexed either all or a part of their area and a hundred years later they wanted to reconsider. What methods and what standards would apply in that case, if any?

VICE PRESIDENT SAUGSTAD: Does anyone care to answer? Delegate Rundle.

DELEGATE RUNDLE: Well, the word "dissolve" — "dissolved" — the word "dissolved" is in there, and I should think it could be used at that time in reverse.

DELEGATE OMDAHL: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: There are several sections of state law that provide for the creation or division of new counties.

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: Mr. President, to answer:

The Section 5 in itself says the methods shall be as prescribed by law or provided by law, so the statutory effect would be involved in this. This is merely as stated.

VICE PRESIDENT SAUGSTAD: Someone asked for the floor — Delegate Hartl.

DELEGATE HARTL: I believe, in further response to Delegate McIntyre's question, he had the added phrase under the Omdahl proposal, and under that proposal, as I understand it, we eliminate all of our Committee's proposed Section 5 and, in effect, would lock in the counties as we now have them and as they now exist for all time, until such time as this Constitution as proposed would pass. We would need a constitutional amendment to annex, consolidate or dissolve a county or reverse the 100-year-effect situation that Delegate McIntyre gave. We have to give the counties the flexibility to decide the counties' problems on the counties' own level. I do not think we can go so far as to lock in the counties as we have them now and retain them as such, requiring a constitutional amendment of this proposed Constitution in order to consolidate a county in the future. This is not what our constituents have asked for, and I would urge the defeat of the amendment.

VICE PRESIDENT SAUGSTAD: Delegate Nicholas.

DELEGATE NICHOLAS: Mr. President. I'd also like to urge the delegates to defeat this Omdahl amendment. I think the counties can well decide when they want to quit paying for these services. We, as taxpayers, when we feel we have too many of these county officials, we'll decide. We don't need someone in the hierarchy coming out in the state and telling us what we have to do.

I happen to live in one of these counties with less than 5,000 people, and I'd like to compare the cost of our county against some of these larger counties, and I think you'll find it's less.

DELEGATE STANTON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Stanton.

DELEGATE STANTON: I share Delegate Omdahl's concern for the counties; however, I'm going to vote against his amendment. I find nothing mandatory in Section 5. It's an option which should be there for any county, if it should so choose.

DELEGATE HILDEBRAND: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hildebrand.

DELEGATE HILDEBRAND: We have a situation between Oliver and Mercer County now where they are sharing the services of one County Superintendent of Schools, and there seems to be no fear or resentment or any reservations on anyone's part.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, we are now on the motion of Delegate Omdahl to delete Section 5 from Committee Proposal 1-12.

All in favor of such question shall say "aye," opposed "no."

I will rule the "noes" have it. The motion lost. Any — Delegate Sinner.

DELEGATE SINNER: Mr. President, I'd like to ask the question if they're sure about the language in the second paragraph of Section 8. I like what you're providing there very much. I once had the unique experience of introducing a constitutional amendment to get rid of elected sheriffs, and a parade of law enforcement officers descended on the Legislature like you have never seen, and I was called at once a Communist, Fascist, and anarchist all in the same breath. So I like what you are presenting there. I'm concerned, though, that in that second paragraph you have the question of which county services shall be provided or officers eliminated, and it seems to me it should be "or elective officers eliminated," because if the county is required, as it is above, to provide the services, the question really becomes one of whether or not the elective officers will be eliminated and not the officers completely — isn't it?

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: We considered that in our Committee deliberations. We felt we should put in the broader term, so that if some of those officers were eliminated by election and later by appointment, that there would certainly be no question but what the government — the people of that area — could eliminate them later; and for that reason, we left out the word "elected."

VICE PRESIDENT SAUGSTAD: Delegate Hill.

DELEGATE HILL: Mr. President. I have a question on Section 8 there, where it says each county shall provide certain services, and then it says "education services." Right now I know they have the County Superintendent of Schools, but it's possible that these duties may be transferred elsewhere, and then is it going to be incumbent upon the county to provide some kind of education services?

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: Delegate Hill, we also discussed that point quite thoroughly. The amount of services that is to be rendered can be very discretionary with the board, and I'm satisfied that that could be the very, very bare minimum, if your occasion ever arose; but under the present situation, we felt that that word had to be in there.

VICE PRESIDENT SAUGSTAD: Is there any further discussion? Delegate Omdahl.

DELEGATE OMDAHL: Mr. Chairman. The Desk has the amendment which I have numbered as "three" to which there will probably be less controversy, because the Committee and I are somewhat in agreement on our language. I would like to move that at this time.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE KRETSCHMAR: Second.

VICE PRESIDENT SAUGSTAD: Kretschmar. All right. Will the Clerk read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-12 is as follows:

On page 2 of the engrossed proposal, delete lines 13 through 18 and insert in lieu thereof the following:

"Section 6. Home Rule.

"The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon. The legislative assembly shall not be restricted in granting home rule powers to cities by limitation on debts of cities contained in this constitution."

And renumber the lines accordingly.

VICE PRESIDENT SAUGSTAD: Representative Omdahl.

DELEGATE OMDAHL: Mr. President, I don't plan on coming back here; I'm only a delegate. (Laughter)

There are just a couple of minor alterations in the language that the Committee had proposed, and I think that the home rule concept for counties is a very good one. That was proposed by the Committee. I added the words "and exercise" because I thought it would strengthen the establishment and it would — and I thought it lent some clarity to the sentence in the first section. Then I added a new sentence to this section: "No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon."

The reason I added that sentence is the same as my thought on Section 5. I don't think they want to have any county or city feel that this home rule provision is going to permit the Legislature to force anything on them, and I think the home rule concept is good, and we want a receptive attitude among city and county people, and if they know they're going to have a chance to vote on it, I think they will be more inclined to support such action.

In the last sentence I deleted reference to counties. Now, the present Constitution does provide that cities are limited under home rule charter by the debt limita-

tions in the section on debt limitation of political subdivisions that was adopted here about a week ago. I took counties out because I checked with the Tax Department and there are only three counties now that have non-highway-building debts, and I guess there's some courthouse construction, and in all three cases the debts did not exceed one percent of the taxable base, and our previous action will give them eight percent. So I can't foresee where counties need this. It would be nice to be flexible in the future and talk about what counties might do; but I'm afraid that there will be, once again, a number of taxpayers and people all concerned about a problem that's never going to develop. And so, rather than having them concerned about that, I think it would be wise to delete reference in this language that would give counties the right to bond above the political subdivision debt limitation that was adopted already by this Convention.

VICE PRESIDENT SAUGSTAD: Delegate Kretschmar.

DELEGATE KRETSCHMAR: This amendment by Delegate Omdahl was discussed at our Committee meeting at eleven o'clock, and I believe the Committee was unanimous — or it was a large majority — to go along and approve this amendment. Most of us felt that this amendment improved our language of present Section 6. It puts in the assurance of a majority vote for adoption of home rule, which is presently in the statute for cities, and presumably would also be in there for counties; but it guarantees it then in the Constitution, and the change in the very last sentence relative to the debt limits of cities and counties, the present constitutional provision on home rule does eliminate the debt limit in home rule cities, and we had it for counties in our Proposal, also. This was one of the areas in which the Committee members were divided, so that the elimination of the provision here, so that counties are still, even if they adopt home rule under the constitutional debt limits, is probably a good thing and was agreed to by the Committee; and so I'll urge the adoption of this amendment.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, now we're on the main motion of Delegate Omdahl that Section 6 be amended.

Those who favor this amendment vote "aye;" opposed "nay." All in favor signify by saying "aye;" opposed "nay."

The motion is carried.

At this point — I see it is now nearly 12:20. We have, I believe, at least two more proposed amendments to this Proposal.

I wonder how many of you would prefer now to stop at this point for a recess and then come back, I would say, within one hour. All right.

Are there any announcements? Should there be any announcements made? Delegate Meidinger.

DELEGATE MEIDINGER: Well, Mr. Chairman — Mr. President, the Education Committee will have a very interesting luncheon in G-1 immediately following recess.

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: The Style and Drafting Committee will meet right away. We'll have our lunch down there. We'll work for about an hour.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President, I believe that Roy has an announcement at the desk.

VICE PRESIDENT SAUGSTAD: All right, Roy.

CHIEF CLERK GILBREATH: The photographer will be in the east balcony — or in the west balcony during the noon hour for any delegates that wish their picture taken — 208 — right up here on my right (indicating).

VICE PRESIDENT SAUGSTAD: Any further announcements?

Hearing none, we will now stand in recess until 1:20.

(The Session recessed at 12:20 P.M. until 1:20 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:23 P.M., Tuesday, February 1, 1972, as follows:)

DELEGATE OMDAHL: Mr. President, do you want a call of the house?

VICE PRESIDENT SAUGSTAD: I've sent the sergeant-at-arms out. I think there's one committee that's meeting.

CHIEF CLERK GILBREATH: Delegate Benz would like to announce that the Senior Class of Glen Ullin High School and their teacher, Jerry West, are in the gallery today.

VICE PRESIDENT SAUGSTAD: Will the students from the Glen Ullin High School please stand and be recognized? (Applause)

We're very pleased to have you here.

One more announcement.

CHIEF CLERK GILBREATH: The photographer will be in the west balcony all afternoon, if the delegates would like to go up there and get their pictures taken, and there will be a sergeant-at-arms at the door to tell you if there's going to be a vote, so that you can come and vote or probably come and yell over the rail.

VICE PRESIDENT SAUGSTAD: We have before us Committee Proposal 1-12.

Is there any further discussion?

DELEGATE OMDAHL: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: Since talking to the Committee, I've decided that I — and due to the shortness of time, I guess I am going to recede from a couple of my proposals here. I just would make reference to the fact that I don't think Section 7 is necessary; but I'm not going to make any effort to take it out of the Committee Proposal, because that would ensue considerable discussion.

Also, I am not going to offer the one on Section 8 — county services — even though I think it would be advantageous to leave the names of the various offices in the Constitution, if they're going to be there, and I might say that the Committee and I do not disagree on that and they have provided for continuing the offices, but they do not name those offices.

I have only one more amendment that I would care to offer, and it's the short one that was sent up to the desk just before lunch. I wonder if you have that one.

VICE PRESIDENT SAUGSTAD: Is that at the desk?

CHIEF CLERK GILBREATH: Page 3?

DELEGATE OMDAHL: Yes.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-12 is as follows:

On page 3 of the engrossed proposal, following the word "question" insert the following: "or by adoption of a home rule charter" —

DELEGATE AUBOL: What line?

CHIEF CLERK GILBREATH: On line 2, page 3 of the engrossed proposal, following the word "question" insert the following: "or by adoption of a home rule charter."

And renumber the lines.

DELEGATE LONGMIRE: I'll second the motion, Mr. President.

VICE PRESIDENT SAUGSTAD: All right. The motion has been seconded by Delegate Longmire.

Now, Delegate Omdahl.

DELEGATE OMDAHL: Mr. President, the reason for adding this is that it is the hope of the Committee — and I'm not speaking for the Committee, but I can tell from the language that perhaps still in the future they will be able to get some of the elective county offices consolidated or eliminated from the ballot, and they provide that such offices shall be eliminated at a countywide referendum by a majority vote of the electors voting on the question. I don't want to leave this with the doubt as to whether or not county elective offices can be abolished through the adoption of a home rule charter. Now it is a common concept of home rule charters that they be permitted to rearrange the executive and administrative offices of a local government that adds home rule. And so this would be another avenue through which we would be assured that the question could be presented to the people of a county that they would abolish or consolidate offices in a county government.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, by way of explanation through our Committee, Delegate Omdahl submitted this new amendment and was withdrawing some of the others that we disagreed with him on at our Committee meeting; and so it seems to me that this is a good amendment and would clarify more as to what the counties can do with respect to eliminating these offices, no matter which route they went, by referendum or adopting the home rule charter; and for that reason, I, as one member of the Committee, at least, do not object to the amendment.

VICE PRESIDENT SAUGSTAD: Delegate Longmire, for clarification, which section are we referring to here?

DELEGATE LONGMIRE: Mr. President, we are referring to Section 8, and it's at the end of the second paragraph of Section 8.

VICE PRESIDENT SAUGSTAD: Thank you.

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Now that we know what section we're on and what paragraph, I wonder if we could have the amendment read again, so we know where it goes.

VICE PRESIDENT SAUGSTAD: Will the Chief Clerk read the amendment again, please?

CHIEF CLERK GILBREATH: In line 2, page 3 of the engrossed proposal, following the word "question" insert the following: "or by adoption of a home rule charter". The last part of the sentence would then read: "Countywide referendum by a majority vote of the electors voting on the question or by adoption of a home rule charter."

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, now we are on the main question — the adoption of the proposed amendment offered by Delegate Omdahl.

All in favor signify by saying "aye;" opposed "nay."

The motion is carried and the amendment is adopted.

Is there any further discussion? Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I have a couple of questions for Chairman Longmire or someone on the Committee.

Now, there was no mention made in the report of the four-year terms of elected officials, and the county officials who had a four-year term numbered six in 1962. The county commissioners now have four-year terms, and I was wondering if anyone appeared before the Committee and asked that the four-year terms be reduced to two years, and was there any discussion by the members of the Committee?

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. I assume this was in connection with the Legislature — of whether the House members would be four or two. No, I don't think anybody appeared on that, but we didn't have any appearing in opposition to it, either, the way we do have it.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: I have no intention of interrupting the line of questioning. I'd yield to Delegate Hoffner.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I was wondering if the Committee discussed the merits of the four-year term for county commissioners. Certainly that must have been up in the Committee, and the reasons for continuing the four-year term —or maybe it didn't.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. My capable Vice Chairman presided on that hearing in my absence at one time. He said they did not, because, apparently, they were very happy with the situation the way it was. Of course we didn't consider the legislative part in our Committee. That wasn't assigned to us at the time.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President, there are some amendments at the desk that I would like to have read, which I then would move, if I receive a second.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE STANTON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Stanton.

All right. The Clerk will read the proposed amendments.

CHIEF CLERK GILBREATH: Proposed amendments to Proposal 1-12:

On line 1 of the title, after "sections" delete "130".

On line 7 of the proposal, after "Sections" delete "130".

On page 2, line 10, after "unless" delete the words "a majority" and insert in lieu thereof "55 percent."

Delete all of lines 13 through 18.

On line 23, after "by" delete the words "a majority" and insert in lieu thereof "55 percent".

On line 3 — on page 3, line 1, after the word "law" —

DELEGATE LONGMIRE: Mr. President, I've lost myself on the last two amendments. Could we have them repeated, please?

DELEGATE SANSTEAD: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead.

DELEGATE SANSTEAD: A point of information. Do we have these amendments at our desk or are we dealing now strictly with those that were just submitted?

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President, these amendments refer to the engrossed bill, and I suppose that most of the delegates have, as I have, been referring to the mimeographed copy that was passed around here several days ago; and so we might have a lot of trouble finding it, but I understand this is the correct way to do it and they're really rather simple, as I understand, once they get read right up there, and I don't think Delegate Sanstead's going to like them anyway.

VICE PRESIDENT SAUGSTAD: The desk force is checking against the engrossed bill, so that the proposed amendments will read correctly.

CHIEF CLERK GILBREATH: All right. We'll start over.

Proposed amendments to Committee Proposal 1-12.

On line 1 of the title, after the word "sections" delete "130".

On line 7 of the proposal, after the word "Sections" delete "130".

On page 2, line 10, after the word "unless" delete the words "a majority" and insert in lieu thereof the words "55 percent".

Delete all of lines 13 through 18.

On line 23, after the word "by" delete the words "a majority" and insert in lieu thereof the words "55 percent".

On page 3, line 3, after the word "law" delete the comma and insert in lieu thereof a period and delete "and".

On page 3, delete all of lines 4 through 6.

And renumber the lines and sections accordingly.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President. May I inquire what happened to the amendment which, on this copy of the engrossed bill as I got it, would appear on page 3, line 1, deleting "a majority" again and inserting "55 percent"? Would that comma be in error?

CHIEF CLERK GILBREATH: No. That's right.

DELEGATE BAKER: Did the Clerk read that?

CHIEF CLERK GILBREATH: Page 3, line 1?

DELEGATE BAKER: Yes.

CHIEF CLERK GILBREATH: After the word "by"?

DELEGATE BAKER: Right.

CHIEF CLERK GILBREATH: Delete the words "a majority" and insert in lieu thereof "55 percent".

DELEGATE BAKER: Very good.

Now, Mr. President, these amendments were prepared before the adoption of the most recent amendment to those by Delegate Omdahl, and if they are approved or if one part of these amendments is approved, then reference will have to be made to that and change made there as well.

Briefly, what this set of amendments sets out to do is eliminate some of what I think are the more objectionable provisions of Proposal 1-12 as it is before us now. The deletion of "130" in the title and in the repealed section, of course, has to do with that section of the present Constitution which provides for home rule in cities, and the reason I am taking it out is because I want to take out the home rule section entirely from this one, and the reason I want to take out the home rule section entirely from this one is that I don't believe this body really wants home rule for counties. This is one of those glittering new terms that is kind of attractive, but we haven't had it around very long and we don't know very much about it, and I don't believe we want to extend this principle to counties as of now, because for — ever since the State of North Dakota has been in existence, the county has been an integral part of the government of the State of North Dakota. In fact, at one time, it was the fashion to refer to the counties as "the arm of the State of North Dakota" and I don't think we want to, by implication or in any other way, disturb that very satisfactory arrangement; and if you think about that for a little while, I'm sure you'll agree with me — at least not yet — maybe some day that might be the proper thing — but not yet — we aren't that sophisticated yet. We aren't that heavily populated. We don't have that many problems, or anything like that.

So that's one thing that I hope you will reconsider and that you will agree with me and get out of here. We don't want home rule for counties, I'm satisfied.

Now, the other changes have mostly to do with this business about the amount of a vote that should be necessary to change things at home. You know that the State of North Dakota Constitution and the laws of the State of North Dakota make things about as flexible for the folks at home as it could possibly be. They can do darned near anything at home, if they can muster 55 percent of the vote. There's a good reason for this. In the first place, it discourages making major changes likely. You have to have a good, substantial majority in order to make the change in the first place. But there may be an even more important reason. It takes 55 percent to change it back, too, you see. If you change that to a majority, while you may be able to make an appealing argument about "We're going to do away with a system that allows a minority to block progress" and all that other garbage, the plain fact of the matter is that if you allow one more than half of the voting people in a county or a — county in this case — to change the form of government at the next election, then, if they can file a petition and get the thing on the ballot, one more than a majority can change it back at the next election, and that's the real compelling reason for leaving that at 55 percent. And I plead with you to do just that. It's a good, sound provision as it applies to this particular function.

The other major difference that I have with the committee is in the matter of the forced election on this question. I don't want to say to my neighbor, "John, you're too dumb to know when you want to vote on something. I'm going to tell you that you've got to vote on something, and if you don't pass it the first time, ten year later you've got to vote on it again, whether you want to or not." I think that's bad public relations and that's just exactly what that amounts to. The way it is now, even now, under our — obviously, under the present situation, the people can, by petition, put questions of change in the form of county government up on the ballot any time they want to, if they get enough signatures. It takes a lot the way the law was written, based on the Constitution, which requires 15 percent or more — I think it's 40 percent now — for that kind of petition. But here, again, the idea is that changes like this should not be undertaken lightly, and the Legislature can change that all the way down to 15 percent, if they want to. No change, really, from the numbers that we have in the Constitution now and the Proposal that's before us. But they do it on their own initiative. They don't have to do it at some particular date, whether it's timely or not, whether they want to or not, and the provisions of the law also provide for the governing body to submit this kind of a question, even without a petition, at any time, and, really, I think that the reason

for bringing this kind of a thing in at this time is the impression — a false impression among many of us — that nothing is being done to make changes in government at the local level. This is not true. As I said, the laws of North Dakota provide many ways to change arrangements around the home, and they are being taken advantage of in many places. A combining of county offices has been done here in Minot — in North Dakota. The service to more than one county of a County Superintendent has been done. Almost every county in the State of North Dakota cooperates with adjacent counties at least in the manner — in the matter of county line roads and bridges. They do that all over the State all of the time. Almost every county cooperates with the — particularly the smaller municipalities within its borders in the matter of street and road maintenance and drainage, and that sort of thing; and there are many, many areas where changes and arrangements are made that fit the particular situation and, generally, it's pretty satisfactory.

Now, I know that the Legislature when it meets does have considerable call for changes in law, and there are complaints made about the way things are here and the way things are there, and this is really not so bad. It's the way things should be — where changes in law can be made, to make it easier for these governments — local governments to function; that should be done, and, really, it's no concern of ours here at this Convention. I think that if we would adopt these very simple amendments, we can leave the situation close enough to the way it is now so that the folks at home would not feel resentment over improper inference in their affairs and still make the changes that seem to be desirable, that seem to me to be just moving the furniture around a little bit.

Thank you.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: I fail to follow Delegate Baker's reasoning in the home rule situation with respect to counties and cities. He says that we considered counties as the arm of the State, and I assume on that same analogy, if you carried it further, that we would then have to consider the cities as the fingers of the State.

He says it's all right to have home rule in the cities, but the fingers — but he says don't monkey with the arm of the State insofar as the counties are concerned.

Now, we realize that there is some difference of opinion with respect to home rule for counties in our Committee; in fact, some of the members — a very small minority, I'd say — thought that we shouldn't have that provision in. However, I think the discussion has been going around this state for a long time that we ought to do everything we possibly could to alleviate some of this expense of operation of some of the — particularly the smaller counties of our State. We ought to make it just as easy for them as we could to consolidate or go with another county. We know that in all the history of the United States, only one county went with another one, and that was in the State of South Dakota some years ago; and certainly they have not followed the procedures that we did have for their consolidation or changing their form of government, and they have had that for a long time.

Now, evidently, too, Delegate Baker is afraid of the people. I always considered him to be a great people's man — to let the people have the authority.

Well, in the home rule situation, that's exactly what you are doing. Nobody's voting on that except the people back there that are affected. I can see no reason why you should have the minority of the people governing the form of government that we should go to or the change in their method of doing business that they would want to go to, if the majority saw fit to do that. We felt that we ought to make it easy for this question to be considered, because in the past, even though they have had this method of petitioning this on the ballot, they have not gone forward to do it, because it's a little trouble to go out and get 15 percent of the voters to sign a petition and get it on, and we wanted to be sure that the people did have an opportunity or would take advantage of the opportunity in voting on this question of consolidating a lot of these offices. At first we thought of taking some of these offices out as elective offices; but the counties came in and said they didn't want that — I mean the county officials — and of course we had a stack of petitions

about two or three inches high on that. So we said, "Fine. We'll buy your philosophy that the people should say whether or not they eliminate them; but we want the people to have the right to take you out, too, if they don't want you, as well as keep you in." And it was for that reason that we provided this procedure that two years after the adoption of this Constitution, that the question would be put to the people. If the majority of them don't want to buy it, fine. They're right back where they are. But they ought to have a chance to vote on it. And so we felt that we were following this philosophy of letting the local people have more authority, making it easier for them back on the local basis, as well as in the counties as in the cities, to change their form of government, if they want to, and we feel that the majority of them, as in most other things, should be able to have that right to make a change, if they so desire. That was the thinking behind the majority of the Committee with respect to the amendments, and I personally would oppose the amendment for the reasons indicated.

VICE PRESIDENT SAUGSTAD: Delegate Hougen had asked for the floor.

DELEGATE HOUGEN: Yes, Mr. Chairman — or Mr. President and Fellow Delegates:

I would just like to say, briefly, that I, also, favor the option of home rule for the counties. We did find out in our Committee that we doubted very much any county would choose this method of government; but we felt that if the city had the right, the county certainly also should have this right, because it would be the people, in the final analysis, who would be making this decision. And, also, this little part where we stipulated that the people in the county should vote within two years on proposed changes, I don't know if Delegate Baker has had the opportunity to talk to any of his county citizens or not, but I did, and the reason I did is because we had this first proposed way back in November, and I have asked many, many people, "Now do you think that the authority in the county should set up a study group and give you things to vote on?" And without exception, every person said, "Yes." When we had this discussion on county government, the groups of county sheriffs, the county auditors, county judges and all of these groups, came very well represented; but the people — the average citizen in the county — was not represented, and I think that we should give them an opportunity so that they could take a good look at themselves and make any changes that they might feel are desired.

DELEGATE STANTON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Stanton.

DELEGATE STANTON: I think that Delegate Baker has brought up some rather important points here. I'm not sure what a home rule provision would do to the county. I know what it does for the cities. The point that if the Legislature was able to adopt or pass a rule which allows home rule in cities, could they not do the same for counties and does this need to be in the Constitution? I have no objection to the 55 percent provision establishing a majority. I think they're doing some pretty serious business in the county, and maybe you should have 55 percent. I also do not approve of the referendum section, which makes it mandatory, in Section 8.

Now, one of the reasons I approved on Section 5 was because it was pronounced and left open to the people. I don't go along with a mandatory calling for election in two years and every ten years thereafter.

VICE PRESIDENT SAUGSTAD: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Delegates:

I'd just like to reinforce what our Chairman Longmire has said. I think the mandatory election in two years, and then every ten years, is one of the strong points of this article. It's the compromise between the people that have their positions now and the taxpayers. I think it's very important to keep this provision in our article.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, we are on the — Delegate Haugen.

DELEGATE HAUGEN: Mr. President. Not for the purpose of argument, but to determine how we are going to vote on this: Personally, I support the principle

of 55 percent. I think it's important in this case. I think it's important in counties where you have a large city involved, and 55 percent of the total number of citizens in that county should agree on the change in county government. But how are we going to vote? — because I want to vote for that 55 percent and I don't think I agree with going along on the other two items.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President, I request a division of the question then, so as to provide a separate vote on the amendment which applies on page 2, line 10, line 23, and on page 3 in line 1.

VICE PRESIDENT SAUGSTAD: Delegate Baker, I think you should perhaps explain which refers to which.

DELEGATE BAKER: All of these that have to do with the amendments would change the words "a majority" to "55 percent" and they refer to different questions — two different sets of questions, one having to do with combining counties and the other having to do with changing the form of government. This would separate out the super-majority argument from all the other arguments. Is that clear?

VICE PRESIDENT SAUGSTAD: I believe that Delegate Baker has divided — has requested a division of the question, and his question, of course, is a series of amendments that he offers.

Now, the portion that Mr. Baker — Delegate Baker has separated is that portion dealing with the majority required — that is, changing it from a straight majority to a majority of 55 percent, which, I believe, affects Sections 7 and 8, and those —

DELEGATE BAKER: And 5.

VICE PRESIDENT SAUGSTAD: And 5?

DELEGATE BAKER: Right.

VICE PRESIDENT SAUGSTAD: Sections 5, 7 and 8.

So now, on the divided question of the amendment, and the amendment that is offered is that portion of the amendment which would change the majority from 50 percent to — or a straight majority to a majority of 55 percent. If you vote "aye," you're in favor of the amendment to raise that to 55 percent; if you vote "nay," you're against the amendment.

Any questions? Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman. Would Delegate Haugen yield to a question?

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Yes.

DELEGATE KESSEL: Delegate Haugen, I've sat here for a number of days and have heard you and others state that the majority of the people should speak on a question and now you question the majority of 55 percent. You must have some good reason for it.

DELEGATE HAUGEN: I — would you mention a specific instance in which I insisted on the majority?

DELEGATE KESSEL: Well, you have voted on the majority, I'm satisfied, on many of the questions, without going specifically. If you haven't, then I'll just ask: Why in this particular instance then do you ask for a 55 percent majority?

DELEGATE HAUGEN: Well, there have been several instances before this Convention in which I supported a two-thirds vote and a 60 percent vote dealing with — a two-thirds vote dealing with the Legislature enacting property tax and a 60 percent vote — it's still not before the — it's on our calendar — dealing with the State debt, and the two-thirds vote dealing with the ability of the Legislature to use money out of dedicated highway funds. In this particular instance, I agree with Delegate Baker. It is important when the people want to change their type of government that there be a pretty broad agreement on the change. I think the same argument that applies to a 60 percent requirement for increasing a debt limit can apply to this, because you're changing the fundamental structure of your government and you want to be able to have good support when you do that; and, as Delegate Baker argued very well, I think, in order to do it again, to reverse it, you want to have a good support. I think this is entirely justified, and I surely hope that this part of Mr. Baker's amendment will be approved.

DELEGATE KESSEL: Delegate Haugen, would you yield to one more question?

DELEGATE HAUGEN: Yes.

DELEGATE KESSEL: When we elect a governor of the State of North Dakota, is that not one of the most important functions of the State? And we elect him by a majority. Isn't that just as big a problem?

Thank you.

DELEGATE HAUGEN: I've been asked a question. My answer to that is that when we elect a governor, we do not make a fundamental change in our government; we just continue the general operation of our government that's already accepted.

VICE PRESIDENT SAUGSTAD: The Chair will recognize Delegate Roney.

DELEGATE RONEY: Mr. President, I think we are here in the process of re-writing the Constitution of the State of North Dakota, and when it's referred to the people a majority of the people will approve or disapprove.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: I hope that the amendment is defeated, and I think it is in error when we link the majority to be required for the levying of property taxes with this issue, because property taxes are not involved. It's not a matter of bonding a county; it's just a matter of making a decision. The experience with county home rule in other states is that it's confined quite primarily to the structure of government and it doesn't get into the specification of many services and expenditures. So I don't see why more than a simple majority should be required.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I want to clear up one misunderstanding that was raised by Delegate Haugen. We are changing the debt limits of counties under this proposal. We are of cities, of course, but even if this proposal passes, the debt limits now in the Constitution for counties will remain as it.

DELEGATE HAUGEN: I hope that I —

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I hope that I didn't give the delegates the impression that I believe that we're changing our debt limits; but I think there is a similarity. There's a similarity between increasing the debt limit, which, in many instances, requires 60 percent vote, and in changing the fundamental structure of county government.

VICE PRESIDENT SAUGSTAD: Hearing — all right. We're now — again, I shall repeat: We're on the question of the divided amendment as proposed by Delegate Baker, and the portion which deals with the majorities required to effect a change. Baker's amendment calls for a 55 percent majority.

All those in favor, signify by saying "aye;" opposed "no."

The Chair will rule that the "nays" have it, unless someone calls for a division.

DELEGATE OMDAHL: Mr. President, I think we had more than 55 percent on that! (Laughter)

VICE PRESIDENT SAUGSTAD: We'll now revert back to the other portion of the amendment offered by Delegate Baker.

Is there any further discussion? Hearing none, we're on the main question of the adoption of the remainder of the amendment as offered by Delegate Baker.

All those in favor, signify by saying "aye;" opposed "nay."

The "noes" — the "nays" have it, and the motion lost.

Any further discussion?

We now have before us Committee Proposal No. 1-12, which has been amended several times.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, if there are no further amendments, I move that the rules be suspended, that this proposal be deemed properly re-engrossed, and placed on the calendar for second reading and final passage.

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: The motion was seconded by Delegate Litten.

We are now on the motion of Delegate Longmire that the rules be suspended, that Committee Proposal 1-12 be deemed properly re-engrossed and placed on the calendar for first passage.

This requires a two-thirds majority. All in favor signify by saying "aye;" opposed "nay."

The "ayes" have it. The motion carries.

Now we have before us Committee Proposal No. 1-12 for first passage.

Any further discussion? If not, the key will be opened. You may record your vote. Saugstad votes "aye." Wenstrom, "aye." Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will record the vote.

The record discloses 94 "ayes," 2 "nays," and two delegates absent and not voting; therefore, Committee Proposal 1-12 has been adopted.

Next we have under consideration —

CHIEF CLERK GILBREATH: Committee Proposal 1-60, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 8 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to indictment and information.

"SECTION 1. REPEAL.) Section 8 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"INDICTMENT OR INFORMATION. No person shall for a felony, be proceeded against criminally, otherwise than by indictment, or by information, except in cases arising in the military forces, when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

DELEGATE THOMPSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: I hope now that this is non-controversial. It's very much the way it was originally, except that we corrected the problem that the State's Attorneys felt that they have, by adding the words, after "indictment," "or by information." We changed the language so that we now express "in the military forces." We tried to satisfy Delegate Hill by suggesting that in all other cases they may be prosecuted by indictment or by information, and I forgot who it was that wondered about locking in the grand jury system, and we didn't do that. So I move the passage of this one.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nothing.

DELEGATE NETHING: Mr. President. Fellow delegates, I have copies of correspondence that was presented to the Committee from General Melhouse regarding the language "when in actual service in time of war or public danger" and suggesting the deletion of the same. His concern was that this would jeopardize the use of the Uniform Code of Military Justice as part of the code that the National Guard follows during such time as while they're not in actual service in time of war or public danger, but when they may be on alert, such as they were last spring up at — I believe it was last spring up at Nekoma, and I'm wondering, since I know that the Committee got the same correspondence, their reason for leaving it out, or if General Melhouse has changed his position since his letter of January 28th.

VICE PRESIDENT SAUGSTAD: Does anyone care to comment? Delegate Thompson.

DELEGATE THOMPSON: I do not remember the correspondence. I remember

that you said something to me about it, Delegate Nething. I don't know that we talked about it. I don't believe we have.

VICE PRESIDENT SAUGSTAD: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, this is a matter that came up after the Committee had acted, and we have not had any meeting at which this matter has been on the agenda since that time.

VICE PRESIDENT SAUGSTAD: Is there any further discussion? Delegate Nething.

DELEGATE NETHING: Mr. President, I would like to move this, then, to the foot of the calendar so I can get an amendment ready and, after I get the amendment ready, I'd like to move it back up for consideration.

VICE PRESIDENT SAUGSTAD: Is there a second?

Seconded by Delegate Stanton.

We are now on the motion of Delegate Nething that Committee Proposal 1-60 be placed at the foot of the calendar. All in favor signify by saying "aye;" opposed "no." The "ayes" have it. The motion carries, and Committee Proposal 1-60 will be moved to the bottom of the calendar.

Next before us is Committee Proposal 1-80.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-80, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 208 of the constitution of the state of North Dakota be repealed.

"Section 1. REPEAL.) Section 208 of the constitution of the state of North Dakota is hereby repealed."

VICE PRESIDENT SAUGSTAD: Is there any discussion? Is there any discussion?

Delegate Lamb.

DELEGATE LAMB: Mr. President. Fellow delegates, I'm sorry for the delay.

Originally, Committee Proposal 1-80 was taken verbatim from the present Constitution, Section 208. I had had a proposal in — a delegate proposal — that would have inserted the words "single persons," as well as heads of house — of families, because I personally felt that this was a discrimination against the single person, which I am not one of. But the Committee — at first I was the only vote in favor of the proposal. Finally, we came to a seven-seven tie on it and it went down. Then we considered this whole thing — matter again, and with legal counsel. We questioned the advisability of this being in the Constitution, because we felt it was a legislative matter. The statutes in North Dakota and the Code defined what the head of a family is, and felt that this was unnecessary in the Constitution, and I urge your adoption of the Committee Proposal.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none —

DELEGATE PEARCE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I really would take some issue with the question as to whether this is a constitutional matter. Unless some of these types of exemptions are authorized by the Constitution, creditors might very well claim that other types of exemptions are not equal treatment — that there's some discrimination. I think one of the proud things that North Dakota has had since statehood has been its exemption of homesteads; and while I think it is well to limit it in size or value, as we have done outside of cities, and by value inside of cities, it seems to me that it is a proper place to be in a constitution, and I — the amendment, as I understand it — the proposal at the present time would do nothing except repeal Section 208 of the Constitution, which would wipe out the homestead exemption. I would think that at least on one side there would be an enormous outcry in this State if the Convention did that.

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Just to continue Mr. Pearce's line of thinking, much of the statute we have on the books today is because of the constitutional revisions,

which take out constitutional provisions guaranteeing the rights. Eventually, the statutes are going to change to reflect this deletion. I don't think we want to do this, and I think we might consider guaranteeing at least a minimal amount of property and security for everyone, whether he's a debtor or not. Most of us are debtors.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

Hearing none, the board will be opened. You may record your vote on the question of Committee Proposal 1-80.

Has everyone voted? Saugstad votes "aye." Does anyone wish to change his vote? If not, the key will be closed and the Clerk will take the record.

The record discloses 45 "ayes," 47 "nays," six absent and not voting.

Therefore, Committee Proposal 1-80 has lost and will be automatically re-referred to the Committee on Preamble, Bill of Rights and Suffrage.

DELEGATE MAXWELL: Mr. President.

VICE PRESIDENT SAUGSTAD: I beg your pardon. The desk force tells me that that does not automatically follow our rules with that. That follows, but they say "no."

DELEGATE MAXWELL: Thank you, Mr. President. Good!

VICE PRESIDENT SAUGSTAD: Committee Proposal 1-80 is now dead.

DELEGATE OMDAHL: Mr. President. Section 208 refers — we apparently haven't repealed it, which doesn't concern me; but everybody else seems to think that we have to repeal everything. And so it's just kind of hanging here and its wordage is kind of awkward and I don't think it would fit in this 1972 document. "The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws", et cetera.

I move that this 1-80 be re-referred to the Committee.

DELEGATE KNUDSON: Second.

DELEGATE MAXWELL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl moved that Committee Proposal 1-80 be re-referred to the Committee on Preamble, Bill of Rights and Suffrage, and it was seconded by Delegate Knudson.

Now, Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. I rise to oppose the motion.

(Laughter)

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President. Fellow Delegates:

I would urge to vote down this motion, and I will make a motion to amend 1-80 back to the original Committee Report, because that's all that would happen in the Committee anyhow. We'd have to reconsider, I mean.

VICE PRESIDENT SAUGSTAD: We're on the motion of Delegate Omdahl that Committee Proposal 1-80 be re-referred to the Committee on Preamble, Bill of Rights and Suffrage.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: To save time, with the consent of the second, I'd like to withdraw the motion, because I think the one by Delegate Decker makes more sense at this time.

VICE PRESIDENT SAUGSTAD: All right. Is that satisfactory with Delegate Knudson?

(Delegate Knudson nodded.)

VICE PRESIDENT SAUGSTAD: All right. Delegate Omdahl has withdrawn his motion. Now, Delegate Decker.

DELEGATE DECKER: Mr. President, I would like to make a motion that the delegates reconsider their action, and if I get a second, I'll explain it, and that's on 1-80.

DELEGATE O'TOOLE: Second.

VICE PRESIDENT SAUGSTAD: All right. Seconded by Delegate O'Toole.

DELEGATE DECKER: If this is passed by the body, I will make a motion to reinstate the Committee Report that is in your books before the amendment which deleted the Committee Report.

VICE PRESIDENT SAUGSTAD: We're now on the motion of Delegate Decker that this body reconsider its action on Committee Proposal 1-80.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it and we now have Committee Proposal 1-80 before us.

DELEGATE DECKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President and Fellow Delegates:

I'll make a motion that 1-80 be amended into its original form as it came from the Committee, which is in your books.

DELEGATE PEARCE: Second.

VICE PRESIDENT SAUGSTAD: Delegate Decker has moved that Committee Proposal 1-80 be amended by replacing into it the language as appears on Committee Proposal 1-80 in your bill books, and the motion is seconded by Delegate Pearce.

Any further — any further discussion?

There being no further discussion, we're now on the main motion of Delegate Decker that we re-adopt the language in Committee Proposal 1-80 as originally passed, as it originally appears in your bill book.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it and the amendment has been adopted.

Now, Delegate Decker.

DELEGATE LAMB: Mr. President, I have a further amendment.

DELEGATE DECKER: Mr. President, I will now move that 1-80 be properly re-engrossed and placed at the foot of the calendar for further action.

DELEGATE KWAKO: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Kwako.

Now, Delegate Lamb.

DELEGATE LAMB: Mr. President, I have an amendment that I would like to put before this body for consideration. It's for the benefit of Delegate Knudson.

On line 11, after the word "that" insert "a single person and" and delete the word "the".

VICE PRESIDENT SAUGSTAD: Delegate Lamb has moved that, on line 11 of Committee Proposal 1-80, that after the word "that" insert "a single person and" be inserted.

Is there a second to that motion?

DELEGATE FRITZELL: Second.

VICE PRESIDENT SAUGSTAD: Delegate Fritzell seconds the motion.

Now, Delegate Lamb.

DELEGATE LAMB: Mr. President, the reason that I put that in there is because I firmly believe that the single person should have as much protection — if we're going to have the right of protection from the forced sale of a homestead, the single person deserves that protection as much as the head of a family. Now I know that everybody is going to say that the reason that they have "head of the family" is because there's an innocent third party involved, because the head of the family may be a philanderer or something of that nature. But the single person can also be forced into the sale of his homestead for something that he did not cause by his misactions; but because of some force of nature or God or something of that manner. And so that's why I believe that single persons should have this right also.

DELEGATE HERNETT: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hernet, and then Delegate Baker.

DELEGATE HERNETT: Well, I agree with Delegate Lamb, but I don't think that you could apply this to Delegate Knudson.

(Laughter)

His seat mate, who is my cohort — Delegate Kretschmar — is also in a similar situation, and I think it should apply to him, too. He's no philanderer either, by the way.

DELEGATE DOBSON: A point of order, Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President, I think I need a lawyer. I thought that, so far as the homestead laws were concerned, a single person who owned a homestead was the same as the head of the family. Is that not right? Now this is homestead laws I'm talking about — not Federal Internal Revenue law.

DELEGATE LAMB: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lamb.

DELEGATE LAMB: As far as I can gather from the counsel on the Committee, that the only ones that are exempt on this homestead provision are the ones who are the heads of families, and it could be a single person only if he had somebody dependent living with him.

VICE PRESIDENT SAUGSTAD: The Clerk will now read the amended version of Committee Proposal 1-80.

CHIEF CLERK GILBREATH: Would it read now: "The legislature shall provide for the rights of debtors and shall provide that all single persons and the heads of families — a single person"? — "provide that a single person and the heads of families shall be exempt?"

DELEGATE LAMB: No. "and heads of families."

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: While we're getting the language fixed, I rather object to this. I think it's discrimination. Look at the advantages Delegates Knudson and Kretschmar and the other bachelors have over the rest of us already.

(Laughter)

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Two things: First, if the Legislative Assembly is going to provide that a single person shall be exempt, I wonder what single person that will be. Secondly, the amendment is out of order because the pending business is Delegate Decker's motion.

VICE PRESIDENT SAUGSTAD: No. Delegate Decker's motion has not been put. Delegate Lamb had offered a further amendment, which the Chair ruled was in order. We are at the present time waiting — allowing the desk force to get caught up with the amendments.

DELEGATE THOMPSON: Mr. Chairman, are they ready or —

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: I just would like to remind the Convention you voted this down once before, for a good reason.

VICE PRESIDENT SAUGSTAD: Delegate Lamb.

DELEGATE LAMB: Mr. President, with the consent of my second, I think that we will answer Delegate Dobson's objection and take the word "a" out and put "single persons".

CHIEF CLERK GILBREATH: "Single persons and heads of families"?

DELEGATE LAMB: Yes.

VICE PRESIDENT SAUGSTAD: Delegate Lamb.

DELEGATE LAMB: And in regard to what Delegate Thompson said, we voted down the — we indefinitely postponed, I should say, Delegate Proposal 2-74 primarily because of the fact that we were considering deleting the whole portion of this particular proposal that has now been put back in by amendment.

DELEGATE HARTL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hartl.

DELEGATE HARTL: I would rise to oppose the amendment. I am not concerned with the fellows in the front row. I am concerned with the Ann Landers report of last evening, which referred to a sleeping-bag type of situation. We have too many of those under present conditions. This language is in original Section 208, "heads of families." By Internal Revenue definition and by definition in our

current Constitution, this refers specifically to that type of institution, a head of a family; namely, persons holding the benefits and rights of a family with the responsibilities of feeding and caring for individuals besides themselves, either as married individuals or as single persons with responsibilities which deal with the rights, feelings and needs and necessities of others.

I recognize the needs of a single person. A single person, as again I refer to that well-quoted author, apparently does not, in the original Constitution or in our current understanding of conveniences, require the protection, since they seek the fleet of foot and, therefore, I would oppose the amendment for that reason.

VICE PRESIDENT SAUGSTAD: Delegate Lamb.

DELEGATE LAMB: Mr. President, I think, to clarify a point: I say when we're talking about a single person, we just don't — we are not referring to those people in the front row here. We're also talking about widows and widowers as single people, and the way it's been defined in the statutes in the State of North Dakota, a widow who does not have any dependent children or relatives that are dependent upon her is declared a single person and then is not eligible for the homestead exemption.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE HARTL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hartl.

DELEGATE HARTL: In response to Delegate Lamb's statement, I would call the body's attention to the citation in our Constitution, **Meidinger v. Security State Bank of Medina**, which reads: "Once the homestead exemption is established it continues to exist, after the death of the husband or wife, for the benefit of the surviving spouse or minor children." Therefore, if the surviving spouse was indeed such a surviving spouse, we would have the protection we require at this time.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Mr. President. I'm not a great reader of Ann Landers, but apparently Delegate Hartl is basing part of his argument to the language on Ann Landers' sleeping-bag description. I would like an explanation of what he's talking about.

VICE PRESIDENT SAUGSTAD: Delegate Hartl?

DELEGATE HARTL: I wasn't able to check the bag. (Laughter)

VICE PRESIDENT SAUGSTAD: Is the desk ready to read it?

CHIEF CLERK GILBREATH: Yes. In line 11 of the amended proposal, after the word "that" insert the following: "single persons and".

And in line 11 of the engrossed proposal preceding the word "heads" delete the word "the".

It would then read: "that single persons and heads of families".

VICE PRESIDENT SAUGSTAD: We now are on the motion of Delegate Lamb to further amend the amendment as originally offered by Delegate Decker. If you vote "aye," you are voting in favor of this amendment to add "single persons." If you vote "no," you vote to delete that or keep that out.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it. The motion carried and the amendment — further amendment is adopted.

Now, Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I fail to see the need for the second paragraph of this proposal. I like the first paragraph, but I just think that's legislative. I don't think it adds anything to it, and I would move that we delete lines 14 to 18.

DELEGATE HAUGEN: Second.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch has moved that lines 14 through 18 on the printed bill — Committee Proposal 1-80 — be deleted, and it was seconded by Delegate Haugen.

Any further discussion?

DELEGATE PEARCE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Pearce.

DELEGATE PEARCE: Unless the second paragraph is in, it could well be that there could not be a sale of a homestead for labor done on it or materials furnished for its improvement. I'm positive on that, because there hasn't been any case on it. There is a Supreme Court case under our present Constitution that says a homestead can be sold under such circumstances; but if this Convention takes that out, we may well be looked to have overruled that Supreme Court opinion. Therefore, it might become somewhat difficult to buy materials to remodel your home or whether to hire any labor.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President, that section also makes it possible for you to get a loan on your home, and different things like that to improve it, or building, or anything else. It would be possible to — wouldn't be possible to get a savings-and-loan loan on your home without that section in there.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, if you are referring to just one case where we allow foreclosure of homesteads, now banks borrow money on homesteads and foreclose them if you don't pay your loan, and that doesn't do violation of the homestead exemptions, and I would think the courts would say the same thing. If I, the owner of a homestead, asked that improvements be made, they waive the homestead right as to that improvement. I think this is geared at a forced sale for debts other than those arising from improvements or first mortgage or purchase money mortgage on the property.

DELEGATE PEARCE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Pearce.

DELEGATE PEARCE: When you give a mortgage, one of the terms of the mortgage is that unless the debt be paid, it could be foreclosed. In fact, if you read a mortgage, it is a deed until you get almost two-thirds of the way through it, until you get to those two words that say "providing nevertheless," it actually is a deed, and that's why it's called a mortgage deed, and in many states it isn't called a mortgage at all — it's called a "trust deed." But, to me, that's a different situation. I'm referring to — and I think this does refer to — liens that are not secured by some other instrument as that.

DELEGATE WARNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Warner.

DELEGATE WARNER: I believe what you are referring to, Delegate Pearce, is mechanic's liens, a situation like that, is that not true, Delegate Pearce?

DELEGATE PEARCE: Yes — and open-account. You might or might not file a mechanic's lien, but you might have an open account for the labor done or materials furnished. A mechanic's lien would also apply.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, we're on the motion of Delegate Kelsch that the second paragraph of the Committee Proposal No. 1-80 be deleted.

All in favor signify by saying "aye;" opposed "no."

The "noes" have it and the motion lost.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Will Delegate Lamb yield to a question?

VICE PRESIDENT SAUGSTAD: Delegate Lamb.

DELEGATE LAMB: Yes.

DELEGATE DOBSON: Delegate Lamb, the proposal that we have before us provides that "single persons and heads of families shall be exempt from a forced sale of a reasonable amount of personal property." Do we mean, perhaps, that they shall be exempt from a forced sale of an unreasonable amount of personal property?

DELEGATE LAMB: Mr. President, would Delegate Dobson repeat his question?

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Mr. President. My point, very simply, is that the word "reasonable" should be "unreasonable."

DELEGATE LAMB: Mr. President, I don't know whether Delegate Dobson's asking a question or making a statement.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Both. It's true that in the old Constitution it says "a reasonable amount of personal property;" but the construction of the sentence is quite different in the old Constitution, and I don't know if we'd want to exempt anyone from a forced sale of a reasonable amount of personal property. Is that the intent of the Committee?

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, we are now on — I think, if you will restate your motion, Delegate Decker.

DELEGATE DECKER: Mr. President, I will move we suspend the rules and that Proposal 1-80 be deemed properly re-engrossed and placed on the calendar for further action.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE ENGELTER: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Engelter.

We are now on a motion to suspend the rules, to consider Committee Proposal 1-80 deemed to be properly re-engrossed, and that it be placed on the calendar for first passage.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it. The motion carries.

Now we have before us Committee Proposal 1-80 as amended.

Any further discussion? The board will be opened. You may record your vote. Saugstad votes "aye."

Has everyone voted?

DELEGATE WENSTROM: Wenstrom votes "aye."

VICE PRESIDENT SAUGSTAD: Wenstrom votes aye."

Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The record shows 91 "ayes," 3 "nays," four absent and not voting. Therefore, Committee Proposal 1-80 has been adopted.

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Could we be on the twelfth order?

VICE PRESIDENT SAUGSTAD: We may, yes.

DELEGATE NETHING: I move that Committee Proposal 1-60 be moved to the head of the calendar.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE STANTON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Stanton.

We're on the motion, then, of Delegate Nething that — is it 1-60? — that Committee Proposal 1-60 be moved to the head of the calendar. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it and Committee Proposal 1-60 has now been moved to the head of the calendar.

DELEGATE NETHING: Mr. President, I have an amendment at the desk that I would like to have read.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-60:

On line 12, delete the second comma and insert in lieu thereof a period, and delete the word "when".

On line 13 delete the following: "in actual service in time of war or public danger."

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

First, I'd like to apologize to the Committee on Preamble, Bill of Rights and Suffrage, because I was not aware that these things had not been brought to your attention, and I — I guess now it is the time to explain the amendment and why.

Under the old Constitution, Section 8 had the words that said "unless otherwise provided by law," and based on that particular language in that provision, the Legislature adopted Section 37-01-03 of the North Dakota Century Code. Incidentally, this was accomplished in 1891 — whereby they set forth that the military justice would be applicable — the Articles of Military Justice would be applicable to North Dakota law.

General Melhouse, in his letter, stated that he felt that if the words which I have moved that we delete were left in, that it would indicate that the Uniform Code of Military Justice and the court martial system could not apply to members of the National Guard when they are on active duty for training or ceremonial purposes or possibly when on a stand-by status pending the possibility of public danger, and I think this is the status that they were on last spring up at the Nekoma area. It was standby. It wasn't really a public danger that existed. He says, "This situation would be contrary to that which is traditional for the active military forces of the United States and the National Guard of every state." He believes that the lack of jurisdiction of the National Guard to use this Code in all but trivial cases would be very prejudicial to good order and discipline in the Guard and would cause a substantial amount of confusion and cost when we attempt to use civilian courts in those instances where a similar civil defense exists.

Now, Mr. President and fellow delegates, there's always the inherent danger when you read something that someone writes to you that you do not have an opportunity to inquire as to the exact circumstances he's referring to, and as we term in the practice of law, the opportunity to cross-examine him, and of course we don't have that opportunity here; but I would say that when I served as Vice Chairman of the Senate Social Welfare and Veterans Affairs Committee, and General Melhouse has appeared before our Committee many times, and he does not appear and say things unless he believes in them. I am asking at this time that you accept his words that this is very vital to them, and this is the amendment that he recommends. As I read it, I don't think it will interfere with the — the intent of the amendment is there, but I think it will provide the tool that they need in implementing the articles of the Uniform Code of Military Justice within the State, and I would, therefore, move the amendment.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: I second, and I agree.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President. We've heard the Clerk read the amendment, but I don't think that the rest of us have a copy of the engrossed bill, and I have no idea what you are talking about, Delegate Nething.

DELEGATE NETHING: Mr. President, I might explain that as you read the amendment on 1-60, what we are doing is deleting the language commencing on line 4 — "when in actual service in time of war or public danger." We're deleting that language, and that's the extent of the amendment.

VICE PRESIDENT SAUGSTAD: All right. We are now on the main motion of Delegate Nething to amend Committee Proposal 1-60. If you're in favor, you vote "aye." If you're against the amendment, you vote "no."

All in favor, signify by saying "aye;" opposed "no."

The "ayes" have it. The motion carries and the amendment is adopted.

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Mr. President, I now move that Committee Proposal 1-60 be deemed properly re-engrossed and placed on the calendar for first reading and first passage.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE LITTEN: Second.

DELEGATE NETHING: And that we suspend the rules.

VICE PRESIDENT SAUGSTAD: Delegate Litten seconded.

We're now on the motion of Delegate Nething that Committee Proposal — that the rules be suspended, that Committee Proposal 1-60 be deemed properly re-engrossed and be placed on the calendar for first passage. All in favor signify by saying "aye," opposed "no."

The "ayes" have it and the motion carried.

Now, we have before us Committee Proposal 1-60.

Any discussion?

Hearing none, the board will be opened. You may record your vote.

Saugstad votes "aye." Wenstrom votes "aye."

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The record discloses 90 "ayes," no "nays," eight absent and not voting. Therefore, Committee Proposal 1-60 has been adopted as amended.

Are there any other — we'll be on order No. 8. Any announcements?

All right. The Chair will declare a ten-minute recess.

(The Session recessed at 2:50 P.M. until 3:08 P.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

Will the Convention please come to order?

Next for consideration, Committee Proposal No. 1-96. 1-96.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-96, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 185 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to public business.

"SECTION 1. REPEAL.) Section 185 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"PUBLIC BUSINESS. As provided by law the state or any of its political subdivisions or any combination thereof may undertake any business or enterprise but only for the purpose of providing public services. Unless otherwise provided by law, any form of business or enterprise in operation when this constitution is adopted may be continued. Neither, the state nor any political subdivision thereof shall otherwise loan or give its credit to or in aid of any individual, association or corporation except as otherwise authorized in this constitution and except for reasonable support of the indigent and for such payment of adjusted compensation for veterans of the armed services as may be provided by law, nor shall the state or any of its political subdivisions subscribe to or become the owner of capital stock in any private association or corporation."

PRESIDENT WENSTROM: The question is on the first passage of Committee Proposal No. 1-96.

Delegate Lerberg.

DELEGATE LERBERG: Mr. President. Fellow Delegates:

If anybody wants to follow along with the Interim Report, this is on page 44, starting in the third paragraph. It takes the rest of page 44 and about the first half of 45. This is a repeal of old Section 185. The first sentence refers to the State or political subdivision involvement in business, and this is a restriction over the old Section 185. The first committee draft on the end of that sentence used the words "public benefit," but in reconsideration, the words "public services" were put in there as the word "public benefit" was too broad. This section had considerable discussion, particularly this sentence. In fact, I think this was the only section that our Committee had that was acted on by a subcommittee, because of the various questions, and so on, on it.

The second sentence there is in the nature of a grandfather's clause to allow present businesses to continue without any problem and also to sanction any form of business continuing. Now, we don't have any specific illustrations of this, but

we thought there might be some cases where cities were involved in public servant businesses at the present time that might have some question and other cities were not involved at the present time; so, rather than saying just "businesses," we used the word "form" there advisedly.

Then the last sentence of this section is pretty much the same as the present Constitution. The language has been changed slightly and, basically, there's a prohibition on the State or political subdivision to give its credit or aid to an individual. We added the part in there — the "indigent part", which used to be in there, we changed the word "poor" to "indigent." We also added a few lines allowing for such payment of just compensation to veterans of the Armed Forces as may be provided by law, because we've always had to have a constitutional amendment before on veterans bonuses because of this prohibition in here of any aid being given to any individuals. So we thought, so long as three veterans bonuses had passed so easily, that this would be a part of this Constitution in case it was ever needed again.

Then, in the last sentence there, it prohibits the State or any of its political subdivisions to subscribe to or become the owner of capital stock in any private association or corporation. Now that word "private" has been added to the word — the words as used in the original Section 185 and, again, I don't have any specific illustration of this, but it was felt maybe that there might, in the future, and looking at irrigation and some of the things of this type, there might be possibly some public associations involved here in which this phrase, if the word "private" was not put in, would be unduly restrictive.

The Committee passed this out with almost unanimous consent as to what it does and what it should do, and we recommend your support for it as it is written here.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention —

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I have an amendment here that I'd like to send up to the desk. It's a very brief amendment and I do not have it distributed to every desk here, but I think, when the Clerk reads it, you will understand it very clearly.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-96:

On line 12, delete the following language: "but only for the purpose of providing public" and insert in lieu thereof a period.

In line 13, delete the word "services".

DELEGATE CHASE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Chase. May I have a second to the proposed amendment?

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Maxwell.

DELEGATE CHASE: Mr. Chairman. Now I know I'm opening up a can of worms here, and we'd all like to finish and go home, but I don't believe we should leave things unfinished either. So let's talk about this thing for just a few minutes.

In North Dakota, I think we have a peculiar problem that all other states do not have, and of course here I'm thinking of the very bleak possibility of young people remaining in our state: and if we adopt the original language, we forever, as I see it, close the opportunity of taxpayers participating in any kind of a venture to improve job opportunities in this State. Offhand, I can see various possibilities here when we talk about irrigation and when you talk about — oh, it seems to me I've heard some or read some news articles on a sugar refinery and so forth, in the southeast corner of the State, and there certainly will be other possibilities, too, I believe — not a lot of them, but some that the taxpayers may definitely want to be a part of.

Now, I have not had the opportunity to appear before this Committee on this. I believe that the liquor industry was the one industry looking for some protection, and I have no particular objection to this. However, I do not believe we should forever — and it looks to me like this means forever — include any type of business venture to protect one particular segment. There must be a better possibility.

I also realize that, should you adopt this amendment, there may be some conflicting language later in the Proposal. However, I ask the delegates to vote for the

intent of this amendment, so that the Committee, if necessary, may adjust the later language in the Proposal to fit the intent.

Thank you.

PRESIDENT WENSTROM: Further discussion? Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, I have a question somewhat different that doesn't pertain to that part. May I speak now or —

PRESIDENT WENSTROM: No — only on the proposed amendment. I'm sorry. I thought you wanted the floor on this.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: As a member of the Committee, you will know that we worked hard on this, and I would ask Delegate Chase a question.

You have said that this would foreclose, or possibly do so, development of the State. Can you imagine, Delegate Chase, any venture that the State would want to go into, or any political subdivision thereof, that would not provide a public service?

DELEGATE CHASE: Pardon?

DELEGATE UNRUH: That would not provide a public service?

DELEGATE CHASE: Well, I think there might be a great deal of them, Delegate Unruh. Maybe not a great deal, but some. When you talk about "public service," this is something that's pretty hard to define. Is a sugar refinery, for example, a public service? Is the Mill and Elevator a public service? Is the Bank a public service? I'd like to answer your question by asking you the same question.

DELEGATE UNRUH: The Bank and the Mill are —

(President Wenstrom rapped his gravel.)

PRESIDENT WENSTROM: Gentlemen, let's keep the decorum of the chamber and let's keep this thing on an even keel.

Delegate Unruh, you may proceed.

DELEGATE UNRUH: I am responding to a question.

The Bank and the Mill are excepted under the grandfather clause. Our Committee had serious questions about the State being in any business, the mood of the Committee being somewhat conservative, I would say. I don't mean ultra, but I mean conservative. None of us felt that we wanted any political entity to go into a business that is competitive to private free enterprise, and we felt that if any political subdivision wished to go into a business which had a public benefit or public service — pardon me — connotation to it, they should be permitted. Certainly, if you're going to go into irrigation, you're going to have public benefits and public service involved there. But we didn't want a political entity to go into, let's say, a hay-buying business or a drug store. This is the kind of thing we're thinking of.

DELEGATE CHASE: I agree with you, Delegate Unruh. We don't want them to go into a drug store, (laughter) and we don't want them in the hay-buying business, and so forth; but I still think the language you have here precludes any type of a venture. You say irrigation is a public service. To me, it would be a public service for a certain segment of the people. Is this then a public service.

DELEGATE LERBERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I just might add a couple more things — a brief definition of the word "public service" from Black's Dictionary. It says, "A term applied in modern usage to the objects and enterprises of certain kinds of corporations, which specially serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroad, gas, water, and electric light companies; and companies furnishing motor vehicle transportation."

So I think the public service connotation is fairly broad. We realize this probably hasn't any court-defined definition, but we felt it would be broad enough to allow for flexibility in the future. The Committee has not only with this section — and this is one of the unfortunate parts about bringing in sections one at a time, but we have another section later on which, I think, will address itself to Delegate Chase's concern about extending job opportunities and things like that.

The Committee has been consistent in trying to look ahead and anticipate possibilities where the Constitution had to be flexible in these cases, and I think we've done a fair job on it with all our sections, and we don't feel that this is unduly restrictive, but perhaps a little more restrictive than the present Constitution.

DELEGATE McINTYRE: Mr. President.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen — Donnell Haugen.

DELEGATE HAUGEN: Mr. President, I'm not speaking as Chairman of the Committee now.

I happen to be at least the major part of the less-than-unanimous segment of the Committee that Delegate Lerberg mentioned, and I would have to question Delegate Unruh's statement that none of us wanted the State to go into business or in competition with private business, because I don't particularly have that feeling. I have the feeling that there are several businesses that the State may have to go into and local subdivisions may have to go into that should be in private business, and one of them that I have in mind right now and that you are all probably thinking about is the matter of busing or rapid transit transportation within our cities. It's apparent — it's apparent that we're not going to be able to have rapid transit or bus systems within our cities without some type of a subsidy, and if the city or subdivision has them subsidized, I don't know why the city and the subdivision should not operate them in the first place. I, of course, have expressed my opinion in the Committee that I believe that the people of a subdivision should have a right to indicate whether they want to go into the liquor business. I happen to think, and I've had some experience, that there's nothing wrong with municipal ownership of a liquor store. I think that it has its values, and I agree that by adopting this language, we are curtailing the rights of the people to do what they might want to do in the future, and I've told the Committee members that I intended, if this issue came up — that I would oppose the Committee on it, and I hope they bear me no ill will; but it's an important issue and I do feel that there's a good deal of merit to the amendment.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President. Will Delegate Lerberg yield to a question?

PRESIDENT WENSTROM: Does Delegate Lerberg yield?

DELEGATE LERBERG: Yes.

DELEGATE LAMB: Delegate Lerberg, in the wording "for the purpose of providing a public service," was it the intention of the Committee — and I'd like to make sure that this is on the record — that a municipality which is now being served by a particular private utility could at some time, at some later date, would they be restricted or wouldn't they be restricted from going into municipal power or telephone, or whatever it might be?

DELEGATE LERBERG: I think the definition of "public service" that I just read covers, I think, both your question and Delegate Haugen's question, because the matter of gas, water, electric light and motor vehicle transportation are both under a legal dictionary definition a "public service." There may be things in the future that would even broaden the public service beyond this. I don't think, certainly, the Committee's intention when they wrote the words "public service" in there was to restrict it somewhat from the present Constitution, but not to be so restrictive that a municipality or the State couldn't be involved in these things which were necessary in the future.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: If that's the case, then, if Delegate Chase's amendment fails, I would hope that the record will show that in any future litigation revolving around this type of a thing, that the municipality has that right to go into a utility program such as I have mentioned.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

In further response to Delegate Lamb and his question: We have added the sentence there "unless otherwise provided by law, any form of business or enterprise in operation when this constitution is adopted may be continued." Now, we have used the word "form" — that if — as an example, Valley City has a city power plant. Another city may be able to use that same city power plant and it will not be tied into the Constitution. So the word "form of business" as used any other place, it will be permitted in another town, if they wish to develop a municipal electric plant.

PRESIDENT WENSTROM: The Chair will recognize Delegate McIntyre.

DELEGATE McINTYRE: Mr. President. Fellow delegates, I'd like to rise to oppose the amendment.

In regards to Delegate Chase's statement, I agree he's opened up a can of worms; in fact, I think he's opened it wide — too wide for my satisfaction. I think that there is a far greater danger to what you're talking about with your amendment than there is under the present wording in 1-96. I think that the Committee has made their intent quite clear — that is, as to public services. I, therefore, urge you to vote "no" on the amendment.

PRESIDENT WENSTROM: Further discussion? Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. I would like to ask Mr. Lerberg a question about municipalities going into the landlord business.

We have in Fargo the City Parking Authority that has several square blocks of parking land, and it plans in the future to either lease the space or maybe finance a building and rent the — some space for a retail operation. Another example would be an airport terminal, where the city rents out bar space and takes a share of the profits as its rent.

Now, these businesses are not now in operation. They might be in the future. They are not necessarily a public service deal; they are a way for the city to kind of break even on some of its investment. Would we run into problems?

DELEGATE LERBERG: I solicit any other members of the Committee that worked so hard on this, if they want to comment on these definitions, and I don't just want to put my definitions in here, because my definition of "public services" might be a little broader than some of the other Committee members; but I think it's a fairly well-defined term, and as to Delegate Paulson's question, I think if the thing was ever questioned, I think the courts would look at the overall implications and not the fact that a city might be involved in a little segment of private business, or something like that, but the overall implication, and I would say a parking ramp on which some of the side effects, where some of the rental businesses might come under "public service" — and the same thing about an airport — there's no question about an airport and an airport facilities being a public service. The fact that some rental space or some considerable rental space is a by-product of this thing, I don't think would defeat it under the effects of the Constitution or under the effect of the words "public service."

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. This is a replacement for present Section 185, which permitted the State to go into any business other than prohibited by Article XX of the original Constitution.

Now, it would be pretty difficult, it seems to me, for any community to go out and make proper showing that opening up a liquor store was public business. It maybe is possible if you had enough people that demanded it. But that is the main thing. It is not easily adopted or put into operation by any city, village, county, or the State, for that matter. The terms of the language here in this section are broad enough for the State or any of its subdivisions to go into any business where there is a service — where a public service is being rendered, and for the — getting right down to what's behind all of this, I think I can give you some history, and it's probably going to jolt some people pretty hard. There's been a move on for the last about four years to set up public power districts in this State, and we've got an operation in this State that has a superabundance of power and no customers, and that's where the power lies, and as far as they could get the public — the cities — if they want to go into this, there's nothing to prohibit them in this language from setting up municipal power systems, but it certainly is going to be up to the public to do it, and this is just, apparently, an attempt to unload a white elephant.

PRESIDENT WENSTROM: The Chair will recognize Delegate Poulson.

DELEGATE POULSON: Mr. Chairman and Fellow Delegates:

The question that's come to my mind, and it has — I can only phrase it as a question to, perhaps, Delegate Chase. I'm not picking on you, but am I wrong in my conception that by the deletion of the words of the amendment, the State could, if — if you could get the law passed by the Legislature, enter into the broadcast media or the news media? And if the answer to that is "yes," I have an inherent fear that

we could have a State censorship of both the press and the other broadcast media as now exists. As I said before, this is merely a question. Could you or someone help me out?

DELEGATE CHASE: I'm not sure I can help you out —

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Excuse me. I'm not sure I could help you out, Delegate Poulson, but of course you're turning this thing around and trying to put it in exactly the opposite way the thing is intended. But you hit the nail on the head when you said "as provided by law." And here, again, we have legislators that are making these laws. We've said many times we can trust these people. I think that in the majority of the cases, you can. There may be some cases where the taxpayers of this State might like to become involved on a project that would be beneficial to all the people in the State; and yet, under the original language in this particular thing that is proposed to us now, they would be restricted, and this is my point. I'm not talking about private power or public power or any of these things that have been brought up; just that one thing.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, I have an amendment at the desk that does substantially the same thing that Delegate Chase's amendment does, except that I would keep the State or its subdivisions out of the booze business, as it presently is restricted. However, I don't say that I feel so strongly on it but what I will be controlled by whatever the Convention does on his amendment.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE MAXWELL: Excuse me.

PRESIDENT WENSTROM: Excuse me.

DELEGATE MAXWELL: I just wanted to make a couple comments with reference to this term "public service." That is a term which has been fertile ground for a great deal of litigation and it's a veritable legal quicksand, and I think it's a dangerous term to have in there, and I'm afraid that I can't agree with Delegate Lerberg that when you have that type of a term in a constitution, that then airports, as Delegate Paulson mentioned — the airport authority can rent out space. I don't think so. I think they're getting into private business, and under this present phrasing of the Constitution, they could not do that, and I think there are many other dangers here; for example, off-street parking. That's extremely important to our cities today and it's the life or death of uptown — of the uptowns in many of our cities. They're going to stand or fall upon what happens as far as off-street parking is concerned.

Now, under the rulings of the Supreme Courts of the States of Illinois, Ohio and Kansas, off-street parking is not permitted because it was not a public service. Now how do we know what will happen here under this language? I think that it will prohibit indefinitely any further extension of public housing or housing for the elderly, because you've got to remember that our present public housing act was found constitutional by our Supreme Court only because Section 185 is phrased as it now presently is phrased. I don't think that the Supreme Court would have been able to hold it constitutional if we had had the language proposed in this Proposal. And there are a lot of other areas, Mr. President. There are a lot of fairgrounds where space is rented out to private people during this fair. I don't think that that could be done any more. There are recreation centers where they have space rented out — exhibition space, for example. I'm afraid that that would be out. Vending machines, where the city or subdivision would get part of the proceeds, I'm afraid that would be out with the language. Even pay telephones might be ruled out. And I'm afraid that this has gone too far.

I don't say that I particularly favor the language of the present Constitution. I think that perhaps gives too much authority to the subdivisions to go into business. But I think, under the amendment, where it provides that "as provided by law," then it leaves it up to the Legislature as to what types of business they could go into, and I think that's a healthy thing. Mr. President, I favor the amendment.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, I'd like to direct a question to one of the Committee.

With their original words, I would have much question as to whether our shelter-

ed workshops that we have for the mentally disabled and for workshops of various rehabilitation projects that are currently working under the public — or political subdivisions or for public projects, and yet they are not necessarily doing a public service — they may be tearing down some telephones for Bell Telephone Company or building some parking or create boxes for some other company; and what about educational television? Can anybody answer that? Is that included in the phrase?

The way it looks to me is I would favor the deletion and favor the amendment.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President and Fellow Delegates:

I'm not on the Committee, but I don't believe that Delegate Poulson's question has been answered, and I think it can be answered on line 13, and I think that the last two delegates have spoken — most of what they said would be deleted by line 13, because in all cases — for instance, there's a liquor store at the Bismarck airport which is leased out and a percentage of the rent is collected by the Bismarck airport. We have parking facilities that the rents are collected on the present situation. All those forms of business are in progress today. The Mental Health is doing what Delegate O'Toole said. I don't think that there's any of the danger that we have been led to believe there is in some of the recent speeches.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, I did want to answer the question for the Committee — the last question and the statement there. "Any form of business which is now in operation may be continued," is the key here that we can continue any of these forms of business. We can continue all of the forms of business which were asked for by Delegate O'Toole.

Now, the only — the only resistance we found in Committee to the action which we had there was by the REC's who want to establish the public power or the consumer power districts. This is the key thing right here. They feel that they are unable to establish it without a vote of the people, and I submit that I do not know enough about public power districts or their ramifications; that I would rather that we submitted to the vote of the people when that key problem comes up; and as far as we are concerned in the Committee, we believe that we should not have the State or its political subdivisions entering into any of the commercial businesses, and we did not want to mention by name or by title or any other identification the liquor business. And since we did not feel that they should be classified as an exclusive one, and since there were a large majority of the Committee that feels that the private enterprise type of business should not be entered into by government, we placed this in the form we have, and by this form we are satisfied that any of the businesses mentioned by O'Toole or mentioned by any of the others here can be entered as long as we are now operating in them, including the bus and transportation systems.

DELEGATE URDAHL: Mr. Chairman — Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: The point that disturbs me somewhat on this, the way it is written, is due to the fact that I have been very much involved in public housing for elderly people in our city, and I am presently involved in the addition of about twenty additional units, and the overall plan in talking to the Urban Renewal people in our city, there is also involved there — public housing is also involved there. Now I understand that the grandfather clause could lock in what we have already done, but I submit that it would be a very difficult thing to make any further plans as far as public housing is concerned. And I want to reemphasize what Delegate Maxwell has already indicated — that this would be one of the enterprises that would certainly be curtailed under the provisions of this particular proposal, and I certainly would resist the passage.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President and Fellow Delegates:

I think we've pretty well gotten down to the nuts and bolts of this whole thing. We did spend a lot of time on this thing. We battled it all summer and all fall. Delegate Aas is completely correct when he says the only opposition we had to it was from the REC's. I still don't see how it's going to prevent them. The haven't really convinced us that it's going to damage them in any way, as long as people have a vote

on it. I don't see how much more democratic we could be than to allow them to have a vote. What we have tried to do in this thing is to keep the State Mill and Elevator in business, because we believe it is performing a service for the people of this State. We intend to keep the Bank of North Dakota in business, because we believe, too, that it is performing a service for the people of this State. We intend to prohibit the State from getting into the liquor business, and we had it almost unanimous, as Delegate Haugen has said, in our Committee. I guess all of us but Delegate Haugen favored keeping the State out of the liquor business. We have no intention of trying to get those cities that have municipal power to give them up. This is the reason for the word "forms" in the wording. We consulted long hours with the Attorney General's office in getting rulings on the wording "public services". We consulted with the Tax Department. We consulted with everyone that we knew of who could give us advice on this — on how to word it to do as the majority of the Committee wanted it done.

So I submit to you, Fellow Delegates, this boils down to a personal philosophy, and that's about all that it's going to be decided on today.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: I believe that someone in here — Delegate Lander, did you request the floor? And you have spoken, Delegate Urdahl, so I will recognize Delegate Lander.

DELEGATE LANDER: Yes. Mr. President, I have a question, and you can rule if it's germane to this particular issue.

In the printed booklet here to which Delegate Lerberg referred, the first proposal of the Committee, as I think he has stated, is to provide services for the public benefit. The one now is different from that. Would you either explain or repeat the reasoning of the Committee in going from the first proposal to that second one, please?

PRESIDENT WENSTROM: Delegate Lerberg, would you answer?

DELEGATE LERBERG: Yes.

Mr. President, as Delegate Miller has said, this particular sentence is where we spent a good deal of time, and on these particular two words more than anything else. On the opinion of counsel involved in this field, the term "public benefit" was felt to be too broad for the intent of our Committee. There isn't a thing that a business couldn't be involved in, as long as, say, the proceeds went to the municipality that couldn't be construed as a public benefit. So this — this, we felt, would — or this, the Committee felt, would put it in the same place as the proposed amendment would be, whereas the words "public services" have been more narrowly defined than the words "public benefit" and would be more restrictive than the words "public benefit."

Now, I'd just like to add a little bit of additional comment on this word "public service" and I made the statement in Committee, and at this point I didn't bring it up in my presentation, but it's been presented on the floor here — this matter of liquor — and I'm with Delegate Haugen — I'm not nearly as concerned about it as the rest of the Committee was. Now I can foresee, for instance, the words "public service" are going to be interpreted from time to time. I can foresee twenty or thirty or forty years from now, if we continue to have as much problem with highway accidents, and both the State and Federal people that are involved with this are acknowledging publicly that something like fifty percent of the deaths that occur on the public highways are caused by liquor or associated with liquor, and I can see in the future that if public bodies — states or political subdivisions — would have to undertake something in this field to help answer the problem that may continue to get much greater, I can foresee that courts could possibly, under this "public service" doctrine, even allow this particular thing. Now, I say a majority of the Committee was certainly against this being possible, but I don't think any of us can, twenty or thirty or forty years from now, interpret what may happen in terms of definition of words.

Now, as has been indicated, this grandfather clause is very broad, and even without the grandfather clause there, I in no way can see how this section would interfere with public housing, or anything of that nature, which has been so universally accepted as a necessary governmental function in the present day in which we live.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'm not just sure that I'm right on this. If any of the other attorneys that are delegates have represented a housing authority and I make a mistake, would you correct me?

It seems to me that the housing authorities are nonprofit corporations, separate from the city — separate so far that they are even now being put in the position where they have to pay service contracts to the city for protection — police protection and fire protection. I don't think that they would be considered a municipality or a public corporation. I think they're separate and apart and that, therefore, this section would not affect them in any way.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: I believe, Delegate Larsen, you have not spoken.

DELEGATE LARSEN: May I yield my time to Delegate Maxwell?

PRESIDENT WENSTROM: To Delegate Maxwell? Yes, you may, if Delegate Maxwell wishes the floor. Delegate Maxwell.

DELEGATE MAXWELL: Thank you, Delegate Larsen, and Mr. President.

I merely have a question that I would address to one of the members of the Committee. I'm curious about this word "form of business." Let's assume that West Fargo has housing for the elderly and another city does not at the time that this Constitution goes into effect. Now, housing for the elderly is a form of business. Does this mean that that other city, which does not have housing for the elderly, as West Fargo does, would be entitled to go into that business because it is a form of business now in existence in the State, although not in that community or municipality or subdivision?

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Yes, that's precisely why that word "form" was used. We recognized there were many things today that were accepted, and if we just made the grandfather clause to apply to existing businesses, then some of these others that were in like form — then perhaps some of these others might have to justify themselves under "public service." And that's why we used the word "form."

PRESIDENT WENSTROM: Now, are there any delegates that have not spoken that would like to speak?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, that last exception by Delegate Lerberg started me thinking about something, and I wanted it clarified, and I believe it would be in the form of a question, and we had a lot of speeches in the Senate Committee on Industry and Business by a large entrepreneur out of the Fargo area who wanted to put together for the State of North Dakota, and particularly for the farmers in the eastern part of the State, a large type of sugar plant operation, particularly buying contracts for beets, et cetera, and as I remember, we spent hours on that in our Committee. We ended up telling him he couldn't do it because of prohibitions in the Constitution against us engaging in the sugar beet operation or in buying contracts and being involved in that kind of an operation, and I would wonder if the State Mill and Elevator, for example, would not be found under the word "forms", for us to even go into, say, the eastern part of the state and say that it needs that kind of a service, and we might well, instead of having contracts lapsing and not being honored, that we might well, in effect, engage in that for awhile to help those people. Could this possibly be an extension of the State Mill and Elevator operation?

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I think it conceivably could be, although, again, this would be something for a matter of interpretation. But we understood, when we used the word "form," that it might have some problems, but we felt, by not using it and just applying it to existing businesses, there were even more problems here. One of the problems, I think more so than the State being involved in business, and which one of our other bills here — our proposals — which will come up later, will speak to is the matter of financing for these, and this has been one of the problems at the State level and at the other levels, in that they're restricting financing even more so than even being in business itself, and I don't think this section is half as restrictive in terms of the businesses that are going to be good for the future as some of the old financing sections were.

PRESIDENT WENSTROM: Did you wish the floor?

DELEGATE AUBOL: Mr. President. No. I would yield to Delegate Aas. He wishes to answer Delegate Sanstead.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President. Delegate Sanstead, if you'll look at 1-74, which is the one taking care of the bonding. The President of the Bank of North Dakota says that this will meet his satisfaction as to authorizing bonding and debentures so that he may — there may be state financing or state support for such businesses; however, I would say that there would be a private or a nonprofit type of corporation at the very best, but not a State operation. But the President of the Bank of North Dakota says that 1-74 will meet his requirements for debentures and support of this type of a business.

PRESIDENT WENSTROM: Will a delegate yield time to Delegate Urdahl?

DELEGATE BASSINGTHWAITE: Mr. President, I'd like to yield my time to Delegate Urdahl.

PRESIDENT WENSTROM: Delegate Bassingthwaite yields time to Delegate Urdahl.

DELEGATE URDAHL: Thank you, Mr. President. My question has been answered.

PRESIDENT WENSTROM: Your question has been answered?

DELEGATE URDAHL: Yes, sir.

PRESIDENT WENSTROM: Thank you. Then will somebody yield time to Delegate Lamb?

DELEGATE DANIELS: Mr. President, I would yield time.

PRESIDENT WENSTROM: Delegate Daniels yields time to Delegate Lamb.

DELEGATE LAMB: Thank you. Mr. President, I'm a little confused, which isn't out of the ordinary; but Delegate Aas, I want to make it perfectly clear that if a municipality wants to go into a business that another municipality is in, also, even though there is a private corporation that is in the municipality and that is performing that business, they still have the right under this use of the word "form" to do that?

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President. The answer is "yes."

PRESIDENT WENSTROM: Will a delegate yield time to Delegate Cart?

DELEGATE BAKER: I yield it, Mr. President.

PRESIDENT WENSTROM: Delegate Baker yields.

DELEGATE CART: Mr. President, this would be in response to the question raised by Delegate Sanstead.

In appeared, from what he said, any enterprising citizen who wanted to promote some business down there, that the State is prohibited from investing into privately-owned corporations, and that is true under Section 185. You would have no difference under the present section as proposed and under the existing Section 185.

PRESIDENT WENSTROM: The Chair will recognize Delegate Burke.

DELEGATE BURKE: Mr. President and Fellow Delegates:

In regard to the question by Delegate Lamb as to whether a municipality presently served by an independent utility could set up their own, I might point out that you would have problems getting out from under the franchise which the city has with the private utility, and if that were accomplished, there is certainly nothing in this provision that would prevent the city from entering into their own business, and I speak against the amendment. And as far as I'm concerned, the only criticism I have of 1-96 is the somewhat lengthy sentence which finishes the section. You will notice that it starts on line 15 and ends at line 23 with a period, and I'm sure this will offend the sensibilities of Delegate Solberg and Delegate McElroy, who have a penchant for putting in periods in long sentences.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Do I understand from the discussion that the Committee, in recommending the words "public service enterprise" includes within that definition the manufacture and distribution and sale of electric power to consumers?

DELEGATE LERBERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I think maybe Delegate Aas' answer to Delegate Lamb's question is a little too simple. I don't think by this section we can be construed as giving carte blanche authority to any — every community or that would be involved in every business that some other community might be involved in. It just means that this particular section here would not prohibit it. I'm sure that many other sections, as Delegate Burke has suggested, would have to be complied with before this could be gone into; so that it's not a carte blanche thing.

Then I'd like to comment on Delegate Burke's mention of this last sentence, and you can be sure we wrestled with that one for a long time and, as somebody has said back here, Style and Drafting can deal with it, and I can assure you that the Chairman of Style and Drafting has already had considerable to do with the make-up of that sentence, and there's one magic word in there which I might point out that hasn't been pointed out, on line 17 — the last word in line 17 on your printed bill — and that's "otherwise," because the part that precedes it says that the State may not loan or give its credit or aid to any individual. Now that's the same language we have in the present Constitution. That would severely restrict both the Bank of North Dakota and the State Mill and Elevator in its operation, and that's why that is all in one sentence, rather than breaking it up, and that's why that word "otherwise" modifies that preceding sentence, and we do have a court decision on that.

DELEGATE McELROY: Mr. President.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: May I yield to Delegate Paulson, please?

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. President, after listening to all of the discussion, I'm convinced that the wording in the Committee Proposal is too restrictive. I support the amendment. In North Dakota we need a partnership between business and government. We cannot get along without both of them working together, and the Committee Proposal tries to draw a line between the two. I think you should know that in Fargo we are trying to build an overhead mall over Broadway. It will put the City in business. It will put it in a business that we cannot now describe or say that some other form covers. I think that we are buying too many unanswered legal problems again with the Committee Proposal. I support the amendment and I trust the Convention will help us in this project.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: I would like to know if Mr. Paulson would like a State newspaper started in Fargo. Could you give me an answer on that, please?

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: They're welcome to try. (Laughter)

PRESIDENT WENSTROM: Delegate Berg, did you wish —

DELEGATE BERG: Mr. Chairman and Delegates:

I happen to be one of the five businessmen here — there's only five of us delegates that are businessmen, and I know that it uses the word "undertake," and if you put an "r" on there, you'd have "undertaker;" but I remember in the days years ago our State Penitentiary built caskets. That's a business that was run by the State. I'm sure that no private business would like the State to compete with them. It would put all of us business people out of business. Let me tell you that. I, therefore, cannot — (laughter) Earl Chase looked at me there! Therefore, I must say, Earl, that I can't go with your amendment.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Chase.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I just want to make note that he'll be the last one to let you down! (Laughter)

PRESIDENT WENSTROM: The question is on the adoption of the amendment

as offered by Delegate Chase. Those in favor of adopting will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay."

The "noes" have it. The amendment lost.

A division has been requested. That's a sufficient number.

Again, the question is on the adoption of the amendment as offered by Delegate Chase, and those in favor will vote "aye;" those opposed "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change?

The vote is closed.

The vote indicates 34 "ayes," 62 "nays," two delegates absent and not voting.

The amendments to Committee Proposal 1-96 have failed.

The question is on the — Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and members of the Convention:

I have a question I am not quite sure about. They have talked about the length of that last sentence. I'm wondering if it should be a little longer. We state there, on line 21, that the political subdivisions cannot become owner of capital stock of any private association or corporation. My question to one of the Committee: If a government entity or political subdivision should obtain some stock through a foreclosure action, for instance, or if I should want to give a share of bank stock to the Lake Region Junior College, which is a political subdivision — it's part of a school district — are we excluding the subdivision from accepting this gift?

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: This language is very similar to the language we now have, except we have broadened it a little bit by adding "private." But there are, I believe, court decisions on this which answer negatively your concern over the stock. For instance, conceivably the Bank of North Dakota might make a note with stock as security and have to foreclose it, and this would not be precluded from this particular section.

PRESIDENT WENSTROM: Thank you. Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President. I have just one question, and that concerns line 13. It's the area that's been referred to as the "grandfather clause." Now, I don't know much about grandfather clauses, but it seems to me the grandfather clauses protecting the forms of business now operating in the State — that this is a sort of a weak grandfather clause and we should leave it up to the Legislature to change it, and I expect they should; but, like I say, I don't know much about grandfather clauses and I would ask someone on the Committee to answer it for me.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Yes. One of the first drafts of this, when we were kicking around the word "abrogated," and this was provided here because we didn't want to make mandatory that any form of business existing now had to be continued if, in the wisdom of the Legislature in future years, this should be changed, and that's the reason for that wordage — so the Legislature does have some discretion with this.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: A question?

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: A question? Yes, Mr. President. Under our present Constitution, would the Legislature have authority to do away — to do away with the Bank of North Dakota or the State Mill and Elevator?

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Mr. President. Yes, precisely. Both the Bank of North Dakota and the State Mill and Elevator are now creatures of statute and they could be changed by statute, and that's one of the reasons that we didn't want to prohibit that possibility in the future. It is available now, so we are not changing that situation at all from the present situation.

PRESIDENT WENSTROM: Delegate Cart, did you have a question?

DELEGATE CART: No. It would be the same answer they got.

PRESIDENT WENSTROM: I believe Delegate Birkeland wanted the floor.

DELEGATE BIRKELAND: It's been answered.

PRESIDENT WENSTROM: It's been answered.

The question before the Convention is on the first passage of Committee Proposal 1-96. No further discussion?

Those in favor of passage will vote "aye," those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 69 "aye" votes, 27 "nays," two delegates absent and not voting. Committee Proposal No. 1-96 is passed.

Next for consideration, Committee Proposal No. 1-101.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-101, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that section 139 of the constitution of the state of North Dakota be repealed.

"SECTION 1. REPEAL.) Section 139 of the constitution of the state of North Dakota is hereby repealed."

PRESIDENT WENSTROM: Any discussion?

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Mr. President. Fellow delegates, I have an amendment. I'll appreciate having it read at the desk. It's been distributed to everybody's desk, incidentally, fellow delegates.

PRESIDENT WENSTROM: Will you read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-101:

On page 1, line 2 of the title, delete the period and insert in lieu thereof the following: "; and that article XVII to the constitution of the state of North Dakota be created, both of which pertain to public utilities."

On page 1, line 6, add the following new section:

"SECTION 2.) Article XVII to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE XVII
"PUBLIC UTILITIES**

"Section 1. No law shall be passed by the legislative assembly granting the right to construct or operate any public utility or similar service within any city without requiring the consent of the governing body of that city."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE DECKER: Second.

PRESIDENT WENSTROM: Delegate Decker seconded.

Delegate Litten.

DELEGATE LITTEN: Fellow delegates, you recognize immediately, of course, this proposed amendment restores the Committee Proposal which we discussed on, I believe it was, either Wednesday or Thursday of last week, and we turned it right back to where the Committee on Resources, Education and Public Lands was when we made our original presentation. I can't put this discussion in any better terms than Delegate Miller did here a few moments ago when he said that — when he was talking about consideration on the previous proposal having to do with the fact that it boiled down to personal philosophy, and that's exactly what 1-101 does; it boils down to personal philosophy.

We can visit about the problems with reference to the fringe area. We can talk about race. We can talk about the problems of the REC's. But you can't escape the fact that what we're really talking about is the very simple problem or proposition having to do with the home rule and the rights of our cities in North Dakota.

Now, very simply, this amendment is going to accomplish three very salient points that our Committee has discussed at great length. In the first place, it is going to preserve the concept of Section 139 of our present Constitution. Secondly, this amendment is going to prohibit the Legislature from usurping the authority that justifiably belongs to our cities. We're hearing a lot about home rule these days and we are rather enthusiastic about it; but when we start talking about public utilities or similar services, for some strange reason we think that this concept belongs in another ballpark.

And then thirdly, fellow delegates, and probably the most important point of all, is that this amendment and this Proposal from our Committee reserves the exclusive rights to the cities to franchise, and we submit to you, Mr. President and fellow delegates, that without a doubt and no question at all, the cities of North Dakota deserve the right to guide their own destinies within the boundaries of their respective cities. This is the amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: If you look in Section 6 of Committee Proposal C-12, which we passed just a short time ago, which establishes the home rule concept that Delegate Litten has just spoken of — pardon me — Committee Proposal 1-12 — you will find the language "The legislative assembly shall provide . . ."

Are we now to give the cities veto power over the Legislature? Because that's what Committee Proposal 1-101 would say, if we were to put this language back in. We have already established the concept that the Legislature shall provide for the concept of home rule. Are we now saying that the cities shall have veto power over the Legislature in its effort to protect the rights of citizens and citizen groups in the exercise of that home rule concept? This is simply what this section means and can mean, and without trying to hide any of it, this is what it's all about. If an area west of Bismarck — a traditionally rural area — is served by a rural electric cooperative, and the city expands into that area, the city may then say to the REA, "I'm sorry. You can't serve any more. You have to take your — pull your poles, get your services out, because we can't franchise you because we're larger than 2500 citizens and the law prohibits us to franchise you," and the Legislature can't protect them because, under this language, we would give the city council veto power over the Legislature. If in my town, which has been served by Otter Tail Power, the City decided to franchise an REA, the Legislature would have no way, under this language, to protect the property of the Otter Tail Power Company in my town.

Now, Mr. President, what's basically wrong here is that it denies to the Legislature the right to protect the property of the citizens. It gives to city government veto power over the duties of the Legislature to protect those rights.

Secondly, the language of the amendment is not the same as the language of old 139. The language of 139 was bad enough; but a neat little replacement has been made. The word "and" in line 2 has been substituted by the word "or" — pardon me — the word "or". Under the old language, the Legislature could at least allow an existing utility in a newly-franchised area, which did not include that earlier utility, the Legislature could at least allow them to operate. Under this language, the Legislature could not even do that. Mr. President, the amendment that we adopted the other day when we repealed both of these sections and presented that language as it is now before us, without this amendment, is the right approach because it preserves for the Legislature the right to protect the property and the property rights of all its citizens.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President and Fellow Delegates:

I'd like to make three points, and that is the amendment as is proposed is not granting a new right to the cities. Section 139 contains essentially the same provisions as to utilities, telephones, telegraphs and street railroads. Now, we have broadened it. We are not denying that. We're taking into consideration such things as cable TV. So we're not creating a new right. What we're trying to do is preserve the existing rights of cities to franchise.

Point No. 2.: There was some discussion that we have home rule — that this

takes care of it. No, it does not. Some of the cities will not exercise the home rule provision. This amendment as proposed will preserve those cities who do not exercise this provision the franchise right. I think this is important — that the cities who stay with the the form of government that we now have will still have their existing rights as they do under Section 139.

And, No. 3, I won't be as definite about this, but I checked on the word — the impact of the word "or" as against "and," as suggested by Delegate Diehl, and I was told by the Public Service Commission that in law it has no law or effect, and now that's relaying an opinion that was expressed to me and is not my opinion.

PRESIDENT WENSTROM: Further discussion? Delegate Nothing.

DELEGATE NETHING: Mr. President and Fellow Delegates:

It seems to me that the only thing we should be concerned about here is whether or not we believe that the cities should control the franchising ability that they currently have. Now, as a legislator, it seems rather ridiculous for me to sit and determine what's good for the City of Bismarck or the City of Fargo or Minot or Ellendale — any one of them. Those people in that city are the ones that know what's the best for them, and that's why we've reserved this right of franchising to the cities, and I think that, since it's their business, they're the ones that should have the say — not a legislator, like myself, from Jamestown, because I don't know anything about the problems of that city; those people know them. I think we should adopt the amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President. Frankly, I don't see the need for the amendment. Under Section 21 of the Committee Proposal 1-75, which has passed, the Legislature is forbidden to pass local or special laws. It seems to me that this covers the situation, and that the amendment would simply be extraneous.

PRESIDENT WENSTROM: Further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: It seems to me that this Convention is getting taken into an area which is purely legislative in character. The other night, when I was looking through my big yellow book here that has the recommendations from the 1965 Constitutional Study Commission, and I found that they had recommended that this section be deleted from the Constitution, and I took it at face value and thought "Why should we put it in the Constitution?" The next day it was up on the calendar and we got into all kinds of discussions on the floor that surprised me; and then, after the discussion, I noted a number of lobbyists lurking about the outer chambers for the private companies, and then in the afternoon came a number of lobbyists lurking again, except from the REC's. And so we've had lobbyists lurking about as though we're in the Legislature's business, and I'm sorry to suspect that we are getting into the Legislature's business. I have no objection to the Legislature considering this matter of the territorial integrity and the battle between the REA's and the private power companies, and I think battle between the REA's and the private power companies should be sent to the Legislative Assembly, and if we would kill this amendment and just repeal Section 139 and be silent on the matter, then the Legislature can continue to deal with the question of territorial integrity, as they have for the last few years.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: Would Delegate Litten yield to a question?

DELEGATE LITTEN: Yes, I will.

DELEGATE SIMONSON: Would this apply to counties, too?

DELEGATE LITTEN: I'm just looking here. Pardon me, Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: I don't have a line number, delegates, but the next-to-the-last line applies to cities — "within any city without requiring the consent of the governing body of that city." It has no bearing on the counties.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President and Ladies and Gentlemen:

I don't like foxiness and I feel that I was had in this argument before, because we didn't come out in the open when we voted on it. I didn't know quite what it was. Now I don't know that this requires an answer or not, but someone asked the question about the one word being changed from the old Constitution, and I would like to know if there's any reason for that word "and operate" to have been changed to "or". Delegate Litten, could you explain that?

DELEGATE LITTEN: Well — Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Delegate Rundle, I think I should yield to Delegate Devine, because he's the one that talked to the attorney having to do with these two words.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. Delegate Rundle, no; this came in in the drafting procedure. As far as I know, there was no special intent given to it, and I would object to amending it back. The reason we didn't amend it back was because I checked with this guy, and we didn't want to foul up the issue any more.

Does that answer your question?

DELEGATE RUNDLE: Yes, it answers my question. Now I would like you do that then, that you amend it back. We have been getting along after a fashion under the old Constitution, and I do not want to be confused any further. If there isn't any significance, I would like — will you move it?

DELEGATE DEVINE: I'll second it.

DELEGATE RUNDLE: I'll move that the "or" on line 13 be changed to "and."

PRESIDENT WENSTROM: Delegate Rundle, you are offering an amendment to the amendment; is that right?

DELEGATE RUNDLE: Yes.

CHIEF CLERK GILBREATH: Do you want — after the words "to construct," you want to strike the word "or" and insert the word "and"?

DELEGATE RUNDLE: Yes.

PRESIDENT WENSTROM: And Delegate Devine seconded the proposed amendment.

Any discussion? The question is on the adoption of the amendment to the amendment — that we strike the word "or" following the word "construct" in the amendment and as distributed, and insert the word "and."

So it would read "construct and operate".

As many as are in favor of adopting the proposed amendment will say "aye;" those opposed "no."

The "ayes" have it and the amendment is adopted.

Now we're back on the amendment as offered by Delegate Litten.

Any further discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I have only one question, and it's similar to the technicality which was brought up by Delegate Rundle.

The old Section 139 requires the consent of the local authorities having the control of the streets or highways supposed to be occupied for such purposes. Under the proposed amendment, you set up local authorities having controls of the street or highway. It refers to the governing body of that city. So my question is: What's the difference between the old 139 and the proposed amendment?

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, if I may answer the question.

By way of explanation, we first just put the city, and the reason we changed from local authorities was the problem of concurrent jurisdiction of a street going through a town — that maybe part of it may be a state highway, part of it might be a county farm-to-market road, part of it a city street. Who would the local authorities

having the jurisdiction be? And for this reason, we're dealing with cities. We just simplified it to "cities" to get away from this problem of checking with one, two, three or four different governing groups to get the permission. We felt the intent of the provision was to give the franchise power to the cities; so we addressed it to that specifically.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Just a brief comment.

I think we are being drawn into a utilities-REC Convention fight here in this Convention, which, I feel, has no place in this Convention. It seems to me the Legislature can and should and will pass a law protecting the cities' right to franchise. Now, I'm from a city and I fully agree that that should be in there. As Delegate Omdahl mentioned the '65 Commission recommended we delete this, and I think it should be deleted and we should not be drawing or dividing ourselves in favor or against public or private utilities. I don't think it has anything in there at all.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President. Delegate Simonson and I were talking about the question of why only cities? We've provided the machinery for home rule for counties. Is there a legitimate reason for your language leaving out counties, and would you object to an amendment to include it? I have one ready, but I don't want to move it through the machinery if there's some strong objection.

PRESIDENT WENSTROM: Delegate Devine, do you have an answer?

DELEGATE DEVINE: Were you asking a question that you wanted answered by the Committee? Speaking as to my opinion why the Committee amended this: You get into other political subdivisions, townships and counties. Basically, they're not franchising — staying out of this public power-REC thing that caused all the smoke last time, and, I think, caused the defeat of the Committee Proposal — and this is in answer to the question: We looked at the section and said, "What does it do?" And we felt it gave the cities the franchise right and effectively it gave it only to the cities. You get out into the country and you get into all these problems of concurrent jurisdiction — township, county, state and what not. It comes down to the nitty-gritty — should the city have the franchise right? And we addressed ourselves to that question.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I'm going to move the amendment at the desk. If I can get a second, I'll explain why.

DELEGATE SIMONSON: Second.

PRESIDENT WENSTROM: Would you read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment is as follows:

Under Article XVII, Public Utilities, Section 1., following the words "any city" insert "or county" and following the words "that city" insert the words "or county".

PRESIDENT WENSTROM: The proposed amendment was seconded by Delegate Simonson.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I wish, too, that the problems between the investor-owned utilities and the consumer-owned utilities would go away; but, however, much as I wish it, they won't. And for all of the controversy and turmoil that existed in the 1965 session dealing with territorial integrity, the real question was: Do the REC's have a right to a rural franchise? It was the franchise question in the country. And we've been willing to say for years that the cities have a right to grant franchises to investor-owned utilities, and the question in 1965 was will we grant a right for a franchise to a consumer-owned utility in the country?

Now, Mr. President, it seems strange to me that we are willing to grant to a city a veto power over the Legislature that we are unwilling to grant to the county. I think there's every bit of logic on the side of granting the same veto power to the counties. I hope you will support the amendment.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I'd like to review a little bit of REA history in the State of North Dakota.

In 1937, when the Federal Attorney came up here to Bismarck to promote the adoption of the statute under which these electric companies operate, he sat down with the then Public Service Commission, which included S. S. McDonald, Ben Larkin and myself, and our attorney, and we went over this from beginning to end. He got everything exactly as he wanted it, with a minor exception that was on standards of construction, and the Commission insisted that they would have to observe those standards. Even the private line, if someone builds their own line, has to observe that. That means clearance above ground, crossing a — going over crossings and streets and attachment to homes or buildings. Those are safety things and their lines are just as dangerous as those owned by the Montana-Dakota or the Northern States Power, because if you come in contact with it, you generally get killed. So, with that exception, they got everything exactly as they wanted it, which was a permissive right to serve in rural areas — not an exclusive right — and he didn't want that, because then he would have been up against the problem of regulation. That's why you have regulation — is when you give some company an exclusive right. So they got a permissive right, exactly as they wanted it, and they have the right to discontinue services as the corporation sees fit. Now there's your differences between those two services.

PRESIDENT WENSTROM: Further discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I'm curious about how Delegate Sinner would suggest that such a constitutional provision be implemented. As I'm sure you know, counties do not now have any ordinance-making authority — any legislative authority. Counties operate under state law. Would you suggest that each of the counties then adopt home rule provisions, including the legislative authority?

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President.

Delegate Baker, I'm only suggesting they have the same veto power over the Legislature that this amendment would give to the cities.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

I would resist the amendment. It's clear that the cities have had the power to issue franchises to authorized franchisees. The county has not had this. The cities do want this for the future. There's no reason to have this in here for any subsequent laws or in this Constitution, and I think it's — it should be clear that if we want to regulate both the REC's and the private power companies, they should all be under the Public Service Commission, and that is when we can stop regulating them. Until that time, the cities need their right, which they have under the present 139, and they will need it in the future. They are disturbed by this, and there is no reason to have the counties in here. It will clutter up the issues. The cities need it and the counties don't have it at the present time and, therefore, I would urge the defeat of this amendment.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President, I also oppose the proposed amendment. I see it as an attempt to further cloud the issue.

I'll reiterate what other members of the Committee have said: All we are attempting to do is continue to permit cities to have a right which they have historically had — the right to grant franchises.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I think, under the circumstances, I would oppose the amendment, too, because I feel, as the former delegate has, that it's just muddying up the situation. The counties now have no franchise right or ordinance right, and I personally have never been involved in a rural area problem in terms of this situation; but if you have — I think those of you who have will recognize that this is a fairly basic right and one that probably shouldn't be changed. I have been an attorney for an REA telephone for about 17 years. The REA telephones are under the jurisdiction of the Public Service Commission and have had relatively little boundary prob-

lems under this jurisdiction. The REA electricians are not under the Public Service Commission and they and the investor-owned power companies have had a multitude of boundary problems and have been continually in the Legislature, and until this matter is resolved, I would say that we better leave this section alone for the protection of the cities.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

I am against this amendment, just as I am for the original amendment. It seems rather foolish to me to have the city first grant a franchise to somebody and then have that same group have to go to the county for the authority for that franchise which the city has already given them, which this amendment would provide. After all, all cities lie within counties; so the counties are, in effect, again controlling the cities, and I think the cities know more of their own problems and should have control of this lone business — not the county commissioners that run the counties.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Sinner.

Those that are in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay."

The "nays" have it and the amendment lost.

Now we're back on the amendment as — no. We passed that. Okay.

Then we are back on 1-101 — the amendment as offered by Delegate Litten and amended by Delegate Rundle.

So now we are back on the amendment as amended.

The question is on the adoption of the amendment as offered by Delegate Litten.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I guess I was the one that got this thing back on the floor in the first place. I definitely am speaking for the REC's and myself and for 1,000 farmers when I feel that they feel that this is not good, and I feel it should be out of here. I think it should be deleted as it was passed last time, and I very much oppose having it restored, and we did not discuss it in Committee after the last vote, so I don't know whether the Committee has changed its position in any way. But as far as I'm concerned, if I can't have the old one, I definitely would like to see this one deleted.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Litten — the amendment as it is now amended.

Those in favor will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed "no."

The Chair will rule the "ayes" have it.

DELEGATE SINNER: Let's have a division.

PRESIDENT WENSTROM: A division has been requested. A division is granted.

Again, those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. Any questions? You will record your vote.

Has every delegate voted? Any delegate wish to change? Hearing none, the vote is closed.

The vote indicates 59 "ayes," 36 "nays," three delegates absent and not voting. The amendment has been adopted.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: With your permission, Mr. President and Fellow Delegates, I would like to move that the rules be suspended, that Committee Proposal 1-101 be deemed properly re-engrossed and placed on the calendar for first passage.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: The motion was seconded by Delegate Stanton, and the motion before the Convention is that the rules be suspended and that Committee Proposal No. 1-101 be deemed properly re-engrossed, to be placed on the calendar for first passage as amended.

As many as are in favor of the motion will say "aye," those opposed "no." The "ayes" have it and the amendment — or the motion is adopted and Committee Proposal 1-101 is before the Convention for first passage.

The question — Delegate Sinner.

DELEGATE SINNER: Mr. President, I couldn't help resist this one parting shot:

The other day, when we were debating the merits of Committee Proposal 1-89, I heard Delegate Pearce make a statement that was repeated sometime later in the debate, in which he said "Eminent Domain must be under the sovereignty of the State." And it seems to me that that's in large part what we're dealing with here, and I hope that this Convention does not now vote to give the cities veto power over the Legislature.

PRESIDENT WENSTROM: The question — Delegate Aubol.

DELEGATE AUBOL: Mr. President, I have an amendment at the desk that's being prepared; but before that is done, I still have a question on this governing body thing, and if I could direct a question to Delegate Devine —

PRESIDENT WENSTROM: Does Delegate Devine yield?

DELEGATE DEVINE: Mr. President, Delegate Devine yields.

DELEGATE AUBOL: If I recall, you said that you have now given the city board authority to grant this franchise. Now, what happens if this franchise is also going to be involved with county property or state property, such as a highway, and the states say, "No, we don't want this franchise running across our property"?

DELEGATE DEVINE: Mr. President. Delegate Aubol. I'm not sure — you mean if, in order to construct and operate a utility, it will be necessary to — going across on a state highway, for example, the person requesting to design or operate would need an easement. If the property is property of the State of North Dakota, it would need an easement from the State of North Dakota. This does not — if I can go just one step further. Like most other things, if they have to occupy private property, they would have to obtain easements.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: Fellow Delegates: Mr. President.

We've heard a lot of argument, but there is one statement that I question a little bit. Sometime ago it was said that people of the city did not and should not have any say in county government. Now, in our county, the people of the city, if they vote properly, they can control the county commissioners — they vote for them — and because of that statement, I'm in very much favor of supporting Delegate Peterson in her statements. I feel that this Section 139 should definitely be left up to the Legislature.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention — Delegate Aubol.

DELEGATE AUBOL: Mr. President. There is an amendment being prepared at the desk, which I would like an opportunity to offer.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-101:

In the re-engrossed Committee Proposal, after the words in the last line "that city" insert the following "provided, however, that no public utility or similar service shall have its property taken without receiving just compensation for the loss of business and for the loss in physical facilities."

PRESIDENT WENSTROM: Could we have a second to the proposed amendment?

DELEGATE BASSINGTHWAITE: Second.

PRESIDENT WENSTROM: Delegate Bassingthwaite.

DELEGATE LANDER: Mr. President, could we have that repeated, please?

PRESIDENT WENSTROM: Delegate Lander, you wish the amendment repeated?

DELEGATE LANDER: Please.

PRESIDENT WENSTROM: Will you re-read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-101:

In the last line of the re-engrossed Committee Proposal, after the words, "that city" insert the following: "provided, however, that no public utility or similar service shall have its property taken without receiving just compensation for the loss of business and for the loss in physical facilities."

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President, this question came up the last time we debated this issue, and I toyed with this idea and I talked to some people, and they thought it had some merit. Now, I didn't pursue this thing very far, except we have given the city a lot of power to grant franchises and say who is going to be operating in their city. By the same token, I think we have given the city the power now to say, "Okay, MDU, we don't want you in. Leave!" And the same would be true of REC's. And so I think that both public utilities and similar services should have some protection as to property rights, and it for that reason I offer this amendment.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I have intentionally stayed out of this debate; but I must point out two things: I suppose a nonprofit corporation could have no damages for lost businesses; and, secondly, I'm not sure who's to pay.

PRESIDENT WENSTROM: The question — can someone answer the question as raised by Delegate Pearce?

The question before the Convention is on the adoption of the amendment as offered by Delegate Aubol. Those in favor will vote "aye;" those opposed will vote "nay."

Delegate Sinner.

DELEGATE SINNER: Mr. President, I'd ask Delegate Pearce who he thinks should pay.

DELEGATE PEACE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: How long have we got? (Laughter)

I would only say, since I am intimately acquainted with the utility business, anyone who operates on a franchise basis stands to lose his property if his franchise runs out. That's one of the risks of business that you take. Now, if the city gives a franchise to someone other than the one already operating, if they're going to pay for the one that's ousted, if you should pay at all, what should you do? — require the competitor who now has the franchise to pay? That might be impossible. Or ask the public to pay? Equally so. I don't think it could be either one. I think anyone who operates on a temporary-permit basis, which is what a franchise is, whether it's for twenty years or ten, he takes the risks if he loses that franchise.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Aubol. Those in favor of adopting the amendment will vote "aye;" and those opposed will vote "nay."

As many as are in favor of adopting the amendment will vote "aye;" those opposed vote "nay."

The "nays" have it and the amendment lost.

We're back on first passage of Committee Proposal No. 1-101 as amended.

As many as — those in favor of passage will vote "aye;" those opposed to passage will vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 63 "ayes," 32 "nays," three delegates absent and not voting. Committee Proposal No. 1-101 has passed.

Next for consideration, Committee Proposal No. 1-57.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-57, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to equal enjoyment of public accommodations, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any public accommodation, without discrimination or segregation on the ground of race, sex, color, religion or national origin."

PRESIDENT WENSTROM: Any discussion on Committee Proposal 1-57?

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: Mr. President and Fellow Delegates:

I have a brief statement with respect to 1-57. This Proposal is one that has been brought — that has been the subject of much — has been the subject of much study and scrutiny, and certainly it's been brought to the attention of the Convention through its frequent appearance. Previously, there was an amendment offered by myself, which was discussed and debated and considered, which, by the way, I fully appreciated and I thank the Convention for its consideration. But, at any rate, that amendment was defeated. The point is that I hope this previous amendment has cast no shadow or serious doubt in your minds upon the question that is now before us. Certainly any comments I have had were not meant to hinder the quality or the intent of 1-57. I believe — I believe that the intent does deal with the original statement of 1-57, and there is no doubt that the Committee on Preamble, Bill of Rights and Suffrage has given a full and adequate study of this provision.

At best, this provision makes an allowance for basic human rights, for full and equal enjoyment of life for all human beings, without discrimination. Although it may be accountable to our federal or national government, it does remain at heart a human prerogative that we cannot afford to overlook. I, therefore, urge the support and passage of Committee Proposal 1-57.

PRESIDENT WENSTROM: Any further discussion on Committee Proposal No. 1-57?

Delegate Dobson.

DELEGATE DOBSON: Mr. President. A question to a member of the Committee.

If there is to be no discrimination in any public accommodation on account of sex, does this mean that the ladies' powder room will be abolished or integrated?

(Laughter)

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: The Committee hopes so! (Laughter)

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I am eager to support this Proposal, but I have a simple amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-57:

In line 10, delete the word "sex".

DELEGATE DOBSON: Mr. President —

PRESIDENT WENSTROM: Your proposal was seconded by Delegate Hendrickson.

Delegate Dobson, you may proceed.

DELEGATE DOBSON: Well, Mr. President, I guess the big joke — in the present Constitution there's a section making the Governor the Commander-in-Chief of the naval forces of the State. Although the intent of the Committee probably was all right, I don't think we should build a joke into the new Constitution. The new Illinois constitution has a section condemning the telling of Polish jokes, and I want to point out that I am only proposing this amendment to delete "sex," comma, and I want to make it perfectly clear that there is no intention to abolish sex, period.

(Laughter)

PRESIDENT WENSTROM: Any further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I wish to resist the motion. (Laughter)

DELEGATE KESSEL: Mr. President.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: The average age of this group, I believe, is 59. I'm quite a little older than the average age. I don't care what you do with it! (Laughter)

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: For once, I'm going to agree with Delegate Omdahl. I think we should leave this to the Legislature. (Laughter)

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I certainly don't want to leave sex to the Legislature. (Laughter)

PRESIDENT WENSTROM: Seriously, though, would you have an amendment to offer? Are you aware of the amendment?

Those in favor of adopting the amendment will vote "aye" and those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay."

I believe the "ayes" have it. The amendment is adopted.

Any further discussion? Delegate Dobson.

DELEGATE DOBSON: I now move, Mr. President, that Committee Proposal 1-57 be deemed properly re-engrossed, the Rules be suspended, et cetera.

PRESIDENT WENSTROM: Delegate Dobson moves that the Rules be suspended and Committee Proposal No. 1-57 be deemed properly re-engrossed and be placed on the calendar for first reading as amended.

Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The amendment's adopted. The motion is adopted, and Committee Proposal No. 1-57 is before the Convention for final action.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President, do I understand we deleted the word "sex"?

PRESIDENT WENSTROM: It's my understanding we did.

DELEGATE KELSCH: I can recognize the problem that Delegate Dobson was getting at, but I wonder what you're doing with the rest of the section. The basic section is, "All persons shall be entitled to the full and equal enjoyment of the goods and services." Now, of course I'm sure the "discrimination or segregation" is the problem Delegate Dobson is getting at. But I wonder what you have done with it with relation to the women's lib movement.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I wonder, on the amendment, much for the same reason that Delegate Kelsch has brought up — it was considered in a very laughing manner, but I think that dropping reference to "sex" out of the proposal, it now leaves the full public accommodations open to discriminate on the basis of sex, and I think we erred.

PRESIDENT WENSTROM: The question before the Convention —

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: May I ask a question of Delegate Aubol?

PRESIDENT WENSTROM: Delegate Aubol?

DELEGATE AUBOL: Yes, Mr. President.

DELEGATE HENDRICKSON: I really can't think of a facility or a place right now that I feel we are discriminated against for our services. One doesn't come to my mind.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: In comment on Delegate Hendrickson's idea there, I think what we're talking about is the enjoyment of the full and equal enjoyment of privileges; for example, the privilege of employment. We have some laws now regarding nondiscrimination in employment on the basis of sex, but I suspect employment might be considered a privilege, and if we have a statement in there regarding sex, I suppose the Legislature still could provide for a nondiscrimination in employment on the basis of sex, as they have done now. But what we are doing is removing the guarantees that the Legislature shall provide for nondiscrimination in employment on the basis of sex.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

It seems to me that the Legislature would not be able to discriminate on that basis, because the federal law would govern.

DELEGATE HENDRICKSON: Mr. President, may I speak again?

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I think I'm fully covered, as far as we're concerned, under Delegate Burbidge's Proposal 1-53.

PRESIDENT WENSTROM: The question then before the Convention is on the first passage of Committee Proposal No. 1-57.

Those in favor of passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote?

The key is closed. The roll call discloses 86 "ayes," 9 "nays," 3 delegates absent and not voting.

Committee Proposal No. 1-57 has passed.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: My seat mate is giving me a bad time here. He thought the amendment should agree to retain the words up through "of" and then delete the rest of the Proposal, except the word "sex." (Laughter)

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: May I rise to a personal privilege?

PRESIDENT WENSTROM: The question?

DELEGATE THOMPSON: May I rise to a personal privilege?

PRESIDENT WENSTROM: The question?

DELEGATE THOMPSON: May I rise to a personal privilege?

PRESIDENT WENSTROM: State your privilege.

DELEGATE THOMPSON: I would like to respond to Delegate Dobson's reference to the Governor being the Commander of the naval forces.

For his information, the big lake that we call Devils Lake will soon be some twenty miles long, and it has a bigger problem than that. It also has an involvement with Indian treaties and jurisdiction. We've already thought about asking the Coast Guard to come in to police it, and we'll probably have to have a North Dakota Coast Guard to help.

Now, may we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE THOMPSON: I would like to move that Committee Proposal No. 1-89 be placed at the head of the calendar.

PRESIDENT WENSTROM: Delegate Thompson moves that Committee Proposal No. 1-89 be placed at the head of the calendar. Do I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal No. 1-89 is placed at the head of the calendar.

Delegate Aubol.

DELEGATE AUBOL: Mr. President, is it still too late to explain my vote on 1-57? I think that I would like to explain my vote, and I think that other delegates who voted "no" would also like to explain their vote.

I voted "no" not because I'm against the concept of nondiscrimination. I voted "no" because I believe the Constitution now allows for the discrimination on the basis of sex.

PRESIDENT WENSTROM: The question before the Convention is Committee Proposal 1-89.

DELEGATE SONDRREAL: Mr. President.

PRESIDENT WENSTROM: Delegate Sondreal.

DELEGATE SONDRREAL: I, too, would like to explain my vote on the last proposal that was voted on. It was not on discrimination, but because of the deletion of the word "sex."

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Will these be outlined in the Journal?

PRESIDENT WENSTROM: They will be.

DELEGATE AUBOL: Thank you.

PRESIDENT WENSTROM: Again, the question before the Convention, Committee Proposal 1-89.

CHIEF CLERK GILBREATH: Committee Proposal 1-89, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 14 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to eminent domain.

"SECTION 1. REPEAL.) Section 14 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner and the interests of the general public and without just compensation for all damages having first been made to or estimated just compensation for all damages paid into court for the owner."

PRESIDENT WENSTROM: Is there any discussion?

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I have an amendment at the desk and I would like to call it a committee proposal — or a committee amendment, but I can't do that because I have the printed one; so I'll make the amendment and ask that it be read.

PRESIDENT WENSTROM: Will the Clerk read the proposed amendment?

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Committee Proposal 1-89:

Delete everything after line 9 of the engrossed proposal and insert in lieu thereof the following:

"Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner and the interests of the general public and without just compensation having first been made to the owner for all damages.

"The legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service and provide the procedure and time limit for determination of damages, necessity, and public use."

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do we have a second?

Seconded by Delegate Saugstad.

The Chair will recognize Delegate Thompson.

DELEGATE THOMPSON: I want to report that the Committee did reconsider, and we had more presentations made and, as a matter of fact, we met twice and we could not agree. Following that, we started working on it while we were up here, and I hope that we have now got it in such a shape that it will at least meet the approval of most of the people.

If you will notice, the first paragraph adds new language and gives the property owner more rights and protection. We then felt that we must give the Legislature some rights to provide for a method of faster taking than normal, and, incidentally, don't be fooled by this. This does not provide for quick take; it provides that they could provide a quick take, but it also provides that they could have 90-day limitations or one-year limitations, or something like that. We have, also, in that second paragraph, put in the proposition that the Legislature must provide for a procedure to determine the procedure and, also, the time limit that shall be utilized and, also, the determination of damages, necessity and public use.

You will notice that we have substantially taken away the quick-take powers from many of the agencies that now have them, and we felt that, in that way, we gave the private property owner more help. They think now that we might even satisfy Delegate Pearce.

We move the adoption.

PRESIDENT WENSTROM: Any further discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President, in order that others may have all the time that's necessary, I'll get my say out of the way first.

With all due regard to Delegate Thompson's and others' efforts, I still can't logically understand how you can take property and protect its owner. I think we should understand clearly what eminent domain is. The term — the adjective "eminent" is the important one. Originally, it was the power of the king over the lands of his subjects.

Now, I have been misquoted several times in regard to sovereignty. Eminent domain is a part of the power of the sovereign. It is eminent above everyone else's right to own property. Those of you who think you really own property are, perhaps logically, mistaken. You have the right to possess it and to transfer it to the devisees in your will or allow it to pass to your heirs, provided that you pay the annual fee, which we call taxes — real property taxes. If you pay that sockage, as it was once called, then you can keep it. Just don't pay it for three years and see how long you have it!

As I said, one of the rights of property, as long as you pay up to the Government, is the right to its use and its exclusive use. There is this eminent power — this sovereign power that if it's necessary to use your property or a portion of it for a public use, that the State can take it. Now, the State is careful in the way it shares that portion of its sovereignty. It gives that to certain agencies by statute. Most public bodies have it — not all. It gives it to those type of common carriers or public service companies, pipelines that are common carriers, public utilities that furnish light and power, some private persons who furnish light and power, such as the rural electric cooperatives and the generating and transmission cooperatives, because that service that they furnish is a public service — it's needful and necessary to the public, because where would we be if the lights went out? Of course you could go home then.

The ultimate decision as to whether that eminent domain needs to be exercised has to be left in those agencies that share that part of the sovereignty, that part of the power. It cannot be given to individual juries who do not determine the overall project, but are only concerned with that portion of the right-of-way, ordinarily, or the piece of the park — piece of the property that's to be taken for a park or a street or a public building or a schoolhouse that is necessary.

Now, if they can deliberate and say, "No, that particular piece of property is not necessary," then you can't take it, you have eliminated eminent domain and you have chopped it up and put it in the hands of the jury, or a court. You cannot share

the power of eminent domain like that. It can't be done. All of the constitutions that I know of, including the recent Illinois one, simply say that we say that private property shall not be taken or damaged for public use without just compensation and the right of trial by jury is guaranteed for the determination of the condemnation.

Now, as I look at the proposed amendment of Delegate Thompson, I really don't understand it. I understand parts of it. The first paragraph is a denial which we have always had — that private property shall not be taken unless — then separate and apart is a second paragraph or sentence, which says, "The legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service." Now that, to me, would appear to be a limitation upon what the Legislature can do. That would be the only thing that they could provide eminent domain for; no longer for schoolhouses, for parks, and any number of other things that may be necessary for public domain.

I have pondered this problem and I have talked to many others on the floor. It seems to me that we are getting no nearer a solution, and my own feeling is, since the people, in 1957, voted for quick take for highways, let's go back to Section 14 that we've lived with and that the people approved in 1956.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I am reminded of some words I learned some short years ago at my mother's knee, that begin, "Oh what a tangled web we weave" — and I think you will follow me up to that point. Now, you will follow as it goes on, speaking of deception, and I don't want to imply that anybody that is speaking or will be speaking on this subject is trying to deceive the body here, but I wonder if we're not deceiving ourselves some.

So far as speaking as a layman in this matter, with more than a little knowledge of the complexity of this matter, I can say that I would surely be deceiving myself if I thought that I could make any improvement on the language in the present Constitution. In the brief time that we have available to us in this Convention — and I wonder if the attorneys who are so interested in this may not be deceiving themselves, possibly without realizing it, because of an interest that they have — maybe a current interest in the operation of the laws of eminent domain, so that, instead of writing a section of the Constitution in a truly objective fashion, that they might possibly be allowing their opinions of the moment to color their feelings to some degree.

I support Delegate Pearce's suggestion that we return to the language of the present Constitution. I know that that's not a very popular idea right now, but I'm sure it could be done, and I surely agree that that would be the best solution at this time.

And just to find out if anybody else thinks that way, I move that further consideration of Committee Proposal 1-89 be indefinitely postponed.

PRESIDENT WENSTROM: The question. It has been moved that further consideration of Committee Proposal No. 1-89 be indefinitely postponed.

Delegate Baker — we have an amendment and, therefore, Delegate Baker, I am going to have to rule that your motion to indefinitely postpone is out of order.

The question before the Convention is on the amendment as offered by Delegate Thompson, and seconded by Delegate Saugstad.

Is there any further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I doubt very much if this language would permit a quick take at all, because the first paragraph says "without just compensation having first been made to the owner." And once that has been established, you're going to have to put some more language in there, clearly stating that the Legislature can provide for a quick take without payment having first been made to the owner.

PRESIDENT WENSTROM: Further discussion? Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I am not completely in accord with the amendment; however, I certainly agree with the ideas behind the amendment. I don't think, because of the eminent domain theory and principle since the days of

the king, it ought to apply in North Dakota in 1972. I do feel that under this present section of our Constitution, 20- — or, rather 14, that the property rights of the individual property owner are fully protected for the reasons that were mentioned the other day. I don't think the word "just compensation" fully compensates the property owner for the loss that he has sustained. Taking someone's property, in my opinion, is one of the most serious things that we could ever hope to do, and I think that we ought to bend over backwards to compensate for all damages that that property owner has, if we're going to do that. We ought to give him the benefit of the doubt, rather than the State or the subdivision that may be exercising eminent domain rights. I agree there may be some confusion in the word "property rights." One delegate suggested we take out the word "property right" and just leave it "rights of the individual." I do think that we can protect some of the rights and property rights of the individual and still go through with eminent domain proceedings because of the example that I gave yesterday or the day before, when we were discussing this proposal, in that he be given adequate time to relocate and to vacate his business. I do feel that we would take a step backwards if we go back to the old section, because I do not feel that the property rights, and certainly the other rights of the property owner, are protected in that section for the reasons mentioned.

PRESIDENT WENSTROM: Further discussion?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I thought probably the proposal that's before you by Mr. Thompson was probably a reasonable compromise. I am not schooled in the law well enough to know whether the first paragraph is properly drawn. My particular interest, of course, is in that second paragraph. Now, there were a lot of things said on this floor yesterday, and I notice the Press indicated that what I wanted to do was loosen the present provisions up so that property rights weren't so important, which is absolutely contrary. I'll restate that I thought — what I thought was in the Committee Proposal, and I went down to the Committee this morning. I was backed up in that, in regard to testimony there, in a statement by a Committee member. The Committee Proposal did allow the Legislature to quick take on anything. It also provided that private corporations, as well as political subdivisions in the State, could take property under the quick-take method.

Now, my proposal — now here's what is dangerous in the old Constitution, as I see it, and what I'm afraid of: It doesn't say that political subdivisions can use the quick take for right-of-way for roads. It says "for right-of-way" period, and right-of-way can be a multitude of things. This is what I'm trying to get at — is to cut down that quick take on these multitude of things that can be taken by quick take or that it gives to the Legislature to take, or determination by the Attorney General on what is a right-of-way. Is it a ditch? Is it a park? Is it an airport flyway, a runway, or what is it? The quick-take procedure can be used for anything that can be defined as a right-of-way. And this is what I want to make clear.

In the second paragraph of this Proposal, it allows the Legislative Assembly to provide quick-take procedures, and there's a lot of things they can do with that. They can allow trails by other than jury to be set within 60 or 90 days. They can put the onus on other than the property owner on proving some of these things. There is a latitude of things they can provide; or they can provide just what they can take by quick take within these limitations and spelled out in that second paragraph. And these are the obvious ones where quick take should be workable and this property can be used. So the second paragraph, for me, is all right.

Now, on that first paragraph, the definitions on all those words in there and what they mean legally, I'll have to leave to the lawyers; but I want to make it clear I most certainly was not trying to open the door to destroy property rights. I was trying to close this door. Somewhere along the line it has to be closed, because I've got property owners up in my area, because of this quick-take thing, they are losing property by the hundreds and thousands of dollars, and they have no recourse in the courts, except for the price they got for a little right-of-way; and this wrong.

PRESIDENT WENSTROM: Any further discussion? Delegate Geelan.

DELEGATE GEELAN: Mr. President.

To ease any fears that people may have about the words "without protecting the property rights of the owner," we asked the legal counsel who has served the Commit-

tee, "Is there any danger there?" And he assured us that there was none. There was nothing there that would harm eminent domain, because he said you had to read the words in context. So that we feel there is no danger in saying "Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner." We felt that the proposal, as we had proposed it to you, would give the Legislature the rights that had been mentioned in the second paragraph. We are not adverse to adding the second paragraph, if that will help clear up matters and if that will specifically give to the Legislature the right to carry out the intent that we have stated in the first paragraph. I thoroughly agree that, to go back to Section 14, would be a step backwards, because all we are doing is guaranteeing damages; we are not protecting the property rights, we are not protecting the general good of the public; and so, for that reason, we hope now that we have a satisfactory conclusion of this terribly knotty problem when we are giving it to the Legislature. We do not think that we have to mention "estimated damages" in the first paragraph, because now we are giving it to the Legislature to carry out the intent, and we think that first paragraph will be a mandate to the Legislature to see when you carry out this mandate, whether you have quick take, no quick take, or quicker take than you have ever had before, you must see that the property rights of the owner and the general public are protected.

For that reason, we ask for the support of the amendment as now proposed.

PRESIDENT WENSTROM: The question — any further discussion?

The question is on the amendment as offered by Delegate Thompson and seconded by Delegate Saugstad.

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed will say "nay."

The "ayes" have it. The amendment is adopted.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: May I move that the Rules be suspended and that it be properly re-engrossed and placed for first reading?

PRESIDENT WENSTROM: Delegate Geelan moves that the Rules be suspended, that Committee Proposal 1-89 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

Do I have a second to the motion? Seconded by Delegate Maxwell.

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I think that the legal problems still involved in this thing take a little bit more time to get straightened out. You can't have eminent domain and protect property rights. I would suggest that we vote against this Proposal, so that we can take one more day on it tomorrow.

PRESIDENT WENSTROM: Any further discussion?

The question is on the motion as offered by Delegate Geelan to suspend the Rules, to deem the Proposal properly re-engrossed and placed on the calendar for first passage as amended.

As many as are in favor of the motion say "aye;" those opposed "no."

The "ayes" have it. The amendment is adopted — or the motion is carried.

The question before the Convention, first passage —

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Let us not be hasty here. I'm in full sympathy with the purposes of the amendment, and I would like to feel at ease with the idea that the construction of the language will provide for a quick take under the circumstances mentioned in the second paragraph. But not being a lawyer, I don't know if I am correct or incorrect, but I feel that the second paragraph does not provide for a quick take, because the last — the end of the first paragraph — it says "without just compensation having first been made to the owner for all damages." And there's nothing in the second paragraph that contradicts that statement, and until we correct the language, I'm afraid we're not going to be able to have quick take.

PRESIDENT WENSTROM: The question before the Convention — Delegate Hill.

DELEGATE HILL: Mr. President. Did that last motion carry by a two-thirds vote?

PRESIDENT WENSTROM: I ruled that it did.

DELEGATE HILL: Could we have a division on that, please?

PRESIDENT WENSTROM: Yes. It's a little late, but I'll still grant it. The question — the division has been granted. That is a sufficient number. Normally, you don't permit further debate if you're going to have the question of division. However, I would still grant it.

The question before the Convention is on the adoption of the suspension of the Rules. And the key will be opened. It will take 66 votes to suspend the Rules, and those in favor will vote "aye;" and those opposed will vote "nay."

The key will be opened and you will indicate your preference.

Has every delegate indicated his preference? The vote is closed.

The vote indicates 45 "ayes," 49 "nays," 4 delegates absent and not voting. The motion to suspend the Rules fails.

Fellow delegates, we will take a 15-minute break, and then we will come back and we'll work until seven o'clock.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I would like to request the members of the Public Information Committee to meet downstairs in the Large Hearing Room for a discussion of what we might do in the next couple days — immediately.

PRESIDENT WENSTROM: We'll be in recess.

(The Session recessed at 5:32 P.M. until 5:49 P.M., the same day.)

PRESIDENT WENSTROM: May we have order? Will the Convention please come to order?

First for consideration, Committee Proposal 1-82.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: I move that we place Committee Proposal 1-82 at the bottom of the calendar under, I believe, Committee Proposal 1-85, for the reason that there are a couple of amendments at the desk which we think we can work at and compromise, if we have a little additional time.

PRESIDENT WENSTROM: You move that we place 1-82 — 1-82 at the foot of the calendar?

DELEGATE HARTL: That is correct.

PRESIDENT WENSTROM: It's been moved. Do we have a second?

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: It's been moved and seconded that we place 1-82 at the foot of the calendar.

Delegate Hoffner, do you wish to talk on this?

(Delegate Hoffner shook his head.)

PRESIDENT WENSTROM: The question is on the motion to place 1-82 at the foot of the calendar. As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it and 1-82 is at the foot.

Now, Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, may we continue on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE HOFFNER: Is it my understanding that 1-57 is at the top of the calendar?

PRESIDENT WENSTROM: Which one, Delegate Hoffner?

DELEGATE HOFFNER: 1-57.

PRESIDENT WENSTROM: No.

DELEGATE HOFFNER: I then move, in view of the fact there are a number of amendments proposed for 1-29 — this is the one on reapportionment — I don't think it would be wise to go into this at this time just for an hour — that this be laid at the foot of the calendar.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposal No. 1-29 be placed at the foot of the calendar. Do I have a second?

Seconded by Delegate Maxwell.

As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it. Committee Proposal No. 1-29 is below 1-82.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: By way of a little clarification, you have two proposed amendments by me on 1-29. The last one you've got is the one that we will be moving. We wanted to rewrite the first one and, rather than have two amendments before you, we do not plan to introduce that one. But the amendment that you received just a few moments ago will be the one we'll be introducing tomorrow, or whenever we get to it.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I wonder if I might ask Delegate Longmire: Which one is the last one?

PRESIDENT WENSTROM: Will Delegate Longmire explain to the delegates?

DELEGATE LONGMIRE: I have been told by someone behind me that the large printed one is the last one; but the provisions of the last one provide for leaving legislative districts as they are at the present time. That's the last one. It's been pointed out, again, by some of my capable associates here, that the last one is the one on page 1 of the engrossed proposal — to delete all of lines 13 through 25. That is the beginning of it, and then it has engrossed on the top of it "Proposed Amendment to Engrossed Committee Proposal 1-29."

PRESIDENT WENSTROM: Has that momentous decision been arrived at?

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: Thank you. For consideration, Committee Proposal No. 1-38.

DELEGATE HARDMEYER: Mr. President.

PRESIDENT WENSTROM: Delegate Hardmeyer. Just a moment while the Clerk reads it.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-38, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 37 and 39 of Article II and Article 51 of the amendments to of the constitution of the state of North Dakota be repealed; and that section 7 of Article II to the constitution of the state of North Dakota be created; all of which pertain to restrictions on the office-holding capabilities of state legislators.

"SECTION 1. REPEAL.) Sections 37 and 39 of Article II and Article 51 of the amendments to of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Section 7 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 7. No member while serving in the legislative assembly shall hold any other elective office of the state or any of its political subdivisions, nor any appointive state office which shall be deemed to be any office established by this constitution or by law. During the term of office for which he was elected, no legislator shall be appointed to any office which has been created, or for which the compensation has been increased by the legislative assembly during that term."

PRESIDENT WENSTROM: Delegate Hardmeyer.

DELEGATE HARDMEYER: Mr. President.

This proposal had a reasonably-good hearing the other day and it was amended several times, especially the language that was eliminated — "and any of its political

subdivisions" — and then they substituted therein "county and city officials." But there are now additional amendments to be offered, and without speaking any further on this particular Proposal, I would yield to Delegate Haugen.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President. I have an amendment at the desk, and it has been distributed this morning to the desks of all of the members.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-38:

Delete lines 14 through 21, inclusive, and insert in lieu thereof the following:

"Section 7. While serving in the legislative assembly no member may hold any full time elective state or political subdivision office nor hold any full time appointive state office established by this constitution or designated by law. During the term of office for which he was elected, no legislator shall be appointed to any office which has been created, or for which the compensation has been increased, by the legislative assembly during that term."

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

May I have a second to the proposal?

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE HAUGEN: When this was discussed previously, I was rather unhappy with what I considered to be severe limitations on the restriction of the citizens to hold — minor state and subdivision officials to serve in the Legislature. The proposal that I have leaves the last sentence of the Committee Proposal as it was, but it makes a considerable change in the definition of who may serve in the Legislative Assembly. It provides, briefly, that any full-time elected state or political subdivision — a person who holds a full-time elective political subdivision office shall not be eligible to serve during the time of his holding the office; and then it makes that same provision in regard to the appointive state officers established by the Constitution as designated by law, and I was very disturbed about that particular provision in the original bill, because we have so many, many committees — advisory committees, committees dealing with regulations of professions and so forth — who would be kept from serving under that provision.

Under my proposal, the same time — the same full-time provision would apply. They could serve in the Legislature, unless they were a full-time appointive official of the State.

The question was asked, "What is the meaning of 'full-time'?" There is no real legal definition. I talked to our — one of our counsel, who has worked with me in drawing this up, and he tells me that this is a clearly-understandable term. We would have no problem in having it defined, if it ever came to a court test, and he agrees with me that it means the usual, normal working time of an individual who is affected by the Proposal. I do think that this proposal is a very definite improvement over the original Committee Proposal, and I would appreciate support.

PRESIDENT WENSTROM: The Chair recognizes Delegate Nicholas.

DELEGATE NICHOLAS: Yes. I'd just like to direct a question to Mr. Haugen, if he'd yield.

DELEGATE HAUGEN: Yes.

DELEGATE NICHOLAS: I would like to know what it says. For instance, the county commissioner's office, would that be considered full-time?

DELEGATE HAUGEN: No, I do not believe it would be considered a full-time. This is my own personal opinion. This, of course, would have to be determined, probably by —

DELEGATE NICHOLAS: Okay. I have another question.

How many present senators and representatives would this affect? If you have any idea or any other member of the body —

DELEGATE HAUGEN: No, I — I have no — I have no idea. The list that I read to you the other night was an accurate list. A couple of people have challenged me on it; but in each instance I have been able to show them the wording in the

original section that they would not have been able to serve in the Legislature during the time that they held the other appointment or office.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hildebrand.

DELEGATE HILDEBRAND: I would certainly think that, if I were a city commissioner or a county commissioner or had such a position where I would be working on a per diem basis, I would not consider myself a full-time position, whether it was appointive or elective, and if I had any intentions or ambitions of running for the State Legislature, I would certainly do so, unless someone else were to challenge it.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I hope you will give serious consideration to this amendment. I admit I was sleeping at the switch the other night when this was discussed, and it suddenly went by. But we have a real problem in our area finding people who are willing to serve, and if you put too many restrictions on them, it's going to be just that much harder for people in the less-settled areas. Probably in cities you have a surplus in that direction; but we definitely do not. And so I do hope that you will seriously consider this. I think that by emphasizing the "full time elective state or political subdivision office nor . . . full time appointive state office," and so forth, that that clarifies the people. Incidentally, I should never stand up, because I notice anything I stand up for, I lose. Therefore, I now wear dark glasses. I vote incognito. (Laughter)

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Is it working?

PRESIDENT WENSTROM: Yes.

DELEGATE RUNDLE: Mr. President, this word "full time" bothers me a little bit, too, because if you're going to say the county commissioner isn't full-time — and I do not wish to hurt anybody's feelings here, but we have an attorney in our area — a State's Attorney — who said he can handle two or three counties and was willing to do so. There are several jobs in the smaller counties that it would be kind of questionable whether they're full-time or not. I don't know how you define it; but if you're going to eliminate some county officials, you're going to have to eliminate them all, I feel.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Well, Mr. President and Fellow Delegates:

I think what we've done here is — I thought we made some ground in this area yesterday, but, apparently, I was wrong. We have actually now gone back to the basic Section 35, which is in our Constitution, covering this area, which would allow anyone except those elected county officials basically outlined, and these aren't the ones we're worried about, really. It goes back to — I should say Section 37 of the old Constitution, which says that no judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff — there, again, we get into the county — so we've actually gone back. We're allowing anybody that wants to get into the race at all, except those few that are outlined in old Section 37.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates:

I think this is a big improvement over what we approved the other day — at least temporarily — and I rise in support of this amendment.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. President. Fellow members of this body:

You may recall that I was one of the dissenting individuals the last time this particular proposal came up. I feel that Delegate Haugen has done an excellent job in working to provide a proposal that we can all support. This proposal, as it states, indicates that any individual may run for the Legislative Assembly, provided — and I would work it in reverse — that he is not holding a full-time elective state or political subdivision office.

At this time, in a private conference with Delegate Haugen, we discussed this, and it was my personal opinion, from my limited knowledge of the political subdivision field of elective officials, that we would possibly have only two county officials which were qualified and one eliminated from running for the Legislative Assembly at this time, and those two particular offices would be the State's Attorney

of Burleigh County and the State's Attorney of Grand Forks County. The county commissioners of each and every county and each and every elected official of the county commissioners could run.

Now, as far as I can see, we would have a problem with the county register of deeds. That would be a full-time position. The county judge — as we know, the county judge would also be a full-time position; but when it comes to, for instance, a State's Attorney in any of the other counties, I think some of the individuals had a question there. That job, by determination, is not referred to as a full-time job, as the county commissioner's job is not a full-time job.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Haugen.

Any further discussion? Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I think that we should remind ourselves that we did explore this. This is not a prohibition against anybody running for the Legislature. It only says once you are elected, you can be responsible to only one elective body and only to the Legislature; and if then you would like to resign the Legislature, then you are responsible to the county commission or the city commission. You cannot — you shouldn't, it would seem to me, use your status with the voters to keep on building yourself up and keep on holding one office on top of the other. You can serve either the State or the County. I don't think you can serve both. And this is the original — I mean the amended provision takes care of all eventualities. This one, again, has these loopholes, and then you have a decision coming up on every case. I urge the defeat of the amendment.

PRESIDENT WENSTROM: Further discussion? The question — Delegate Simonson.

DELEGATE SIMONSON: I should like to support the amendment of Delegate Haugen. I think that we are agreed up to this point that the people back home know their neighbors, and I will go along further with that, as far as this amendment, that they know whether they — whether or not they want those people to serve as the State's Attorney and, also, as a legislator. I think we're going to get some excellent candidates out of this amendment.

PRESIDENT WENSTROM: Further discussion?

The question is on the adoption of the amendment as offered by Delegate Haugen. Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" opposed "no." The "ayes" have it. The amendment is adopted.

Delegate Haugen.

DELEGATE HAUGEN: Did you have any further — I would move then that —

PRESIDENT WENSTROM: Delegate Haugen, maybe we should ask if there are further amendments.

Are there further amendments to the Proposal?

Now, Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I move that Committee Proposal 1-38 be considered properly re-engrossed and be placed upon the calendar for first passage.

PRESIDENT WENSTROM: Delegate Haugen moves that the Rules be suspended, that Committee Proposal 1-38 be deemed properly re-engrossed and be placed on the calendar for first passage, as amended.

Is there any discussion?

DELEGATE PETERSON: Second.

PRESIDENT WENSTROM: It was seconded by Delegate Peterson.

As many as are in favor of the motion will say "aye;" those opposed "no."

I think we better do that over again. Really, it takes two-thirds of the vote to suspend the Rules. I tried to get by with that a little bit ago on the same kind of a vote and you asked for a division and upset it, and I think this is just as important.

I am going to ask that those that are in favor of adopting the motion to suspend the Rules say "aye;" those opposed "no."

The "ayes" have it. The proposal is before the Convention.

The question before the Convention is on the first passage of Committee Proposal No. 1-38 as amended.

No further discussion? Hearing none, those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 83 "aye," 12 "nays," three delegates absent and not voting. Committee Proposal No. 1-38 has passed.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: We anticipate considerable discussion on the next two proposals, which are from the Finance Committee. I would appreciate it if they could be laid over — placed —

PRESIDENT WENSTROM: Delegate Haugen, 1-74 and 1-87?

DELEGATE HAUGEN: 87, yes.

PRESIDENT WENSTROM: 74 and 87?

DELEGATE HAUGEN: Yes.

PRESIDENT WENSTROM: Well, then will you move that they be placed at the foot of the calendar?

DELEGATE HAUGEN: I so move, Mr. President.

PRESIDENT WENSTROM: Delegate Haugen moves that Committee Proposals No. 1-74 and 1-87 be placed at the foot of the calendar. Do we have a second?

DELEGATE ERICKSON: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Erickson. Any discussion?

As many as are — hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. They will be at the foot of the calendar.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE THOMPSON: I would like to move — or I would move that Committee Proposal 1-86 be placed at the bottom of the calendar for the reason that I have some information coming that I hope will be here tomorrow.

PRESIDENT WENSTROM: Delegate Thompson moves that Committee Proposal No. 1-86 be placed at the foot of the calendar. Do I have a second?

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nothing.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and it will be placed at the foot of the calendar.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President, I move that Committee Proposal 1-89 be moved to the top of the calendar.

PRESIDENT WENSTROM: Delegate Omdahl moves that Committee Proposal No. 1-99 be moved to the top of the calendar.

DELEGATE OMDAHL: 89.

PRESIDENT WENSTROM: Oh! 1-89.

DELEGATE OMDAHL: 1-89.

PRESIDENT WENSTROM: You shouldn't be too critical. That's only ten off!

Delegate Omdahl moves that Committee Proposal No. 1-89 be placed at the head of the calendar. Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I hate to ask a question, and I hate to be disruptive, but I believe 89 had been amended and it is not on today's calendar.

PRESIDENT WENSTROM: Hasn't that been up before?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl, you're aware of the parliamentary reason for not moving 1-89 today. We hadn't considered it and the motion to suspend the Rules and deem it properly re-engrossed failed. Therefore, it has to remain in position.

DELEGATE OMDAHL: Well, we could suspend the Rules and put it back on the calendar. I move that we suspend the Rules.

PRESIDENT WENSTROM: If you must do that, I would mention it failed once today.

DELEGATE OMDAHL: Well, Mr. President, I'm game for anything at this time of the day.

I move that we suspend the Rules and move 1-89 to the top of the calendar.

PRESIDENT WENSTROM: Delegate Omdahl moves —

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: — that the Rules be suspended, that Committee Proposal No. 1-89 be deemed properly re-engrossed, that it be placed at the head of the calendar as amended.

As many as are in favor of the motion will say "aye" — I'm sorry. Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, may we be on the eighth order for a moment?

PRESIDENT WENSTROM: I believe, Delegate Meidinger, I'll have to rule you out of order while we have this on the floor.

Delegate Aubol, do you have a question?

DELEGATE AUBOL: Mr. President, I see that Delegate Omdahl has a proposed amendment to 1-89, and I wonder if the body wouldn't care to hear what he has to offer for the purpose of determining whether or not what he has to offer is going to fit in with the objections to 1-89 as it was originally.

PRESIDENT WENSTROM: Fellow delegates, I believe we are then spinning our wheels on this last proposal, in that we do not have Committee Proposal 1-89 in the possession of the Convention. It is still with the engrosser. Is that it?

CHIEF CLERK GILBREATH: Yes, that's it.

DELEGATE HOFFNER: Mr. President.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Now we're right back where we were. We do have it now.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: In answer to Mr. Aubol, I think that we might have some language here that might solve the objections, although such language is hard to come by for 1-89. I think that if this motion prevails, we might be able to find the flaws in it, if nothing else, tonight; so somebody else can work on it by tomorrow.

PRESIDENT WENSTROM: The question before the Convention is on the motion to suspend the Rules, deem Committee Proposal 1-89 properly re-engrossed and placed on the calendar for amendment.

As many as are in favor of the motion will say "aye;" those opposed "no."

The "ayes" have it and Committee Proposal No. 1-89 is now before the Convention.

DELEGATE OMDAHL: Mr. President, I would like to move my amendments to Proposal 1-89, if they may be read from the desk.

PRESIDENT WENSTROM: Those amendments now are in line with the engrossed bill.

CHIEF CLERK GILBREATH: Proposed amendments to the engrossed Proposal 1-89:

Delete everything after line 9 of the engrossed Proposal 1-89 and insert in lieu thereof the following:

“Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner and the interests of the general public and without just compensation having first been made to the owner for all damages.

“The legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service by depositing estimated just compensation into court for the owner. The legislative assembly shall provide the procedure and time limit for determination of damages, necessity, and public use in such cases.”

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President and Delegates:

What we — if you who were following along on —

PRESIDENT WENSTROM: Delegate Omdahl — excuse me. May we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

Now you may proceed.

DELEGATE OMDAHL: This proposed amendment follows quite closely to Delegate Thompson’s proposal that we had just a few minutes ago, and what it does is it leaves the first paragraph intact and Delegate Pearce will have to worry about property himself, if he wants to take it out of there. And then, in the second paragraph, we follow the same language until we get to “transportation, communication, and transmission of power for public service.” And then, to make it clear that you have a quick take, we put “by depositing estimated just compensation into court for the owner.”

Now, that would apply only to the taking of property for highway purposes, for transportation, communication, and so forth. Then we start a new sentence, saying the Legislative Assembly shall provide the procedure, and so forth, in such cases. So it seems to me that this language might give the Legislative the kind of jurisdiction we want it to have in quick-take situations.

PRESIDENT WENSTROM: May the Chair ask Delegate Omdahl a question?

DELEGATE OMDAHL: The Chair may.

PRESIDENT WENSTROM: Delegate Omdahl, in reading that last paragraph, you said, “The legislative assembly shall”. My copy says “The legislative assembly may”.

DELEGATE OMDAHL: Oh! Excuse me. In the second sentence, though, it says, “The legislative assembly shall provide”.

PRESIDENT WENSTROM: That’s fine. Any further questions? Delegate Pearce.

DELEGATE PEARCE: The only comment I can make: It will take a lot more money trying to find out what this means in the Supreme Court than I will serving as a delegate to this Constitutional Convention, and then some years later, when the Supreme Court has decided what it means, people will be complaining that the court made the law.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: In the event that this winds up like all the rest of the conversations on this subject, I’d like the delegates to know that there is another amendment ready at the desk that would retain the language of the present Section 14.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move an amendment to the amendment.

On the fourth line from the bottom, after the words "just compensation" add the words "for all damages".

PRESIDENT WENSTROM: Delegate Longmire has moved an amendment to the amendment.

DELEGATE O'TOOLE: Second.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: While you're getting the language in, I just would like to say that I am in concert with the amendment.

PRESIDENT WENSTROM: The Clerk will read the amendment to the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment is as follows:

In the second paragraph of the amendment, after the words "just compensation" add the following: "for all damages".

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Just one moment here. The motion was seconded — or the amendment was seconded by Delegate O'Toole.

Delegate Baker:

DELEGATE BAKER: I'd like to ask Delegate Longmire a question.

PRESIDENT WENSTROM: Does Delegate Longmire yield?

DELEGATE LONGMIRE: Reluctantly.

DELEGATE BAKER: I'm wondering if, in thinking of the example you gave the other day of a mission which was having so much trouble finding a new place to build, if this would mean then — this amendment then would mean that the new place to move — the cost in connection with the moving and any other cost than might be justly compensable would have to be determined before there could be any taking. Would that be the effect?

DELEGATE LONGMIRE: I would think that could be estimated, just as well as the market value of the property, which is the main damage, of course. So I would see no problem. It would be an estimate, and I think at that time, when a property owner has to get out in a hurry and go somewhere else, if they're going to kick them out in a short period of time, they ought to pay something in there to enable them to get away and move somewhere else or buy something else when they do take it. I don't contemplate that that would be too big a problem, because all of it would be an estimate, in any event.

PRESIDENT WENSTROM: Any further questions?

The question before the Convention is on the amendment to the amendment as offered by Delegate Longmire.

Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, I think this is a fairly-good amendment, and I see no reason why all damages should not be estimated and deposited. Likewise, the rest of the amendment seems to be in fine order.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment to the amendment.

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "no."

The "ayes" have it. The amendment is adopted.

We are now on the amendment as offered by Delegate Omdahl, as amended. Delegate Omdahl.

DELEGATE OMDAHL: Mr. President, one of our stylistic delegates has suggested something that might be worthwhile, and I'd like to amend the amendment myself to insert the word "However" at the beginning of the second paragraph, and making the capital "The" a small "the". "However, the legislative assembly may provide".

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Sinner.
Would you read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment is as follows:

In the second paragraph of the amendment, first line, delete the capitalized word "The" and insert in lieu thereof the words "However, the".

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President. Could you explain what that does or who your stylistic authority is? It sounds wrong to me.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: By inserting the word "However" we make it more clear that the second paragraph is an exception to the general rule established in the first paragraph, and my stylistic authority has worked on our committee with us for about five months, and he's very tough, and his name is Richard Dobson.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment to the amendment as offered by Delegate Omdahl.

Those in favor will vote "aye," those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "no."

The "ayes" have it. The amendment is adopted.

Again, the amendment as offered by Delegate Omdahl to Committee Proposal 1-89 as amended is before the Convention.

Delegate Pearce.

DELEGATE PEARCE: Mr. President. I would like everybody to take a close look at the first paragraph, and by leaving out one phrase, it reads like this: "Property shall not be taken or damaged for necessary public use without protecting the interests of the general public." Now, if it's a necessary public use, you are obviously protecting the interests of the public, aren't you? So I don't see what the sentence means by putting it in. Now, if you're going to take it, you can only take it for a necessary public use. That's the whole point, and that's what you say here. "Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner." Now the rest of the thing is you are protecting it by providing, as we have it amended, that we pay all damages. How else can you protect him? If you're going to take it, there's only one other way to protect him, and that's by not taking it. But we're only talking about the necessary public use in the first place.

Now, if I were to try to draft an amendment, which I haven't done, I would say something like this: "Private property shall not be taken or damaged for necessary public use without protecting the property owner by paying him just compensation for all damages."

If I thought that had a ghost of a chance, and I haven't had time to prepare it, I would do so.

PRESIDENT WENSTROM: Are there further amendments to Committee Proposal No. 1-89?

The question before the Convention is on the adoption of the amendments as amended and offered by Delegate Omdahl.

Those in favor of adopting will vote "aye;" and those opposed will vote "nay."

As many as are in favor of adopting the amendments will say "aye;" those opposed "no."

I'm afraid the amendments lost.

DELEGATE DOBSON: Division.

PRESIDENT WENSTROM: A division has been requested. A division will be granted. Again, those in favor will vote "yes" — or "aye" and those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates there were 58 "ayes," there were 37 "nays," three delegates absent and not voting. The amendments to Committee Proposal No. 1-89 have been adopted.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: As I said once before, this is a constitution we're writing and not the church by-laws, and I think, if there's some doubt as to language in the first paragraph, that maybe Delegate Pearce might come up with some language that might be very good for that tomorrow, being that we fixed the second paragraph today.

PRESIDENT WENSTROM: Without any further consideration, this proposal will be on the tenth order of business tomorrow.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE HOFFNER: We've seen a lot of shuffling this afternoon, and I'm going to attempt some more. 1-44 is up next on the calendar, and I do really believe that 1-44 should come immediately after 1-29, and I so move; and I'll explain, if I get a second.

DELEGATE DOBSON: Second.

PRESIDENT WENSTROM: Delegate Hoffner, you wish to move 1-44 —

DELEGATE HOFFNER: Be placed immediately below 1-29 on the calendar for tomorrow.

PRESIDENT WENSTROM: It's been moved and seconded that Committee Proposal No. 1-44 be placed immediately below Committee Proposal No. 1-29.

Now, Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. 1-44 deals in numbering the seats, and you remember we had quite a bit of controversy over that, and I think, if we dispose of 1-29, which is reapportionment, I think we can more easily deal with 1-44.

PRESIDENT WENSTROM: I doubt that I had you vote on Delegate Hoffner's motion to place this below. Anyway, we'll vote again.

As many as are in favor of placing 1-44 below 1-29, will vote "aye," opposed "no." The "ayes" have it and it is placed below 1-29.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, may we be on the eighth order for a moment?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE MEIDINGER: Would the members of the Education, Public Resources and Public Lands Committee please assemble in G-1 at 8:45 tomorrow morning for the purpose of having your pictures taken?

PRESIDENT WENSTROM: We'll be on the eighth order of business — continue on the eighth order of business for announcements.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The Public Information Committee met and agreed to hold its full-scale session for post-convention planning on Thursday morning at a time and place to be designated, which is just an advance warning for the hope that all of you can stay over, just in case we finish tomorrow night.

PRESIDENT WENSTROM: Any further announcements? The desk has an announcement.

CHIEF CLERK GILBREATH: The photographer will be in the room until 6:30 tonight and will be there at 8:00 A.M. tomorrow.

A reminder that the second Scribes and Scriveners party is being held tonight at the Municipal Country Club, which is the same location as before. The party is

scheduled to start at 7:00 P.M., or as soon after adjournment as possible. Dancing will commence at 8:30, and the buffet table will be out at 10:00, and the public can be admitted at the door.

PRESIDENT WENSTROM: Further announcements at the desk? Are there further announcements from Committee Chairmen?

The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: I move that the absent members be excused.

PRESIDENT WENSTROM: It's been moved that the absent delegates be excused. Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. The absent members are excused — I mean the absent delegates are excused.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: No further announcements from the desk? The desk is clear.

I now move that we stand adjourned until 9:00 A.M., February 2nd.

PRESIDENT WENSTROM: It's been moved that we do now adjourn until 9:00 A.M. on February 2. Do I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten. As many as are in favor of the motion say "aye," opposed "no." The "ayes" have it. We will be adjourned until tomorrow morning at 9:00.

(The Plenary Session adjourned at 6:41 P.M., Tuesday, February 1, 1972, until 9:00 A.M., Wednesday, February 2, 1972.)

VOLUME XXIII

(February 2, 1972)

MORNING SESSION

(The twenty-third day of the Plenary Session commenced at 9:06 A.M., Wednesday, February 2, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain for this morning is The Reverend Arnold Spain, Pastor, the Church of St. Anne, Bismarck.

REV. ARNOLD SPAIN: Father, it is a great age to be alive! We've reached deep into the heart of the earth and solved many of her problems.

We're thrusting our creativity right into the mysteries of outer space.

The world — the whole world — is moving ahead, with wonder, sensitivity and power.

Thank you for making man such a marvel.

Teach us to live together in respect and love for each other, and to put our power and skill at the service of men everywhere. Amen.

PRESIDENT WENSTROM: We will be on the third order — roll call. The Clerk will open the key. You will record your presence.

Has every delegate recorded his presence? The key is closed.

DELEGATE DAWSON: Mr. President. Mr. President, I don't believe your light was lit. Did you intend to make yourself present? (Laughter)

PRESIDENT WENSTROM: Do I vote "aye" or do I just say that I'm here? (Laughter)

Roll call discloses 95 present, three absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 31st day of January, 1972, and recommends that the same be corrected as follows:

On page 358, in line 16, following the word "proposal" delete the balance of the line, and insert in lieu thereof the word "lost".

And delete lines 17 and 18.

On page 360, following line 6, add the following: "The motion prevailed."

And when so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Paulson moved the same be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report of the Committee on Revision and Correction. Is there any discussion? Hearing none, all in favor say "aye;" opposed "no." The "ayes" have it. The Report of the Committee is adopted.

We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Delegate Sanstead has the ninth grade of Jim Hill Junior High of Minot, North Dakota, and their teachers, Mr. Johnston and Mr. Anderson, in the gallery.

PRESIDENT WENSTROM: Will the students from Minot visiting with us this morning — will you please rise and be recognized by the Convention?

We want to welcome you to this morning's session. We hope you'll enjoy it. We hope that this will only tend to increase your interest in government and that you, too, will be privileged to serve in this same beautiful assembly room at sometime in the future.

We'll be on the tenth order of business.

First for consideration, Committee Proposal No. 1-99 — 1-99.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-99, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that article 33 of the amendments to the constitution of the state of North Dakota be repealed; and that new section 8 of Article XVI of the constitution of the state of North Dakota be created, both of which pertain to the recall of certain elected officials.

"SECTION 1. REPEAL.) Article 33 of the amendments to the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section 8 of Article XVI of the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XVI

"Section 8. Recall. Any elected non-judicial officer of this state, or of any county or any legislative or commissioner district shall be subject to recall upon petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county or district in which such officer is to be recalled.

"The petition shall be filed with the officer with whom a petition for nomination to the office in question is filed, which officer shall call a special election if he finds the petition numerically sufficient. No elector may remove his name from a recall petition.

"The name of the officer to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for such office may be nominated in a manner provided by law. The candidate receiving the highest number of votes shall be deemed elected for the remainder of the term once the election results have been officially declared. No officer shall be subject twice to recall during the term for which he was elected."

PRESIDENT WENSTROM: Is there any discussion? The question, Committee Proposal 1-99.

DELEGATE BERG: Mr. President.

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: Mr. Chairman. This section from the Legislative Functions Committee has been assigned to me, and this is the last section of the powers reserved to the people. If you will note, we repealed Article 33 of the amendments to our old Constitution, and we created Section 8 of Article XVI as follows:

You will notice the similarity between the sections — between the section and Article 33 are apparent, but we make no reference to congressional offices and we have removed the judicial officers from recall. We have also lowered the required amount of signatures on petition from 30 percent to 25 percent of the votes cast for the governor in the last preceding election of the State, county or district in which such officer is to be recalled. The balance of the section is self-explanatory and about the same as in the present document. But in our Committee, about the only two things that we debated were the amount of signatures required for the petition, which was 30 percent, and we felt that 30 percent was a little high. We dropped it to 25 percent. And the sticky one was the judicial portion of it.

As it now reads, "non-judicial." The majority group in our Committee felt that the judicial offices should be handled the same as any other elected office — officer of the district or county in which the petition is to be filed. At one meeting, we had the word "non" in it, and the next meeting we would take the word "non" out of it, and apparently, when it got here in our Plenary Session, it got back in again. But there is an amendment before the desk.

But before I go to the amendment, I would say, too, that there was some discussion in our Committee about possibly deleting the entire recall section. But until we get to that, I'll have the Clerk read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-99:

On page 1, line 13, delete the letters "n-o-n" and renumber the lines accordingly.

PRESIDENT WENSTROM: Do I have a second to the amendment?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

DELEGATE BERG: Mr. President. Fellow Delegates:

As I mentioned, we didn't see any reason why this should be deleted from the recall section. I'm sure that all of our judges that are elected aren't perfect, like any other elective officer, and we're bound to get an oddball in any office, and one should be treated as equally as the other. We do know of counties that have judges that should be recalled or could be recalled; but if we leave the word "non" in this, of course they're on their own and we can't touch them. But I, myself, have been an elective officer for 32 years and subject to recall, and I don't see any reason why a judge shouldn't be in the same category as I am or anybody else. So, therefore, like I said before, the rest of the section reads pretty much alike. If an officer is recalled, of course if he gets 25 percent of the signatures on the petition — of the people that voted for governor in the last election — his name can be put on the ballot, regardless, plus the nominee to run against him; so he does have an equal chance to win his spot back if the recall does not go through. He cannot be recalled a second time at any time while he's been in office.

PRESIDENT WENSTROM: Any further discussion?

Delegate Daniels.

DELEGATE DANIELS: Mr. Chairman. As I read this, with taking "n-o-n" off, it just says "Any elected judicial officer". Doesn't this sort of limit it to the judicial then?

PRESIDENT WENSTROM: Delegate Berg, will you yield to a question?

DELEGATE BERG: I'll yield. What is the question?

DELEGATE DANIELS: Well, when you eliminate this "n-o-n" — "non" — don't you just limit this recall to judicial officers then?

DELEGATE BERG: It wasn't meant that way. It was meant that all elected officers were to be subject to recall. We probably — oh, the amendment may be — an error has been made. Maybe the term "non-judicial" should have been there, and I think I would make that as an amendment now, if I may, Mr. President. Instead of "non", I would amend the "non" to "non-judicial." "All elected officers" — and then add "s" on the word "officer" — make that "s" to clarify it.

CHIEF CLERK GILBREATH: Then, on line —

DELEGATE BERG: On line 13.

CHIEF CLERK GILBREATH: Delete the word "non-judicial" and then add —

DELEGATE BERG: "s". Would that be right? Well, leave off the "s" then. That would be right. I move for this amendment.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-99 will read:

On page 1, line 13, delete the word "non-judicial".

PRESIDENT WENSTROM: Now, Delegate Stanton, do you yield to this change in the amendment?

DELEGATE STANTON: Yes.

PRESIDENT WENSTROM: The question before the Convention now is the amendment to Committee Proposal 1-99. The Chair will recognize Delegate Kwako.

DELEGATE KWAKO: Thank you, Mr. President.

I, too, would like to second this amendment that Delegate Berg has proposed this morning, and to not belabor the Assembly, I do not want to go any further.

Thank you.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President. Fellow Delegates:

The recall is a political weapon to be used against elected officials. We have already provided for means of removing office holders for incompetence, continuing disability, and the other causes that could exist for removal. Recall is a political ballgame in which you don't need any reasons; all you do is go out and get enough signatures and you can recall him just because he might have the wrong nationality or he might have long hair.

I'm opposed to recall generally, and I have an amendment at the desk later on to deal with this. But, if we are going to have recall, it seems to me that we ought to have enough respect for the courts that we don't subject judges to political threats through the recall process. I don't think that judges should be placed in situations where they feel they should compromise their primary devotion to the law and the Constitution. I think they should be able to make decisions that may be unpopular, and I don't believe that we ought to subject our judges to the political actions of recall. Therefore, I hope the Convention votes down the amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate Pearce.

DELEGATE PEARCE: I would like to strongly support the statement of Delegate Omdahl. A judge, elected on a non-party basis, is defenseless in a recall situation. It's difficult enough to campaign for judge as it is. I think that there are plenty of remedies to remove a judge who is incompetent. I can easily conceive of some large class action of some kind in which the judge makes a decision which is unpopular with a group who can initiate a recall, and in his defenseless position he might well be recalled, and I had thought, frankly, that in our Committee we still had "non-judicial" in there. I don't know how it was gotten out; but I would support the amendment.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE PIERCE: Excuse me. I want "non-judicial" in there. I do not support the amendment.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: This particular proposal — the subject of recall — is another one of the areas that the Legislative Functions Committee was divided on, and the confusion that reigns there in this amendment and whether or not we should vote for it or not, I think adds to the reason that, at the beginning, this Committee felt that the people should have recourse in the action of recall to do just that — certain elected officials. But then we started to find ways of rewording it. It was not really workable the way it was. It had been used little or not at all in the last 83 years and was not workable; so we tried to rework it, rewrite it, so it would be plain and simple. All we accomplished, really, was reducing the number of signatures —

PRESIDENT WENSTROM: Delegate McIntyre, I believe you're off the amendment. The question before the Convention right now is on the amendment. I believe you're talking on the main Proposal, aren't you?

DELEGATE McINTYRE: Perhaps I am, Mr. President.

PRESIDENT WENSTROM: I believe you are.

DELEGATE McINTYRE: Excuse me.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Berg.

DELEGATE McINTYRE: All right, sir. In that case, I would like to vote down the amendment.

PRESIDENT WENSTROM: Any further discussion?

Delegate Burke.

DELEGATE BURKE: Mr. President. Fellow Delegates:

I would like to direct a question to the Committee. It would have some relevance to the amendment; particularly why the language "officer" is used throughout, rather than "official".

PRESIDENT WENSTROM: Delegate Burke, I believe that, too, is off the amendment.

The question is on — before the Convention at the moment is the adopting of the amendment as offered by Delegate Berg; that is to strike the word — after "any elected" strike the word "non-judicial". I believe that's right, isn't it? So is there any further discussion on this amendment? Delegate Kelsch.

DELEGATE KELSCH: I would also like to urge the delegates to defeat the amendment. At first in the Committee, I felt if you elect someone, we ought to be able to recall him; but I do think there's a distinction in the case of judges.

A fairly-reasonable case can be made for not electing judges. We do not elect our U. S. Supreme Court judges, and I'm sure you would all agree that, on some of their decisions, you could have quite a recall movement, and I do think that the judicial branch should be free from the political arena, and I would hope that you would all reject the amendment and exempt the judiciary from recall.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I think this is one proposal where all of the attorneys and everybody else can agree on. We think we have very adequate remedies in the judicial article for removing judges, and it is also, of course, in the impeachment section and in another section of the Constitution. I agree with the other delegates who have strongly opposed or who do strongly oppose this amendment by including judges in the recall system.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Berg. Delegate Cart.

DELEGATE CART: Mr. President. When the article was adopted in 1919 to have the recall, the judicial officers were included, the same as all other elected officers, and in that long period of time, there has never been a — to the best of my knowledge, any attempt to recall any judicial officer, which speaks well for the conduct of our judicial system. However, I doubt the wisdom of taking it out. The recall has been seldom used against any other officer. We had one real barn-burner of a campaign in 1921, when former Governor Frazier was recalled upon the allegation of a lot of misconduct in office, and so forth. But when the books were opened and a new governor was elected, they couldn't find anything, and the next year, 1922, we elected him to the United States Senate and kept him there until 1940. And so I can't hardly see the wisdom of striking this out and leaving elected judicial officers immune to this recourse, if it ever becomes necessary.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Berg.

Those in favor —

DELEGATE BERG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Berg?

DELEGATE BERG: Yes, please.

PRESIDENT WENSTROM: Delegate Berg.

DELEGATE BERG: We took this recall section right out of Article 33, and it was mentioned to me just a minute ago about the "officer" instead of official. But our original Article 33 does use the word "officer." So it goes pretty much like it had been approved before in our old Constitution.

I'd like to mention this, too: That in our Committee there was discussion, like I said, about leaving the entire section out —

PRESIDENT WENSTROM: Now, Mr. Berg — Delegate Berg, I believe you're off the amendment.

DELEGATE BERG: All right. I'll sit down.

PRESIDENT WENSTROM: We're having a lot of trouble here this morning keeping on the subject before the Convention.

Delegate Vogel.

DELEGATE VOGEL: Mr. Chairman, it seems to me that what Mr. Cart just said emphasizes the political nature of the recall. It has been used mainly only once in North Dakota's history, and that was for political recall of a man who then was turned around and reelected, and the judges should not be subject to this kind of political pressure. We need an independent judiciary, not subject to the type of political pressure which the recall brought upon Governor Frazier in 1920, and then turned around and elected him. Judges should not be subject to this, it seems to me; and, consequently, I urge the defeat of this amendment.

PRESIDENT WENSTROM: The question is on the adoption of the amendment as offered by Delegate Berg.

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "no."

The "nays" have it and the amendment lost.

We're back on the Committee Proposal 1-99.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think the desk has an amendment for 1-99. I would move that at this time.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: Will you read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-99:

On page 2 — on line 2 of page 1, delete the semicolon and insert a comma, and delete the remainder of the line.

Delete all of lines 3 and 4 and insert in lieu thereof the words "which pertains to the recall of certain".

Delete all of lines 19 through 25.

On page 2, delete all of lines 1 through 6.

PRESIDENT WENSTROM: The amendment has been seconded by Delegate Sinner.

Delegate Omdahl.

DELEGATE OMDAHL: Mr. President. At our last meeting before this Proposal was introduced, the Committee voted on the question of recall and, if I remember correctly, by a narrow margin a majority felt that recall ought to be deleted from the Constitution; however, we felt it a responsibility on the Committee to bring recall back to the body and then bring the question before you. My amendment proposes to delete any reference to recall in the Constitution. My reasons are that it is — it is political, and you conduct recall for political reasons. We have plenty of other provisions in the Constitution to impeach executive and judicial officers and to remove them for other causes; and so recall is only a political vehicle, and it seems to me that maybe our political system has matured to the point in the 1970's and 1980's so that we can confine our political activities to the election years; and if we elect someone who is corrupt or fails in other legal ways to fulfill the obligations of the office, that we use the other means for removal. And so I — I urge the support of this amendment. I don't think that recall is necessary

I might add that most states don't have recall, and yet I've never heard of any of the states having to dissolve their government and revert to territorial status.

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: Mr. President. Recall is an idea which came along in the first two decades of this century as part of the progressive movement. About 'twenty states have it, I believe, and most of those that do have it put it in their constitutions early in this century. In a way, and to borrow a phrase, it is now an idea whose time has gone. It's been used in North Dakota mostly as a political instrument. The first attempt at a recall after this was put in the Constitution was directed at an Emmons County Commissioner. However, the Supreme Court said present Article 33 does not provide for recall of county commissioners; so that petition was void. But we are now allowing the recall of county commissioners.

Second, as has been mentioned, the recall against Governor Frazier, Attorney General Lemke and Agricultural Commissioner Hagen — they were all recalled. Governor Frazier was elected to the U. S. Senate the next year; William Lemke was elected to Congress ten years later and Commissioner Hagen, in 1963, was elected to the very office from which he had been recalled.

Then, in 1932, we had a couple more recalls. State Senator Fred Aandahl was recalled. He was elected Governor later and State Senator E. W. Jones was recalled; a couple years later, his opponent apologized to him for the whole thing.

Now, getting to the amendment: There is more justification for having recall in a constitution now than there was fifty years ago, because at that time just about everybody had a two-year term. We're going to longer terms now — four years and six years; so that is a justification, I think, for having recall in the Constitution. Also, although I'm not particularly excited about the concept of recall, I favor retaining it. I think the people want it in there. So I oppose the amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate McIntyre.

DELEGATE McINTYRE: I think we should remember the reasons and the arguments that we gave for voting down the previous amendment with the word "judicial officials" in there, because I think this situation pertains to all of our elected officials. There's plenty of recourse to the people of this State to take care of the wrong type of an official that's in office, for any number of reasons, and I hope that you would support the amendment for repeal of the recall. It is inoperative. It gives — it does not take away the people's right to deal with the type of an official that should not be in office. There's plenty of recourse in our present system for impeachment in other areas to take care of this. I urge you to defeat the amendment.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. I disagree with the speakers who say we do not need recall. Perhaps it hasn't been used very often, but we are giving all the officials longer terms. We have given most of them — and we may give the legislators longer terms, and I'd like to know what other recourse there is. They're all talking about "recourse." You haven't any recourse for four years, unless you have a real fraud, or something. What if it is a political election? So is an election. We aren't cutting them out.

PRESIDENT WENSTROM: Delegate Berg, did you have any further comment? I shut you off a little bit ago, and I'm sorry for that. But we're back on the main — on this motion now.

DELEGATE BERG: Thank you, Mr. President.

Well, in our Committee, the majority, at our last vote on it, was twelve to retain it, four opposed, and four were absent. So that was a pretty good indication from the studies that we have made on recall that we should still give these people the power of a recall section, and by deleting it, we're going to take this additional power away from our people.

PRESIDENT WENSTROM: Any further discussion? Delegate Sinner.

DELEGATE SINNER: Mr. President, as has been already explained, the use of recall in the times it's been used has been sheer political tomfoolery almost, where people, for political reasons, have tried to be an irritant to a man who was elected. And in the cases that have been mentioned, the people actually went on to greater things and proved themselves to be outstanding public servants.

The reason that I think we should get this out of the Constitution is that if some political hack wants to irritate and embarrass an elected official, all he has to do is start a recall proceeding and any manner of gossip or slander can be used to get signatures, and it's no wonder that people get tired and lose faith in their governmental process, when you have this kind of opportunity for political hacks to embarrass elected persons.

I suppose that I, as a Democrat, should want to keep this, so I could irritate the majority party in the Legislature. But I think that's exactly the point. We need to elect people and then let them serve and not have this sort of garbage, which is what I think it is, in the Constitution.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President. Since we are all reversing our judicial positions this morning, and since Delegate Omdahl — despite the fact that Delegate Omdahl says that recall might be used against people whose hair is too long, I urge you to defeat the amendment. (Laughter)

PRESIDENT WENSTROM: The question before the — Delegate Peters.

DELEGATE PETERS: Mr. President. Fellow Delegates:

I think the use of recall is another right that the people should have. Taking it out of the Constitution is just another way of taking rights away from the people. The fact that it has been used very little is proof that it has been serving the purpose. It's probably kept some of our officials in line, and it probably has served the people a little better, because the recall is there to remove them if they don't serve as they should.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Mr. President. I favor retaining the recall, too. I don't think this is just a tool of political hacks. Remember, you have to go out and get 25 percent of the signatures, and I doubt very much that they are all political hacks.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Omdahl.

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed will say "nay."

The "nays" have it and the amendment lost.

We are back on Committee Proposal 1-99. The question.

The question before the Convention is on the first passage of Committee Proposal 1-99. No further discussion?

Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote. Has every delegate voted?

CHIEF CLERK GILBREATH: Binek votes "aye."

DELEGATE BILLEY: Billey votes "aye."

PRESIDENT WENSTROM: Do we have people in the balcony? Do we have —

DELEGATE AAS: "Aye."

CHIEF CLERK GILBREATH: Rosendahl?

DELEGATE ROSENDAHL: "Aye."

CHIEF CLERK GILBREATH: Binek?

PRESIDENT WENSTROM: He voted "aye."

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 75 "ayes;" 19 "nays," four delegates absent and not voting.

Committee Proposal No. 1-99 has passed.

Next for consideration —

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: At this time I move that Committee Proposal No. 1-100 be moved to the head of the calendar.

PRESIDENT WENSTROM: Delegate Hernet moves that Committee Proposal 1-100 be moved to the head of the calendar, and we have a second from Delegate Hendrickson.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

Next for consideration is Committee Proposal No. 1-100.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: What we have under consideration here is only Section (b) —

PRESIDENT WENSTROM: Delegate Vogel, we'll read this section, first.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-100, introduced by Committee on Executive Functions:

"Be it resolved by the North Dakota Constitutional Convention that two new sections to the constitution of the state of North Dakota, both of which pertain to the executive branch of government, be created.

"SECTION 1.) Two new sections to the constitution of the state of North Dakota are hereby created to read as follows:

"Section 1. Executive Organization.

"(a) The legislative assembly shall allocate the executive powers among not more than fifteen principal state departments which shall be organized along broad functional lines. The head of each department shall be a single executive unless otherwise provided by this constitution or by statute. The legislative assembly shall prescribe the duties for each executive department and shall also provide for the periodic reorganization of such department.

"(b) The governor may, for more effective administration, make changes in the allocation of functions, powers, and duties among and within the executive departments, other than those departments headed by constitutionally elective officers. When these changes affect existing laws, the changes shall be set forth in executive orders and submitted on the same day to both houses of the legislative assembly. The legislative assembly shall have thirty session days in which to disapprove the orders. If they are not disapproved by a majority of the elected members of either house, they shall have the force of law when filed with the secretary of state unless a later date is provided in the order.

"Section 2. State Planning Council.

"The chief executive officers of the principal state departments shall constitute the state planning council. The governor shall be chairman of the council and the lieutenant governor shall be the vice chairman. The council shall prepare a comprehensive state plan based on the comprehensive plan for each department."

PRESIDENT WENSTROM: Now, Delegate Vogel.

DELEGATE VOGEL: Mr. Chairman, this Proposal came back to Committee largely to straighten out the language concerning the length of time that the Legislature would have to act in Section (b). At the time this Proposal was drafted, we had no way of knowing when the Legislature would be in session, so a problem arose there. This Section (b) provides for the continuing reorganization within the executive area to keep the structure of government — of the executive department up to date after it has been reorganized by the Legislature, which has the primary responsibility for doing this reorganization.

This section then would allow the governor, within a very narrow area that is for more effective administration, to make changes in the allocation of functions, powers and duties among and within the executive departments, except for those departments which are headed by constitutionally-elected officers. These proposals of the governor would go into effect, if they were not disapproved by one or the other house of the Legislature. The Legislature is given thirty — both of the proposals must be submitted to the Legislature while it is in session. The governor could not make these rearrangements when the governor — when the Legislature is not in session, and the Legislature would have thirty session days in which to act on the governor's proposal. If one or the other house does not disapprove of the governor's rearrangement within and among the various executive departments, his proposal would then go into effect and have the force of law when filed with the Secretary of State, unless some other date is contained within the proposals themselves.

We hope that we have straightened out the language so that this idea, which is a new one to North Dakota, which was recommended as far back as the LRC Commission of 1963. If there are any questions, I'd be glad to answer them. I urge its adoption.

PRESIDENT WENSTROM: Any further discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President.

With all due respect to the semanticist who rearranged the language, I have the same objection that I had before; that we are permitting, by this language, a governor to change the law and we are evolving a new way of enacting law, not requiring the approval of the Legislature, but simply if they fail to disapprove it.

In the printed Proposal, it says, "If this executive order contravenes law" — meaning if it violated law — this has been changed to say "when these changes affect existing laws." That's even vaguer, but it gets away from contravention, of course. You have given the Legislature a little longer time to act negatively. You still have, then, an executive order which, in my opinion, would affect or change or contravene or violate some existing statute passed by the Legislature to go into effect and have the force of law simply because the Legislature hasn't mustered enough energy to disapprove it. I have no idea what these orders might be. They might be very fine. They might be excellent. But they could be bad, too. But I simply don't think that's a proper way to enact a law. We have the Legislature for that purpose. That's why I oppose it.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I agree with the remarks of Delegate Pearce in that the rearrangement of the language and the varying of the words "executive order" down to the bottom, instead of the first line, don't change this proposition a bit, and I renew my previous plea to this body to approach this in the proper fashion. If you want to have an executive order, provide for the executive order in the governor's powers and provide that the Legislature shall write the rules for the exercise of that executive order. In that way, it could be used properly. In this way, it is simply a further complication that can do nothing but — can make nothing but trouble.

PRESIDENT WENSTROM: Any further discussion? Delegate Hill.

DELEGATE HILL: Mr. President.

I urge the adoption of the Committee Proposal on this. It is not an unknown and untried method that has been suggested, and I think all of you who received the Executive Chart of State Government have some idea of what kind of shape the state government is in today. There are some other measures we have adopted which will help straighten that out, and this simply is another one. Congress has adopted a provision like this. I believe it was at least some 20 years ago. And they allow the President to reorganize the agencies in the executive branch, and a number of states have done so recently. It's currently under consideration in Montana and in South Dakota, and it's simply a very limited way of allowing the governor to make law regarding the reorganization of the offices within the executive branch, and I can see nothing harmful about it. It cannot go into effect until the Legislature has had a chance to consider it. If either house of the Legislature thinks it's a bad move, they simply have to pass a resolution vetoing it, so to speak, and I think, as a practical matter, if you will consider all the political considerations that go into getting a reorganization bill through the Legislature, you simply knock your head against the wall trying to get it passed; but there are a lot of representatives who would allow the governor to reorganize the executive branch of the government in some small way, but they simply cannot affirmatively vote for it on the floor because it's bad political business, so to speak. This is simply a way of allowing good changes in executive structure to take place and make them take place. I think we've suffered in the past from lack of reorganization. I don't think there's any harm in allowing the governor to make these changes in the departments when they're agreeable to the department heads and agreeable to the Legislature. It simply allows the governor one extra chance and it doesn't allow him to make these changes without consideration by the Legislature. I hope you would support the Proposal.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President. Fellow Delegates, I do share Delegate Pearce's thoughts to a small degree in this particular situation. I'm wondering if one of the Committee members could answer a question.

Did they consider including the word "disapprove" as well — or "approve" as well as "disapprove" in their new wording; and if they did, what reason did they have then for not including the word "approve"?

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Yes, we had — that was mentioned on the floor the other day when this was under consideration. But if we're going to require approval by both houses of the Legislature, why in the world do we need the section in the first place? This is the process we go through when we pass a law. The governor has always had the opportunity to have someone submit a bill to the Legislature on reorganization, and there have been many of them, and they have been beaten down consistently. The minority party can always find a few other people to go with it — or the party in opposition to the governor can accuse the governor of having political motivations, and it suffers from sabotage within the departments, and they can find more ways to kill it. There are more ways to kill a bill in the Legislature on reorganization than any other known method of killing a bill; but if we're going to have the word "approval" in there, we might as well delete the section from the Constitution, because this is, in effect, requiring the affirmative action by the Legislature, and this is the same thing you do to pass a law.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President. Fellow Delegates:

I would like to ask two questions of members of the Committee. 1-100 provides for 15 principal state departments. 1-15, the Education Committee's Report, in effect sets up one of these departments. My first question, then, is: Are we to have 14 or 16? And my second question is: The governor may, by executive order, provide for reorganization of the executive departments other than constitutionally-elected officers. Does this mean that the governor may, by executive order, change the board set-up under 1-15?

PRESIDENT WENSTROM: Can someone answer Delegate Burke's question? Delegate Hill.

DELEGATE HILL: Mr. President.

With the type of changes that are under consideration here, the governor could not change any constitutional provision, of course, and the Legislature can't change it either, unless the Constitution gives them this permission. But insofar as the number of departments goes, the Education Department would be considered the principal state department as such. So 15 is the limit, regardless of the others established. I would think that's subject to some interpretation, I'm sure, or fact-finding by the Legislature as to what constitutes a "principal department."

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I was initially opposed to this section because it did offend my concept of how laws should be passed and separation of powers. But after attending one of the Committee hearings on the matter and concerning the matter, I think I think it's a novel approach, but I think it is one way of getting at the inertia of bureaucracy. It's extremely difficult for a legislature to deal with that problem. The chief executive is there, and even the chief executive in the past has been stymied in attempts to reorganize the various departments.

Now, the Legislature, in defining a department, can be very specific and outline the duties of that department and the function, and if it does this by law, then the governor can't change that, except to take the initiative, present a proposed change to the Legislature by executive order, and if either house rejects that — it will have to get through both houses without a rejection — only then will it become law. And I think that it's a new approach and I think that it will give the initiative — impetus immediately when the governor suggests a change, and it will take a positive action by the Legislature, through a rejection, to override it. It's much like a veto by either house of the Assembly.

PRESIDENT WENSTROM: Delegate Devine, did you wish the floor?

DELEGATE DEVINE: Mr. President, I was trying to get a question answered, and I think I have it, but I'll ask it.

As I understand the section that is now proposed, the change continuing into effect until after the Legislature meets, and is either silent or — yeah — and the Legislature is silent. Is that correct?

DELEGATE VOGEL: That's correct, Mr. Devine. This allows the governor to take the initiative in proposing changes in the Executive Department, which is primarily a function of the Executive. It allows him to propose the changes. At the present time there is no way in which the governor can propose changes to the Legislature, other than through the normal way of having bills introduced and going through the normal process. This would allow him to cut through some of this, and in a very narrow field, which is limited to the allocation of functions, powers and duties among and within the executive departments, he could propose changes which would go into effect only if they are not disapproved by one or the other house.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

Delegate Kelsch mentioned the veto powers by the Legislature. This brings up an interesting point.

Now the governor may veto the legislative acts. Now we're going to turn around and let the Legislature veto the governor's acts. And I think this is exactly like hitching a horse backwards on the buggy, which doesn't work very well, and the governor is elected under the laws and the Constitution. He may get a little frustrated someday because he can't kick out the Attorney General, whom he doesn't like; but you've been frustrated in this body, too — I assume most of us have — and I think that this is not only a novel, but not a very wise, approach. I oppose the measure.

PRESIDENT WENSTROM: Further discussion? Delegate Paulson.

DELEGATE PAULSON: Mr. President and Delegates:

I think, if we take a look at the concept of the bill in 1-100, I think that we'll find that Section (b) — or paragraph (b) is not really necessary. We have created a new form of government. No longer will the elective insurance commissioner be the one that prevents reform. If the appointed insurance commissioner is against any changes within his department, the governor can simply make sure that the appointed insurance commissioner is no longer appointed. And so you're dealing with a different type of government. You don't add anything to the legislative process. Either house can vote against the executive order and it fails. The same is true if it should have to pass a law to make the changes.

In the first section, we provided the Legislative Assembly shall prescribe the duties of these new departments, and I'm sure that, as we go through this thing and establish this new type of government, that the built-in bureaucracy that exists with your 14 elective offices vanishes. And so these executive office changes are for some date in the far-too-distant future, and not really necessary, and I wish Mrs. Vogel, or someone, would address themselves to that question.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I think that the Legislative Assembly is still given the duty of assigning the function and the power and the duties among and within this department, so that the governor, even with the consent of his appointed department heads, could not make those changes without the consent of the Legislature.

I might say, again, that this approach has been adopted by an increasing number of states. The last one was Illinois. Alaska was one of the early ones to do it. And several other states have done it one way or another in the last dozen years. Others have it under consideration, because the proliferation of agencies and committees and commissions has to be controlled in some fashion.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Further discussion? Delegate Omdahl.

DELEGATE OMDAHL: Having had a considerable amount of experience in the executive branch of government, I feel that I should comment to the extent of Delegate Paulson's remarks about the appointed officials. I can say from experience that appointed officials develop empires and bureaucracies that are as independent as the elective officials, and I think that, with this kind of authority, even though it's somewhat anemic, as proposed by the Committee — but even with this authority, the governor will have a greater opportunity to get these appointed officials working in closer coordination.

Many of you are probably aware of the introduction session after session of the proposal to consolidate the natural resources agencies of the State, and these are mostly appointed officials, and even though the governor supported such a proposal, by various and sundry means which we will not discuss on the floor, these appointed officials managed to get such proposals killed in the Legislature because they made the Legislature a playground. I think that even though this is somewhat weaker than we have on the national level and in the states that now provide for executive initiative and reorganization, that the proposal of the Committee is certainly a good one.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I yield to Delegate Burke.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President: Fellow Delegates:

On this one rare occasion I find my philosophy in harmony with Delegate Pearce's, and what bothers me about this repeal of a law by the governor, in effect, is we lawyers, who practice our profession pursuant to the Constitution and the laws of the State of North Dakota, and the red volumes you see over there which are the statutes, well, when the law is changed, we have annotations under that law which says that it was repealed by the Legislature or changed by the Legislature. And what bothers me — as a lawyer, am I to be able to go on the fact that under this law, when the governor, in fact, repeals it, it is repealed by executive order? That sort of bothers me as a practicing lawyer, and I would like to have someone on the Committee answer that question.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: As a practicing lawyer, I would like to speak to the issue. It doesn't particularly bother me at all, because, as you read line 2, you'll find that the only particular statutes involved would be the allocation of functions, powers and duties among and within the executive departments. That's the only statutes that are involved at all. And then you will note that, if it affects existing law, then it has to go to the Legislature for action. So I don't think it's anything that, as a practicing lawyer, we have to worry about at all. This involves the organization of executive departments; and other than those, of course, that are constitutionally provided — and I think the measure is — just what it merely boils down to is that you want to have a strong executive and give him the tools to work with. The Committee felt that we did.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Jim Hougen, please.

DELEGATE HOUGEN: Mr. President and Fellow Delegates:

I visited the Executive Functions Committee and I was opposed to this section being in 1-100. I felt that this was amply taken care of in the powers and duties of the executive, or the governor, underneath 1-27.

I want to say, though, that I have changed my mind. The governor still does have the opportunity and right under 1-27 to make suggestions to the State Legislature. But I do think this section will give the executive department one more opportunity to go along and make the changes that they feel are necessary, and you aren't going to contravene law this way, because the Legislature will have the opportunity and can say "no." I think it's a tool that could be well-used by the executive department, and I hope that the Convention will follow the wishes of the Committee.

PRESIDENT WENSTROM: Delegate Hill, did you wish to comment?

DELEGATE HILL: Yes, I wished to, in regard to Delegate Burke's question. And another change that we made in Committee the last time is to provide that it shall not be effective until filed with the Secretary of State, and this will allow the Secretary of State to annotate these changes in the Code, the same as they do other statutes now, and this is the way it's handled in the United States

Code Annotated. But these changes that are made by the governor, I, myself, was concerned about how would we find out what the changes are when we look at our Code? How would we rely on it? But now that they're filed by the Secretary of State, they would be handled the same as any other change by the Legislature. It is a method of changing the law and it is provided for in the Constitution, the same as provided for by the Legislature, and it would be so shown in the Code.

PRESIDENT WENSTROM: The Chair will recognize Delegate Simonson.

DELEGATE SIMONSON: Mr. President. I certainly urge the adoption of this proposal. To allay any fears, I would borrow from the Scriptures, as Omdahl is inclined to do, and from Luke, and say, "Nothing is covered up that will not be revealed, or hidden that will not be known."

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, I yield to Delegate Baker.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I don't think we can afford to take the time to go over this matter again. We're plowing the same ground again and again here, and in order to bring it to a head, I have submitted at the desk an amendment which, I think, is being typed now, and as soon as it's ready, I would like to propose that amendment, and then we can vote on it and get this out of the way.

PRESIDENT WENSTROM: Delegate Baker offers the following amendment:

CHIEF CLERK GILBREATH: Proposed amendments to Proposal 1-100:

On page 1 of the engrossed Proposal, delete lines 15 through 25, inclusive, and insert in lieu thereof the following:

"The governor shall have authority to reorganize executive departments by executive order under procedures prescribed by law."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE SAUGSTAD: Second.

PRESIDENT WENSTROM: Seconded by Delegate Saugstad.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: There's a very simple amendment. It would put into this Proposal another power of the governor, which, I presume, could be re-arranged, if it were adopted, by Style and Drafting elsewhere, and it would provide for the rules and regulations of the exercise of the power applying only to the reorganization of executive departments, those rules and regulations to be passed by the Legislature and signed by the governor, as all other laws are made. I hope that we won't take too much time to decide this. It seems a clear issue to me.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment as offered by Delegate Baker.

The question is on the adoption of the amendment as offered by Delegate Baker.

Those in favor will vote "aye;" those opposed will vote "nay." Those in favor of adopting the amendment will say "aye;" those opposed say "no."

The "noes" have it. The amendment lost.

DELEGATE BAKER: Division, Mr. President.

PRESIDENT WENSTROM: A division has been requested. That is a sufficient number. The division will be granted.

The question, again, is on the adoption of the amendment as offered by Delegate Baker.

Those in favor will vote "aye;" those opposed will vote "nay."

The key will be opened. You will record your vote. The Clerk will open the key.

Have the delegates recorded their preference?

DELEGATE FRITZELL: "No."

PRESIDENT WENSTROM: Delegate Fritzell votes "no."

DELEGATE POULSON: "No."

CHIEF CLERK GILBREATH: Would you push Poulson's button "no?"

PRESIDENT WENSTROM: Any delegate wish to change? The vote is closed. The vote indicates 33 "ayes," 61 "nays," four delegates absent and not voting. The amendment has failed.

The Chair will recognize Delegate Scheel.

DELEGATE SCHEEL: Mr. President.

I don't want you to think for a minute that we haven't thought this over in committee a lot. I counted them up, and this is our eighth revision which we have brought to you at this time.

Now, really, I think you can realize the division here. The governor is more interested in reorganizing the executive department than any one man. At least if he isn't, he should not be governor.

Now, the governor has to have each of his appointments to any office in the executive branch approved by the Senate. If they veto it, he doesn't get the appointment and they don't have to really specify the fact that the fellow is not competent, or anything else; if they don't like him, they can just veto him. Now, in this we tried to come up with something that would still keep the power in the governor, who is interested in this, and, at the same time, give the Legislature every opportunity to reject a proposal, if they didn't believe it was in the best interests of good government for the State of North Dakota. The consequence was we gave either house — not just the Senate — but either house the right to veto this. Now, this may be a new concept, but there certainly doesn't seem to be anything difficult or complicated about it. But one thing it does require is that they focus on the issue. They can't get tied down in other things for thirty days and let the law go by default. They have to focus on it and come up with the answer. Either it's good government and they can let it go through and approve it, or it isn't good government and they would have to reject it. But at least they have to focus on it.

Now, I think we've gone all around the horn. We've searched in other books and we've come up with one thing: For a good executive department, concerned reorganization and responsiveness and responsibility, this is almost the way it has to be. On the other hand, if our government's to be completely organized within the legislative branch, then of course you can expect that the executive branch will never live up to its full potential.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Yes. I would like to ask a question of one of the Committee, please.

This provision states that the governor can make changes in the allocation of functions, powers, et cetera, within the executive departments, except those which are headed by constitutionally-elected officers. We intend, hopefully, this afternoon or sometime, to accept the education article in the Constitution, which will be constitutional, but not headed by an elected officer. What is the interpretation of the Committee as to the powers of the governor in reallocating functions or powers of constitutionally-determined boards, not headed by an elective officer?

PRESIDENT WENSTROM: Will a delegate answer Delegate Lander's question? Delegate Hill.

DELEGATE HILL: Mr. President, we discussed this at some length in the Committee, and I think there are three ways that you could go: One, that the governor could try in all agencies; two, that in those agencies that are only directly responsible to him, where he makes the appointment; and, three, which we adopted, he can recommend those changes in departments other than constitutionally-elected

offices. This would mean that the governor, for example, if the Department of Education was handling the Food Stamp Program, the governor could draft an executive order which would be presented to the Legislature, transferring such functions to the Department of Agriculture; but he could make these recommendations concerning the Department of Education, since it is not a constitutionally-elective office.

PRESIDENT WENSTROM: The question before the Convention is on the adoption for first passage of Section (b) — Section (b) of Committee Proposal No. 1-100. You will recall that we have previously adopted the first section, Section (a), and Section (b) of this — or Section 2 of this has been previously adopted. So we are only at this time voting on Section (b).

And now, any further discussion? Hearing none, the question is on the passage of Section (b).

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote. Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

How did the delegate up there vote? You vote "aye"?

DELEGATE POULSON: "Aye."

DELEGATE GRIFFIN: "Aye."

PRESIDENT WENSTROM: The vote is closed. The roll call discloses 77 "ayes," 18 "nays," three delegates absent and not voting. Section (b) of Committee Proposal 1-100 has been passed.

DELEGATE THOMPSON: Mr. President.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I move for reconsideration of Proposal 1-57, and if I get a second, I'll explain why.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Delegate Peterson moves for a reconsideration of Committee Proposal No. — what was the number?

DELEGATE PETERSON: 1-57.

PRESIDENT WENSTROM: 1-57, which was passed yesterday. Did we have a second? Seconded by Delegate Gipp.

DELEGATE PETERSON: I have an amendment at the desk.

PRESIDENT WENSTROM: We have to get the measure back before the Convention, first. Would you explain why.

DELEGATE PETERSON: Yes. I want to have reconsideration because I feel that the word "sex" was removed improperly. I feel that Adam and Eve definitely belong in our Constitution, and I think that part was misconstrued — that particular word. It means men and women. And I would like very much to have it put back in.

PRESIDENT WENSTROM: The question before the Convention is on the motion of Delegate Peterson to reconsider our action whereby Committee Proposal No. 1-57 was passed yesterday.

Delegate Fritzell.

DELEGATE FRITZELL: Being a female, I'm the first one to rise to an objection. I hope you defeat the motion. I feel "all persons" covers both male and female, and there's no necessity for "sex" in the proposal.

PRESIDENT WENSTROM: Mr. President.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I, too, feel that "all persons" is all-inclusive enough to cover the situation, and the reason I moved yesterday to take out the word "sex" is because in the context, it sort of made a joke out of this section. That's why I moved to take it out.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I agree with Delegate Peterson. I think this is a very serious matter, and I think the word — reconsideration should be given to this proposal. I think that when we considered it yesterday, we considered it in a very light-hearted manner, including myself, I might say, without much thought, and I do believe that, again, it would certainly talk about all persons could be enjoying full and equal enjoyment of goods, services, et cetera; but I think that word is very important, especially in this day and age, and I would hope the Convention would reconsider this proposal.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President and Fellow Delegates:

I appeal to you to give Delegate Peterson her day in court. This is an issue that she feels very strongly about, and I think we owe her the courtesy to further explain the reasons for doing what she's done. We've been quite lenient in the allowing of reconsideration where delegates have felt strongly about something, and I certainly favor giving her an opportunity to explain this.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Delegate Miller said it better.

PRESIDENT WENSTROM: Further discussion? In that we are now re-considering the proposal as previously passed by the Convention, it requires a minimum of 50 votes to reconsider, and I am going to ask the Clerk to open the key so that you can indicate your preference.

Has every delegate voted? Any delegate wish to change?

DELEGATE GRIFFIN: Delegate Griffin votes "aye."

PRESIDENT WENSTROM: Griffin votes "aye."

Delegate Engstrom?

DELEGATE ENGSTROM: "No."

PRESIDENT WENSTROM: "Nay."

CHIEF CLERK GILBREATH: Dawson?

DELEGATE DAWSON: "No."

CHIEF CLERK GILBREATH: Would you push Dawson's button, please?

PRESIDENT WENSTROM: Any delegate wish to change his vote? The vote is closed.

There were sufficient "aye" votes to reconsider it. So the Proposal is now before the Convention. Delegate Peterson.

DELEGATE PETERSON: Yes. I move to put the word "sex" back in.

PRESIDENT WENSTROM: Delegate Peterson, will you move to place it at the head of the calendar?

DELEGATE PETERSON: I move to place 1-57 at the head of the calendar, please.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

It's been moved and seconded that we now place Committee Proposal 1-57 at the head of the calendar. As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Committee Proposal 1-57 is at the head of the calendar.

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I'll make this brief. I just feel that it was taken out of there improperly. I think, if it can be placed in the United States Constitution and accepted, there's no reason why it couldn't be accepted here. And just to show you the difference possibly, in our voting yesterday I noticed in the paper that they say two ladies voted against it; and since I am the third lady that voted against it, I am in limbo, and I did say yesterday that I was voting in-cognito because I lost so many votes. I wore dark glasses. But I didn't think the

Press would take me seriously. I did vote "no" yesterday, and I do hope you will put this back where it belongs.

PRESIDENT WENSTROM: Is there an amendment at the desk?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: You will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-57.

On page 1, line 10, following the words "ground of race," insert the phrase "sex,".

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I raise, again, the question I posed yesterday: If there is to be no discrimination or segregation in any public accommodation on account of sex, does this mean that the ladies' powder room is going to be abolished or integrated?

Now, the first part of this proposal covers the situation: "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities," et cetera. Now, there are a few things which should be equal but separate. I don't think I have to elaborate on that.

Now, by putting the word "sex" back in where it is, we're sort of writing a pun or a joke into the Constitution. If we want people in other states to read the new North Dakota Constitution and have a good giggle, well, then let's put it back in. But I oppose it.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: The United States Constitution guarantees no discrimination on account of sex, and I haven't found any integrated powder rooms yet.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'm not really too uptight on this particular word. I certainly don't want to be — (laughter) — I don't want to be caught up in a women's liberation movement, or anything like that; but I think that we probably took that word out yesterday for the wrong reason. I think that the mood of the debate, the manner in which the amendment was offered, all led us into this mood; and so I think, if we take it out, we should take it out for the right reasons, as outlined by Delegate Dobson. I don't think we were that clear on it yesterday, however. So I hope we don't get caught up in that same mood today, and we can objectively take a look at this thing.

DELEGATE SONDRAL: Mr. President.

PRESIDENT WENSTROM: Delegate Sondreal.

DELEGATE SONDRAL: If we're going to take the word "sex" out because we have "all persons" up there, then we might as well take out everything else — "race, color, origin," and so on.

PRESIDENT WENSTROM: Anything further? Delegate Hougen. Delegate Jim Hougen.

DELEGATE HOUGEN: Yes, Mr. President and Fellow Delegates:

I hate to talk on this thing, too, but I want the support of Delegate Dobson wholeheartedly. I think that the first section gives everybody equal right; but the last part speaks to some of these accommodations, and I gather there is a difference between a man and a woman, and I think we are being ridiculous by stating that we are going to treat them equal, because they are not. I happen to think a woman is just as good as I am; in fact, she might be even a little bit better; but they certainly aren't equal. (Laughter)

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: May we have order in the convention?

Delegate Hendrickson.

DELEGATE HENDRICKSON: Amen!

PRESIDENT WENSTROM: Anything further? Delegate Aubol.

DELEGATE AUBOL: Mr. President. I think that the mood is, once again, very light. I would think that, if Delegate Dobson and Delegate Hougen are concerned about powder rooms, that they should, perhaps, put some specific language in it that will exempt the powder rooms from this section.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: While I admit to being not that astute a student insofar as the United States Constitution is concerned, I think some of us are perhaps observing the word "sex" and "nondiscrimination" in the Federal Constitution, if, in fact, it does appear in that amendment of approximately two or three years ago. It is not in the original United States Constitution, and I do not believe that it belongs in our Constitution on the basis as we are attempting to again reinstate it today. The section as proposed indicates all persons shall be entitled to public accommodations, regardless of grounds of race, sex, color or religion. If I want to go to the ladies' powder room, after we include the word "sex," I believe I have that right. I might be a wee bit embarrassed, but I think someone else in there also might be likewise embarrassed. I think then, after this happened, eliminate the statute of indecent exposure in certain public accommodations, since we would preach equal rights to the same particular slot to drop quarters in. I would again refer to your February 1st newspaper — **The Grand Forks Herald** — page 7, which quotes specific sections under the title "Homosexual Job Denial Appealed," and it states in that, in one section, "The State Supreme Court of Minnesota rejected an appeal for a marriage license, the pair arguing there's nothing to date in state law to prevent same-sex marriages."

I submit there is nothing in the Proposal that we have before us which would prevent same-sex accommodations in a public restroom.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I move the previous question.

PRESIDENT WENSTROM: The previous question has been moved. Do we have five seconds? Delegate Sanstead, Delegate Devine, Delegate Benson, Delegate Aas, Delegate Kelsch. An immediate vote has been called for.

DELEGATE WARNER: May I now call for a recorded vote?

PRESIDENT WENSTROM: Not at this particular time. The question now is on the vote of the previous question, and this takes a two-thirds vote.

Those in favor of adopting the previous question will vote "aye;" those opposed "no."

The "ayes" have it.

Now we are on the amendment as offered by Delegate Peterson.

DELEGATE WARNER: May I now call for a recorded vote?

PRESIDENT WENSTROM: You may now request a recorded vote, provided there are ten delegates that so wish. One, two, three, four, five — ten. That is sufficient. That is a sufficient number. A recorded vote will be granted.

The question before the Convention is on the adoption of the amendment as offered by Delegate Peterson. Those in favor of its adoption will vote "aye" and those opposed will vote "nay."

We will open the key. You will record your vote.

Has every delegate voted?

DELEGATE DAWSON: Dawson votes "no."

PRESIDENT WENSTROM: Dawson votes "nay."

Any delegate wish to change his vote? The vote is closed

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: May I report my presence?

PRESIDENT WENSTROM: Delegate Solberg is present.

The vote indicates there were 59 "ayes," 31 "nays," eight delegates absent and not voting. The amendment as offered to the Committee Proposal No. 1-57 has been approved.

Delegate Paulson.

DELEGATE PAULSON: Mr. President, I have an amendment at the desk. I wish it to be read.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-57:

On page 1, line 10, of the engrossed proposal, delete the words "or segregation". And renumber the lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the amendment as offered by Delegate Paulson. Do we have a second?

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Delegate Kelsch seconds the motion.

Now, Delegate Paulson.

DELEGATE PAULSON: Mr. President. Delegates, I simply think that, by removal of this word, we'll remove the joke and we'll take care of the — if the word "discrimination" doesn't take care of it, then we leave the U. S. Constitution all by itself. I can't read the English language. I think the removal of this word will remove the humor that we've been subjected to, and then we can pass it and have it out of our hair.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Paulson.

Is there any further discussion?

Hearing none, as many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

Now we have —

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I move that Proposal 1-57 be deemed properly re-engrossed — the Rules be suspended, it be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Kelsch moves that the Rules be suspended, that Committee Proposal 1-57 be deemed properly re-engrossed and placed on the calendar for first passage as amended, and the motion was seconded by Delegate Engelter.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. Committee Proposal 1-57 is again before the Convention as amended.

Is there any further discussion? Hearing none, the question is on the first passage of Committee Proposal 1-57 as amended.

Those in favor of its adoption will vote "aye" and those opposed will vote "nay." The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 84 "ayes," 3 "nays," 11 delegates absent and not voting. Committee Proposal No. 1-57 has been passed.

Is there anything under the eighth order?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: We will proceed to the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Delegate Miller would like to announce that the Granville High School of Granville, North Dakota, and their teacher, Mr. Hillman, are in the gallery.

Delegate Gipp would like to announce the twelfth grade of the Standing Rock

Community at Fort Yates, North Dakota, and their teacher, Mr. Simonson, are in the gallery.

Delegate Lerberg would like to announce the twelfth grade of Parshall High School, Parshall, North Dakota, and their teacher, Jim Wiegum and John Dwyer, are in the gallery.

PRESIDENT WENSTROM: The delegates to the Convention are happy to have this many students attending this day's session of the Convention. I hope you find that it is interesting and somewhat enlightening. I'm sure that, as the day progresses, that you will hear many of the important issues before the Convention discussed.

Will the visitors in the balcony please stand? One more school?

CHIEF CLERK GILBREATH: Delegates Thompson and Hoghaug would like to report that they have students from the Lake Region Junior College in Devils Lake, North Dakota, with their teachers, Astrid Anderson, Mr. Lysne and Mr. Burrows, in the gallery.

PRESIDENT WENSTROM: Will the students and visitors in the balcony please rise and be recognized by the Convention? (Applause)

We have one more announcement.

CHIEF CLERK GILBREATH: All vouchers must be turned in today, before you leave. All the vouchers must be turned in at the staff office before you leave today.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I'd like to just call the delegates' attention to the blue proposals that are in their proposal books on No. 4-1 and 4-2. These are the first two, and only two, so far as proposals to be referred to the Alternate Committee, and if any of you are contemplating further proposals, we would appreciate knowing about it, because the Committee will have to meet during one of the recessed days. So, if you have in mind anything, we'd appreciate hearing from you.

PRESIDENT WENSTROM: The Convention will be in recess until eleven o'clock.

(The Session recessed at 10.43 A.M. until 11:00 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

Will the Convention please come to order?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: May we be briefly on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE BURBIDGE: I'd like to announce to the delegates that this morning I received a six or seven-page Attorney General's Opinion on the question of the 18-year-old adult-for-all-purposes thing, and some implications on it. If anyone — any of the delegates are interested in a copy of this, either Delegate Nething, Delegate Thompson or myself will see that you get one.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: May we be on the twelfth order of business for a minute?

PRESIDENT WENSTROM: We will be on the twelfth order, without objection.

DELEGATE THOMPSON: I want to move that we put 1-104 on the bottom of the calendar.

PRESIDENT WENSTROM: Delegate Thompson moves that we place 1-104 at the foot of the calendar. Do I have a second?

Seconded by Delegate Aas.

Any discussion? Delegate Thompson.

DELEGATE THOMPSON: Very simply, one of the proponents is not going to be here long enough to argue, and I think he should have the right.

PRESIDENT WENSTROM: Thank you.

As many as are in favor of the motion will say "aye," those opposed "no." The "ayes" have it and 1 — Committee Proposal 1-104 is placed at the foot of the calendar.

We will be on the ninth order of business — Introduction of Proposals.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-3, submitted by Delegates Stanton, Solberg, Kwako, Berg, Warner, Roney, Trenbeath, Wallin, Peters, Rundle, Baker, Erickson, Diehl, Knudson, Fallgatter, Unruh, Saugstad, Binek, Pearce, Cart, Devine, Ketchum and Benz:

"Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-102 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot."

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report — I'm sorry, Committee Report on — Alternate Proposal No. 4-3 is referred to the Committee on Constitutional Ballot.

We'll be on the tenth order of business. Committee Proposal No. 1-70 is before the Convention.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-70, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 31, 36, 46, 47, 48, 49, 58, 61, 63, 64, 65 and 66 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 6, 11, 12, 13, 14, 16, 17, 18 and 19 of Article II to the constitution of the state of North Dakota be created; all of which pertain to matters of legislative procedure."

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, this proposal has been read, and I would, therefore, move that — it's back only to put the language for the deciding of tie votes in legislative races, and I would, therefore, move that we dispense with the reading.

PRESIDENT WENSTROM: Moved by Delegate Sinner that we dispense with the reading of Committee Proposal 1-70. The motion has been seconded by Delegate Kwako.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and we will dispense with the reading of Committee Proposal No. 1-70.

Delegate Sinner.

DELEGATE SINNER: Mr. President, I now move the amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-70:

Delete all of lines 22 and 23 of the engrossed proposal and insert in lieu thereof the following:

"Section 12. Each house shall be the judge of the qualifications of its own members, but their election returns shall be subject exclusively to judicial review as provided by law. In the event that a review of those returns discloses that two or more candidates to the same office have received an equal and highest number of votes, the secretary of state shall by lot choose one of them for that office."

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do I have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako. Any discussion? Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, I don't think there's any comment really needed. I just wanted to say there is a copy on all the desks, if you want to look at it more closely. It's pretty obvious, I think, that we are trying to take this out of the — make it one job that the Legislature doesn't have to deal with.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President, this is a variance from what has become tradition in the State of North Dakota — what has been tradition for all these years, where the legislative body shall determine the qualifications of its own members.

You're all aware of the reason for this being brought up — the fact that there have been cases in years past where members of one house or the other were seated under some, well, rather shady conditions. What we're trying to do in this is to clean up the language so that it will be easier to determine and see that a man is qualified and has been the selection of the majority of the people in his district.

Now, I know that the Legislature wants to guard jealously this proposition of their being able to select or to qualify the members of their own house; but I resent very much, fellow delegates, the Legislature telling me who will represent me in these halls. This is a determination that ought to be made by the district that's represented.

In the Seventh District, if we have a problem, if someone is sent down here to serve who is not the choice of the majority of the electors in that district, I don't think it ought to be left up to this body or the Legislature or the Senate to determine who shall sit here. It's our problem. It's our business, and I resent the fact that we are not able to resolve it ourselves. I think this would solve the problem.

Now, some of you are going to be concerned, and you rightfully ought to be, that the judicial matter may take too much time, and I grant you that this is a problem. In fact, some research has shown — and I probably ought not to even be telling you this — it might influence your vote on it — but research of the statute shows that up to 110 days have been used to process a situation like this. And this is bad. The session of the Legislature could be over before a man is ultimately seated. However, if someone can come up with a better solution, I'd sure be happy to hear it. But this, to me, does resolve the problem in the most fair manner that I can think of, and does leave the matter up to the people in the district that he's representing.

I urge your support of this amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I can readily understand what the Committee is trying to do; however, I think that if we consider what has happened in the past in connection with some of these contests, why we can see it's not as serious a matter as has been indicated by Delegate Miller.

In the years that I have served in the Legislature, it's been my opportunity to serve on two of these committees that considered contests that were presented to the Legislature. It's a fast method that is usually settled in two or three days when the matter is called to the attention of either of the houses. The president of our Convention had the opportunity of serving as chairman of a committee during our last session in the Senate, when such a matter came before the Senate. In both of those cases, the rules were determined before any action was taken on trying to establish who had been elected and who hadn't. We even counted every vote in both cases, and we went along with the rules that had been prescribed

and detailed by the Senate, based upon a nonpartisan basis completely, and both candidates, I think, were completely satisfied when the count was made. In the first instance, it meant that a Democrat stayed in office. In the second instance, it meant that a Republican stayed in, because the rules were laid down as prescribed by law under the same conditions as they were in the law, and ballots that were invalidated were validated because the law said they should have been validated. And I think, in both cases, both of the losing parties were satisfied that they had had a fair hearing, and both were willing to abide by the results that the Senate reached.

Now I can see here that, in every case where you have a situation of this type, if you're going to the court exclusively — that word "exclusively" is what bothers me in this amendment that you're offering — you will have the district from which the contest arises left without any representation in that particular session of the Legislature, and I don't think any of us want to disenfranchise any district from being represented in the Legislature during any session. I think, if you would consider taking out the word "exclusive," you'd still have a court determination if either of the parties involved were not satisfied with the treatment or the disposition of the matter as it was determined by the Legislature. I think you'd save a lot of expense. You'd keep from disenfranchising anyone, and yet you would have the same results, eventually. If either party was not satisfied, he could still go into the court and have it determined, even though that might take several days to get that done.

I hope that we will consider these conditions before we finally pass this amendment.

PRESIDENT WENSTROM: Further discussion? Delegate Sinner.

DELEGATE SINNER: Mr. President. One of the reasons, Delegate Longmire, that I feel rather strongly about this, as does Delegate Miller and some others, is that under the present system, and even under the system that you're proposing, you're into the Legislature already and the Legislature is in session before the Legislature can act itself on the qualifications of its members; and if there is a contest of the Legislature's decision by the losing party, you throw in the question of many votes of the one who's seated by the Legislature and, in fact, you make it very difficult for him to challenge the decision of the Legislature, and a judicial review after the Legislature might act would be a very, very complex situation, it seems to me.

It is our hope that the law can provide for a speedy review of a tie vote prior to the meeting of the Legislature, so that the issue is all resolved when the Legislature comes in session, which is an impossibility either under the present situation or under the one you're talking about.

PRESIDENT WENSTROM: The Chair will recognize Delegate Warner.

DELEGATE WARNER: May I inquire of Delegate Sinner? Would you respond to a question?

PRESIDENT WENSTROM: Will Delegate Sinner yield?

DELEGATE SINNER: Yes.

DELEGATE WARNER: Did you think originally of placing original, exclusive jurisdiction in the Supreme Court, so that you could get immediate — a quick determination in the matter?

DELEGATE SINNER: No, we didn't, I guess. However, we do provide that this system shall be spelled out in law, and if the Legislature, in the discussion of what kind of procedure should be established, would determine that that would be the best procedure, they could still do that under this provision.

PRESIDENT WENSTROM: Any further discussion? Delegate Omdahl.

DELEGATE OMDAHL: Mr. President, I think we need to keep in mind the proposal we adopted sometime ago which provides for 80 plenary days to be spent as the legislative session wishes to spend it, and under that, it could very well be that we'll have a short session each year, and if this be the case, the time factor that Delegate Miller brought up will not be as critical. It is true that a contested election may result in the representative not being seated in the first session, but he will still have work to do later on in his term. And I share Delegate Long-

mire's concern about that word "exclusively," and before I would move to even amend it out, I wonder what defense there is for that word "exclusively." I don't see that it's necessary.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

The reason for the word "exclusively," I think, is that traditionally legislative bodies have been the sole judge of their qualifications and the sole judge of election returns and, as a result, I think in 1969 the Legislature spent quite a bit of time counting votes in close elections. And if we don't put the word "exclusively" in, there would be some question that we're deviating from the original position. And this is a deviation, but I would rise to support the idea because I think that we don't — we don't question the fact that we might have to recount a contested governor's election to the courts, or other county officials, and of course the delay in those cases would apply just as well. The governor may not take office, or county officials may not take office. I think the way to get at the problem of delay is for the Legislature to set up — to type up the conditions, so it would occur rapidly; first, in the district court, where the ballots would be counted and immediately reviewed by the Supreme Court, and I think they could cut it down, and this would take it out of the hands of the Legislature — the real knotty problems that they have in trying to decide the real close elections.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Sinner.

No further discussion?

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay."

The Chair will rule the "ayes" have it. The "ayes" have it.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I'll now move that the Committee Proposal 1-70 be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Sinner moves that the Rules be suspended, that Committee Proposal No. 1-70 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it. Committee Proposal No. 1-70 is before the Convention as amended.

Is there any further discussion? Hearing none, the question before the Convention is on the passage of — first passage of Committee Proposal No. 1-70 as amended.

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 92 "ayes," 3 "nays," three delegates absent and not voting.

Committee Proposal No. 1-70 has passed.

Next for consideration, Committee Proposal No. 1-82.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-82, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 127 of the constitution of the state of North Dakota is hereby repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to voting disqualifications.

"SECTION 1. REPEAL.) Section 127 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"No person who is incompetent, or insane shall be qualified to vote at any election; nor shall any person convicted of a felony, unless restored to civil rights."

PRESIDENT WENSTROM: You have heard the reading of the proposal. Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I have an amendment at the desk I'd like to propose at this time.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-82 is as follows:

Delete lines 10 through 12, inclusive, of the engrossed Proposal, and insert in lieu thereof the following:

"No person who has been declared mentally incompetent by order of a court or other body of competent jurisdiction and which order has not been revoked or rescinded shall be qualified to vote at any election; nor shall any person be qualified to vote who has been convicted of a felony, or otherwise under sentence in a correctional institution or jail, during the period his sentence is still in effect."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to the proposed amendment? Do we have a second?

DELEGATE RUDE: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Rude.

DELEGATE LONGMIRE: Mr. President.

By way of explanation of the amendment, this has been changed a little from the copy that you have on your desks, as you will note, by adding after "declared" on the first line of the amendment the word "mentally" and the words "or insane" have been deleted. I believe there was a typographical error on the second line, which has been changed from "or" to "of."

Well, now, Mr. President, the way this proposal originally — or read as amended, as it was read from the desk, we leave the words "incompetent" and "insane" pretty much up in the air — who is "incompetent" and who is "insane." I can see that somebody that I don't like, that we have had a hot argument — "You're insane." That doesn't make a person insane; in fact, probably just the opposite might be true. Maybe I, as the accuser, might be, rather than the person accused.

We have gotten away in the mental health procedure — away from this word "insane," because the professional people have not been able to say what the word "insane" really means. It used to be anybody who went to the State Hospital or was committed or went voluntarily was considered to be insane. In modern-day methods and treatment of people — mentally-ill people and emotionally-ill people — we've gotten away from that, and in all of the statutes that we've passed in recent years, we have gotten away from the word "insane."

Now, this provision would define who is mentally incompetent. I don't think that any of us want to be able to have people who have been declared by a competent court or body of competent jurisdiction incompetent — that we want to permit them to vote, because it would open up the grounds for fraud by those maybe under whose supervision they were at the present time of telling them to vote or voting them in a certain way. This way, we think that if they have come through a court or the County Mental Health Board — or, rather, the County Mental Board — I don't know the exact term that it is listed as now in the statute — but if they come through there and have been declared incompetent

and that order has not been revoked — see, lots of times somebody will come to the State Hospital or some other institution for treatment. Later on they are improved or they get back home and they're fine. And if that order has been revoked or rescinded, why then they should be able to vote like the rest of us. So that was the reason for the first part of the amendment.

Now, I think Delegate Thompson raised a good point the other day when we discussed this on the latter part. He pointed out that, under the old proposal that we had, that someone could come in and vote who was still under sentence and, of course, under the bad feature of that, too, the way it read, we would let people in Leavenworth vote, if they were outside the State and incarcerated, but we wouldn't let those who were in a jail in the State vote. But under this amendment, it will prevent these people from voting, as long as they're sentenced, and of course part of that sentence may be a parole or probation period. It would prevent them from voting during this period. But as soon as that ends, then they would be permitted to vote, under this amendment.

I have a good example that came to my attention — in fact, it is pending in my office at the present time on this very matter of having civil rights restored. Most of these people, when they get out, since it is a tedious procedure, both in the State courts as well as in the Federal procedure to restore a person's rights, most of them never get it done. I had a man come to me just a few months ago — he was around 45 years old. I had known him for 15 years. He's a good citizen now — had done carpenter work for me and others — and he came into my office and said, "I'm ashamed to tell you, but I have never voted." And it happened, apparently, in his younger years, when he had a drinking problem, that out in Montana he had been convicted for check forgery at that time of a federal check. He was sentenced to one year in the federal penitentiary. He had gotten out. He had never applied. So I immediately applied for a presidential pardon; but that was six months ago and we still haven't got the matter resolved. And most people will not take the interest of this man. It was very impressive to talk with him. And he said, "That is the thing that I want most now — to be able to vote and participate in other activities on a local level, as well as on the state level, in government."

And so we would take care of people of that kind; permit them to get back and rehabilitate back into the mainstream of life and in the activities, if we let them vote, without going through this tedious procedure either in the State Court or Federal Court, depending on where the violation first occurred or where they were tried. We would let them get back and start voting again, once that probation period was over or the parole period was over, and we would encourage them — we would make better citizens out of them. They would develop more of an interest, I think, if we did. So I hope these amendments pass, Mr. President. I think it will do what we all are trying to do to get qualified people, to encourage them to vote and participate in their government.

PRESIDENT WENSTROM: The Chair will recognize Delegate Thompson.

DELEGATE THOMPSON: I have to resist the amendment for two major reasons.

First of all, Delegate Longmire has forgotten that there are many people, such as those that are in Grafton, who are incompetent, who cannot vote legally now, nor should they in the future, and are not declared judicially to be incompetent.

Secondly, he has forgotten — or maybe not — but I would be very much against the fact that a person who has been convicted of a misdemeanor should not vote. There are many misdemeanors which do not have any moral or social ramifications, but they are convicted and sometimes put in jail.

Now, I don't think that that would be legitimate. I do agree with the rest of it. However, I ask you to vote against it, because Delegate Hartl has an amendment which I think we can all approve of.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Would Delegate — Mr. President. Would Delegate Longmire yield to a question?

PRESIDENT WENSTROM: Would Delegate Longmire yield to a question?

DELEGATE LONGMIRE: Yes.

DELEGATE POULSON: I must again confess ignorance here.

What would be the situation of a person who was convicted of a federal offense, served time, and given a pardon? Would this be in conflict at all with any federal regulations as to his voting in an election where a federal — where we are electing people to the Congress of the United States?

DELEGATE LONGMIRE: It could: We, of course, can't change the federal setup. We have to worry about it as far as our State situation is concerned and hope that the federal government will eventually change theirs. If they don't, there are — I am not familiar with the procedure at the moment insofar as the federal law is concerned on restoration of civil rights. I do know that they have made it easier in recent years for them to get their civil rights restored. But what the effect is at this moment on the federal law, I do not know.

DELEGATE POULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: I'd like to just pursue this just a little farther.

Delegate Longmire, then I gather from your answer, you aren't sure what the federal statutes are on this.

DELEGATE LONGMIRE: No, I'm not.

DELEGATE POULSON: Thank you.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Will Delegate Longmire yield to a question?

PRESIDENT WENSTROM: Will Delegate Longmire yield?

DELEGATE LONGMIRE: Yes.

DELEGATE KESSEL: Delegate Longmire, you stated that when they're declared incompetent by order of courts or other body of competent jurisdiction, then I think you mentioned mental health boards. Now, as I understand, mental health boards merely observe a person and find that they're a fit subject for observation, and they are then sent to the institution. The institution then does not really find them incompetent; they merely determine that they're a fit subject for treatment.

Now, I'm wondering what —

DELEGATE LONGMIRE: Well, I was taking into consideration the possible changes in the matter of declaring a person incompetent in future years to come by legislation, and I think you're right — that the county mental health boards do not, in many instances, at least, rule on their competency; they rule on whether or not they need treatment and need to be sent to the State Hospital for treatment.

DELEGATE KESSEL: Thank you. That answers my question, and I was thinking about the future agencies as the Legislature might determine.

PRESIDENT WENSTROM: The Chair will recognize Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman. Fellow Delegates:

As you probably notice, this is not the original voting disqualification that I have, but I certainly feel that it will clear up some of the difficulty that I have had with the Thompson amendment.

I would like to direct myself to a number of questions that have been around here. The people at Grafton generally are there and have been appointed under guardian, and as I stated in a fairly-long dissertation with review of the statutes last week, that they are declared under guardianship and mentally incompetent. It meant the term would eventually take care of both those that have intellectual deficits and, also, disorganization problems or judgment problems.

Then I'll direct myself to the federal statute. At the present time, the federal government asks for the present pardon board to grant pardons in the State; and as I understand Delegate Longmire's proposal, they would be able to then vote after — in our State after they have served their sentence.

Now, in regard to the Mental Health Board: The Mental Health Board can do two things; one is to confine for treatment; the second is to declare incompe-

tency and appoint a guardian. So that that, I think, would answer some of the questions that Delegate Kessel had.

Under the old Constitution, the pardon board was a constitutional office. Under the new Constitution it will have to be statutory. I feel that I can live with it, and I hope that I will never have to take advantage or disadvantage of either part of this problem. But I think that it is more important that a number of people in the State can live with you. You must remember that incarceration — we're only talking about approximately a hundred people in the Penitentiary and probably about six or eight hundred serving probation and parole. We're talking about those people in Grafton, which will come to around 1,800, which, as I say, have already been declared under guardianship and, according to the statutes, seems to be similar to mentally incompetent, so that, I think, that will take care of the questions that I had.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman.

Before I ask — I would like to ask Delegate Longmire a question; but, before I do, the delegates all have on their desks a copy of the Hartl proposal. If you'd take a look at it while I ask a question of Longmire, we might speed this up.

Would you yield to a question, Delegate Longmire?

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: Delegate Longmire yields.

DELEGATE HUBRIG: The question that I raise on this: Where in your proposal — and I see it's in the Hartl — the same last sentence — it's still in effect — the sentence is still in effect. Are you meaning that a person on parole, say, for instance, who spends time in the State Penitentiary and then is paroled for a year or two years' parole, would he be disqualified from voting for that period of time, too?

DELEGATE LONGMIRE: He would be; and I think he should be until he has proved to the proper authorities that he has rehabilitated himself.

DELEGATE HUBRIG: But once he went off of parole, he wouldn't have to go through what you call the "red tape" in getting the voting rights back?

DELEGATE LONGMIRE: That's right.

DELEGATE HUBRIG: And what — one more question, and I'll sit down.

What would you say the average cost would be at the present time to get your rights — voting rights back, if you went through a lawyer to get the voting rights back — filing the applications and such?

DELEGATE LONGMIRE: About five hundred.

PRESIDENT WENSTROM: Any further discussion?

The question — the question before the Convention is on the amendment as proposed by Delegate Longmire.

DELEGATE KESSEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I'm going to move to Grand Forks and set up my legal practice, if I can get five hundred for that!

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: To answer one further objection of Delegate Thompson: He mentioned that, if they were in jail on a misdemeanor, he felt they ought to be able to vote; and, of course, this only applies if they're in jail. Personally, I don't think that you should go over to the courthouse or to the county jail and start voting these folks by absentee ballot. In the sheriff's race, the sheriff might have a better advantage to influence them, since they're under his custody and they're being fed by him, and so forth, and it seems to me that that should be another penalty that a person pays if he's in jail for three days or five days or ten days; that if he is in jail at the time and can't go to the polls, why we ought to deprive him of that privilege and maybe he'll think a little the

next time, before he gets into this difficulty. I certainly would be opposed to permitting those people to vote.

As Delegate O'Toole has stated, we don't have to worry about people in Grafton, because under our State laws now, they are — unless one of their relatives or a close friend or somebody is appointed guardian of those folks, the Superintendent of the institution there is by law appointed their guardian, so they all would be under this competency clause or phrase that we have in it, and certainly, if they're not capable of understanding the issues or the candidates, they should not be permitted to vote. So I don't think in that particular institution we would have anything to worry about.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hill.

DELEGATE HILL: Since we don't have the exact proposal before us, could the Clerk read it once more, please?

PRESIDENT WENSTROM: The Clerk will read the Proposal — the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-82:

In the engrossed proposal, delete lines 10 through 12, inclusive. Insert in lieu thereof the following:

"No person who has been declared mentally incompetent by order of a court or other body of competent jurisdiction and which order has not been revoked or rescinded shall be qualified to vote at any election; nor shall any person be qualified to vote who has been convicted of a felony, or otherwise under sentence in a correctional institution or jail, during the period his sentence is still in effect."

PRESIDENT WENSTROM: Now, Delegate Simonson.

DELEGATE SIMONSON: Am I in order to direct a question to Senator — to Longmire on his proposal — his amendment?

PRESIDENT WENSTROM: Does Delegate Longmire yield to a question?

DELEGATE LONGMIRE: Gladly.

DELEGATE SIMONSON: I've been thinking about the word "incompetent." Let's take the case of a widow who may be incompetent in handling her financial affairs but is competent in all other areas. How would this apply?

DELEGATE LONGMIRE: Yes. I added the word, you know, and it's not on your copy, but "mentally incompetent."

DELEGATE SIMONSON: Thank you.

PRESIDENT WENSTROM: The question before the Convention — Delegate Knudson.

DELEGATE KNUDSON: Mr. President, I believe there was a typographical error on the second line of this. Is that correct? In the amendment at the desk.

DELEGATE LONGMIRE: That was taken care of on the one at the desk.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Longmire. Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay." The "ayes" have it and the amendment is adopted.

Any further discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President, I would now move the amendment that I have at the desk.

PRESIDENT WENSTROM: Delegate Hartl moves the further amendment to Committee Proposal No. 1-82.

The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Committee Proposal 1-82:

On page 1, delete lines 10 through 12, inclusive, and insert in lieu thereof the following:

"No person who has been declared mentally incompetent by order of a court of competent jurisdiction and which order has not been revoked or who is non

compos mentis shall be qualified to vote at any election; nor shall any person be qualified to vote who has been convicted of a felony during the period his sentence is still in effect."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE THOMPSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Thompson.

Is there any discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President. Fellow members of this Assembly:

The Longmire proposal, I thought, had been a compromise proposal as it was originally submitted to you. However, on the urging of fellow delegates, I have brought my proposal back before you for further consideration, and at this time I would urge that it be adopted in place of the Longmire proposal, for the following reasons:

Number one, I would let you make your own decision with reference to the words "non compos mentis." There are certain sheets that have been distributed to a few individuals with reference to the definitions. The one which we are particularly concerned about deals with the people in the homes for the elderly, possibly someone who found himself a bottle of good bourbon while the stores were closed and presents himself to the polls, as sometimes happens. The legal authority Coke, who is known for definitions, defined "non compos mentis" in the following terms: "Not sound of mind; insane. This is a very general term, embracing all varieties of mental derangement. Also refer to 'insanity.'"

He has enumerated four different classes of persons who are deemed in law to be non compos mentis: First, an idiot, or fool natural; second, he who was of good and sound mind and memory, but by the act of God has lost it; third, a lunatic, who sometimes is of good sound mind and memory. I think, while we would not classify the people in the homes for the aged as a lunatic, I think they would qualify as "sometimes of good sound mind and memory — sometimes of not good sound mind and memory. And, fourth, the definition applies to one who is non compos mentis by his own act, as a drunkard.

I think that is primarily the second thing we are looking at on this.

The third situation where this proposal would differ with reference to Delegate Longmire's is that no person shall be qualified to vote who has been convicted of a felony during the period his sentence is still in effect. We went around and discussed the provision in the Longmire proposal "or otherwise under sentence in a correctional institution or jail." Through our limited research this morning, it has been determined that under our present system, we can have the individuals who are incarcerated for misdemeanor offenses vote, if the honorable sheriff desires to obtain absentee ballots for them, and, likewise, it would appear they may be under sentence to the State Farm under misdemeanors, also under present circumstances, could vote. This being the case, we do not currently know of any flagrant voting violations and, therefore, I would urge consideration of my proposal for that reason.

The second reason that came to my mind with reference to the "or otherwise under sentence in a correctional institution or jail, during the period his sentence is still in effect," could carry the sentence of a person who has committed a misdemeanor beyond the period of incarceration, prohibiting him from voting. That for the following reason: That in a number of misdemeanor cases, particularly with some of our younger individuals, the court imposes a sentence of good behavior under conditions established by the Parole Board for a period of six months to one year. This, under the Longmire proposal, I feel, would prevent that person out of jail, but only under sentence for a misdemeanor, from voting during the period of time his sentence is still in effect.

I would submit that my proposal, prohibiting a person from voting only after he has been convicted of a felony, would stand as the proposal, and I would ask you delegates to vote for it, accordingly.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LARSEN: Mr. President.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: May I have the privilege of asking Delegate Hartl a question?

PRESIDENT WENSTROM: Will Delegate Hartl yield to a question?

DELEGATE HARTL: I will.

DELEGATE LARSEN: In the case of a young man convicted of a marijuana charge who has spent two years in jail, or a similar incident or term, is his voting right, upon his release from prison, automatically given back to him?

DELEGATE HARTL: At the current time, they are not. It would be the situation in the Longmire proposal, in all fairness, and in my proposal, that at the time the sentence terminated, if it were a termination upon release from jail or a termination after successful completion of the period of parole, that the voting rights automatically would be restored and it would thereby eliminate some bread and butter for Senator Longmire.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President. Would Delegate Hartl yield for another question?

DELEGATE HARTL: I will.

PRESIDENT WENSTROM: Does Delegate Hartl yield?

DELEGATE HARTL: I will.

DELEGATE BURKE: Delegate Hartl, on your proposal on the non compos mentis provision, this would have to be a decision made by the election officials alone, would it not?

DELEGATE HARTL: That is correct. It would be to the best that we have been able to determine. We recognize the fact that some delegates have questions about this particular term, and that is why I specifically indicated to you delegates earlier to make your own decision with reference to the inclusion of this term. We feel it has merit because we do have problems which occur at the polls.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention — Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I resist this amendment because I think we're getting back into the old, vague no-man's-land field when we're talking about non compos mentis. We're trying to make this Constitution readable and understandable to everyone. I feel that all of the things that should be covered in the non compos mentis descriptions are covered in the proposal, which are — or the amendment which we just passed.

With respect to the homes for the aged, and so forth, I think you'll find that the overwhelming majority of those probably have had a guardian appointed for them. But if they haven't, who is going to determine whether that elderly person — they may be a little senile for some reason or other — we have some in the Legislature sometimes that we think are — and there might be one or two in this body, including myself, temporarily — not now however, but (laughter) — but I think we are opening it up here for a nonjudicial determination without proper hearing, without proper evidence, or anything, disenfranchising some people who would be entitled to vote otherwise and whose rights to vote would be taken away from them.

As far as this business of drunkards, certainly under present laws, if anyone comes to the polls drunk, all the election officials would have to do is call the sheriff or state's attorney and that person could be taken out of there immediately, if it was so obvious to all present that this person was so drunk that he — under liquor or dope, or anything else of that kind, that he should not vote. I think we are writing in and letting our imagination get a little further in the non compos mentis than we should, and it would seem to me that, in going on the idea that we ought to encourage every qualified person to vote, that we ought to bend over backwards not to deprive those who would otherwise be qualified by putting in some vague language here in our Constitution which could easily be used by someone who felt that this person might not vote the way he wanted them or she wanted them to vote, if we adopt the amendment that's before you at the present time. I hope that we leave the proposal now as we have it.

PRESIDENT WENSTROM: The question — Delegate Scheel.

DELEGATE SCHEEL: Mr. President, before we go to vote on this, I'd just like to have the Clerk read the last amendment once more.

PRESIDENT WENSTROM: Delegate Devine, do you wish to wait until —

DELEGATE DEVINE: I'll wait, Mr. President.

CHIEF CLERK GILBREATH: Proposed amendment to engrossed — amended engrossed Committee Proposal 1-82:

On page 1, delete lines 10 through 12, inclusive, and insert in lieu thereof the following:

“No person who has been declared mentally incompetent by order of a court of competent jurisdiction and which order has not been revoked or who is non compos mentis shall be qualified to vote at any election; nor shall any person be qualified to vote who has been convicted of a felony during the period his sentence is still in effect.”

PRESIDENT WENSTROM: Now, Delegate Devine.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. Fellow Delegates:

I think they're cutting me off — (referring to malfunctioning sound system) —

PRESIDENT WENSTROM: That's the new method of applying the gag rule. (Laughter)

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: While he's trying to get one that works, I just want to say, relative to Delegate Longmire's remarks, that his reference to himself was a self-serving declaration. (Laughter)

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I'm not going to speak to the word. I did so the other day. I have had several long discussions with several of the delegates in regard to it. I will take exception to what Delegate Longmire said, irregardless of whether I am using his microphone.

Number one, we're talking about two different horses. The proposals are not the same. “Non compos mentis” is something entirely different — I think Delegate O'Toole will agree with that —

(Delegate O'Toole shook his head.)

DELEGATE DEVINE: — than being judicially determined mentally incompetent.

Number two, most of the people that I am familiar with in the old folks homes, in rest homes, have not been determined to be mentally incompetent by any court or board.

Number three, it's not something that is brand new, because it is in our present Constitution and in our statutes.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Hartl.

Delegate Hartl.

DELEGATE HARTL: Mr. President — Mr. President —

PRESIDENT WENSTROM: Delegate Hartl, I think you'll have to use a different mike. They tell me that when one is out in a section, they're all out.

DELEGATE HARTL: Mr. President. I would just like to advise the delegates that —

PRESIDENT WENSTROM: Delegate Hartl, I think you better use a mike. It's real difficult. And then we have a number of students and people in the gallery, and I think they would like to hear you.

DELEGATE HARTL: Mr. President. I would just like to advise the delegates that my proposal has been distributed to each desk and it should be available for their scrutiny.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Hartl.

Those in favor will vote "aye;" and those opposed will vote "no."

As many as are in favor of adopting the amendment will say "aye;" those opposed vote "no."

The "noes" have it and the amendment fails.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Could I ask for a division?

PRESIDENT WENSTROM: A division has been requested. A division will be granted.

Again we're voting on the amendment as offered by Delegate Hartl to Committee Proposal No. 1-82. Those that favor its adoption will vote "aye;" those opposed will vote "no."

The Clerk will open the key. You will record your preference.

Has every delegate voted? Any delegate wish to change? Delegate Trenbeath, have you voted?

DELEGATE TRENBEATH: Trenbeath votes "nay."

PRESIDENT WENSTROM: Trenbeath votes "aye."

CHIEF CLERK GILBREATH: No! "Nay."

PRESIDENT WENSTROM: "Nay."

CHIEF CLERK GILBREATH: There you go!

PRESIDENT WENSTROM: Any delegate wish to change his vote? The vote is closed.

The tally indicated 64 "ayes" — 30 "ayes" and 64 "nays." The proposed amendment failed.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: If there are no further amendments, I move that the Rules be suspended, that this proposal be deemed properly re-engrossed, and placed on the calendar for first reading and passage.

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Delegate Longmire moves that the Rules be suspended, that Committee Proposal No. 1-82 be deemed properly re-engrossed, and placed on the calendar for first passage as amended. The motion was seconded by Delegate Omdahl.

Delegate Aubol.

DELEGATE AUBOL: Mr. President, I know it's dinnertime and I don't think we should debate this issue any more at this point, but I don't think we should pass it right at this time either, because I, for one, am concerned about the language that Delegate Longmire has in here that says "or otherwise under sentence in a correctional institution or jail." I wonder if this sometimes might not be used as a political tool — you know, so you can lock up a man for two or three days and not allow him to vote, on some charge other than a felony. I really think that we should restrict this thing only to references to felonies and not have this language in there.

I would, therefore, resist the motion to properly re-engross at this time.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

Ladies and Gentlemen: There might be a bug in this, especially for some of the lawyers. Now, in my county, the jail hasn't been used for years for anything but hunters — mostly lawyers from Fargo and Grand Forks.

(Laughter)

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Mr. Chairman. Fellow Delegates:

I think we're ready to vote on this. Frankly, I don't think you could lock up too many people in too big a hurry, because I've always understood that, before you can be put in jail, you have to go through the process of being served with a summons and complaint and having had a trial.

PRESIDENT WENSTROM: Further discussion?

The question — Delegate Hill.

DELEGATE HILL: Could I ask Delegate Longmire a question regarding the amendment we have adopted at this time or not?

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: Delegate Longmire yields.

DELEGATE HILL: It's my understanding that nobody at the State School at Grafton, nor the State Hospital, is declared mentally incompetent. There's a requirement of "mental illness" or "mental deficiency." But if your amendment is adopted, does that mean all those people over 21 — or 18 — would be entitled to vote?

DELEGATE LONGMIRE: No. It is my understanding that a guardian has been appointed for all of those people by statute, and that if they first ask that relatives or other dependents of the person there be appointed and get themselves appointed, and then, after a certain length of time, under the present law, if they have not had themselves appointed, then the Superintendent of the Hospital has become automatically the guardian of all of those that didn't have a regular guardian.

DELEGATE HILL: I'm aware that they all have a guardian; but there's no finding that they are incompetent.

DELEGATE LONGMIRE: Well, I don't think you can appoint a guardian for someone — you'd have to show their condition before — without declaring them incompetent. I would think that the same meaning would be written into the laws that we did pass, because, otherwise, if they weren't incompetent, they wouldn't be there; and if they weren't incompetent, they wouldn't need a guardian.

DELEGATE HILL: Well, my point is that I would appreciate an hour or two to check this over, so we don't open this wide open, because this is a substantial deviation from our present Constitution, which talked about non compos mentis.

DELEGATE LONGMIRE: Mr. President, in view of the remarks here, I would withdraw my motion, with the permission of my second, on the suspension of the Rules at this time; however, I think we will certainly have to dispose of this today. We can't let it go over in the regular way until tomorrow. We hope we won't be here.

PRESIDENT WENSTROM: Delegate Omdahl, do you yield to the delegate's second? I believe you seconded the motion.

DELEGATE OMDAHL: Yes.

PRESIDENT WENSTROM: Then we are back on the Committee Proposal 1-32 as amended.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I move that it be placed at the bottom of the calendar.

PRESIDENT WENSTROM: Delegate Rundle moves that Committee Proposal — well, Delegate Rundle, we have a little technicality here, and I'm going to ask you to rephrase your motion to move this to the foot of the calendar, and that we do it for this particular reason: That our Rules require that if we just don't do anything with this Proposal, but just leave it right where it is, we cannot act on it until tomorrow, and you know that we all hope we'll be out of here today. So now, Delegate Rundle, I'm going to request that you move that we suspend the Rules and that we put this at the foot of the calendar. Then it will be on the calendar for further action today.

DELEGATE RUNDLE: Mr. President. Thank you. I so move.

PRESIDENT WENSTROM: Delegate Rundle moves that we suspend the Rules and that Committee Proposal No. 1-82 be placed at the foot of the calendar.

Do I have a second?

The motion has been seconded by Delegate Peterson.

Delegate Kessel.

DELEGATE KESSEL: Before we vote on that, Delegate Hill is definitely correct that under our present law there is no incompetency declared by anybody for these people in the State Hospital or at Grafton; but because of the fact that we do have Delegate Longmire's proposal, the fact that there can be this court or other jurisdiction to declare them incompetent, at least we can correct that by legislative action and to take care of that, whereas under the non compos mentis, we will always have problems; and with that in view, I trust that we won't have to go into too much more debate and discussion on this.

PRESIDENT WENSTROM: The question before the Convention is on the motion to suspend the Rules and put Committee Proposal No. 1-82 at the foot of the calendar.

As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it. It is at the foot of the calendar.

I think that, rather than call up another proposal at this time, I think the pangs of hunger are attacking all of our delegates, and at this time, unless we have something under the eighth order, we will recess for one hour.

Delegate Unruh.

DELEGATE UNRUH: Mr. President. Your Style and Drafting Committee will meet during the lunch hour in the usual place.

PRESIDENT WENSTROM: Anything further on the eighth order? Hearing nothing further, we will recess for one hour.

(The Session recessed at 12:06 P.M. until 1:06 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:07 P.M., Wednesday, February 2, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

The Convention will please come to order.

Delegate Thompson.

DELEGATE THOMPSON: Mr. President, I would like to be on the twelfth order of business, if I may.

PRESIDENT WENSTROM: What was that?

DELEGATE THOMPSON: The twelfth order of business.

PRESIDENT WENSTROM: The twelfth order of business. Without objection, we'll be on the twelfth order.

DELEGATE THOMPSON: Then I would like to move that we move Committee Proposal 1-89 to the head of the calendar so that I could make an amendment to it.

PRESIDENT WENSTROM: Delegate Thompson moves Committee Proposal No. 1-89 be placed at the head of the calendar. Do I have a second?

DELEGATE TRENBEATH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Trenbeath.

It's been moved and seconded that Committee Proposal 1-89 be placed at the head of the calendar. As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it and Committee Proposal No. 1-89 is now at the head of the calendar.

DELEGATE THOMPSON: I have a motion at the desk that I'd like to make at this time.

PRESIDENT WENSTROM: We have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-89:

Delete everything after line 9 of the engrossed proposal and insert in lieu thereof the following:

"Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner and without just compensation having first been made to the owner for all damages.

"The legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service and provide the procedure and time limit for determination of damages, necessity, and public use."

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Following the amendments that were made yesterday and on the supposition that the second paragraph is now all right with everyone, I tried to delete from the first paragraph those words that Mr. Pearce had problems with, and that is all that has been done. The words that were deleted were the ones that specified "in the interest of the general public," and that seemed to be what his problem was. So we have taken those out.

PRESIDENT WENSTROM: Any further discussion? Delegate Omdahl.

DELEGATE OMDAHL: Mr. President, I wonder if you'd have the desk read that again — the second paragraph only. Okay. Re-read the whole thing, I guess they want.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-89:

Delete everything after line 9 of the engrossed proposal and insert in lieu thereof the following:

"Private property shall not be taken or damaged for necessary public use without protecting the property rights of the owner and without just compensation having first been made to the owner for all damages.

"The legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service and provide the procedure and time limit for determination of damages, necessity, and public use."

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Overnight there have been several amendments — proposed amendments distributed around here. One of them that bears Delegate Pearce's name is a new one, and this does not — the language on that proposed amendment is not the same as that language in the first paragraph in the Thompson amendment; and inasmuch as Delegate Pearce isn't here, I'm not too sure that I want to take the word for — anybody's word but his that this satisfies his objection. I think we should wait awhile on this one.

PRESIDENT WENSTROM: Any further comment or further discussion? Delegate Chase.

DELEGATE CHASE: Mr. Chairman. I agree with Delegate Baker. I'm not sure whether Delegate Pearce is in complete accord on this or not, and I'm sure he viewed it as being a little bit further down the calendar than it is right now, and I wonder if we're doing a little maneuvering here. I would resist the motion at this time.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'm not trying to maneuver. Mr. Pearce told me he would be back at 1:00. Now I'm in full accord, if they want to delay action on it until he gets here. That's fine with me.

PRESIDENT WENSTROM: Why don't you so move?

DELEGATE THOMPSON: I so move.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I would suggest that Delegate Thompson just withdraw his motion, with the consent of the second, and then I think we would be able to be on the proper procedure.

PRESIDENT WENSTROM: Well, I think the Chair is still in command. I'm going to ask that we accept Delegate Thompson's motion that we defer consideration — further discussion of this bill — or this Proposal until such time as Delegate Pearce returns to the Convention.

Do I have a second to the motion? Seconded by Delegate Rundle.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we will defer action until such time as Delegate Pearce returns.

Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I would suggest that we have a copy of that amendment placed on our desks. It's difficult, in a long amendment, to know what we are doing, and if we could have that, I'm sure we could better consider it.

PRESIDENT WENSTROM: I'm sure it can be arranged.

DELEGATE BAKER: Well, Mr. President, I've got one. Most people in this section have one.

PRESIDENT WENSTROM: Delegate Thompson, have copies of your proposed amendment been distributed?

DELEGATE THOMPSON: No, they haven't — not of this one. The ones that they have at their desks have the words in that I have now deleted.

PRESIDENT WENSTROM: We will have copies prepared and distributed to the delegates.

Committee Proposal No. 1-29 will be next for consideration.

Is there any discussion — we'll read the Proposal.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-29, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 29 and 35 of Article II and section 214 of Article XVIII of the constitution of the state of North Dakota be repealed; and that section 4 of Article II to the constitution of the state of North Dakota be created; all of which pertain to reapportionment of the state legislature."

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Just for the information of the members, a lot of them are looking at the old copy. This has been reprinted, so it would be the pink copy.

PRESIDENT WENSTROM: Any further discussion?

CHIEF CLERK GILBREATH: "SECTION 1. REPEAL.) Sections 29 and 35 of Article II and section 214 of Article XVIII of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Section 4 of Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"Section 4. A legislative reapportionment commission consisting of electors appointed by the district judges in a number and manner as shall be established by the district judges, shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The commission shall guarantee that, as nearly as practicable, every voter is equal to every other voter in this state in the casting of ballots for legislative offices. One senator and at least two representatives shall be apportioned to each senatorial district and be elected at large or from sub-districts thereof. The commission may combine two senatorial districts and provide for the election of senators at large and representatives at large or from sub-districts thereof.

"Upon agreement by a majority of its members, the commission shall file its reapportionment plan with the secretary of state, and it shall be deemed an effective act sixty days following such filing; provided, the supreme court, in its exercise of original jurisdiction, may review any plan adopted by the commission and remand such plan for revision within a stated period if it fails to meet state and federal constitutional requirements.

"The commission shall be appointed as soon as possible following adoption of this constitution and immediately following the 1980 general election and every ten years thereafter. No member of the legislative assembly shall be eligible for appointment to the commission. Commission members shall serve until each reapportionment plan becomes finally effective. Vacancies shall be filled in the same manner as for original appointment.

"The commission shall promulgate its own rules and modes of procedure, and its members shall be compensated for meeting days at a rate provided by law."

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I would like to move the previous question and I'd like to ask for a division. May I have a second, and I'll explain why?

PRESIDENT WENSTROM: On the previous question?

DELEGATE HENDRICKSON: I think that's what they instructed me at the desk. Well, at any rate I'd like to ask for a division of the proposal.

PRESIDENT WENSTROM: You may surely have either motion that you wish. You may have — move the previous, question, if you wish, and you may also ask for a division after you move the previous question, or before.

DELEGATE HENDRICKSON: Well, I'd like to move for a division of this proposal.

PRESIDENT WENSTROM: Well, that will surely be granted.

DELEGATE HENDRICKSON: Can I say a word on dividing?

I'd like to divide it, and I think, for the convenience of the Convention, it would be easier to debate the type of commission separately from the debate on redistricting. So the division would occur in the engrossed proposal after the words "casting of ballots for legislative offices." I believe it's on line 20 of the engrossed proposal.

PRESIDENT WENSTROM: Do you have that distinguished there?

DELEGATE HENDRICKSON: I gave this to the desk during the break, so —

PRESIDENT WENSTROM: Just so that both sections can stand on their own. Why, if they will do that, then you surely may divide the question.

We can divide the question as Delegate Hendrickson suggests.

The question is now on the amendments, and they cover — both the amendments we have.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire, I believe I'm going to have Delegate Hendrickson continue, if she wishes to move the previous question. You asked about the previous question, so —

DELEGATE HENDRICKSON: I will move whatever I should move at this time.

PRESIDENT WENSTROM: Well, no — but you moved the previous question.

DELEGATE HENDRICKSON: All right. I move the previous question.

PRESIDENT WENSTROM: Excuse me. But if you move the previous question, you shut off all debate, and if that's what you wish, why then you proceed and move it; and if you don't, why then withdraw that request so that we could —

DELEGATE HENDRICKSON: What debate would I be closing off?

PRESIDENT WENSTROM: Everything until we vote on this.

DELEGATE HENDRICKSON: You mean we'll vote on whether or not to divide?

PRESIDENT WENSTROM: No. You moved the previous question, and that shuts off debate.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The previous question is what? Would you explain that?

PRESIDENT WENSTROM: Well, I would say that consideration of the matter that we have before the Convention.

DELEGATE KELSCH: That would be Proposal 1-29 itself?

PRESIDENT WENSTROM: That's right.

DELEGATE KELSCH: I don't think Delegate Hendrickson wants to do that, and there's no need for a motion to divide the Proposal, is that right? The Chair has ruled that she can.

PRESIDENT WENSTROM: I have ruled that the question can be divided.

DELEGATE LONGMIRE: Now, Mr. President —

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I have — or hope to present — and I'm speaking on the division which we may want to reconsider at this stage — I have a complicated amendment at the desk, and I'm not sure that this amendment will apply to just this single question alone. I would suggest that we first submit whatever amendments are to be submitted, we act on them, and then, after we've determined what we're going to do — what amendments we're going to make, then we divide the question, because I think at this time it looks like we're going to have to start all over again on these amendments to change the wording of them.

PRESIDENT WENSTROM: Well, Delegate Longmire, the only place that you can divide the question is when you vote. When it gets to the place where we're going to vote, if the lady still wishes to divide the question, she has the privilege.

DELEGATE LONGMIRE: That's fine. As long as these amendments will be accepted on the whole Proposal, why then that's fine; but, otherwise, they're going to be messed up.

PRESIDENT WENSTROM: Well, the question has to be divided at the time you vote. That's the only time you can divide.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I just wanted to ask that the Convention hear the explanation — the Committee explanation of the Proposal, first, before it divided the question.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, are we ready to proceed on Committee Proposal 1-29?

PRESIDENT WENSTROM: We are ready to proceed.

DELEGATE DOBSON: Well, Mr. President and distinguished delegates:

The North Dakota Constitutional Convention has today a historic opportunity. By acting wisely on the proposition before us, this Convention can reclaim for the people of North Dakota a state responsibility which has gone to the federal level of government by default. If, on the other hand, we take ill-considered action today, this matter of legislative reapportionment will rest permanently, I'm afraid, in the hands of the Federal Judiciary.

The Legislative Functions Committee has studied this matter over a period of several months. We looked at the job the Legislature has done or attempted to do in the past, and concluded that the Legislature, by and large, has failed to properly reapportion itself. The 1889 Constitution required periodic reapportionment, first after every federal decennial census and, second, after every state census which was to be taken at mid-decade. The legislators failed, perhaps understandably so in most cases. They really violated their oaths of office to support the State Constitution. And we have now a situation where the three sections pertaining to reapportionment in the present Constitution — namely, Sections 26, 29 and 35 — are unconstitutional, having been declared so by a Federal Court.

Now, I am not going to recite this afternoon the whole unhappy history of legislative reapportionment in North Dakota. If anyone is interested, I refer you to an article in the winter issue of the *North Dakota Law Review*. Suffice to say or announce that when the Legislature did reapportion, the reapportionment act generally was designed to safeguard incumbents or preserve the status quo or to give an advantage of some sort to one political party or faction.

So, Mr. President, your Legislative Functions Committee decided that, if the State is going to exercise the responsibility of legislative reapportionment, the job should be given to some type of nonlegislative body. We had a delegate proposal before us which would have given the job of reapportionment to the State Supreme Court. We asked Justice Ralph J. Erickstad to appear before our Committee and comment on this. He said, "First, the Court does not have the staff necessary to do a reapportionment properly. Second, the Court is already loaded with work that falls upon it normally as the court of last resort of this State."

Justice Erickstad was also asked to comment on an informal proposal which provided that the Supreme Court Justices would appoint a legislative reapportionment commission. On this matter, he said, "Difficulty arises from the fact that the Court which would do the appointing of the commission members would most likely be the court which would ultimately have to review the work of the commission. That would place the court in the awkward position of perhaps having to find unsatisfactory the work by the appointees in the event that the reapportionment plan was contested."

So we discarded those two ideas. However, Justice Erickstad did indicate to us that perhaps the District Judges could be the appointing authority for a reapportionment commission. So, over the summer and fall months, the Committee looked at the plans which have been used in other states, and we studied these, and the more we studied them, the more unsatisfactory we found them. Generally, no state has come up with an adequate plan to effect periodic reapportionment of its legislature. The system used by Congress, of course, is totally inappropriate to state legislatures. So the Committee finally concluded that we should try something new — we should write up a plan which would be unique for North Dakota — a plan that will work — that will guarantee equal representation for all the voters of this State, a plan that they may serve as a model for other states, a plan that will make North Dakota a leader in this field.

So, by a 14-to-5 vote, the Committee reported out Committee Proposal 1-29. This provides for a legislative reapportionment commission consisting of electors appointed by the District Judges. It would be a non-legislative and non-political commission. The commission — now, two problems that have arisen with regard to reapportionment are the growth of the military installations in North Dakota and the method of taking the census. We have — we have Minot Air Force Base, with sufficient population to give it one senator and two representatives. We have Grand Forks Air Force Base, which also would be entitled, on a strict population basis, to one senator and two representatives. But no one in the rural areas of North Dakota wants to give up their senate seats to these two military installations which are populated mainly by a transient population, a non-voting population.

The second problem is the nature in which the census was taken in 1970. The census districts did not conform with political subdivision lines, and that made it real difficult to try to do any reapportionment plan.

So the Committee has considered the alternatives to a straight population reapportionment and has tried to write into this Proposal a system — an alternative system; for example, perhaps the reapportionment should be done on a votes-cast basis — the number of votes cast at a recent presidential election or at the last two presidential elections, or something like that. Generally, the voter turnout in this State closely follows your population distribution. So that is the reason for the sentence "The commission shall guarantee that, as nearly as practicable, every voter is equal to every other voter in the state in the casting of ballots for legislative offices." We think that this would open the door to reapportionment on a votes-cast basis or, in the alternative, to reapportionment based on registered voters, if we ever get voter registration or, again, the alternative to reapportionment on a population basis, but excluding nonvoting military personnel.

This sentence is constitutionally sound because it was excised from the landmark decision by the U. S. Supreme Court.

Now, the question arose in Committee and elsewhere how can you ever have a nonpolitical body do reapportionment? Well, it's possible, and it has been done in the countries which have a parliamentary form of government. As you know, the political parties play a much greater role in the countries which have a parliamentary form of government than they do in the United States. In Canada, for example, they have electoral boundary commissions in each province, and these commissions do reapportionment for both the provincial legislature and the Federal Commons. In Saskatchewan, the members are a Justice of the Court of Appeal, a political science professor, a clerk of the legislature and a gentleman who holds the title of "Representation Commissioner."

In Great Britain, your boundary commissions are similarly staffed by non-political citizens; for example, a Judge of the High Court, civil servants of senior rank, people knowledgeable in the field, et cetera. So it is possible to remove this from politics, and we think that, by making the District Judges the appointing authority, we are removing it from politics as far as possible.

So, Mr. President and fellow delegates, I urge you to give favorable consideration to Committee Proposal 1-29; but, in doing so, you can be secure and confident that you have provided a lasting solution to a very difficult problem of fundamental importance.

PRESIDENT WENSTROM: Further discussion on Committee Proposal 1-29? Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I have an amendment at the desk on 1-29. I'd like to propose it at this time.

PRESIDENT WENSTROM: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Committee Proposal 1-29:

On page 1 of the engrossed proposal delete all of lines 13 through 25.

On page 2 of the engrossed proposal delete all of lines 1 through 17 and insert in lieu thereof the following:

"Section 4. A legislative reapportionment commission consisting of nine electors, two each designated by the presiding officer of the senate, the presiding officer of the house of representatives, and the minority leader of each house, and the ninth appointed by the governor, shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators, which district shall be equal to each other in the number of persons entitled to representation. Two representatives shall be elected at large from each senatorial district, except that when a majority of the electors within a senatorial district so elect, the commission shall create two separate representative districts therein. When a majority of the electors within a senatorial district reside within a municipality the commission shall combine that senatorial district with other districts in which portions of the municipality and any related townships are located, and provide for the election of senators and representatives at large, except that when a majority of the electors within each of the affected districts so elect, the commission shall create single-member senatorial and representative districts only. Elections at which the foregoing issues may be determined shall be held as provided by law.

"Upon agreement by a majority of its members, the commission shall file its reapportionment plan with the secretary of state, and it shall be deemed an effective act sixty days following such filing; provided, the supreme court, in the exercise of original jurisdiction, may review any plan adopted by the commission and remand such plan for revision within a stated period if it fails to meet state and federal constitutional requirements.

"The commission shall be appointed as soon as possible following adoption of this constitution and immediately following the 1980 general election and every ten years thereafter. Commission members shall serve until each reapportionment plan becomes finally effective. Vacancies shall be filled in the same manner as for original appointment.

"The commission shall promulgate its own rules and modes of procedure, and its members shall be compensated for meeting days at a rate provided by law."

And renumber the page and lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do we have a second?

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Baker. Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, this — there really are just two main changes from the original proposal or the proposal that's before us at this time in connection with this amendment. The type of this commission or this commission is different in that it provides that it will consist of nine members; that two members will be appointed by the presiding officer of the House of Representatives, two by the presiding officer of the Senate, two by the minority leader of each of the two houses, and one by the governor. This, of course, is a nonjudicial commission and the main reason for offering this amendment in this connection is the fact that we have been trying all the way through in this Constitution to separate the three branches of government so that they would be completely independent — the judiciary, the executive and the legislative branches. This, of course, would leave this commission in the hands of the Legislature, where the — many of us feel that it really belongs. And I want to say that this is not my idea. I give Delegate Hendrickson the full credit for the idea of setting up this commission. It's almost identical with a proposal which, I understand, she called to the attention of the Committee, with the exception we added one more member to break the uneven number, by appointing — having one appointed by the governor.,

Now, I have talked with many of the district judges in the State and, in fact, three or four of them as late as just a few minutes ago. The judges themselves feel that this is strictly a nonjudicial function and that they object to being brought into a function that should be handled by the Legislature, or at least a commission set up by the Legislature, and they, without exception, object to being called in on something of this kind, which is not a judicial function of the District Courts. And certainly the objection that was raised by the Supreme Court Justices could equally apply to the District Court Judges. I know that, in my district, the First Judicial District, the Judges are completely swamped in their work. They have plenty to do, and we're carrying cases over from one term of court to the next that are not getting tried and getting heard in the prompt manner that they should be heard, and I assume that there are other districts in the State where the Judges find themselves in the same position. My main objection, of course, to letting the Judges set up this commission is the fact that it is letting one branch of government supersede its intended jurisdiction and placing it in the hands of another, where they should not be making decisions until at least these decisions get before them in a judicial manner and in the regular legal channels. I believe that this commission could do a good job. I'm sure that the leaders of both political factions in the Senate and the House would be sincere in appointing these people not on the basis of partisanship, but on the basis of their qualifications, their abilities, to get the job done. We have never tried this, of course. Certainly we have had difficulty in the Legislature in the short 60-day period that we've had down here in considering apportionment plans and in getting the job done. But this commission would be nonlegislative, except from the fact that they were appointed by the various members — officers that I have mentioned of the Legislature beforehand — and I feel that they would approach this on a sound basis, would be able to get their job done and get their report in to the Secretary of State.

I might state that there is no difference in the procedure to be followed after this commission is provided or appointed in this commission than there would be in the commission appointed by the District Judges. They go into the Secretary of State's office, file their report and wait 60 days; it becomes the apportionment plan within that time, if the Supreme Court is looking over it and it has not determined that it is in violation of federal or state law on the equal-vote proposition as nearly as possible.

I feel that this method would be highly superior to the one that is being proposed in the Proposal that is before us.

Now, here is another difference between the amendment and the Proposal that is before us. As everyone knows, at the present time multiple districts are permitted in the State. We have found, and it happens that I happen to be serving from one of those districts — we have found that it has worked very well in our community. We have three senators serving in our district, nine house members. We feel that we should leave this to the local people, whether or not they want to break this down into three districts or let the senators and the house members run at large in the whole district, and I say, from the practical angle, it is much more practical for me, as a legislator, to represent my whole city, rather than to represent just a small segment of that city, because the problems of the businessman in the north end of town are the same as the problems of the businessman in the south end of town, and if they want to dilute their representation among three people with the same number of people, of course that's required for three — to justify three senators. I think we ought to leave that up to local control to do that.

The amendment that I have presented provides, however, that if the multiple district electorate do not want to do it on this basis, then a majority of the electors — and the procedure will be as provided by law — will be able to vote on the issue and then break it down into single districts, if they so desire.

I know that those of you who do represent a multiple district know the problems involved when you try to break down a city into single districts. You have already had that city broken down in many respects; you have your wards, your precincts, you have in the alderman cities, at least, the areas — the different wards that they represent. If you further break it down in order to reach this as near equal vote as you can from each district, you may even have to cross precinct lines in order to do it, because some of our precincts in Grand Forks will be as many as 600 people, or even more. And so, to break that down into single districts would be even much more confusing than it is at the present time to the electorate and to the people involved.

We've talked a lot about giving more local control to the people back in these areas. This would be one step — further step in that direction — to guarantee that that would be done. We know that we've had some experience on this already. It's worked out very effectively in the short time that we have tried it and have worked under the plan that was set up by the courts for us to work under. We feel, Mr. President, that this would be an improvement in the proposal and would get the job done. We hope that the delegates seriously consider this amendment.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President and Fellow Delegates:

I'd like to oppose the amendment. It's unfortunate that we all feel that we should have reapportionment in this State, but nobody wants to do it, and I feel that the amendment introduced by Delegate Longmire brings us right back into the legislative arena and allows them to participate in reapportionment, which has been proven futile in the past. It also allows constitutional designation to the majority and minority leaders of the State Legislature, and I think that's unfortunate. I think we've got to recognize that the particular reapportionment plan as outlined by Delegate Longmire, as I said, puts us back into the legislative ring. There's no indication — of course, this commission could appoint legislators, too. The Supreme Court will ultimately pass judgment on this. I think that the proposed — the proposal 1-29 as outlined by the Committee is a sound plan. True, it's a plan that's never been used; it's unique, as Delegate Dobson said. It can work, and I hope that you will defeat this amendment.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

Delegate Longmire's proposed amendment addresses two topics — one the kind of commission we should have for reapportionment and, secondly, the actual reapportionment.

As long as the Chair has ruled that we will be dividing Committee Proposal 1-29, I would move that — I think it's two separate subjects, and I think we can dispose of them much better if we would treat them separately.

I would move that Delegate Longmire's proposed amendment to Section 4 be divided on the ninth line — at the period in the ninth line. If you will count down nine lines, and I think it would fit neatly if the Convention wants to take his as opposed to the divided question on Article 29 that just relates to the question of the composition of the commission, and I think we could address ourselves to those topics separately, without damaging either party's side on the question.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I would like to comment on the point as to whether or not reapportionment is a non-judicial question. I think I've been as anxious as anyone over the years —

PRESIDENT WENSTROM: Delegate Pearce, just one moment, please.

Delegate Kelsch, this is a little different situation now. It's customary, when you divide a question — normally, when you divide a question, you are dividing it at the point that you are going to vote on it, and if someone would like to move — If you'd like to move that this be divided here. I'll accept the motion; but I don't believe that I should decide on my own prerogative that this amendment can be divided at this particular place.

DELEGATE KELSCH: I appreciate that, and I would like to make that motion, and if I get a second, I'll explain why.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Kelsch, and it's been seconded by Delegate Lander, that we divide this amendment so that it can be considered on two different premises.

Now, is there any further discussion? Delegate Kelsch.

DELEGATE KELSCH: I think that, by doing this, we'll direct our attention, first, to how should the reapportionment board be constituted. The board can either take the committee's recommendation that it be done by an appointed committee, appointed by the District Judges, or they can take Delegate Longmire's amendment, and I think the lines will fit right in, and it would not destroy the continuity of either proposal. They can take Delegate Longmire's amendment that calls for a reapportionment commission named by the Legislature, and then we can move on to the question of multi senatorial districts, which, I think, follows the two different items of argument.

PRESIDENT WENSTROM: The question is on dividing the amendment.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I'm wondering how this kind of a division at this particular time might affect some of our other rules. I'm thinking about being germane so that if we're dividing when we consider an amendment, that then we'd have to stick to the subject in whichever part of the division we were on, and then, if that were the case, what about the individual member of this assembly speaking twice?

PRESIDENT WENSTROM: Well, Delegate Baker, in order to answer your question then, I would rule that, first, we will have for consideration the first portion — the portion down to where it starts "Two representatives," and we'll consider that portion of it first, and then we will proceed on from there. Does that answer your question?

DELEGATE BAKER: So that there wouldn't be — they wouldn't be counted as speaking on it twice, if one person spoke on each section?

PRESIDENT WENSTROM: That's correct.

DELEGATE BAKER: Thank you.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I certainly have no objections to dividing the questions here. I admit that there are two questions involved; however, the second — or the last part of the amendments sets up the procedure under which the commission would operate, and that part, of course, should be considered, I think, and it is identical with the — or almost identical with the procedure as set up in the commission that was in the proposal — the commission to be named by the judges. So I would assume that we'd be discussing the procedure along with it, too; but we could agree on where that starts, and that starts on the second page of the amendment.

PRESIDENT WENSTROM: Are the delegates aware of the place where the question will be divided?

Hearing none — everyone apparently is aware. Delegate Cart.

DELEGATE CART: Well, Mr. President, I'm quite confused the way this thing is being developed. I would like to speak in opposition to both proposals — both the Longmire and the Committee Proposal, and then having them divided, to which part am I going to talk?

PRESIDENT WENSTROM: Well, right at the moment, Delegate Cart, the question before the Convention is on Delegate Kelsch's motion to divide the question, and we'll consider that first part of this recommended amendment first.

As many as are in favor of the motion as offered by Delegate Kelsch will say "aye;" those opposed say "no."

The "ayes" have it and the question is now divided.

Now, if we can give our attention to the first one, two, three, four, five, six, seven, eight — eight lines in Section 4 of the proposed amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, the debate is now limited, as I understand it, to the type of commission.

PRESIDENT WENSTROM: That is correct.

DELEGATE DOBSON: Very well. I wish to speak against the Longmire amendment.

Now, first of all, in doing so, I have to relate back to the Committee Proposal. I don't know what District Judges Delegate Longmire talked to. Evidently, they are different ones than the ones I talked to, because the ones I talked to didn't see any problem here, and they considered it as a quasi judicial commission. We are not adding to the workload of District Judges. This job of appointing is going to be done once every ten years and they can maybe find a day in their schedule once every ten years to do this. So that's why we went along with Justice Erickstad's idea — not recommendation, but idea — that the District Judges possibly could do the appointing. This is not an example of extending the jurisdiction of one branch of government into another. We're creating a citizens commission to do the reapportioning and, besides that, the judicial branch is already involved in legislative reapportionment and they're going to stay involved because we're letting the Supreme Court review the final plan.

Now, on to the amendment.

This would create a partisan commission. That is objection No. 1.

Objection No. 2: The amendment is going to give constitutional status to the minority floor leader. This is not a constitutional office. This is a job. It's a position — a transitory position at that. There is no protection built into the amendment for a third party, if one should ever develop again in the future. We used to have, in effect, three parties in North Dakota — the NPL, the ROC, and the Democrats. Well, if a situation like that ever developed again, the minority faction of the majority party would be completely frozen out of this process.

Now, the people that are appointed would seem to me to have as their first inclination to protect the seat of the person who appointed them and, also, legislators are not barred from serving on this commission. It could be an all-

legislative commission, and that is something we want to get away from. I am confident of that. But the most serious defect, as I see it, is in the language stating which district shall be equal to each other, and here the key words are "in the number of persons entitled to representation." The Committee wrestled with the wording of its proposal for a long time, and we called up Mr. Robert G. Dixon of George Washington Law School to get some assistance on this. He is the author of the book **Democratic Representation**, and he is, I believe, the foremost authority on reapportionment in this country, and we explained the problems from the air bases, and so forth, and he recommended that, if we want to deny the air bases senators, we stay from such words as "persons" and "inhabitants" because that's basing it on population, and that is why the Committee used the language that one voter is equal to every other voter.

So, Mr. President, I would say that if the delegates from the rural districts in the western part of the State want to give up one of their senators and two of their representatives — give them to the Minot Air Force Base and let them be elected by the 146 voters, then vote for this amendment. If the people from the rural districts in the eastern part of the state want to give up one of their senators and two of their representatives and give them to the Grand Forks Air Force Base and have them elected by 110 voters, then vote for this amendment. Otherwise, I urge you to stand by the Committee and reject the amendment.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I agree with Delegate Longmire that reapportionment should be a legislative function, and our Committee Proposal doesn't do violence to that, but if you look directly at the Legislature and the problems we create by giving these duties to them, I think you should agree that it just hasn't worked in the past. The only time the Legislature did attempt to reapportion, the courts had reviewed it and struck it down. You are into problem areas where the legislators themselves have a vested interest, first of all in their own seats; secondly, in the control by the — or gerrymandering as to the various parties.

Now, the Longmire proposal calls for a commission then that would be named half by the majority party and half by the minority political party, with the governor to select the tie breaker. You could almost be assured that it is the tie breaker that's going to reapportion the State, and I think that what we tried to do in the Committee with the Proposal, with a committee of electors named by the judges, was try to remove it as remotely from the political arena as possible, so that the people can be represented fairly, and I'm not concerned about the judiciary here, because the fact of the matter is that it's going to be the judiciary that's ultimately to decide the question, and I would urge that you give the Committee Proposal creating an independent body to do this your careful consideration.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I wanted to correct a misunderstanding that I think Delegate Dobson had of Judge Erickstad's statement.

I don't think that Judge Erickstad really projected this idea of district judges doing the nominating. He was asked the question and expressed no serious opposition to it. He said he hadn't thought about it a great deal, and I think maybe Delegate Dobson maybe misunderstood his remarks.

I also wanted to point out and reiterate what Delegate Dobson has said about the third-party factor. I think third parties are a real possibility in the future, and the Longmire proposal does not make any arrangement for that eventuality, which is a serious defect.

Finally, the Committee discussed at great length the topical question of whether this is a judicial or legislative function, and I think a good case can be made to demonstrate that, in the final analysis, this is a judicial matter, because the protection of the rights of the people to representation is at stake; it is not the representation itself that is at stake; but the protection of those rights, and I think a good case can be made for the idea that this is, as a matter of fact, a judicial function.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President. I don't know what District Judges Delegate Longmire talked to either, but on account of geography, I suspect that Delegate Dobson and I may have talked to some of the same District Judges, and I found this about Judges: They're kind of like the rest of us. When they're talking to a newsman, they're likely to give the kind of answer they think the newsman wants; and since I'm a sometimes-newsman, I had a different impression, and that was that while the District Judges would not resist this kind of an involvement, they would not treat it very seriously, either. It's a job they have to do, so they make the appointment and let it go at that, without giving it a lot of thought, probably; whereas I can assure you that the presiding officer of the House, the presiding officer of the Senate, the minority leaders of the two houses, would give it a lot of thought. They would surely make a selection which they thought would contribute the most to their particular point of view, and that might turn out to be partisan, but at this point, a least, it would surely be bipartisan, wouldn't it? The governor would break the tie in any case. And so far as I am concerned, that's plenty of involvement in the reapportionment process by another branch of government.

Now, so far as the other operation is concerned, as I see this, and I believe I'm correct, there is little or no difference between the Committee Proposal and the amendment as proposed by Delegate Longmire. The overriding consideration, it seems to me, here is whether we want to strike out on a bold new course, possibly showing the way for other states how to do this, or whether we want to be a little bit more cautious and rely on a different application of the same principle that we know about — we know the shortcomings of it — and with the thought of improving that process on the same foundation that has been constructed before, and I favor very strongly the Longmire amendment.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President. Fellow Delegates:

A statement has been made that a legislator could be appointed by the Longmire proposal, which I favor. That is right. But I believe that a knowledgeable legislator could be appointed under either proposal.

Another — at least the way I read it — another reference was made to partisan politics, and I remember a meeting that I was at right after our present governor was elected, and we were setting up a bipartisan group, and somebody called it a nonpolitical group, and the governor mentioned, he said, "I don't believe you can ever have a nonpolitical group. You can have a bipartisan group. No matter who appoints anybody to anything, it is never a nonpolitical group."

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I believe that, if you will turn to page 2 — and Delegate Decker referred to a legislator could be appointed — I think that would eliminate — what is that? — page 2 on line 10.

Mr. President: Members of the Assembly:

I favor the District Judges forming a committee. Now, I can see the six districts each probably having two members on this reapportionment commission, and these members would know their area; they'd know the trade areas, the counties, how the different counties voted, the different cities the people go to and trade areas should be considered. I keep thinking of the last reapportionment, where the Supreme Court Judges did it. In Towner County, for example, a long county was divided and completely removed then from the political arena. Towner County got Towner County, and they feel they have been completely sliced off, and I'm sure Delegate Nicholas would have some comment here.

Now, if we had had the representation from the districts on this reapportionment commission, instead of people in politics that you're going to get, this would not have happened, or the judges doing it, sitting alone and not taking into consideration trade areas. I think this is very important. We want the people to participate in government, and the minute you start dividing the state up and slicing it, you're not taking into consideration trade areas, et cetera. I think you're losing people in political parties and people's participation.

An area in Benson County, for example, was removed and taken into another district. They felt they were completely disenfranchised and had to go to a new area. These county lines are still there.

Now, I feel that a commission made up of people from the different commissioner districts — or judicial districts would know their trade areas and would take that into consideration. The legislators do not take that into consideration. They would be continually barraged with comments from other legislators — “Protect my seat. Protect my seat.” I’ve seen it! Delegate Longmire has seen it, and any legislator has seen it when they sat through the ’65 and the last session.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President, a question. I’m not sure it’s germane to this particular part of the thing that we’re talking about, but it affects my vote, and I’d like to know. Apparently this is going to end up in the Supreme Court, irregardless of what type of a commission we vote, and the Supreme Court then reviews it and okays it or doesn’t okay it.

Is that the way this is supposed to work, or do they then take it over and realign it themselves?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Does someone wish to answer the question? Delegate Dobson.

DELEGATE DOBSON: Under either plan, the Supreme Court, in the exercise of its original jurisdiction, may review any plan adopted by the commission. So, as I see it, it would take a suit to bring it before the Supreme Court. There is not an automatic review of either plan.

Now, just commenting briefly on the matter of legislators sitting on the commission. Under the Longmire amendment, legislators would be eligible to serve. Under the Committee Proposal, legislators would not be eligible to serve. It might be interesting to speculate what kind of people would wind up being appointed by the District Judges. I would guess that maybe some former legislators, who no longer have a self-interest in the process, might wind up on the commission. You might have some county auditors. You might have an expert in population statistics from North Dakota State University — generally non-political, disinterested people who could be expected to do a good job.

Now, the Longmire amendment is somewhat similar to what was included in the new Illinois Constitution. What has been their experience? They appointed a partisan commission. Naturally, it wound up split four-to-four. So the tie-breaker came along. He reapportioned. Right away it was appealed to the federal courts, and that’s where it is now.

I urge the Convention: Don’t adopt a plan which is simply going to default this back to the federal judiciary.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Chase, you have the floor.

DELEGATE CHASE: Well, I think you answered the part about it may end up; but we’ll say it doesn’t end up in the Supreme Court; they only have the power, as I understand the thing, to either okay or not okay such a plan. Is that right? They cannot take over and then adopt a plan to fit what they think it should be. Is that right?

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. The answer to Delegate Chase: You will find that Sections 29 and 35 have been declared unconstitutional in a case entitled **Paulson versus Meyer**. So I can answer: The Supreme Court in that case ordered the Legislature to reapportion, and the Legislature again failed to do the job, and I repeat: they failed to do the job, despite what the original Constitution said in 1889 — that every legislative district should be equal in population, and that thing went down the hill from 1889 until we were forced to go to court in 1965. The Supreme Court ordered the Legislature to reapportion. It tried to duck around it and it ducked around it a little bit, and finally the court — it did come back with a plan that was pretty good, and there was just

one minor change made by the court, but the final plan finally was approved by the Legislature.

So you have a choice. The Supreme Court has a choice: It can order a reapportionment by itself; it can do it; but actually, it wound up in District Court — U. S. District Court — and that's where final action was taken, because the — pardon me — the North Dakota Supreme Court kind of shuffled around the thing, but it was the three-judge Federal Court that made the final order for the Legislature to redistrict. Essentially, the plan of the Committee is to set up a commission which will do a job, and I assure you, if a good job is done, nine times or twenty times out of twenty-three, it won't be taken to court. The people will be satisfied with a proper distribution and proper boundaries. It's only when the politicians fail to do the job that we must go to court.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President.

Although no subsequent speakers followed up Delegate Dobson's comment about who the voters would be that would be involved here, it is in the particular section on which we are going to vote, and in order to keep the issue even more pure, I have prepared an amendment which is at the desk and which would be offered if the Longmire amendment were adopted — at least the portion which would reinstate the Committee — the proposal as far as a division is concerned. I make that point here so that whatever we think about the relative merits of the commission, we can make that decision now and we'll have an opportunity subsequently to make the other decision.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. Quite a little discussion has revolved around the failure of the Legislature to reapportion itself. I want to defend the Legislature, at least for the last twelve years, because they have had no opportunity and no authority. That was taken away from them in 1960 by the people in this State when they voted to freeze the then-existing legislative districts into the Constitution. So the Legislature, from that time on, has never had any authority to do any reapportioning. So I want to give you a few figures on who caused all this.

In 1960, when the vote was up, Cass County cast 12,763 "yes" votes, 4,755 "no," or gave a margin of 8,004 to freezing the districts into the Constitution. Grand Forks County cast 6,634 votes for, 2,874 against, or a margin in favor of 3,760. Ward County cast 4,858 votes in favor of freezing the districts and 3,023 in opposition, or a margin in favor of freezing the districts of 1,835. Williams County cast 2,795 votes in favor of freezing the districts and 1,706 against, or a margin of 1,089.

Then, when the Legislature came down here in 1961 and found its hands tied, nothing actually was done, and instead of going back and correcting the error that the people of North Dakota made, they waited until after the Supreme Court decision in the Tennessee case, and then went to federal court, and these four counties are the ones that supplied 14,000 — I'll get the figure — 14,688 of the 17,473 votes that it carried by statewide.

A number of these small counties that the finger of scorn was pointed at turned down the proposal, eighteen of them. So the problem goes right back to the population centers that put this thing over. Now, we've got this thing before us again, and I claim it is the Legislature's responsibility to do this apportionment job. You move it farther and farther away from the people and they're deprived of a voice in this very important matter all over this State, whether it's the Committee Proposal of a commission of nine members selected by the District Court, and they say they'll guarantee — well, what kind of a guarantee is it? Are they going to put up a surety bond to guarantee something? Would any surety bonding company write a bond to guarantee something like that? I don't think so.

Or you go to the Longmire proposal, where you have nine members somewhat removed away from the public. Would you have them do the job? I don't think that's good either. I think this should be right back in the hands of the entire body and that they should do the job. And I have a proposal that's involved in

Delegate Proposal 2-52, which would, I think, cure that matter. It's pretty harsh, I'll admit that, but it would wipe out the districts at the end of the first session after each federal census and there would be no more districts, and the Legislature, if it ever expected to come back, would have to redistrict at that time.

Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Stanton.

DELEGATE STANTON: Mr. President.

From the first day in Committee, I have maintained, as I do today, that reapportionment belongs in the hands of the Legislature, the legislative branch of our government. You cannot keep reapportionment out of politics; so it, therefore, follows that you should give both parties an equal chance to be heard and be represented.

I agree with Delegate Cart: I think that, primarily, this is the responsibility of the Legislature and that it should be placed there, first of all, and if they fail to reapportion within a certain specified period of time, then you could go to the reapportionment commission which is contained in Delegate Longmire's proposal. I think that some of the problems that Minnesota is experiencing right now with reapportionment would shake up a lot of state legislators and they would go about their business as they are supposed to do.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

It hasn't been mentioned yet — this particular item — and I thought I'd bring it up. I oppose the District Judges having anything whatsoever to do with it. In the first place, the Supreme Court — and Alvin Strutz, Chief Justice, I believe he has appeared in front of our Committee — and it is on tape, and I don't believe we'd ever find that particular day, but it's down there — and he testified that they were too busy and didn't have the staff and wanted to stay out of politics. Now, I maintain that they're a lot farther removed from politics than the District Judges, and I want to point out one little very practical matter: Every session of the Legislature the judges are in here with a great hue and cry about judicial reform and what it winds up is judicial salaries. That's what they mean by "reform." And I can just leave it up to you what would happen to any legislator who had opposed their raise in salaries and they were going to reapportion. In my case, I would wind up in Montana or South Dakota, because that's the only way they could do it. And I oppose the — or I support the amendment of Delegate Longmire and oppose this other one.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. President. Since I do have a delegate proposal, 2-59, and since Delegate Longmire has patterned his amendment somewhat after this, I think I should speak for a moment in support of Delegate Longmire's proposal.

I have so many notes here I don't know where to start, but some I scratched out, I guess. One is in support of the Legislature. Delegate Cart brought out some of this supporting the fact that their hands were tied because of the fact that boundary lines have been frozen, and this happened in a number of states and is one reason why legislatures have not been able to reapportion. However, the amendment before you does not have it done by the Legislature; it is done by a committee or commission appointed by the Legislature. If you are concerned that the proposal before the Convention — this 1-29 — is a citizens' committee and the one before us now is not, you would only have to add one line on that second page as an amendment to the amendment, to say that "no legislator shall serve."

There have been a number of quotes given by Judges of the Supreme Court — or Justices — and I will read verbatim from the material he gave us when he appeared before the Legislative Functions Committee, of which I am a member. "Without discussing all the various methods used by the different states, I would think that you would want to give special consideration to a reapportionment article which would include in it the appointment of a bipartisan commission for redistricting."

I think, perhaps, unless someone wants to — well, I suppose this just shows that when you sit in Committee, you hear what you want to; but it's here in black and white. So I feel that we really have the approval of one of the Supreme Court Justices, at any rate, that a bipartisan commission would be a fairly-good way to go.

It has been mentioned that the amendment does not allow for a third party. This is true; but, also, I understand that there are a number of things that can be done by the Legislature, by law, or as provided by law, as we have used, and that one of these could be to provide for this by a legislative law. There are methods using the same type of a commission which other states have used when they have come to the point where they do have a third party.

I think that's the end of my notes, so I'll thank you.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President and Fellow Delegates:

I was just sitting at my desk and I was thinking if I were regarded as having the ability to be appointed to one of these commissions, and as an average citizen, and probably no one is more average than myself, which commission would I prefer? And I would refuse appointment to the commission under the Longmire proposal, because I would feel that I wouldn't be as free if politically appointed, and I don't feel I would be as free as under the Committee Proposal appointment.

Another thing: If I were serving under the Committee appointment proposal as one of these people redistricting, I think I'd have more freedom and more power to call in witnesses, and I think that, as non-legislative members, we would have more power in calling in legislators to testify than if I were a member of the commission under the Longmire proposal. I don't think this would be burdensome upon the District Judges at all, and I also believe that we would have better geographic representation under the Committee Proposal than under the Longmire proposal.

For that reason, I oppose the Longmire proposal.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, just a brief comment.

It has been stated here that it is a bipartisan commission in the Longmire proposal. It is not a bipartisan commission. The governor would be reapportioning the Legislature, simply and purely, because the governor would be the ninth member — four from each side of the political parties. The governor would then be reapportioning.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is —

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: May I speak once more for the Committee, just briefly, Mr. President?

PRESIDENT WENSTROM: You may speak.

DELEGATE SINNER: Very seriously, one of the reasons that the Committee majority felt that we should not put this back into the Legislature is the simple fact that, from the beginning of our Constitution, it was before the Legislature and the original Constitution required that the Legislature reapportion itself every 10 years, and there was a 30-year period when that provision was still in the Constitution when the Legislature just did not do it, and I — I think it's a very serious objection to putting it back in the Legislature, to do an objective job, and I don't think that it would be in any way fair for this body to decide on this matter with any overtones of political motive in what the Committee decided either way, because I think that the Committee gave this about as serious a thought as anything that it was bringing before this body. So I think you should be aware that it is not any frivolous idea.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, just two brief comments I thought we ought to clear up.

Delegate Dobson mentioned that, if you wanted to disenfranchise some of the western part of the State, that you go along with this and leave the Air Base in it. I think he misunderstands our geography in Grand Forks, at least, because the Air Base is not in a multiple district and has nothing whatsoever to do with the eighteenth district in which the Air Base is not located.

Now, to further get around some thinking in that connection: If this amendment passes, I will offer another amendment to the amendment, to strike out the word "persons" and put in the word "electors" in the first part of the Proposal on about the — oh, ninth line, or somewhere in there, where it says "persons entitled to representation." We would change that to "electors."

Also, I have no objection to removing a legislator — disqualifying a legislator from those who could sit on the commission to be appointed as named herein. However, I think it would be good to have one or more legislators on that commission myself, because they have been wrestling with these problems for years; they know all of the problems that they have been facing, just as I think it was good to have a sprinkling of legislators in this Constitutional Convention that we're under at the present time. I feel proud that I've been able to serve in the State Legislature for 16 years. I resent any insinuation that, because I am in the State Legislature, that somehow or other, I'm going to look with evil or in some bad way on serving on a commission of this kind, to try to rig this for my own district or some other district in the State. I think you'll find that the legislators, if they did serve on that commission, would serve with the same dedication and devotion as those of us who are here in this body have tried to serve since we started this Convention. But if there is a strong feeling in that connection, that you want to bar some of the very people who know most about this or who have at least had more experience with it in wrestling with it over the last few years, why then I would have no serious objection to it, and if this amendment should pass, why then I would certainly offer the first amendment and I'd oppose the second one

Now, certainly this commission is not perfect. I would certainly go for any other type of commission that one could come forward with on this, other than mixing it with the judiciary. This is the only way that I could think of, after reading and studying Delegate Hendrickson's proposal, to come up with a commission where it would be bipartisan. How do we know this one that the judges appoint is not going to be loaded one way or the other politically? We have no assurance of that. We have to take some calculated risks when we are delving into a situation of this kind, and I certainly think this commission, if it were set up on this basis, they would take their job seriously. They would be dedicated. We would have it away from the judges and no connection with it. I think we would get a good apportionment plan through a commission of this kind.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Two things, very briefly:

First, it is true that if a senator were given the Grand Forks Air Force Base, he may not become part of the multi-member eighteenth district, but the Grand Forks Air Force Base is located in Mekinock Township and there's enough population there to justify a township. In the 1970 general election there were 110 votes cast in that township. Now, certainly, in my arguments, at least, no insinuation was intended against Delegate Longmire. We all know that he has been an outstanding member of the State Senate for many years. We also know that the Legislature as a whole has failed to reapportion in the past. There is no reason or expectation that the Legislature or a commission thereof would do the job in the future.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the first line in Section 4 — the first sentence. There's a little difference there — the first sentence in Section 4 of the amendment as offered by Delegate Longmire. Is there any question now on what you are voting on?

Those in favor of adopting this portion of the amendment will vote "aye" and those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay."

The "noes" have it and the amendment lost.

DELEGATE BAKER: Division!

PRESIDENT WENSTROM: A division has been requested.

A division will be granted.

Again, the question is on the adoption of the first sentence in Section 4 of the amendment as offered by Delegate Longmire.

Those in favor will vote "aye;" those opposed will vote "nay."

The key will be opened. You will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The vote indicates 31 "ayes" and 63 "nays." The amendment fails.

We will proceed with the amendment. We have the one which starts with "Two representatives shall be elected . . ." We will continue with proposed amendment to Committee Report No. 1-29 on the amendment, and we'll start with further consideration or consideration starting with "Two representatives shall be elected at large . . ."

Now, is there any discussion on this part of the proposed amendment?

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: Like Delegate Longmire, I come from one of the multi-member districts — the twenty-first district — which has four senators and eight representatives, all elected at large. But, unlike Delegate Longmire, I don't feel that the system is working very well. I think it's common knowledge that the twenty-first district, which comprises Fargo and West Fargo, is a district in which one party has an effective majority. I suspect that the figures are possibly something like 45 percent minority party, 55 percent majority party. I am not exactly sure what they are. But at least there is an effective minority, so that when there is an at-large election, there's very little point in the minority party putting up any slate whatsoever, and what has happened in the twenty-first district is that the two-party system has been pretty well killed. There are some areas of that twenty-first district in which there is pretty much an even division, in which an election, if it were a senatorial district, might go either way, particularly if one man were running against one man or two representatives were running against two representatives. The outcome would be in doubt. But, in this multi-member district, in which there are twelve people — or four Senators running against four senators, eight representatives running against eight representatives, the minority party has no chance whatever — a fact which was realized in the last election when the Democrats put up no slate whatsoever. What happens in a case like this is that you are reducing the city to a one-party system similar to that in the South, and the temptation is very great, if the decision is to be made in the primary, to go into the primary where the action is to decide who the candidates are going to be. I think this is very unfortunate. I don't believe in it; but I think it's inevitable. It has happened in the South. It will happen anywhere, where you have the one-party system, and you have no choice in the fall. If the battle is to be in the spring, that's where the people are going to go, and this destroys the two-party system. This has pretty well happened, as I say, in Fargo. I am not sure what the situation is in the other parts of the State.

Now, there is — Senator Longmire's proposal does have what I would call some window dressing. It would allow the people of these multi-member electoral districts to decide whether they want to divide the district into several parts. This is something like asking the cat to guarantee the civil rights of the mouse, but his natural instinct is to gobble them up. I think it's asking quite a bit of human nature to ask one party voluntarily to toss away a sure senatorial seat and several certain representative seats when they don't have to do it. Obviously, this decision to break up these multi-member districts has to be made at this level. It cannot be made at the local level, in which one party has a considerable majority

in a whole district. I look with some skepticism on the original proposal, which allowed for two-senator districts with four representatives, and two senators to be elected at large. I don't think this is very good. But it is certainly an improvement on this effort to freeze our present unsatisfactory multi-member districts into the Constitution.

I urge that you vote against this amendment. Thank you.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think, as you consider Delegate Longmire's proposed amendment to the multi or single-senator district problem, you should consider the Committee's action. We, of course, had extensive debates on this question, with some of us advocating multi-senator districts and some advocating single-senator districts; and, frankly, what we're proposing in 1-29 is a compromise. What it does — it allows the combining of two senatorial districts, but not more than two. It allows for the representatives in the combined or single-senatorial districts to be elected either at large or from subdistricts. It places the responsibility of this decision upon the reapportioning commission. It was our belief that this commission would, where a city was involved, combine the districts in the case of senators — two senators — and elect them at large, because that's probably what the people in that area would want, and could allow for subdistricts or districts at large in the rest of the state as far as representatives are concerned. This is, frankly, a compromise. The Committee felt that it doesn't satisfy the single-district people and it doesn't satisfy the multi-district people; but we felt it is a middle-of-the-road approach. It is practical. We felt that it probably would withstand a court test. We know multi-senator districts which are being challenged at this time, they're proper — they're not illegal — but they may not stand that test. But we thought combining the two would not be so extreme that the courts would interfere. And so it's a compromise, and I think it's a workable compromise, and we ask your careful consideration of it.

One of the problems in Delegate Longmire's proposal is that he gives to the electors the choice of whether they should be combined or not, and I don't know how you'd hold those elections in advance of the reapportionment, so the reapportionment commission would know what to do. I think you've got a practical problem, and these are some of the things we looked at. It would be nice if you give the electors this choice, but you'd have to hold statewide elections and out of what districts would you hold them, because we don't have the districts established when they're supposed to be reapportioned. So I think it's a serious mechanical problem; but I think we have come up with a compromise, and I hope it is acceptable.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I rise to oppose the amendment by Delegate Longmire, also. I have had a rather unique position in being the one multi-member senator with 14 in the opposition party across the aisle, and I might say that I think that the points that were brought out by Delegate Vogel certainly hold true, except perhaps for our districts, in which there has been a competitive two-party system operating and where the chance of the minority party at least gaining some of the seats has been consistent.

Now, I'll grant that has not been true in our sister large cities, and I've been all too cognizant of that as a senator. On the other hand, I've also had the distinct and, I guess you might call it a privilege of having been sued by a member of this chamber and another person for having been one of the winners in the multi-member district elections, along with my 14 Republican colleagues in the Senate, and I know that the Court there took a different view. But I would speak mostly, I think, to a different approach, and that would be one that is brought out in the *North Dakota Law Review*, which Delegate Dobson made reference to, and the last paragraph there is a very important one, because it says: "Delegates should also consider returning to a single-senator district system. It simply is not fair to allow a voter in an urban district to participate in the election of four senators while his neighbor in a rural district participates in the election of only one Senator."

Let's look at that for just a moment. My good friend here to the right, Delegate Rundle, from the thirty-ninth district, has one senator and the people of his district have the use and availability of the use of that one senator's work in the Legislative Assembly; but my neighbor in Minot, very politically aware — a bricklayer — spends a lot of time working on all four of us senators in Minot and gets a lot of attention from all four — excuse me — now we have three — probably four. He works hard on all three of our present senators to the extent of influencing their vote on the issues, and I don't think it is fair at all, and it certainly is a miscarriage of justice to suggest that city voters ought to be represented by this whole plethora of elected officials, rather than a specific one elected in original and differentiated parts of his city for that part of his city.

Now, I know this district — the one we are currently meeting in — that there's an area over across the tracks here that votes for the minority party rather heavily, but you know that district has not had any representation in this body for some time, because when that vote is tallied in with all the rest of the votes in this city, three-quarters of the City of Bismarck, that little area is in one way wiped out, and I don't think that that is fair representation either. And so I think the day when we suggest that the multi-member district, even with a vote — I don't see how those people over across the tracks here in Bismarck could get enough of a vote to put a multi-member senator — a single-member district in. They couldn't win that one if they can't win anybody to be elected either in the House or in the Senate in this district. So I think the question is almost a moot one of the compromise which Delegate Longmire says he has in that amendment. So I speak in total opposition to the amendment from several points of view.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I, also, come from a multi-senator district. Fargo, incidentally, does have a Democrat mayor, but we are still able to come up with some opposition to him once in awhile. So far, we haven't been successful. But I fail to see how Delegate Vogel's statement about a one-party comment is valid for that reason. The fact is the Republicans have put up such good legislative candidates that they've had the support of both parties. (Laughter) And, incidentally, they represent all of the people of Fargo, not just a fourth of them. When they're elected on an at-large basis, they represent not only their neighbors, but their employers, their employees and their fellow workers, some of whom they probably know their problems better than they know the problems of their neighbors.

Delegate Longmire's amendment is a logical step toward keeping senatorial districts in compliance with the uniqueness of the State of North Dakota. The substantive committees are justifiably proud and jealous of their proposals because of all the work and discussion and research that has gone into their committee proposals. It is indeed fortunate we have had these dedicated committees present their thoughts to this Plenary Session. Their time has not been in vain. Each proposal has led to further consideration by about six times as many heads and invariably has led to sounder and better final action. The Longmire amendment to 1-29 is no exception.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Mr. President, I want to rise to oppose not only this amendment, but the other one, and so that Delegate Cart doesn't feel bad, I want to oppose his Delegate Proposal, also; and I also oppose the U. S. Supreme Court's ruling of one-man-one-vote. I firmly believe that the only possible way that the rural areas can get adequate representation is to have one senator from each county.

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: First of all, Mr. President, a little background on the discussions in our Committee. We didn't consider this matter of single or multi senator districts on a political basis — Republican versus Democrat. I guess in our Committee we've got about twelve Republicans and five Democrats and a couple independents, and Paulson won't tell us what he is.

Anyway, the Committee generally felt that, to be on safe constitutional ground, we should first establish the principle of the single-senator district. Then we had discussion about the multi-member districts and how large they should be. The Committee — a substantial majority thereof — was against large multi-member districts, and we wound up with a compromise, as was explained by Delegate Kelsch.

Now, going on to the Longmire amendment: I have several objections to it. Some are technical in nature and others are quite substantial.

First of all, a technical one: He allocates two representatives. Now, the Committee said at least two, because of the possibility in the future that if the Senate is reduced in size, we may want to go to a three-to-one ratio. I'm a little surprised down here on the sixth line from the bottom of the Longmire amendment, on page 1, to find the word "townships." This is the first time "townships" has shown up on this floor, and I'm surprised that the Chairman of the Political Subdivisions Committee has brought it before us, because in the article on political subdivisions, "townships" were never once mentioned.

Also, we have a technical problem here, because in the thirty-second district there is attached to Bismarck not only townships, but unorganized territory.

Now, my more substantial objections to the amendment are these: What we're doing under the Longmire amendment is creating a special class of citizens out of the general population. City people will be able to do things in their districts that rural people won't be able to do. I question the constitutionality of that. Also, the procedure for doing these things in the urban districts is very difficult and unwieldy — probably unworkable. So I think that — rather, I urge the rejection of this portion of the Longmire amendment. And then, with the Committee Proposal back before us, if anyone wants to offer an amendment to combine two or three or four senatorial districts, or whatever, I suggest the amendments of a multi-member-district nature be directed against the Committee Proposal, and I urge you to reject the Longmire proposal here because, one, it's unworkable and, two, it's on very shaky constitutional ground.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention, as the Chair understands it, is starting on the second sentence in Section 4, where it starts with "Two representatives," and from there on through the balance of the proposed amendment.

You have heard the question. Those in favor will say "aye;" those opposed will say "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay."

The "noes" have it. The amendment lost.

DELEGATE LONGMIRE: Mr. President, may I request a division?

PRESIDENT WENSTROM: Delegate Longmire, what was your request? You request a division?

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: One, two, three, four — a division is granted. Delegate Sanstead.

DELEGATE SANSTEAD: May that be a recorded division?

PRESIDENT WENSTROM: Yes. There were at least ten people standing, so we'll grant a recorded division.

The question, again, is on the adoption of the second portion, starting with "Two representatives," on Section 4, and it is pertaining to the Longmire amendment to Committee Proposal No. 1-29.

Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate indicated his preference? The key is closed.

The roll call indicates 33 "ayes," 63 "nays," two delegates absent and not voting. The amendment to Committee Proposal No. 1-29 has been defeated.

Is there anything — any announcements at the desk?

We have two announcements. Will you read these?

CHIEF CLERK GILBREATH: Delegate Brakke would like to announce that Representative Gronberg from Hannaford, District Twenty-three, is in attendance.

Delegate Aubol would like to announce that Representative William Erickson of Stanley, North Dakota, is in attendance, from District Four.

PRESIDENT WENSTROM: Are these legislators in the assembly? If they're with us, if they'll advance to the rail and be recognized by the Convention.

Delegate Decker.

DELEGATE DECKER: Mr. President. Fellow Delegates:

If you haven't been up in the west balcony to have your picture taken, they would like to have them finished up today, if it's possible, so the proofs could be gotten back in time for next week.

PRESIDENT WENSTROM: The Chair would like to announce a short meeting of the six substantive committee chairmen. Stan, I'm sure that's okay with you.

DELEGATE SAUGSTAD: Yes. Okay.

PRESIDENT WENSTROM: In my office, immediately after we recess.

And if there's nothing further to come before the group at this moment, we will recess for 15 minutes.

(The Session recessed at 2:56 P.M. until 3.30 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. We'll be on the eighth order of business — announcements.

The Clerk at the desk has an announcement.

CHIEF CLERK GILBREATH: Delegate Engelter has three students who are in the Bismarck-Mandan Junior Achievement Program. This is a program whereby the high school students operate and manage a small-scale corporation.

PRESIDENT WENSTROM: Will the students rise and receive the recognition of the Convention? (Applause)

We still have Committee Proposal 1-29 before the Convention.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I have a short amendment at the desk which I would like to move at this time. The effect of the amendment would be to eliminate the last sentence on the first page of the engrossed copy in the book.

PRESIDENT WENSTROM: Would the Clerk read the proposed amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-29:

On page 1 of the engrossed proposal, in line 23, delete everything after the word "thereof."

Delete all of lines 24 and 25.

And renumber the lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do I have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sanstead.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, I see as questionable the authority given to the commission to combine the two senatorial districts and provide for electing all of the senators and representatives in that double-sized district at large. It appears that this authority could be used by the commission for gerrymandering purposes. At least it makes that much more possible. It has especially hazardous possibilities concerning the rights of farmers and rural people. A district under this could be arranged so that the people in a town in a double district could have all six of the senators and representatives from that district. That could not happen in a single-member district. Also, this gives authority to the commission to reduce the number of districts in the State to as low as 24, and

even less, depending on the size of the Senate which the commission itself has established. That, in my opinion, makes entirely too few districts in a state of this size. Moreover, in smaller districts the people are more apt to know their candidates and representatives in the Legislature, and I regard that as a more wholesome arrangement than when people are represented by people that are likely to be strangers to them. With more districts and smaller districts, the Legislature is kept closer to the people and, in my opinion, this is preferable.

These are the reasons for the amendment, Mr. President.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Is there any further discussion? Delegate Kelsch.

DELEGATE KELSCH: I would hope the Convention would reject the proposed amendment. We've rejected the wide-open, multi-member senatorial districts that Delegate Longmire — or at least the ones we had at four and three senators. We rejected that on the theory, I felt, this was a fair compromise between the two conflicting viewpoints, and Judge Maxwell is proposing we go to single-senator districts, and I think there are occasions in North Dakota where allowing the combining of the two-senator districts, you may in many cases be able to keep the county intact. In some of our cities you at least allow some united representation on city problems. So I would urge the Convention to defeat the proposed amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I, also, urge the Convention to defeat the amendment. I feel that the compromise by the Committee was a good one and that the commission has the flexibility with the Proposal as is.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment as offered by Delegate Maxwell.

Delegate Sinner.

DELEGATE SINNER: Mr. President, I only want to say that there was a group of this Committee that agreed this sentence was bad; but it was a minority group and we in Committee also tried to get this sentence out, and I agree with the amendment.

PRESIDENT WENSTROM: Further discussion?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'm sorry. I wasn't in the chamber when they started the discussion on the amendment, but this would, in effect, have me represent a piece of pie at Grand Forks, and I like pie pretty well, but I don't like the idea of representing a sliver of the city, and this is exactly what would happen. I don't think I could represent my people well. I don't think we could divide it up in a good way. I urge the defeat of this amendment.

PRESIDENT WENSTROM: The question is on the amendment — Delegate Scheel.

DELEGATE SCHEEL: I happen to come from the City of Fargo. I oppose the amendment. I think we've conceded quite a bit already. We've done the work in the City of Fargo and this was long before politics entered into this thing at all. We all went to work with the idea we had one town, and we still do have one town, in just about everything we're doing there — city government — everything that has to do with it — churches — the churches aren't divided up, the park districts aren't divided up, the City Commission isn't divided up. The mayoralty isn't divided up. Nothing is divided up. Now we intend to divide this thing down to the very smallest unit, and I would oppose this.

PRESIDENT WENSTROM: Further discussion? Delegate Omdahl.

DELEGATE OMDAHL: Philosophically, I guess I agree with the decisions of the courts that have been made that we should have single-member districts; but in this case, I think that there was a compromise already made in the Committee, and we agreed to report out a plan that was somewhere between what a minority and what a majority of the Committee wanted, and I think that the

two-member district is something that we can all live with. I think there probably might be minor discriminations between the two-member district and the one-member district, but I think those are the kinds of things that we can live with. After all, the whole electoral system isn't all that perfect anyway, and this is manageable and it's possible, and I think I would urge that we support the Committee recommendation as it stands.

PRESIDENT WENSTROM: Further discussion?

The question is on the adoption of the amendment as offered by Delegate Maxwell.

No further discussion? Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye," those opposed say "nay." The "noes" have it and the amendment lost.

We are back on Committee Proposal No. 1-29.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I have, I think, a technical amendment. On line 24, I would move that we add the words "at large" after the word "senators" on line 24. If I get a second, I'll explain the reason.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lander.

DELEGATE KELSCH: I want to make this clear: That where the commission may combine two senatorial districts and provide for the elected senators, it goes on to read as it was before — "and representatives at large" from sub-districts thereof, and when we talk about combining two senatorial districts, the only reason you combine them is to elect the senators at large, and I think the language wasn't clear before. So, if you do combine, the senators will be elected at large. "The commission may combine two senatorial districts and provide for the election of senators and representatives at large or from subdistricts thereof." If you do that, you're not really doing any combining, except in terms of numbers. So I think adding the words "at large" after the word "senators", it would make it clear that the senators would be elected at large.

PRESIDENT WENSTROM: You have heard the reading of the amendment.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: The motion was seconded by Delegate Lander.

DELEGATE HILDEBRAND: Mr. President.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: I rise to oppose the amendment, because I didn't read it that way. You read it as a continuous sentence, and it says "provide for the election of senators and representatives at large." I think it's right the way it is — from the same district, from the same subdistricts — yes.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Delegate Kelsch is simply trying to clarify Committee intent, and I think his amendment is a good one. If it is adopted, it would be perfectly clear that the Senators — or the two senators would be elected at large, while the four representatives may either be at large or from districts containing two each.

PRESIDENT WENSTROM: Would you read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-29:

On page 1 of the engrossed proposal, in line 24, after the word "senators" insert the words "at large" — and renumber the lines accordingly.

PRESIDENT WENSTROM: Any questions? Any further discussion?

The question is on the adoption of the amendment as offered by Delegate Kelsch.

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

We're still on Committee Proposal No. 1-29 before the Convention.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: May I inquire? We have not — the question is still divided. Is there three parts to it or —

PRESIDENT WENSTROM: There still is two parts, unless the lady agrees that she no longer requests that the question be divided — Delegate Hendrickson.

DELEGATE KELSCH: For a point of information, Mr. President. We treated Section 4 in two parts, but there's a matter on page 2 that I don't know that would be considered with it. Is that a separate part?

PRESIDENT WENSTROM: I'm confused on your question. The request from Delegate Hendrickson was on Article II, and that was — that was where? — about one, two, three, four, five, six, seven — on the eighth line, where it reads "legislative offices." That's where she requested that the question be divided. Now, if she still requests that —

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: May I withdraw my request?

PRESIDENT WENSTROM: You may.

The question before the Convention —

DELEGATE KELSCH: Mr. President, I would move that the Rules be suspended and that Proposal — that 1-29 be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Kelsch moves that the Rules be suspended, Committee Proposal 1-29 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

The motion was seconded by Delegate McIntyre.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The Committee Proposal No. 1-29 is again before the Convention.

The question before the Convention is on the first passage of Committee Proposal No. 1-29 as amended.

Those in favor will vote "aye;" those opposed will vote "nay." The Clerk will open the key. You will record your vote.

DELEGATE MEIDINGER: Meidinger votes "aye."

CHIEF CLERK GILBREATH: Meidinger votes "aye."

PRESIDENT WENSTROM: Has every delegate voted? Any delegate wish to change his vote? The key is closed.

The roll call discloses 79 "ayes," 16 "ayes," two delegates absent and not voting.

Committee Proposal No. 1-29 has passed.

We will now have for consideration Committee Proposal 1-89. That was — was moved to a time certain — until such time as Delegate Pearce was in the room. He is here and has been for some time. We can take up further consideration of the amendment as offered to Committee Proposal 1-89 and offered by Delegate Thompson.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: With the permission of my second, I would like to change the amendment that I've made earlier, so that it would read the same as the one I have now, entitled "Last Proposed Amendment" — and I mean this is my last proposed amendment.

PRESIDENT WENSTROM: Is this an entirely new amendment, Delegate Thompson?

DELEGATE THOMPSON: It will have to be, because there are some more

words left out, and I did correct the second paragraph, which I didn't intend to leave some words out of; so some have been added to that.

PRESIDENT WENSTROM: I wonder if it maybe wouldn't be better if you would withdraw your earlier amendment and start anew again.

DELEGATE THOMPSON: Yes. I move to withdraw my first amendment.

PRESIDENT WENSTROM: And your second was Delegate Kwako, and if it's agreeable —

DELEGATE KWAKO: Yes.

PRESIDENT WENSTROM: We will — and I'm sure, for the Convention, it would be less confusing; but we'll withdraw the earlier amendment as offered and proceed from that point.

DELEGATE THOMPSON: Excuse me. I have the new amendment at the desk and I ask that it be read now.

PRESIDENT WENSTROM: We will then consider the earlier amendment withdrawn, and the Clerk will read the new amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-89 is as follows:

Delete everything after line 9 of the engrossed proposal and insert in lieu thereof the following:

“Private property shall not be taken or damaged for necessary public use without protecting the rights of the owner and without just compensation having first been made to the owner for all damages.

“However the legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service by depositing estimated just compensation into court for the owner. The legislative assembly shall provide the procedure and time limit for determination of damages, necessity, and public use in such cases.”

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do I have a second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

It's been moved and seconded. Any discussion?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'm kind of at a loss to do this. I think I'd like to talk, first, just on the first paragraph and I'd like to have you at this time look at the one that Mr. Pearce has sent around and, also, the one that Delegate Burbidge has sent around. Mine is substantially different than Delegate Pearce's in this way:

He provides that a property owner has protection, but he also provides only by the payment of money, and this doesn't satisfy me. So mine does provide for another determination that must be made. You must determine public use and you have to further protect the rights of the owner, and that's substantially the difference. Now, if you look at Delegate Burbidge's proposal, his is longer, and you kind of get the idea what our Committee was trying to do in that first paragraph by reading his proposal. But I don't subscribe to his because I don't think we need all those words.

Now, I misspoke myself this morning when I referred to the second paragraph. Through the transportation of my amendment back and forth, I did not get all of the words in that Delegate Omdahl did yesterday, and so that has been changed, so it reads now exactly the way that it was amended, and apparently approved by the body after we got through with the session on this matter yesterday. I don't think that it's necessary for me to say any more on this. I think, if you will remember that we want to protect the property owners not only by the payment of money, but his other rights, and this is done in the first paragraph, and that's substantially the question: Do you want to give the owner

more rights than he has now or do you just want to protect him by the payment of money?

PRESIDENT WENSTROM: Any further discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President.

Delegate Thompson, you refer to the proposal, which I am not calling the "ultimate proposal," which has my name on the top; however, I have since distributed this, the first thing this morning, adding the word "first" between the words "without protecting" and the amendment as the Clerk has it has the word "first," so that the thing would read "Private property shall not be taken or damaged for necessary public use without first protecting the rights of the owner by the payment of all damages."

Now, my criticism of my colleague's — Delegate Thompson's — is that you're still in that first sentence substantially saying you shall not hang a man without taking care to protect his life. Well, that means you can't hang him, so far as I can see, and I don't see how you can protect his property at the same time you're taking all his property rights — the whole idea of eminent domain.

Now, I've said all I'm going to say on this, because I've argued at long length. If Delegate Thompson's amendment is approved, I'm going to quit. If it is not approved, then I'm going to offer my amendment as it's been handed around on the desks.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move a minor amendment to the amendment. I want to keep in those magic words "for all damages." And so, in the fourth line from the bottom, after the word "compensation," insert the words "for all damages." If I get a second, Mr. President, I'll explain.

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: Delegate O'Toole seconds the motion.

DELEGATE LONGMIRE: Mr. President, there are damages, as I explained earlier, under the court decisions now where just compensation has been interpreted as fair market value. Well, when a person has to leave and has to relocate, there are a lot of additional expenses above and beyond that, and I think that, in putting this money into court, they ought to estimate what that's going to cost and put enough in to take care of them, so they can get out of the place and not have to be kicked out on the street.

PRESIDENT WENSTROM: The question is on the amendment to the amendment. Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Delegates:

I've restrained myself on this topic long enough! We must realize that eminent domain is a necessary function of government. We cannot hang back. We cannot take care of Longmire's clients in this body. We must give our government the right to eminent domain. We have passed a law saying that we've got to take care of the environment and the ecology, and if you tie your local government up in such a proposition, then they're going to get in a court case every time they try to locate a sewage disposal plant, a drainage ditch, a landfill. You're going to effectively throttle everything at the local government level. This is not for the State Highway Department. This is for your local government. And we can't throttle government on that basis. We must make sure that eminent domain will work in a satisfactory manner, and we can't take care of all of the little details of somebody's client in this body.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I don't think that the majority of the members of this Convention feel that I am taking care of my clients. I mentioned some examples in people that I represent. I'll take care of my clients under present law. I am speaking on behalf of every public — or every property owner in the

State of North Dakota whose problems will be similar to those of people that I have come in contact with. I resent the insinuation that I would use the august assembly here to try to use it for personal benefit.

PRESIDENT WENSTROM: Delegate Hougen — Jim Hougen.

DELEGATE HOUGEN: Yes, Mr. President, and Fellow Delegates:

I hesitate, I guess, to state on this, because I admit I don't know too much about it; but I spoke on it a few times and I thought I had known something. But it hasn't come out too well. But I want to second, again, what Delegate Longmire has said. I know personally of what he is talking about. I think he has a just right to expect that the State pay for all damages, and I think that he is entirely correct in what he has said.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I would like to support Delegate Longmire's amendment, and if you look at mine, I've got "all damages" in there. I think it should be said to the Assembly that perhaps you don't know — and this has nothing to do with our practicing law — among the damages that you're entitled to collect is your attorney's fees, and that's the law now, and I assume it will continue to be the law because the courts have said that you're not receiving full compensation unless you get your costs. So they are included. So you don't need to worry about a fellow being in the lawsuit. His attorney's fees are going to be taken care of, too.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President. Delegate Pearce just pointed out that his proposal also calls for payment for all damages. Delegate Longmire — would Delegate Longmire yield to a question?

PRESIDENT WENSTROM: Will Delegate Longmire yield?

DELEGATE LONGMIRE: Yes.

DELEGATE AUBOL: Now, there's one slight difference, I think, between your language and that of Delegate Pearce's, and he specifies that the payments shall be made for all damages occasioned by such taking. Now, would that language be in conflict in any way with yours?

DELEGATE LONGMIRE: No, I don't think — I think we're aiming at the same thing. However, I am not agreeing to go along with Delegate Pearce's first part of his amendment at this time, and this isn't my amendment; this is Delegate Thompson's. I like his better.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Will Delegate Longmire yield to a further question?

DELEGATE LONGMIRE: Yes.

DELEGATE AUBOL: On your amendment, would you consider amending it and putting in the language that Delegate Pearce has — "for all damages occasioned by such taking"?

DELEGATE LONGMIRE: Well, I think it's nit picking. My interpretation of what I said would be "for all damages," and I assumed it would be as a result of the taking. So I would have no strong feelings one way or the other in that connection.

PRESIDENT WENSTROM: The Chair will recognize Delegate Benson.

DELEGATE BENSON: Mr. President. Fellow Delegates:

I understand now that we're going to have a choice. We have before Thompson's — Delegate Thompson's proposal, Delegate Pearce's proposal. I agree with Delegate Pearce in that the language in the first paragraph of Delegate Thompson's proposal just doesn't sit right. I do think that the proposal that Delegate Pearce presented here will do the job, and I think it is more preferable to the one that Mr. Thompson has proposed.

I would like to read very quickly here the right of eminent domain as it appears in the Illinois Constitution. It simply says, "Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law."

I think Delegate Pearce's proposal compares very well with this, and I would suggest that we defeat the Thompson proposal.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. Chairman, have we voted on the Longmire amendment of those three words, which, I believe, puts the second paragraph the same way we had it before?

I would only suggest that we confine discussion to that point.

PRESIDENT WENSTROM: The question —

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: I would rise to support Longmire's amendment. I had hoped that all of the delegates understand the full meaning of this thing. I come from an area where we've had considerable experience with this sort of thing — not necessarily just from the State level, but, in fact, predominantly from the federal. But those three words — "for all damages" — are very important, as far as I'm concerned, from the experiences we've had in our area, and this, I would hope you all recognize, according to my legal counsel, includes severance — a very significant part of this whole thing. Those three words would be all-inclusive and would include severance. Don't forget all of the different little aspects that enter into eminent domain. The taking of the land and the paying for it is only a part of it. There are many other things that enter into this — the inconvenience, the costs of moving, if this be the case, in the case of buildings or a home, and this sort of thing. So this is extremely important, and I support the motion — the amendment.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Would Delegate Longmire yield to a question?

DELEGATE LONGMIRE: Yes.

DELEGATE DEVINE: I'll present a fact situation, just for purposes of illustration.

We have a lake that is soon to be developed in our county, and part of the lakeshore is going to be condemned for public purposes. Would the landowner be entitled to compensation of the value of the land after the lake is developed under your proposal?

DELEGATE LONGMIRE: No. Before.

DELEGATE DEVINE: So he wouldn't be entitled to the damages that the value of that land might be a year from now?

DELEGATE LONGMIRE: No. Our courts have held many times that he would not be. You can't figure on what it's going to be worth after the agency has taken it.

DELEGATE DEVINE: So you're not expanding it beyond the present interpretation of the courts?

DELEGATE LONGMIRE: No.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President, in our discussions here these past few weeks, we've had quotations from Shakespeare, from the Holy Scripture, and several other places that illustrated the points under discussion. I've got a short quotation from another source that ties in directly with what Delegate Miller was saying, illustrating that you can't really pay for all this with money.

A few years ago, when the U. S. Government was expropriating land on Okinawa for the construction of the large airfields we have over there, the Okinawan peasants were rioting and attempting to keep their land, and Time Magazine reported an ancient Okinawan saying: "Money is for a year. Land is forever."

Now, I think that may be a little bit of peasant philosophy, but I think that's the philosophy of the North Dakota landowners.

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President, would I be in order to ask for the question — move for the previous question?

PRESIDENT WENSTROM: You would be in order; however, I would like to have you hear Delegate Simonson's question or remarks, first, in that when I recognized you, you and the lady were up at the same time. Then you can move the previous question.

Delegate Simonson.

DELEGATE SIMONSON: Thank you, Mr. President. It isn't any information, except that I am temporarily non compos mentis on this thing, and we keep talking about Delegate Longmire's amendment. Is that Delegate Thompson's last proposed amendment that we're talking about?

PRESIDENT WENSTROM: It is the amendment to Thompson's.

DELEGATE SIMONSON: And where do we put in "all damages"?

PRESIDENT WENSTROM: Would the Clerk again read the amendment?

DELEGATE SIMONSON: In the first paragraph or the second?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment:

In the second paragraph of the amendment, after the words "just compensation" insert the words "for all damages".

DELEGATE SIMONSON: Thank you.

PRESIDENT WENSTROM: Now, Delegate Hubrig, if you wish —

DELEGATE HUBRIG: Yes. I move the previous question.

PRESIDENT WENSTROM: Delegate Hubrig moves the previous question. Do we have five seconds? Delegate Lander, McElroy, O'Toole, Lamb and Knudson.

The previous question has been moved. We will — in the event this is adopted, we will vote immediately on the proposed amendment.

Those in favor of the previous question will say "aye;" those opposed "no." The "ayes" have it.

Now we are on the amendment as offered by Delegate Longmire. Any question?

As many as are in favor of adopting the amendment will say "aye," those opposed "no."

The "ayes" have it. The amendment is adopted.

We are on the Thompson amendment.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: As I served on this Committee, I saw the birth of an idea — an idea, I think, whose time has come — an idea which I think this Convention should consider — and it essentially is this: That there is something more to eminent domain; there is something more to it than money; that somewhere along the line the public interest and the public good have to be considered. This Constitution is going into effect, hopefully, for the last quarter of the Twentieth Century, and we have to look at these situations in a different light than our forefathers did or that the history books or that the dictionary did. This is something different, and it is not my idea. I saw it develop in Committee — the dream of Delegate Geelan and her subcommittee — and I sat as an interested spectator as she struggled with it, because time and time again in the months that we met, it was first said that the public good and the public necessity cannot be a consideration here. It never has been. The courts do not have an interest in dealing with it. They don't have any competence in dealing with it. And, further, that if you take this thing into consideration, you are faced with the very real problem that you no longer have eminent domain; that the legal processes are so slow — so slow that justice cannot come in the public good, in the public interest. But, gradually, as this idea built — and I think the Committee almost unanimously, including, of course, Delegate Thompson — agreed with it, and I think you agree with it, especially if you listen to our people at home, that somewhere along the line the public good has to come into it.

Now, one of the problems in this public good — and you folks have thrown this thing back to us a number of times, and I think it is for this reason — one of the problems in the public good is this: If you have quick take and it becomes an instant take, you then do not have the time to look very diligently at the public good. And so I think, to understand this thing, we have to understand that quick take does not have to be instant take; that we do have a little bit of lead time on these projects — not a great deal — certainly we've got to gear up the legal machinery to meet the needs of the last quarter of the Twentieth Century, and there is a great gap between what is and what should be.

Now, strangely enough, I realize that the proposal which I am supporting comes at what I think an unfortunate parliamentary time. I am going to support the Thompson proposal. If that is approved, I will move an amendment of the particular proposal that I have, which, I think, deals a little bit more — a little more privacy — a little more concern for the public need — a new idea, a radical idea, but an idea whose time has come. But I'm going to support the Thompson proposal, first, because if you look at Section 14 in the old Constitution, which will be, I think, the remaining instrument if we don't pass either my proposal or the Thompson proposal, it amounts for cruel and unusual punishment for Style and Drafting. There is one word — or one sentence in there that's got 110 words in it. It's a mess!

I would support the Thompson proposal because it attempts in some way, I think, to deal with the public good, as to a smaller degree the Pearce proposal does. But I would hope that, having passed the Thompson proposal, we would then consider an amendment.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of Thompson's amendment as amended.

Any further discussion?

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the Thompson amendment will say "aye;" those opposed "no."

The "ayes" have it and the amendment is adopted.

The question again before the Convention is Committee Proposal 1-89.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: There is a proposal at the desk, a copy of which is on all our desks. Will the Clerk read it, please?

CHIEF CLERK GILBREATH: Proposed amendment to amended engrossed proposal 1-89:

Delete lines 10 through 20, inclusive, of the engrossed Proposal 1-89. Insert in lieu thereof the following:

"Private property shall not be taken or damaged for public use without first protecting the interests of the general public and establishing a reasonable accountability for the project plan. Procedures for certifying this shall be established by law with special consideration being acknowledged for action with dispatch and finality in cases involving right-of-way for transportation, communication and transmission of power for public service.

"After public necessity and project plan has been certified, private property may be taken or damaged for public use after paying owner mutually agreed just compensation for all damages, or by depositing estimated just compensation for all damages into the court for the owner pending final determination either by the courts or by a mutually agreed upon arbitration panel."

PRESIDENT WENSTROM: Do we have a second?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Aubol.

The question before the Convention is the amendment as offered by Delegate Burbidge.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: A further short explanation:

This says that the rights of the general public — the interests of the general public and a reasonable accountability for the project plan shall also be an issue in eminent domain. It's a radical idea, but one whose time, I think, has come.

The problem, essentially, is in establishing the procedure so that the public good and justice can be determined and can be determined without great expenditure of time. Presently, there is hardly even a consideration of the interests of the general public and the reasonable accountability, except through injunction procedures, which sometimes become cumbersome. I am simply saying, and I hope the Convention will back me up, that somewhere along the line there has to be established a legal instrumentality that's imaginative enough and effective enough to deal with the problem of public interest and deal with it without undue delay; and having first established a public interest and accountability for the project plan, then we go ahead and we pay the owner for the private property, for all damages either as agreed or, if we can't agree, go into deposit in the court or, if it is mutually agreed between the two parties, we can go into an arbitration panel.

This is the essence of the plan.

PRESIDENT WENSTROM: Any further discussion? Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I have no objection to having in something about protecting the interests of the public, but I do think one basic thing has been left from Delegate Burbidge's amendment; namely, the property rights of the person.

Now, the question has been asked here, "Well, once the person gets his money, what other property rights does he have, if you pay them into court?" Well, I think there are a lot of other things that are awfully important to the property owner that should be considered in this taking. First of all, how long are you going to give him to vacate the property? Are you going to — once you put that money into court, are you going to serve a notice of eviction on him in 15 days, whether he's got another place to go to or not, and evict him from the premises if he isn't out within that time? I can think of other matters that are very important. One was an example, and this is not for my clients — an example of the Highway Department coming through our city. There was a lady living in a small house there, 78 years old, who had lived there since she and her husband returned from their honeymoon, and the Department wanted to take the whole lot and the whole house. As it turned out, by just taking a little of the porch off, she could change her door and go around to the side entrance and maintain that little security that, to her, was very important, and keep her house intact, even though it would be close up on the street that was busily traveled.

Another instance that I can think of property rights would be in coming through with a power line, or something, where they wanted to come through to take out some trees that had been growing for many years; that just a little change in that would leave those trees and still not be very expensive to the power line or anything that was coming through. Certainly we wouldn't want to change drastically the method or the direction in which a highway would be coming; but there are a lot of things like that that are very important to the property owners that are property rights that I think ought to be considered when we take this. As I have indicated before, taking people's property is a very serious thing. You ought to bend over backwards to cooperate in every way that you can to help them in other rights that they have, if you can, besides just paying them the money for the damages that you have caused to them.

Those are the things that I'm thinking about when I think that it's important to keep in this proposal property rights and consideration for them of the property owner.

PRESIDENT WENSTROM: Further discussion? Delegate Burbidge.

DELEGATE BURBIDGE: I acknowledge Delegate Longmire's problems here. The reasonable accountability for the project plan would have taken care of the problem of the trees, and that, of course, is in here.

We talk about "just compensation for all damages." We mean that! But I have no illusion that I can write into this anything more than the others have

written into it on quick take. Certainly there's got to be some way of taking care of these damages, and this, of course, would be an administrative thing. This is a matter of principle and a matter of policy, and it's strong enough and broad enough so legislation can be built on it to solve these problems.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Burbidge.

Any further discussion? Hearing none, those in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the Burbidge amendment will say "aye;" those opposed say "no."

The "noes" have it and the amendment lost.

We are again on Committee Proposal No. 1-89 as amended. Delegate Thompson.

DELEGATE THOMPSON: I was just wondering if there's going to be more amendments proposed. If not, I was going to make the motion to suspend the Rules and have it re-engrossed —

PRESIDENT WENSTROM: Are there further amendments to Committee Proposal No. 1-89? Delegate Pearce.

DELEGATE PEARCE: Mr. President, I hustled up here this morning and got this drawn up, and I don't want that to go to waste. Therefore: I move the amendment.

Now, to make things clear: In your book, 1-89, as I understand it at present, is reprinted on the pink page and has an additional slip, and my amendment only runs to the first paragraph. I am not attempting to rewrite the second paragraph again. Of course, it's now been rewritten again by adopting Delegate Thompson's amendment. But, still to make things clear, the amendment that I propose and I'll ask the Clerk to read, is only to the first few lines, and pick up the second paragraph that has now been amended by Delegate Thompson's amendment, and it's on each one of your desks — my amendment — except that you should insert the word "first" between the words "without protecting" so it reads "without first protecting," and I move the amendment as the Clerk will read it.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-89:

Delete lines 10 through 13 in the engrossed Committee Proposal 1-89 and insert in lieu thereof the following:

"Private property shall not be taken or damaged for necessary public use without first protecting the rights of the owner by payment for all damages occasioned by such taking, such damages to be determined by a jury unless waived."

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Baker. Any discussion?

DELEGATE OMDAHL: Mr. President.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: So that you people understand, this does not say what mine says, and it would come very close to it if you'd add one word to — prior to "by payment for all damages," if you add the word "and" you'd come pretty close to what mine says. But the big difference between Mr. Pearce's and mine is that he's only going to protect the property rights by the payment of damages, and that's exactly what I don't want.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I am embarrassed by all of the things that I happen to get mixed up in here that seem to be coming today, and I apologize for taking so much time, but I see one basic difference in Delegate Thompson's amendment and Delegate Pearce's.

In Delegate Pearce's amendment you say that once you've paid that money, no further consideration is given to the property rights of that individual; in

other words, you do anything you want to with that property the minute you pay into court what you estimate to be just compensation for damages. I admit that that clarifies the wording somewhat of the amendment, but do we want to do that? I think these other things that I mentioned ought to be considered. The property rights ought to be considered, and that when you — there's something that's worth more than money — there's some other rights there about possession for a reasonable length of time, and those other things I mentioned, and when you put the amendment in this way, you disregard all of them, because the minute they get that dollar and the greenback, they're all through then and the agency can do anything they want to with the property.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Delegate Longmire, my amendment does not provide for payment of estimated damages and then take it. My amendment is not a quick take at all. You can't do anything until the damages have been determined and paid, and determined by a jury, unless waived. I don't have that "estimated" in my portion.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would urge your support of the Pearce amendment. I think it preserves the concept of eminent domain. I agree with Delegate Pearce that under that proposal you will not lose possession of your property or any rights until there's first been a jury trial, if you want one, to determine your damages, and the only way we can — you are exercising eminent domain. The only way you can take the property rights of persons, whatever they may be — whatever they may be — is to pay for it, and he's assuring that the property owner be paid for all damages occasioned by the taking, and this must be decided, first, by a jury.

PRESIDENT WENSTROM: Any further discussion? Delegate Saugstad.

DELEGATE SAUGSTAD: I would yield to Delegate Thompson for him to again explain the difference between his proposal and that submitted by Delegate Pearce.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Mr. President. I, again, even though the damages are determined, that all they're determining is how much money do you have for the property that you're losing? Now that isn't the only question that I think a property owner should have. I think he should have these other things decided: Is this a reasonable taking by the government? Should this property be taken? There are many other things that should be decided before the taking, other than just "How much money is this thing worth?"

PRESIDENT WENSTROM: Further discussion? Delegate Geelan.

DELEGATE GEELAN: Mr. President, I had not expected to — I had not expected to speak again, but I do have to speak against the Pearce amendment for the simple reason that we have said, over and over again, we want to protect the property rights — the rights of the owner far beyond compensation, and when you say protect his rights by paying just compensation, that's all you pay. That's all the jury can decide, if it goes to a jury.

So I must speak again: That by protecting the rights of the owner beyond compensation, you would have to oppose the Pearce amendment.

PRESIDENT WENSTROM: Further discussion? Delegate Burke.

DELEGATE BURKE: Mr. President. Fellow Delegates:

I echo Delegate Geelan's sentiments, and I believe the Pearce proposal brings into focus the two philosophies on eminent domain that are prevalent at this Convention. One philosophy of eminent domain is "We have the right to take property, full speed ahead, and all we are responsible for are money damages." And the other philosophy, represented by the Thompson amendment, says, in effect, "We recognize eminent domain, also, but we want to have the right to question certain things in addition to money payment, such as the location of

a power line running across a quarter section of land and questioning some of the things that Delegate Longmire talked about.”

For that reason, I oppose the Pearce amendment.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Yes, I think that's the issue, and I believe that, if we say that any citizen can question the authority of the State through its Legislature, who, really, in the first instance, grants the power, then you're saying that the individual court can deny to the State the power of eminent domain. I think that you can't have — you can't have eminent domain on the one hand and protect personal property rights on the other hand, because whenever you take a man's property, you're denying him that property, and that's denying him a right.

Now, if the Thompson proposal would say “other rights,” I could agree with him. It says “protect the rights” — not “other rights” — and I think, unless a court could construe otherwise, I think that you're seriously jeopardizing the concept of eminent domain, and I might mention that that's the age-old question — the public good versus the individual good. There has to be a balance, and I think that the Legislature has to have the power to act.

PRESIDENT WENSTROM: The Chair will recognize Delegate Devine.

DELEGATE DEVINE: Would Delegate Pearce yield to a question?

PRESIDENT WENSTROM: Would Delegate Pearce yield to a question?

DELEGATE PEARCE: Yes.

PRESIDENT WENSTROM: He yields.

DELEGATE DEVINE: Delegate Pearce, is it your intent that whoever was using eminent domain would not have to prove necessity?

DELEGATE PEARCE: No. No, I can't say that.

Now, we've got many, many kinds of eminent domain. We may have many more, since we've now said that everybody can protect the environment. If we're going to do certain things about the environment, we may well have to exercise public domain. They're the only people that have got the money to buy it. My point, of course, is that in the case of a utility or a rural electric cooperative or a generating and transmission cooperative, for electric lines you have the authority because you're under the regulation of the State in the case of private utilities, and the Legislature has given it, because of the public use served, to the cooperatives. You have the State having it, itself, the counties for highways, which they've always considered to be necessary. You can't build a highway without trampling over somebody's ground. Sure, we have individual cases where individuals are hurt. This is one of those things where you can't please everybody. The idea of eminent domain is for the public good. Now, no corporation just privately can have eminent domain. There's a whole section in the Code as to who can have eminent domain. You've got to get it, Delegate Kelsch says, from the Legislature. That's the State speaking. That's the source of it. You are not just giving it broadside to everybody. And so — but if you fragment the power in the middle of a pipeline or a road or in the middle of some park development, a jury or a court says “No” to the necessity, then, of course, the group or the organization that had eminent domain from the Legislature no longer has it, and this would stop more projects than would ever get built.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I yield to Delegate Thompson.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I want to answer now Delegate Pearce's last remark. You've got to read both of these paragraphs together. Now don't forget that! We are providing for quick take, or that the Legislature can give quick take for the purposes of transportation, communication and transmission of power. Now, I don't agree that parks are a necessity in that specific area. Wherever they want to put them, maybe they should be somewhere else, and I think your government or the agency taking it should have to prove that that park has to be there

— that that's the only possible place it can be. And if the property owner doesn't have that kind of right, he doesn't have any business owning property.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: We are writing a constitution for North Dakota. We are hoping that government will be more responsible, more accountable, more visible, and we are saying, in the Thompson proposal, that the engineer can't just point and say, "It goes this-a-way." Somewhere there has to be some responsibility and some accountability for the project planned in the public good; a new and novel idea, but one whose time is coming.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment to Committee Proposal 1-89 — the amendment to the proposal as offered by Delegate Pearce.

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the Pearce amendment will say "aye;" those opposed say "nay."

The "nays" have it and the amendment lost.

DELEGATE PEARCE: Division.

PRESIDENT WENSTROM: A division has been requested. It is granted.

Again, the question is on the adoption of the amendment as offered by Delegate Pearce. Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will record your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicated 32 "ayes" and 62 "nays." So the proposal — the amendment failed.

Delegate Thompson.

DELEGATE THOMPSON: I now move that we suspend the Rules and re-engage the Proposal on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Thompson moves that the Rules be suspended, that Committee Proposal No. 1-89 be deemed properly re-engrossed, and that it be placed on the calendar for first passage as amended. The motion was seconded by Delegate Rosendahl.

As many as are in favor of the motion will say "aye," those opposed "no."

The "ayes" have it and Committee Proposal No. 1-89 is before the Convention for final passage as amended — first passage as amended.

Any further discussion? Hearing none, those in favor of its passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will record your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 83 "ayes," 12 "nays," three delegates absent and not voting. Committee Proposal 1-89 has passed.

Next for consideration, Committee Proposal No. 1-44.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-44, introduced by Committee on Legislative Functions:

"Be it resolved by the North Dakota Constitutional Convention that sections 27, 30 and 33 of Article II of the constitution of the state of North Dakota be repealed; and that sections 2 and 5 of Article II to the constitution of the state of North Dakota be created; all pertaining to legislative terms in office.

"SECTION 1. REPEAL.) Sections 27, 30 and 33 of Article II of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Sections 2 and 5 of Article II to the constitution of the state of North Dakota are hereby created to read as follows:

"ARTICLE II

"Section 2. Members of the legislative assembly shall be elected for terms of four years.

"Section 5. The legislative seats shall be numbered consecutively, and be divided into two classes, even-numbered seats constituting one class and odd-numbered seats constituting the other class, so that one-half of the legislators, as nearly as practicable, may be elected biennially; provided, however, that when the legislative assembly is redistricted the legislators elected prior thereto shall continue in office until the expiration of the terms for which they were elected, and the act providing for such redistricting shall specify, where necessary, the newly established seats they shall hold for the balance of their terms."

PRESIDENT WENSTROM: Any discussion?

The question before the Convention is on Committee Proposal 1-44.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I have an amendment at the desk that I'd like to propose at this time.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-44:

Delete all of lines 12 through 23 and insert in lieu thereof the following:

"Section 2. Senators shall be elected for terms of four years and representatives for terms of two years.

"Section 5. Whenever the legislative assembly is redistricted the terms of legislators removed of their constituencies thereby shall be deemed to have immediately expired."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten. Any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President, under Rule 24, I request that the debate and the votes on this amendment be divided as between Sections 2 and 5.

PRESIDENT WENSTROM: Permission is granted. It will be divided.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I wanted to first explain to some of the delegates here and clarify a statement that I made on the floor when I was questioned concerning the proposed amendment that I had planned to offer. I stated at that time that the only amendment that I had considered was the amendment to Section 5, and that I had no strong feelings one way or the other about changing the length of the terms of house members; however, later that day, and the next day, some people came to me — some of the delegates — and rather than submit a separate amendment, asked me to include in my amendment to Section 5 an amendment to Section 2, which merely changes the Legislature back to the four-year terms for the Senate and two-year terms for the House.

I wanted then to explain, so that I wasn't misrepresenting the situation as I answered the question on today. And so I have no strong feelings one way or the other on this, but I assume that there will be comments from other delegates who were interested in having the legislative terms remain as they are at the present time.

PRESIDENT WENSTROM: Further discussion? Delegate Poulson.

DELEGATE POULSON: Mr. President, am I to understand that we are discussing the terms, first?

PRESIDENT WENSTROM: You are discussing —

DELEGATE POULSON: The length of term?

PRESIDENT WENSTROM: That would be correct.

DELEGATE POULSON: Thank you.

Fellow delegates, I guess I come here with clean hands. I have never been

a legislator, nor do I have any designs in that direction; however, I have feelings. I, personally, favor a four-year term for both the members of the House and the Senate; but particularly at this time I would address myself to the terms for House members, because that's the one we're changing.

In my district, we do not have a wealth of candidates. I can only speak for one party. We also have a problem oftentimes in my area of raising funds. Somehow I feel that the inducement of a four-year term to any young man or young lady who would aspire to the House of Representatives would be much greater if they could be assured of perhaps a longer term, whereby they might better justify their existence and perhaps correct some of the mistakes I have heard that first-termers often make.

I think that politics in North Dakota — party politics — is an exciting and a wonderful part of the democratic process, and I enjoy contributing what little I can to the party of my choice, and I feel that, if we are to encourage our new voters to become a part of a bipartisan effort, of a two or a three-party system, we must have the inducement of a four-year term. I found, in canvassing my township, as I'm sure some of you have found — canvassing it for funds for a particular political party — you might have a hundred voters in that precinct; you've probably got ten Democrats, ten Republicans and 80 independents. But I feel that, by having the term of four years, where we would have an election every two years, of course, people would become more interested, because there's more at stake; and, frankly, I came up here with the idea that I was — I was completely open minded on this. Perhaps I favored the two-year term because of tradition; but as I thought this out — and believe me, in my case that's a slow process — I have come to the conclusion that I heartily endorse and sincerely favor four-year terms for the House of Representatives.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Mr. President. Fellow Delegates:

Just to reaffirm the position of the Committee and explain our actions somewhat:

It was our thought that changing the House of Representatives from two to four-year terms was a move to strengthen the entire legislative process. We could see no real practical reason to continue the two-year term in the House. The premise of an upper and lower house has long since passed us by. The Committee felt that the four-year term would be the term best served in the Legislature; and so, therefore, I ask you to defeat the amendment and uphold Committee Proposal 1-44 as the Committee recommended.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President, I was one of those who approached Delegate Longmire, requesting that the reference to Section 2 be included in his proposed amendment; and there were others. So I hope that, before this discussion is over, that the others who are interested in this will rise and speak on it, if only a few words, so that the body will know that there is more than just the sticks-in-the-mud, or whatever the correct title is, objecting to Proposal 1-44 the way it stands. I think there's a lot more than tradition involved here. There's a question of accountability to the voters, and I think that's really important. The way it is now, one-sixth of the Legislature — that is, half of the Senate — or about half of the Senate — has some insulation from the voter reaction which could come immediately after changes in legislation which may or may not be popular. The other five-sixths have to think about the election next fall, and that's a good thing. That's a mighty good thing. I'm sure that's the way we want it and that's why I support this amendment. If you make the change as suggested in 1-44 the way it stands, one-half of the Legislature — half of each house would be insulated, at least for a time, from voter reaction. But I don't want that. I don't think anybody wants that.

PRESIDENT WENSTROM: Further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Fellow Delegates:

In the southwest corner, we have a different situation, apparently, than in

Imperial Cass. We just don't have any funds, but we have candidates coming out from behind every sagebrush, and which makes it more fun. We have a good race in the primary and another one in the fall. I would warn you people here, too, with my great personal popularity, that if I live long enough and you go to four years, you're liable to give me two free years here sometime.

But I favor the two-year term for House members. I think probably it would be smarter to go down to two years for the Senate than the other way around, and there's no doubt that a person has to look over his shoulder a little quicker, if he's elected two years sooner, and whether this is cowardice or good politics, I don't know. Tradition has nothing to do with this, as far as I'm concerned. I just think it's smart, and I don't think that some of these offices that we have raised to four years have worked out too well. If you notice that election year you want some information or some help from any official — a federal official — boy, you write them the year they're being elected, and you get an answer right like that. This includes Washington, as well as Bismarck.

I favor the two-year term. Thank you.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: Mr. President: We have heard of the theory of the political security of the four-year term and the insulation. I personally oppose the four-year term for House members for more than those reasons given, and I think you should remember what our political process is all about. You can speak about the national offices and state offices, but the whole thing is built around your precinct and your county organizations. That is the guts of democracy in voting, and the moment you remove half of your House members, you're taking that much vigor out of your political organizations. And on the House level, I believe you will find it in both instances those that are running for reelection every two years, it's a great contribution to no matter what party it is, and I think you ought to give that some consideration and thought, because that's what makes this country go and that's what drives the people; that's what invigorates the vote you get out, and it's a great contribution on the local level.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President, I have two reasons why I am not in support of the four-year term for house members.

First of all — and it may be a hackneyed phrase — I think we are taking government a little farther from our people. "Responsibility" is the watchword there.

Secondly, if you are locking a House member into a four-year term, you create this problem: You have 98 in the House. Sometimes it's a little hard to find a candidate. You persuade a young businessman or a young teacher to run. Is he going to be interested in locking himself into a four-year term? I know, personally, many young representatives, some women, some men, who have run and found that they did not care to serve any more. They weren't really adapted to the legislative process. Either they were slow learners or they just didn't fit in such a way as to induce them to run again, and I think it would be a disservice to our people of this State to adopt this four-year term for House members.

PRESIDENT WENSTROM: Delegate Bassingthwaite.

DELEGATE BASSINGTHWAITE: Mr. President. Fellow Delegates:

I rise to support Delegate Longmire's amendment. I don't believe we should consider this first term for the legislator as a training period. I think, if they don't do a good job the first time, then the people should have an opportunity to replace them. I think, if we go to a four-year term, we are just taking that much power from the people to have the kind of legislature that they'd like to have.

PRESIDENT WENSTROM: The Chair will recognize Delegate Knudson.

DELEGATE KNUDSON: Mr. President. I, too, support the amendment to delete Section 2. I wasn't one of those who instigated the submission of this amendment, but I am being consistent. I voted against 1-44 on January 27th or 31st, whenever we voted on it last. I suppose a four-year term would make

a House seat a little more comfortable, but I don't know if they really should be comfortable.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President.

I think the Convention early, especially during the debate over the bicameral and unicameral, expressed its concern over the possible professionalism of a legislator, and I think it affirmed its belief that we ought to subscribe to the idea of a citizen legislature — not that either form was going to get professional legislators, but that was a fear expressed. It is my experience, after watching the legislative process and being in the executive branch of the government for a considerable period of time, that the only way the legislators can cope with the professionalism of the lobbyists and professionalism of the bureaucracy is to develop a capacity and an ability and an intelligence of their own, so that with experience they can learn to stand up nose-to-nose with any lobbyist or bureaucrat who might be in trying to make demands on the legislative process.

The only time a legislator can really feel assured of his own information and knowledge is by becoming familiar with the subject matter, and the only way he can become familiar with the broad range of subject matter is by serving in at least a couple of sessions before he has to stand for election.

Some mention was made about encouraging young people to run and professional people to run. It seems to me that any intelligent person who is being asked to run for the Legislature would have to ask himself: "How much time and how much money am I going to have to spend to get this position, and then how much time in service do I have to amortize my investment?" And they look at that short, two-year term, and they think about it in terms of campaign costs and time that they have to put out, and they must invariably conclude that the amount of investment to get the job in the first place is too great in relation to the service that they are able to render; and so I think, in order to amortize their campaign costs and the effort, that the term should be lengthened.

Now, some mention was made that some people probably don't want to get locked in for four-year terms. I think this argument should be used just to the contrary. A resignation from the State Legislature is not uncommon, and it seems to me that, after the first two years of service, if a person finds that personal circumstances do not permit, that he can certainly resign from the position and it can be filled by an election, just as though it were a two-year term.

There has been a great deal of mention made on this floor as to what the people want, and of course none of us really knows what the people want, and most often we use this as an argument to buttress our particular argument at the time it is being given on the issue that is concerned, because we've all been inconsistent with doing what people want. But, if this is true — of some credit on this floor, I would suggest that you look back to the 1960's, if you want to find out what the people want, because in the 1960's, the people, on two separate occasions, voted to increase the terms of the county officials from two to four years, and they voted to increase the terms of the State officials from two to four years. Therefore, let's not argue about what the people want.

Now, you might say there must be some political motive in this because Omdahl is talking about it, because I'm sure that's probably gone through your minds in one way or another. I might take time to observe here that I was early in the Convention going to denounce any interest in state elective office this year, but I made the mistake of going down to the Committee on Judicial and Political Subdivisions, and there they had an imaginary car that was pulling the Chief Justices of the Supreme Court and other judges, and they kept talking about how this car was going to smash up and everybody was going to get killed and there was going to be all these vacancies on the court that had to be filled immediately, and I thought to myself maybe a bus with all the candidates is going to have a crash, so I better not say anything early in the Convention.

(Laughter)

But getting back: If I were partisan, and I want to tell you that, since going up to the University, I've become so objective sometimes it scares me, that —

(laughter) — if I were going to be partisan about it, I'd say I'm for a two-year term, because, honestly speaking, in North Dakota the only way the Democrats are ever going to get control of one house of the Legislature is by a freakish election, such as happened in 1964. But I say that partisan interests should not be uppermost in this matter. We need competent and capable legislators, regardless of whatever party they are, and I think we can get the most competent and most capable legislators by giving the term of office that will build that competence and capability into them.

PRESIDENT WENSTROM: The Chair will recognize Delegate Larsen.

DELEGATE LARSEN: Mr. President. Fellow Delegates:

I had hoped not to enter into this discussion. We have talked quite a long time, but I heartily endorse the four-year term and do agree with the feelings of the Committee. I believe it will enhance the work of the House members if they have four-year terms, and it will give the House of Representatives a more equal status with that of the Senate.

I also believe that under this system we who have been working with parties will have a stronger party basis to work on in our local communities, and I believe sincerely that it will make our representatives better represent the people, because they will get to know them better.

Thank you.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: Mr. President, I would like to rise to support the amendment. Much has been said about freshmen legislators and their inability to learn very rapidly, so that they should have more than one term. It would seem to me that, if they knew they only had two years, it might possibly motivate them to learn a little more rapidly.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, I think that something that's happening on the national level is a lesson here — at least it is my main reason for supporting a four-year term. I think President Nixon made a good start at stopping the steamroller inflation that has affected this country, a year ago, and now I think, because of the upcoming election, it's being frittered away, and I regret that, as I'm sure everyone does. But I think that the pressure of reelection all the time on people in public life has an often bad effect on what they do. I think one of the things that's really fresh about this body is that no one here is worrying about reelection to this office. Now, I'm sure someone is going to stand up and say that there are many candidates here, and I quite honestly think that there has been very little done here by people who were trying to seek political benefit. And think about that independence that you had yourself, that freedom to try to decide the issues not on the basis of some political gain or some political benefit that you get, but on the basis of the issue itself, and it seems to me that we see all too often in two-year terms, whether they be for Congress or for the Legislature, that terrifying temptation to weigh everything once on its own merits and then reweigh it on the basis of next year's election. And I see it as one of the necessary evils in public office, but I think we can minimize it by going to a little longer term.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: Mr. Chairman. Fellow Delegates:

I feel that this is a little bit more of a mechanical problem, rather than a philosophical one. On both sides of this divided question, the four-year-term presents a little problem for House members, because if they should decide, as frequently they do, that after serving some time in the House, they wanted to run for the Senate, half the House members would not be in mesh with the Senate in their term; so if this particular House member ran for the Senate, it would seem he would not have to give up his seat and, therefore, would have what would seem to be an advantage. On the other hand, the voters looking at the situation and knowing that special election would be indicated, if he were elected to the Senate, might be a little bit reluctant to support him, if they might otherwise. So I don't know if it's an advantage or disadvantage to the particular candidate; but I think it's a defect mechanically in the system.

PRESIDENT WENSTROM: Any further discussion? The question —

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Briefly, delegates, I would just like to point out that, if you have listened to the discussion, it is awful fraternizing on the part of the Senators. They keep talking about young people to run for the House. We are merely trying to remove the discrimination that exists between this chamber and the one across the way. We want to put them on equal terms, equal responsibility and equal standing with the public, and I think if you put a four-year term over here, then we won't be talking about graduating to the upper house. I think then you will have a true bicameral system that will operate on the basis of equality, rather than on one of the overlords in the Senate as against the poor commoners over here.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Longmire.

Now, the question here is divided, and you will be voting on Section 2 — only Section 2 of Committee Proposal 1-44. I hope that is clear. The question is on the adoption of the amendment to Section 2.

As many as are in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will vote "aye;" those opposed "nay."

The Chair is in doubt. We will open the key. You will record your preference.

Those in favor of the adoption of the amendment will vote "aye;" those opposed will vote "nay." The Clerk will open the key. You will record your preference.

Has every delegate voted? Any delegate wish to change? The vote is closed. The amendment was adopted, 51-to-44.

We will now — we'll be on the eighth order. Any announcements?

The Chair will declare a 15-minute recess.

(The Session recessed at 5:02 P.M. until 5:18 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

The Convention will please come to order.

The Chair will recognize Delegate Hoffner.

DELEGATE HOFFNER: Mr. President. We are still on Section 2, and I have an amendment at the desk for Section 2.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-44:

In the amended engrossed proposal, under Section 2, following the words "elected for terms of" delete the word "four" and insert in lieu thereof the word "two".

DELEGATE HILL: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Hill.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Hoffner.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I hear a few chuckles around the chamber, and I am very serious about this. If the logic is right for two-year terms for House members, it is also right for a two-year term for Senators, and I expect the same members to stand up and support the two-year term and use the same logic.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I move the previous question.

PRESIDENT WENSTROM: The previous question has been moved. Will five delegates — Delegates Haugen, McElroy, Larsen, Thompson and Warner seconded. That calls for immediate vote on the amendment as offered by Delegate Hoffner.

The question at this point is the adoption of the previous question. Those in favor of adopting will say "aye;" those opposed will say "no." It takes a two-thirds vote.

As many as are in favor of adopting the previous question will vote "aye." Those opposed vote "no."

The "noes" have it and the amendment — or the motion lost.

Now we're back on the amendment as offered by Delegate Hoffner.

Delegate Cart.

DELEGATE CART: Mr. President, I think this is getting to the point of being ridiculous, because ever since this State came into the Union, we've had the four-year term for the Senators, for the foundation of continuity in our legislative system, so we wouldn't ever get a full one hundred percent turnover at one time, that we'd always have some experience in the legislative branch of our government, and I think we should retain that.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment as offered by Delegate Hoffner.

No further discussion? Delegate Chase.

DELEGATE CHASE: I agree with Delegate Cart. I think we should have experience in our government, and so I would favor a four-year term for Senators, but, by the same token, I would favor a four-year term for Representatives, if we're going to talk about experience. So this particular motion, if we're talking about Representatives don't need experience, then perhaps the Senators don't either.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman, I voted "nay" on the former amendment because I wanted a four-year term; but I can't follow the logic that I should now reverse my vote and vote for a two-year for the Senator. If I wanted the four for both, I should at least be happy to have four for one, and I can't follow the logic of asking me now to reverse my vote so that the same vote would carry.

PRESIDENT WENSTROM: Any further discussion? Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I wish I had arisen to speak on the previous question, because I think, as a two-year member, you begin to realize how helpless you are in light of the old heads in the place who run the caucuses and who run the committee structures and who ultimately say "Jump, jump, jump," so the young person starts saying, "Well, I guess I don't belong here and maybe I ought to get out, and it is a sacrifice to be here, so maybe I ought to leave the Legislative Assembly." And I really wonder if that wouldn't be transferring that same feeling to the Senate, because there are older heads over there — I know that from my last terms — those who have been there a lot longer, and it seems to me that we are, in effect, saying that the younger person, with the two-year term, is in difficulty because he can't cope with the system in those first two years. It's very difficult for him. If he had a four-year term, he'd know how to get at the old heads a little better, and in that second term would be able to at least effect perhaps some change and improve the status of the Legislature and the work of the Legislature. So, in that case, I can't tell whether I'm speaking for or against this new move, because it seems to me we are transferring the ill now of the House to the ill of the Senate, and maybe — I suppose the old heads in the Senate then would be able to do some of the things that are being done in the House with the younger members.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: In answer to Delegate Cart's "ridiculous" — he kept saying "this is ridiculous." I don't think it is ridiculous. You're saying

that all the House and Senate will be replaced in an election because of the two-year term. This just does not happen. If you can change half of the membership of each house, this is the very most. So you will have old heads back with the two-year term. Now, this is a very close vote. I'd like to give you a little history of our Committee.

Early in the Committee, the same arguments prevailed as did in this chamber today, and gradually the Committee members began to change their minds and see that this is a very necessary part of the reform of the legislative portion — the four-year term — and the publicity was out. We had no one — no individual appear before our Committee asking that we reduce the two-year terms — or the four-year term to the two-year term. We just heard yesterday Delegate Longmire say there was no one appeared before his committee asking that county officials be reduced to a two-year term. But if this body would like a two-year term, then I think it is right for both houses, and I'm very serious about this.

PRESIDENT WENSTROM: Further discussion? Delegate Omdahl.

DELEGATE OMDAHL: Mr. President. One of the objectives I had in mind when I ran to serve in the Constitutional Convention and when I came here was to try to strengthen the State Government so that it would exercise a stonger role in the federal system, because I believe that it is necessary to revamp the state governments if they are going to continue as viable units in the future.

One of the most important things about the State Government is the effectiveness of the members of the State Legislature in executing the complicated and various duties. It seems to me that the four-year term is very critical to building the capacity and the capability of the Legislative Assembly. As long as a house is full of new members, as it always is, high turnover in the House, the House will never be able to understand the complex issues that they must understand as well as they must.

Now, why — why should we change horses and say we ought to have two years in the Senate? I suspect that, if you would look at the roll call, that you'd note that there are a number of Senators who voted in favor of keeping the House at two years, and I suspect that it would erode their status considerably if they had four-year termers on the other side of the aisle, and there are as capable and as competent a people, who know as much about government, in the House as there are in the Senate, and that this would equalize the work of both branches.

Now, I expect that some Senators were afraid that they would have a House member running against them when the House member was a holdover. Well, that makes no sense. Why would a four-year House member run for a four-year Senate term? After all, that is probably the only difference in status between the two houses, and if the House member had a four-year term, why would he ever run against a Senate member in his off year? It doesn't make any sense at all. So the Senators who were worried about their seats, as they are in Washington, and this is why the House in Washington will never get four years — is because the Senate will never let it pass, because they know what's going to happen in the off year — the House member is going to run against them; but this would not be the case here. You can't transfer it here. And I think that it's very unfair to the State of North Dakota and to future House members to let the vanity of prestige and pomp of one house blind us into thinking that we can afford to have one house less experienced than the other.

PRESIDENT WENSTROM: The Chair will recognize Delegate Knudson.

DELEGATE KNUDSON: Mr. President.

During coffee break, Delegate Hoffner faced me and told me that I better be consistent and support the two-year term for Senators, also. I have to confess that I never thought about the Senate's term when I was speaking about two-year terms for House members.

Delegate Omdahl just alluded to the advantages Senators have over House members. I think the only real advantage they have is having double the voting strength, one individual having double voting power. I remember some of Delegate Paulson's remarks in the earlier debate about the patronizing attitude

of Senators. That may be true. I'd like to tell you that House members have more fun!

I suppose I better not knock the Senate too much. The time may come when I may want to try that, too. But I'm not that old yet. (Laughter)

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President and Fellow Delegates:

I'm not now, or ever have been, a member of the House, and I'm not now, or ever have been, a member of the Senate.

When this debate first started, I was visiting with another delegate in the back of the room and asked him how he felt, and neither one of us cared too much. Then I heard the debate. There's some good reasons for changing, some good reasons for not changing, and I thought about it for a minute, and I finally decided, if things are about equal, I don't feel any great demand to change every single thing that's presently in the Constitution; so I decided to stand pat with the two-year term for the House and four years for the Senate.

PRESIDENT WENSTROM: The Chair will recognize Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, I yesterday was accused of using a ploy by moving an amendment to demonstrate a point, and the delegate that made the accusation was right; I did that, and I regretted it to some extent, because I didn't really think that the amendment was all that good, myself; and, obviously, that's what's happening here. I'm going to vote against the amendment, but I am hoping that we can reconsider the action and that enough people have heard some more points that they hadn't heard before, to change their position.

One of the things that you read in every single study of legislature is that one of the most badly-needed changes is to a four-year term because of the inexperience; and if you look sometime at our primary and secondary laws; you will see that's one of the most self-conflicting hodgepodge, disorganized situations that you could ever want to see, and it's not merely the fault of the Legislators; it's that we don't have enough consistency in our legislative body to develop an ongoing policy, and I — I'm at a loss to know why there is so much concern about what the public reaction is, because, as has been pointed out, the public has, time after time, supported the lengthening of terms; and, therefore, I would vote against the motion and hope that we can reconsider the action whereby we have already amended this section.

PRESIDENT WENSTROM: Further discussion? Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, I would second the thoughts of Delegate Sinner. I didn't get up to speak before because I thought it was pretty well established that we were in favor of four-year terms; but I will vote along with keeping four-year terms in the Senate and support Delegate Sinner in re-considering.

PRESIDENT WENSTROM: The question is on — Delegate Solberg.

DELEGATE SOLBERG: Mr. President, I have taken the floor very seldom. I served on the Legislative Functions Committee. I want to say now that there is no chairman of any committee, in my experience, who has been more capable than Delegate Hoffner. We had good consideration, good dialect, and all of those things served well. We were a committee with great division. We did not often agree. Sometimes we compromised, as our capable Chairman has told you. I have not risen to take one side or the other, but I did vote for the two-year term, rather than to go with my Committee, simply because of contacts that I have made with many of the people in this district, that they hoped that I would see fit to support a two-year term after certain things had happened in this Convention.

When we have decided now on our county units of government, we have decided on many appointive officials, to the administrative division of the State Government; then we have also set 1966 as a basic election year, after which this document will go into effect, if it is adopted by the people — '64 — '66 — yeah, that's right. I'm not wrong on my mathematics — '76. I'm sorry. Well, I wish it were 10 years earlier, for my sake. That is a matter of retrospect. And so

I think this is important, that we look at the fact that only every four years will we have real excitement in our elections. Will the excitement carry through better if we have more people in official positions seeking office? Will we have a better election procedure? Will we have more excitement about this thing? I can't conceive of people not seeking office if their interest is to win an election and to serve their State, and I think this can be done. But I think the old adage and the established custom of the four-year term for the Senate is something that we should not destroy now simply because of the fact that a couple over the majority have seen fit to sustain the two-year term for the House of Representatives.

We've heard much testimony and we've listened to many arguments. It kind of reminds me of the poor fellow before the judge. Ten witnesses appeared before this judge and they told the most devastating testimony that had ever been heard in that court; and finally the poor fellow turned to the judge and he said, "Judge, I plead guilty." And the judge said, like a good judge should say, "If you'd have said that before we started this trial, you'd have saved the taxpayers some money." And the fellow said, "Before I heard the testimony, I thought I was innocent."
(Laughter)

So maybe we should weigh this thing very carefully, because I am not concerned, Mr. President — I'm not concerned about the people accepting what we do here; I am concerned about giving to them a document that I am convinced is good for the State of North Dakota and that I can go out with all sincerity and tell them, "This is an excellent document," and explain why. So, you see, I'm not concerned now. I'm concerned when we finish, and if we do too many of these things that they have told me they do not want done, why then I cannot sell the thing that I am putting into a package or helping put into a package to sell, and I hope the debate can end, because I've tried to reserve many of my statements for some other things.

Thank you very much.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Hoffner. Those in favor of the amendment will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed will say "nay."

The "noes" have it. The amendment lost.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: In the debate on the foregoing motion, we have heard the manifest benefits of the four-year term and the distinct liabilities of the two-year term. Therefore, I move that the Convention reconsider the action by which it adopted the Longmire amendment to Section 2 of Committee Proposal 1-44.

PRESIDENT WENSTROM: Delegate Dobson moves that the Convention reconsider its action whereby it adopted the Longmire amendment to Committee Proposal No. 1-44.

The motion has been seconded by Delegate McIntyre.

Now, is there any further discussion,

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I'd like to point out a couple things that haven't been mentioned — well, one has.

On Delegate Burbidge's point of the mechanical difficulties, I don't think there's going to be a real mechanical problem very often, because if the House members have a four-year term, they won't be so eager to seek the Senate seat, which is also a four-year term.

Now, the turnover in North Dakota legislative elections in the past decade has been absolutely fantastic. It's not equalled anywhere else in this country. In 1964, the Democrats swept into control of the House of Representatives — gained

24 seats that year. Just two years later, the Republicans came back into control by an overwhelming margin. They gained 39 seats in that election in 1966. Neither party in any state gained that many seats. Then, in 1970, we had the Democrats coming back, gaining 22 seats. Well, when you have turnover like that, people are getting swept out of office after only two years, and the taxpayers' investment in their elected representatives is somewhat wasted. If there is any strong public demand for a change in the party control of the Legislature, this can still be effected, providing it is not just a temporary — a temporary thing. It can be effected over a two-year period in two elections. And so I think the — I originally came down here favoring a two-year House term, but I changed my mind. I think we should have four-year House terms. I think it would result in a significant quality improvement in our legislative branch of government.

PRESIDENT WENSTROM: Further discussion?

The question — Delegate Hoghaug.

DELEGATE HOGHAUG: I — are we voting now to reconsider?

PRESIDENT WENSTROM: We are voting now to reconsider.

DELEGATE HOGHAUG: Would it be proper for me to state now why I wish to reconsider?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE HOGHAUG: Mr. President and members:

I served two terms in the Legislature, and after completing the two terms, I decided not to run again. I enjoyed the work. I think it was interesting, exciting, and sometimes frustrating. But the reason I decided not to run for the third time was not that I didn't enjoy the work of the session, but because of the time required to get elected. People expect you, if you're going to get elected, people expect you to come to call on them. In the fall of the year, when you have to go campaigning, in my particular field of work it's the busy time, and I felt that I couldn't give the time to both get elected and then to serve. I think this point hasn't been brought out, and I would strongly urge the people to give serious thought to reconsideration.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the motion to reconsider what has been termed the "Longmire amendment."

Those in favor of adopting the motion to reconsider will vote "aye;" those opposed will vote "no."

Those in favor of reconsidering the action say "aye." Those opposed say "no."

I believe the "ayes" have it.

DELEGATE CART: Division.

PRESIDENT WENSTROM: A division has been called for.

Those in favor of reconsidering will vote "aye;" those opposed will vote "nay." The Clerk will open the key. You will record your preference.

Has every delegate indicated his preference? The vote is closed.

The motion to reconsider has passed 54-to-42.

Again, we have Committee Proposal 1-44 before the Convention —

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: — as amended. Delegate McIntyre.

DELEGATE McINTYRE: I guess maybe I shouldn't have gotten up at this point. Where are we now? Where is 1-44?

PRESIDENT WENSTROM: Where we are at the moment is that we have reconsidered our action; so the Committee — the Committee Proposal as amended — or the amendment is before the Convention. We adopted the amendment on what was known as the "Longmire amendment." Now we reconsidered that action.

DELEGATE McINTYRE: I guess I'm out of order then.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: A point of order.

I understood we passed that —

PRESIDENT WENSTROM: We did.

DELEGATE LONGMIRE: — section as amended.

PRESIDENT WENSTROM: We did.

DELEGATE LONGMIRE: So would we not have the Proposal or that part of the section before us as amended, and isn't that where we are at the present time?

PRESIDENT WENSTROM: Delegate Longmire, as I recall, according to what I have here, we adopted your amendment; and then a further — to Section 2; and then Delegate Hoffner moved to further amend, and that amendment failed. Then we moved to reconsider the action whereby we adopted your amendment. So now we are back having reconsidered your amendment.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Just one moment.

DELEGATE McINTYRE: Well, Mr. President —

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: If I could ask the Chair a question. Are we open for debate now?

PRESIDENT WENSTROM: Just one moment, Delegate McIntyre, while we hold a sort of council of war here.

(A discussion was had at the Desk.)

PRESIDENT WENSTROM: The council of war is over and we will report that we did, as you recall, adopt Section 2 as amended. Then Delegate Hoffner ordered a further amendment. We adopted the amendment to Section 2, and then Delegate Hoffner offered an amendment that failed. Then we had a motion to reconsider the action whereby we adopted the Longmire amendment, and that motion passed. So now we are back on Section 2, without the Longmire amendment.

Yes, that is correct. But the — the Longmire amendment is this whole piece of paper, and the question was divided, so we voted on the Section 2, and that is the part that contained the two amendments — one by Longmire and one by Hoffner — and Hoffner's failed and Longmire's passed. Then we moved to reconsider Longmire's, and we adopted that. So I —

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Would we now move to the Section 5 of the divided question or are we still on Section 2 of the divided question on the amendment?

PRESIDENT WENSTROM: We're still on Section 2, and I would have to say that Delegate Longmire's amendment is still before you. It's just reconsidered — what we did with it — brought it back. It's on the floor — his amendment to Section 2.

DELEGATE McINTYRE: Well, Mr. President —

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'd like to talk against that amendment, if I am in order to do so.

PRESIDENT WENSTROM: You are in order to do so. It's on the floor.

DELEGATE McINTYRE: Mr. President and Fellow Delegates:

I think when we consider this very thing — the two and four-year term for the House — that we've got to consider perhaps something else that hasn't been brought up, and that's the many changes that this delegation has made in our Constitution during these weeks of deliberation and passing; and I think that the changes that we have made affect the State Legislature more than any other branch of government. We have laid an awful lot of responsibility on this body, and I think this reason — this is a definite reason why the four-year term should

be moved to the House of Representatives. We're giving them this responsibility. I think that we are obligated now to give them the four-year term.

Thank you.

PRESIDENT WENSTROM: Further discussion? Delegate Miller.

DELEGATE MILLER: Mr. President. Fellow Delegates:

I'd like to confess to you that I didn't have any very strong feelings on this one way or the other, right up until shortly before we voted. But as I think about this, and I believe if all of you stop and consider this a little closer, you will see the logic of a four-year term for the House of Representatives. The advantages have all been pointed out to you. I see no reason for me to talk about those any more — the fact that we have gone for a four-year term for state officials, we have gone for four-year terms for county officials. If it's logical there, why isn't it logical here? This seems to make as much sense to me as it does in the other situations. I can see no reason for staying with the two-year term in the House. I think a four-year term would solve a lot of problems that we have, and I would certainly ask that the delegates go along with a four-year term in the House.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I believe we should vote on both Section 2 and Section 5, together, and if we were to do this, I would move that we adopt the wording in Section 2 as provided in the Committee Proposal and at the same time adopt Section 5 as provided in the — in Longmire's amendment, and the reason for this, I think, is because the Committee Proposal talks about this numbering of seats, so that it is not going to save money in the district. When you have two House members, you're going to have one running every two years anyway, and if we could have the Senate and the House members all running in the same year, you would take away the argument that the House member is going to run for the Senate seat, and I think that would be the way that this could be a saleable product for everybody.

PRESIDENT WENSTROM: Delegate Dawson, I will have to rule your motion out of order, in that it is the prerogative of a delegate to divide a question, and the question has been divided, and I just can't accept your motion.

Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President. I would just like to relate my own experience, and I definitely am for the four-year term.

I was elected for two years, and then I was defeated, and I feel that I could have done a much better job had I had a little more time. But I do know this: That I will not consider running for the Legislature again, simply because I'm a small farmer, and if I have to run for a two-year term, it just takes up too much time and too little compensation.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I would move that we take up Section 5 before we take up Section 2.

PRESIDENT WENSTROM: Delegate Dawson moves that we take up Section 5 before we take up Section 2. Now, do I have a second? Seconded by Delegate McElroy.

The question before the Convention, then, is that we take up Section 5 prior to Section 2. Delegate Dobson.

DELEGATE DOBSON: Mr. President, that would be putting the cart ahead of the horse, because Section 5 must logically follow Section 2. If we give the House members only two-year terms, Section 5 will require amendment, if we keep the Committee Proposal.

Also, the Longmire amendment to Section 5 will require further amendment, if the House members only get two-year terms. Therefore, I resist the motion. We have to consider Section 2, first, to proceed logically.

PRESIDENT WENSTROM: Any further discussion? Delegate Devine.

DELEGATE DEVINE: Mr. President.

I would speak in favor of the motion. Unlike Delegate Miller, I don't have

a lot of strong feelings about this. I did vote against Committee Proposal 1-44 when it was originally brought up before the Convention, because I didn't like Section 5. Let's go through this Section 5. Maybe I'd be willing to change my vote on Section 2.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the motion of Delegate Dawson to consider Section 5 prior to Section 2.

As many as are in favor of the motion will say "aye;" those opposed say "no." I believe the "ayes" have it.

DELEGATE DOBSON: Division.

PRESIDENT WENSTROM: A division has been called for.

Those in favor of adopting the Dawson motion will vote "aye;" those opposed will vote "no."

The Clerk will open the key. You will indicate your choice.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicated 45 "ayes" and 49 "nays." The motion failed.

We are still on Section 2.

Delegate Hougen — Jim Hougen.

DELEGATE HOUGEN: Yes, Mr. President and Fellow Delegates:

I know all of you hate to listen to this talk, but — and I certainly hate to do it, but I have some comments I would like to make.

I certainly believe the delegates have said that they have been told that they want or that the people in their district wanted a two-year term for the House members. I do believe this; but this certainly was not what I was told from the people that I serve. I was told point-blank "We're tired of all the politics that is going on in our districts and wish you fellows would give us a rest." And I feel this way very strongly, too.

Mention was made of the excitement of the election and how much fun it was to run for office. I don't believe that this should be the question that we should be concerned with, because it certainly doesn't do anything to make a legislator better, because he runs more often. I had very small experience as a legislator — just one term — but I know that with every two years you're running constantly. I think this is — this is unfortunate, and I certainly hope that you will give great consideration to a four-year term for the House of Representatives. I do know that a few things were said in anger when we first came back from — from our short recess, and I know that I was very much tempted to also go along with the idea, "Well, let's stick these Senators for two years, also, and make them suffer the same consequences that we do." This would have been a poor act by the group, and I also think it was a poor act by the group to keep a two-year term for the House. Please give consideration to a four-year term.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President.

I'm concerned about the intent of Delegate Dawson's motion because I — I think what's in Section 5 is —

DELEGATE BAKER: Point of order, Mr. President. I don't believe we're on Delegate Dawson's motion — are we?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: No, we're not.

DELEGATE SINNER: I speak in reference to Section 2 and the implications of the Dawson motion as to the vote on Section 2.

PRESIDENT WENSTROM: You may proceed.

DELEGATE SINNER: What I wanted to say was that I think the four-year terms are much more important than how the people are elected, and I — I think that if you're concerned with Section 5, it would be a mistake, it seems to me, to lose Section 2 because of Section 5, because, by all odds, the thing is important,

as I see it, to a four-year term. I just want to say — what I'm trying to say is, if we want to change Section 5, we should do that, but not vote against Section 2 because of Section 5.

PRESIDENT WENSTROM: Section 2, however, is the question before the Convention.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

Well, as long as one of the delegates said that it shouldn't be fun to run — I'm the one that made that statement — I like the excitement of the election. If this is treason, so be it!

I would just like to explain that my campaigning consists purely of going to four county — five county fairs and celebrations with a great big old, beautiful parade horse, and waving my hat. That's the extent of my electioneering. I do not go house-to-house. I would go to those fairs anyway, and I see no harm in having fun at it, and I think I also did a reasonably good job; probably as good as most freshmen did.

I would also like to remark that I don't know how I'm going to vote on it. I'm in terrible shape now; but I would like to remark that it's funny how fast the freshmen can learn. You know, there are a lot of freshmen in here, and, boy, they're really getting smart!
(Laughter)

PRESIDENT WENSTROM: Is there any further discussion?

We are still on the amendment offered by Delegate Longmire.

Those in favor of its adoption — that's for Section 2. Those that are in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the Longmire amendment will say "aye;" those opposed say "nay."

The key will be opened.

Those in favor of adopting the amendment will vote "aye;" and those opposed will vote "nay."

The key will be opened and you will indicate your preference. Has every delegate indicated his choice? The key will be closed.

The vote indicates 44 "ayes," 51 "nays," three delegates absent and not voting. So the amendment failed.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Without any motion on the floor at this time, may we be on the twelfth order of business, or would you prefer that we finish action on 1-44, first?

PRESIDENT WENSTROM: I will grant that we'll go on the twelfth order of business.

DELEGATE GEELAN: Fellow Delegates — Mr. President.

After consultation with President Wenstrom and Chairman Saugstad, Chairman of the Calendar, I'm going to suggest at this time a change in the Rules; that we amend the last part of Rule 13, substituting "twenty-fourth" for "twenty-third." And the Rule would read: "At the close of the twenty-fourth day of the plenary session all proposals shall have been acted upon on first reading and first passage."

PRESIDENT WENSTROM: Delegate Geelan, will you give the Rule number again?

DELEGATE GEELAN: Rule No. 13, on page 16 — the last part of the Rule — the last sentence to be amended by changing the "twenty-third" to "twenty-fourth" — so the Rule would read: "At the close of the twenty-fourth day of the plenary session all proposals shall have been acted upon on first reading and first passage."

I would move this amendment to see what the wish of the delegates is.

PRESIDENT WENSTROM: The motion has been made by Delegate Geelan, and it has been seconded by Delegate Rundle, that we strike, in Rule 13, at the

bottom of the page — line 2 from the bottom of the page — that we strike “twenty-third” day and insert the “twenty-fourth” day.

Any discussion on the motion?

Hearing none, as many as are in favor of the motion will say “aye;” opposed “no.”

The “ayes have it. The motion is adopted.

DELEGATE GEELAN: And then, Mr. Chairman, may I make one other motion?

Will you turn to 13.1, the second paragraph: “No proposal that has been amended shall be voted on for first passage until one convention day has passed.” I move that we suspend this Rule for the balance of the Plenary Session.

PRESIDENT WENSTROM: Again, on what page, Delegate Geelan?

DELEGATE GEELAN: Page 17, Rule 13.1, the second paragraph.

PRESIDENT WENSTROM: The motion before the Convention is on Delegate Geelan’s motion to strike “No proposal that has been amended shall be voted on for first passage until one convention day has passed.”

De we have a second?

DELEGATE PETERSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Peterson.

May the Chair comment. Hearing no objection — I think you will recall that earlier this afternoon, when Delegate Rundle made a motion to place a particular piece of — one of the proposals at the foot of the calendar, I asked that we suspend the Rules in order that we could place it on today’s calendar. Well, this would avoid that motion.

Now, is there any further discussion on this proposed amendment to the Rules?

Hearing none, as many as are in favor of adopting the Rule change will say “aye;” those opposed “no.”

The “ayes” have it and the Rules changes are adopted.

Thank you very much, Mrs. Geelan.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Could I rise to a point of personal privilege?

PRESIDENT WENSTROM: State your privilege.

DELEGATE STANTON: As long as we have had such a close flipflop vote on this one section, 1-44, I think I would like to announce I would have an alternate proposal ready, and normally I would do it tomorrow, but we only have tomorrow left, and those who are interested in signing can come and see me.

PRESIDENT WENSTROM: We will continue with consideration of Committee Proposal 1-44, amendment 5 — Section 5. Section 5.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I’m sure that there are people who would like to propose an amendment to that Section; and, therefore, I’m going to move that it be — that further action on Committee Proposal 1-44 be postponed until — when?

PRESIDENT WENSTROM: Just withdraw your motion a minute, will you?

DELEGATE SINNER: All right. I’ll withdraw the motion.

PRESIDENT WENSTROM: I think that the best thing that the Convention could do at this time is adjourn until tomorrow morning. I think that we’ve arrived at the place where everyone is tired, and we’ve had a heated day, and there’s been a lot of conversation. There have been a lot of amendments. And I wonder if we shouldn’t have what announcements we would like to make at this time.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Would it be possible —

PRESIDENT WENSTROM: We'll be on the eighth order, Delegate Solberg.

DELEGATE SOLBERG: Would it be possible to get a quick rundown on what we have for tomorrow?

PRESIDENT WENSTROM: Yes, we will do that, Delegate Solberg. Thank you.

We will be on the ninth order of business — receiving — Introduction of Proposals.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-4, submitted by Delegates Rundle, Stanton, Trenbeath, Kwako, Hill, Engstrom, Wallin, Sanstead, Rude, Rosendahl, Nicholas, Binek, Saugstad, Hoghaug, Knudson, Aubol, Baker, Berg, Warner, Peterson, Hougen, Fallgatter and Ketchum:

"Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal Nos. 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112, 1-113 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot."

PRESIDENT WENSTROM: Alternate Proposal No. 4-4 is referred to the Committee on Constitutional Ballot.

Delegate Saugstad.

DELEGATE SAUGSTAD: I would move that the absent members be excused.

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: It's been moved that the absent delegates be excused. Seconded by Delegate Kelsch.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. The motion is passed.

Delegate Sinner.

DELEGATE SINNER: Mr. President, there's been a problem bothering me, and I would like some clarification from the Chair.

In the unicameral proposal, the whole problem of the language in the various sections that we have passed has been kept up to date, and, I think, it's ready to go. It is possible that, rather than go through the machinery of introducing all these either in one lump sum as another proposal or individually as different sections, may we look to the Ballot Committee to amend the proposal that they have to include all of the additional language, if and when the body makes a final decision on whether or not to put this issue on the ballot? If that's possible, I think it would be the simplest way to do it, and I — in preparing and knowing what to do, I would like, for example, from the Chair —

PRESIDENT WENSTROM: Delegate Sinner, as I recall, a proposal has been introduced for that purpose. Is that right? Do you have — is it there, Delegate Dawson, in the possession of your Committee? As I recall, there is a proposal for —

DELEGATE DAWSON: Mr. President, I believe that's right. We have a proposal on a unicameral. I think the question is do we have to go out and get more signatures on proposals to change everything that's been done throughout here.

PRESIDENT WENSTROM: No, I wouldn't — I surely wouldn't rule that. I would rule, however, that that proposal is going to have to be complete — everything that's going to be in the Constitution — so that in the event that the voters adopt that, that the Constitution will be complete. It will have to be taken care of. It will have to be in that proposal. Do you follow my thinking?

DELEGATE DAWSON: Yes, I agree, and I think that will answer Delegate Sinner's question that we don't have to go out and redo all this thing. I think we can handle it in Committee, hopefully.

PRESIDENT WENSTROM: That would be my interpretation of it; however, if the Convention has some other idea — after all, the vote of the majority of the Convention is who will decide these issues —

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Can I then move that the five proposals on the unicameral be referred to the Committee on Ballot?

PRESIDENT WENSTROM: Do you have five proposals?

DELEGATE HOFFNER: Yes, there are five at the desk that we took out of the Legislative Functions Committee and asked that they be held at the desk.

PRESIDENT WENSTROM: Then the purpose of this would be that they — that the Committee on Constitutional Ballot would have these as material that they might need in preparing this one proposal; is that correct?

DELEGATE HOFFNER: Yes, that is correct.

PRESIDENT WENSTROM: Well, I would rule that you may do that.

DELEGATE HOFFNER: Mr. President, I move that Proposal 1-31, 1-35, 1-41, 1-42 and 1-69 be referred to the Committee on Ballot.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposals No. 1-31, 35, 41, 42 and 69 be referred to the Committee on Constitutional Ballot. Do we have a second to the motion?

DELEGATE NETHING: Second.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten. Is there any discussion?

Hearing none, as many as are in favor of the motion say "aye," opposed "no." The "ayes" have it and the five committee proposals as read will be referred to the Committee on Constitutional Ballot.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Are we on the twelfth order, Mr. President?

PRESIDENT WENSTROM: We are on the twelfth order.

DELEGATE DOBSON: I'm going to withdraw a proposal. I have no eulogy for it, but I do have something for the entire Convention.

Quoting from the prayer given in this chamber Monday: "Our Gracious God, as these delegates bog down, help them to continue to move ahead."

In that spirit, I request unanimous consent to withdraw Delegate Proposal 2-72.
(Laughter)

PRESIDENT WENSTROM: Delegate Dobson requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-72. Hearing no objection, the permission is granted.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I have a couple proposals I'd like to put to bed with Delegate Dobson.
(Laughter)

These are Delegate Proposal 2-58 and Delegate Proposal 2-59, and they have to do with reapportionment, and I'd like unanimous approval to withdraw them.

PRESIDENT WENSTROM: 2-58 and 2-59?

DELEGATE HENDRICKSON: Yes, sir.

PRESIDENT WENSTROM: Delegate Hendrickson has moved or requested unanimous consent of the Convention to withdraw Delegate Proposal No. 2-58 and 2-59. Hearing no objection, your request is granted.

Anything further? Delegate Lander.

DELEGATE LANDER: Mr. President. Since there isn't ever any time after the motion for a recess is made, I would like to appear to you at this time to resist it. We have 14 items on the calendar — this morning we had 14. We have disposed of five and a portion, and I think we're going to be even more tired tomorrow. I think we're very foolish. I don't care, personally, whether we stay or come back, but we are very foolish not to spend another hour-and-a-half or two hours today because it's going to be much worse tomorrow. So I would ask you that the motion to recess until tomorrow morning be resisted.

PRESIDENT WENSTROM: Any further discussion? Delegate Saugstad.

DELEGATE SAUGSTAD: Is the desk clear?

I would then move that we now adjourn until 8:30 A.M., February 3rd.

DELEGATE CART: Second the motion.

PRESIDENT WENSTROM: It's been moved that we do now adjourn until 8:30 A.M., February 3rd. Do I have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart. Is there any discussion?

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I agree with Delegate Lander. We have a long calendar here yet. I think, somehow or other, we should work awhile longer. I really do — either now or later on.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: If you need a eulogy: Noli illegitimi non carborundum. (Laughter)

PRESIDENT WENSTROM: The question is on the motion to adjourn. As many as are in favor of the motion will say "aye;" those opposed "no."

There's a lot of "noes."

Well, let's just say that the motion lost. The motion to adjourn lost — it failed. We're going to work.

DELEGATE SINNER: Let's have a division.

PRESIDENT WENSTROM: Those in favor of adjourning will vote "aye;" those opposed will vote "no."

The Clerk will open the key. You will record your vote. Has every delegate expressed his preference? Those opposed? The vote is closed.

The motion to adjourn has been passed, and we will be in recess until 8:30 tomorrow morning.

May I say, Fellow Delegates, that it has been my experience, and I've been one of those fellows that has been so unfortunate to have many, I have seen the motion to adjourn voted down once in my lifetime.

We forgot one announcement, and we should announce what's on the calendar.

CHIEF CLERK GILBREATH: On the calendar I have Committee Proposal 1-104, 1-82, 1-44, 1-74, 1-87, 1-86, 1-15, 1-85, 1-119.

PRESIDENT WENSTROM: That is the reading of the calendar for the morning. I'm sorry we forgot that.

(The Plenary Session adjourned at 6:24 P.M., Wednesday, February 2, 1972, until 8:30 A.M., Thursday, February 3, 1972.)

VOLUME XXIV

(February 3, 1972)

MORNING SESSION

(The twenty-fourth day of the Plenary Session commenced at 8:38 A.M., Thursday, February 3, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order. We'll be on the second order of business. Our Chaplain for this morning is The Reverend E. C. Schumacher, First Evangelical Free Church of Bismarck.

REV. E. C. SCHUMACHER: Almighty and Gracious Heavenly Father, we come humbly into Thy presence this morning, recognizing our own unworthiness and Thy infinite greatness and power. Thou art the One who has made all things, and the whole universe bears witness to Thy great wisdom and power.

Today we stand in need of special wisdom and understanding, that the decisions that we make may be wise and right and workable, and that the people of the State of North Dakota may enjoy many years of good government, of great progress, and of genuine liberty. Give us a portion of Thy great wisdom; guide our discussions and our decisions, and lead us to those conclusions which are in harmony with Thy will and for the good of our people.

We confess unto Thee that we possess no merit that entitles us to these great blessings, but we claim them in the name of Jesus Christ, our Lord and Savior, whose merits exceed all our requests. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — roll call. The Clerk will open the key. You will record your presence.

Has every delegate recorded his presence? The key is closed.

Roll call discloses 90 delegates present, eight absent. A quorum is declared.

DELEGATE THOMPSON: Mr. President, I'd like to report my presence.

PRESIDENT WENSTROM: Delegate Thompson reports his presence.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the first day of February, 1972, and recommends that the same be corrected as follows:

On page 366, line 10, delete "Proposed" and insert "Proposal" in lieu thereof.

On page 376, line 6, delete the word "no" and insert in lieu thereof the word "for"; in line 9, delete the word "use" and insert the word "deletion" in lieu thereof.

And when so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the Committee Report on Revision and Correction of the Journal.

Are there any questions? Any discussion?

Hearing none, as many as are in favor of the motion to adopt will say "aye;" those opposed "no."

The "ayes" have it, and the report is adopted.

We will be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Delegate Litten would like to announce that Representative Clark Jenkins of Fargo is in the gallery with us today.

PRESIDENT WENSTROM: Will Representative Jenkins come forward?

(Applause)

CHIEF CLERK GILBREATH: The Exchange Club of Bismarck invites all delegates to attend the Freedom Shrine dedication ceremonies on the west end of the lower lobby on the ground floor at 1:15 on Monday, February 7th. The Freedom Shrine is a replica of 28 historical documents important to our national heritage.

PRESIDENT WENSTROM: Anything further under the eighth order?

We'll be on the tenth order of business.

First for consideration this morning, Committee Proposal No. 1-44.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Would I be in order to move that 1-44 be laid at the foot of the calendar? There are some amendments being worked on, and I believe it would be worked out where most parties would be satisfied, if this were done.

PRESIDENT WENSTROM: Your motion would be in order.

DELEGATE HOFFNER: I move that Committee Proposal 1-44 be laid at the foot of the calendar.

PRESIDENT WENSTROM: It's been moved that Committee Proposal No. 1-44 be placed at the foot of the calendar. Do we have a second?

DELEGATE DAWSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Dawson. Any discussion?

As many as are in favor of the motion will say "aye" — oh, no! Come, come!

As many as are in favor of the motion will say "aye;" those opposed "no."

The "ayes" have it and Committee Proposal No. 1-44 will be placed at the foot of the calendar.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Delegate Kelsch is present.

PRESIDENT WENSTROM: Delegate Kelsch reports present.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, I move that Committee Proposal 1-15 be moved to the head of the calendar, and if I get a second, I'll explain.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Meidinger moves that Committee Proposal 1-15 be placed at the head of the calendar. We have a second by Delegate Litten.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. Later in the morning, one or two of our committee members may be absent, and they asked that we consider this proposal at this time so that they might be present in the discussion.

Now, Mr. President, before we talk about the proposal, I should like to move several amendments which are at the desk and have them distributed to all the members of the body.

PRESIDENT WENSTROM: The question before the Convention is moving Committee Proposal No. 1-15 to the head of the calendar. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-15 is now up for consideration.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: There are several amendments at the desk, and I would ask that they be read at this time. They have been distributed to all the members of the body.

CHIEF CLERK GILBREATH: Committee Proposal 1-15, introduced by Committee on Education, Resources and Public Lands:

"Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149, 150, 151, 152 and Article 54 of the constitution of the state of North Dakota be repealed; and that Article V to the constitution of the state of North Dakota be created, all of which pertain to education.

"SECTION 1.) Sections 147, 148, 149, 150, 151, 152, and Article 54 of the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) Article V to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE V "EDUCATION

"Section 1. The legislative assembly shall provide for a uniform system of free public education.

"The legislative assembly shall take other steps necessary to prevent illiteracy and to provide for special education and vocational education.

"Schools and institutions so established shall be free from sectarian control. No money raised for support of public schools of the state shall be appropriated to or used for support of any sectarian school.

"Section 2. There shall be a state board of public education which shall supervise a uniform system of elementary and secondary public education, and shall perform other duties as provided by law.

"The board shall consist of nine members, with staggered seven-year terms, appointed by the governor, and confirmed by the senate in a manner provided by law.

"The board shall appoint an executive officer whose term and duties shall be prescribed by the board.

"Section 3. There shall be a state board of higher education which shall have full power, responsibility and authority to supervise, operate and control programs and state institutions of higher learning, and shall perform other duties as provided by law.

"The legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

"The board shall consist of nine members, with staggered seven-year terms, appointed by the governor, and confirmed by the senate in a manner prescribed by law. The members of the board may be removed for the same reasons and in the same manner provided for removal of the governor.

"The board shall have control of the expenditure of all funds belonging to and appropriated to such institutions and shall present a single unified budget request to the legislative assembly. Appropriations for all the institutions and for the board shall be contained in one legislative measure. The legislative assembly shall not reduce appropriations by the amount of any gift.

"The budgets and appropriation measure for the agriculture experiment stations and their substations and the cooperative extension divisions may be separate from those of state educational institutions.

"The board shall have the power to delegate to its employees details of administration of the institutions under its control.

"The board shall appoint an executive officer whose term and duties shall be prescribed by the board."

PRESIDENT WENSTROM: We have some amendments now, I believe. Delegate Devine.

DELEGATE DEVINE: Mr. President. I see many people searching their books. It's on the Journal page 293, if you've lost your Majority Report.

PRESIDENT WENSTROM: Page 293.

CHIEF CLERK GILBREATH: Proposed amendments to Committee Proposal 1-15:

On page 2, line 2, after the period, delete the remainder of the line.

On page 2, delete lines 3 and 4.

On page 2, line 9, after the word "control" delete the words "programs and".

On page 2, line 16, after the period, delete the remainder of the line.

On page 2, delete lines 17 and 18.

And renumber the lines accordingly.

PRESIDENT WENSTROM: Now, do we have a second to the proposed amendment?

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lander.

Delegate Meidinger.

DELEGATE MEIDINGER: Now, Mr. President, in regard to the two amendments, the words "programs and" in Section 3 raise a number of questions and some objections from certain groups. We didn't think it was too important, and we simply left those two words out. And then there are provisions in Proposal 1-120 that provide for the removal of members of such boards, and we have just stricken those two sentences which referred to the removal of those members.

Those are the only amendments that we have at this time.

I would move the adoption of the amendments.

PRESIDENT WENSTROM: Delegate Meidinger moves the adoption of the amendments. Is there any further discussion?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: Second. Any further discussion?

DELEGATE LONGMIRE: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I don't seem to have any amendments on my desk here. Frankly, I don't know what we're voting on.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Well, I want to say about the same thing as Delegate Longmire just said. When the Clerk reads about lines, and so on, we're looking at a piece of paper that has no lines. We have no idea what the amendment is, unless we happen to be lucky enough to have the one in hand that the Committee passed out. No reference was made to that at all here. You are moving us to vote on something that the delegates have no idea on whatsoever.

DELEGATE MEIDINGER: Mr. President, these were all passed out yesterday. I think you will see the changes on page 2 of the sheet that was passed out yesterday.

PRESIDENT WENSTROM: Would you read the amendments?

CHIEF CLERK GILBREATH: It's a two-page handout, and on the second sheet is the way the proposed amendments would be, which you're working on.

Proposed amendments to engrossed Committee Proposal 1-15:

On page 2, line 2, after the period, delete the remainder of the line.

On page 2, delete lines 3 and 4.

On page 2, line 9, after the word "control" delete the words "programs and".

On page 2, line 16, after the period, delete the remainder of the line.

On page 2, delete lines 17 and 18.

PRESIDENT WENSTROM: Any further discussion? Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, if I understand it correctly, then, you're leaving out the programs of the schools of higher education that the Board of Higher Education has nothing to do with. I'd like to ask a question of the Committee that who is going to set the programs at these institutions, if we can't?

DELEGATE MEIDINGER: That was a fair question, Delegate Longmire. There was some objection from school superintendents who thought perhaps that might include their vocational education programs, and that was not our intention; and so we had no objection to removing it.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I have another question then.

As I also understand the amendments, they're taking out that sentence which says "The legislative assembly shall not reduce appropriations by the amount of any gift." Is that going out?

DELEGATE MEIDINGER: No.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Yes. Mr. President and Fellow Delegates:

If you read the first paragraph of Section 3 as it would remain, it states that this board would have full power, responsibility and authority to supervise, operate and control state institutions of higher learning, which would be exactly the same as we have it today. The words "programs and", which are being suggested for deletion at this time, were an addition by our Committee. In other words, if you approve the amendments this morning, you, in essence, are retaining the authority and responsibility with the State Board of Higher Education as it is presently in the existing Constitution. In other words, what we are asking you to eliminate today is what our Committee had put in. Now, under advice, we are suggesting we better take it out again.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Mr. President. Fellow Delegates:

I hope I don't confuse this more. The other two lines that are coming out of there — Delegate Longmire, I think you had a question about that, too — develop as a result of Delegate Paulson's question the other day with reference to the necessity of having the sentence in both of these paragraphs that formerly read "The members of the board may be removed for the same reasons and in the same manner provided for removal of the governor." It turned out, of course, that this has been taken care of in another proposal that's already been adopted by this body, and these lines are unnecessary now.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendments as offered by Delegate Meidinger.

Hearing no more discussion, those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendments will say "aye"; those opposed will say "nay."

The "ayes" have it. The amendments are adopted.

Delegate Meidinger.

DELEGATE MEIDINGER: Now, Mr. President, this delegate report had a considerable amount of discussion the other day when we voted on the minority and majority report, and I'm not going to add a great deal to that. I do feel that we have created a framework and structure for education which looks to the future, and we can look forward to improved educational programs as a result of it. I do think this speaks for quality and is a wholesome approach to the educational process as it affects the students and teachers and taxpayers. I had the opportunity last week to speak to Dr. Richard D. Gibb, who is the Commissioner of Higher Education in South Dakota, on another matter, and we got to discussing this, and I told him what we were doing, and he thought it was marvelous.

I might just tell you they had a study committee in South Dakota as to their structure of their higher education. The study committee recommended that they go to nine members so the subcommittees could work more effectively, and they also then referred that to the Legislature, and the Legislature has approved a nine-member board for South Dakota.

At this time I would like to yield to Delegate Knudson.

PRESIDENT WENSTROM: The Chair will recognize Delegate Knudson.

DELEGATE KNUDSON: Mr. President. Members of the Convention:

I have been assigned by the Committee to discuss Section 1.

First, looking at the Proposal in your Proposal Book: The repealer's in — we have revised Sections 147, 148, 150, 151 and 152 with the short statement we have in Section 1. Most of Section 1 comes from our present Constitution. The first sentence — "The legislative assembly shall provide for a uniform system of free public education" — is almost directly from our enabling act and is directly from our 1889 Constitution. We've had some discussion as to what the word "free" means. Does it mean at no expense? — because, of course, our public schools do charge their students various fees. My own interpretation of that is based on the Enabling Act, which says "The legislative assembly shall provide for a uniform system of public education which shall be open to all children," and I think that's the sense of "free" that we really mean — that it's not barred to anyone. We can't very well say "open to all children" because where do we cut this off? Now where we say that everyone who

is 18 is an adult, are we going to bar people who have reached the age of 18 before they finish the public schools from finishing them?

In the second sentence, we have tried to cover all the other bases, I think. "The legislative assembly shall take other steps necessary to prevent illiteracy and to provide for special education and vocational education."

The last paragraph of this section also comes from our 1889 Constitution — the first sentence directly and in so many words from the Enabling Act. This is one of the requirements of the United States Government. This system of public schools must, in so many words, be free from sectarian control. The same wording carried over directly from the 1889 Constitution and from the Enabling Act. And the second sentence is directly from our 1889 Constitution. At one point in our Committee deliberations, we had, we thought, made changes in this sentence which were only for style and drafting purposes. Some interested parties raised objections. They saw a threat in our new wording, and at their request, we changed it back to the same 1889 wording.

I will yield to Delegate Sanstead for Section 2.

PRESIDENT WENSTROM: The Chair will recognize Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President. Ladies and Gentlemen:

Section 2 is the creation that we explained in the Majority Report the other day — the creation of a state board of public education which shall supervise a uniform system of elementary and secondary public education and shall perform other duties as provided by law.

During our six months of working in Committee and through this session on public and elementary, secondary and higher education, we had a considerable number of persons appear before us who encouraged more action, more involvement by the Department of Public Instruction in the activities of elementary and secondary education. We also had a real desire on the part of many persons to see that public elementary and secondary education have the same status in the Constitution that the old Article 54 in our present Section 3 gave to the Board of Higher Education, and it was with that testimony and with that thinking in our Committee that we decided it would be a very valuable thing, that it could allow for some change in educational program policy and institutional thought in the Department of Public Instruction if, in fact, they were a constitutional board; and that's the reason for the inclusion of a board of public elementary and secondary education. It certainly can do no harm and it might very well do some good.

DELEGATE SCHMIT: Mr. President.

PRESIDENT WENSTROM: Delegate Schmit.

DELEGATE SCHMIT: Delegate Schmit is present.

DELEGATE WALLIN: Mr. President.

PRESIDENT WENSTROM: Delegate Wallin is present.

DELEGATE WALLIN: Thank you, Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Yes, Mr. President.

Proceeding to Section 3, which is the section which pertains to the Board of Higher Education and is involved with the repealer of the old Article 54 in the present Constitution, your references will show that the present Article 54 is about three-and-a-half pages in the little blue book, and so you see that some things have been eliminated. Most of those have been the legislative detail which is now in Article 54; but, in order that you understand exactly what we've done, I would like to list a few specific things:

We have provided, as has been stated earlier, for the full control of the State institutions of higher learning. The present Article lists seven institutions specifically. We have not done that. We have added there at the beginning that the board shall perform other duties as provided by law. The intent of this is to have the opportunity to add to, but in no way detract from, the present authority of the board.

As you know, the present board has seven members. We are proposing nine. We have various ones who appeared before us saying that, on the one hand, that the workload of the present board was too great; secondly, that there was not adequate opportunity for full representation of various interests in the State of North Dakota. Accordingly, after a great deal of thought and a great deal of compromise, we are

suggesting a nine-man board — full nine-member board. However, we felt that we ought not to change the seven-year term as it is presently provided, and that remained the same. We provide, as you will see, that these people be appointed by the governor and confirmed by the Senate in a manner provided by law. This is probably the most shortening that we have in here. The present Article 54 has a great deal of material as to how this is done. There is an appointment commission provided. It states that only one person who is on the board can be a former student or allowed from any particular institution. No one can have been an employee of any of these institutions for the last two years. We have removed all of that material. We have continued the provision in a recent constitutional amendment that there can be fees and tuition in the institutions of higher learning. We have continued the provision for the single unified budget and the opportunity for the separate one for the experiment station, et cetera, all as has been recently adopted in the constitutional amendment. We have added the statement that Delegate Longmire referred to — the fact that the appropriations for any institution shall not be reduced by the amount of any gifts which that institution would receive. We have also now provided simply for an executive officer and have not detailed what he should be called or what — or where he does business or how long his term is.

And now I'd like to yield to Delegate Jestrab.

PRESIDENT WENSTROM: The Chair will recognize Delegate Jestrab.

DELEGATE JESTRAB: Mr. President and Delegates:

Delegate Lander has covered Section 3 very well. As he said, it does follow the pattern of the present Board of Higher Education, eliminating much of the detail. It provides for a constitutional board having the power, responsibility and authority to supervise, operate and control the State institutions of higher learning and such other duties as provided by law.

Now, the constitutional authority of the board, which was demanded by the people, is retained, and this is essential to the most effective operation of higher education. The purpose, of course, of the constitutional board is to prevent the partisan ambition and changing policy and political interference. As was mentioned the other day, this was a reality some years ago, and the present Article 54, as voted by the people, was a result of that situation. The Proposal had the support of the Committee, and we urge your support of Proposal 1-15.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I have an amendment at the desk.

DELEGATE BYRNE: Mr. President.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: Would the record show my presence, please?

PRESIDENT WENSTROM: Delegate Byrne reports his presence.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-15:

On page 2 of the engrossed proposal, after line 32, add the following:

"Section 4. All meetings of the board of public education and board of higher education shall be open and public."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE O'TOOLE: Second.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The amendment speaks for itself. These two boards are being established within the framework of the Constitution. They will be handling the money and the budgets that account for well over fifty percent of the expenditures of the State in any biennium. They will be dealing — the Board of Public Education, particularly — will be dealing with the tax load in your home precincts, and I think that we should guarantee that these meetings are open to public inspection throughout the years. Because they are in the Constitution, they might at some

time quarrel with the fact that the Legislature could open their meetings. I trust that the amendment will be approved.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I have an amendment at the desk.

PRESIDENT WENSTROM: Delegate Jestrab, is this an amendment to the amendment?

DELEGATE JESTRAB: Amendment to the amendment.

PRESIDENT WENSTROM: Amendment to the amendment?

DELEGATE JESTRAB: Right.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment:

On line 2 of the amendment, immediately after the word "public," insert the following: "unless an individual natural person whose rights are being considered requests that the meeting be closed."

PRESIDENT WENSTROM: Do we have a second to the amendment to the amendment?

DELEGATE LONGMIRE: Second the amendment.

PRESIDENT WENSTROM: Seconded by Delegate Longmire.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President and Delegates:

I attempted to introduce this the other day and the main amendment — the main proposal was defeated. I am concerned only with the difficulty in conducting interviews. When the president of an institution of higher learning is being interviewed for that very important position, it becomes very difficult, both for that individual and, actually, for the people doing the interviewing, when it must be done in a public situation. I feel that if the person requests a closed interview, that that should be respected. I urge your support of the amendment to the amendment.

PRESIDENT WENSTROM: The question before the Convention — Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, I should like to support that amendment. I have been on the presidential selection committee twice. These are very delicate negotiations. Many of them have been written up nationally in the last years, in national publications. A good many of these professional people wouldn't think of applying for a position if they felt that their investigations were public. Many of them don't want the institutions that they're with to know that they're applying for another position. I think this is very, very important.

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

Many of these jobs that are being talked about now are very highly-paid; that is, in my language. Some of them get thirty-one thousand, plus considerable expenses — one of them does. The president of one university gets \$30,500 plus some expenses, and I've heard in the Legislature many times high-grade people, which you get kind of tired of, because the high-grade people are asking for more money.

Now, if they're so high-grade, I can't for the life of me see why they should have anything to be hidden. The story came to me from a person I respect — I wasn't there — that a man was being interviewed for a job and they wanted to keep it secret because he didn't have a very good credit rating. Well, the person being interviewed for about a \$25,000 job, without a good credit rating, should have stayed home. And I — I just can't conceive of keeping it secret. I hope the amendment is defeated. Now, wait a minute! Mrs. Jestrab's — wait a minute! Where am I? Anyway, I agree, for once, with Paulson. I do not think the meetings should be secret.

PRESIDENT WENSTROM: Further discussion? Delegate Jestrab.

DELEGATE JESTRAB: I don't believe, Mr. Chairman — Mr. President — that the amount of the salary would ever be secret, and I don't believe that that is the intent.

PRESIDENT WENSTROM: The question — Delegate Hendrickson.

DELEGATE HENDRICKSON: Well, I'm in complete agreement —

PRESIDENT WENSTROM: Delegate Hendrickson, your mike isn't working.

DELEGATE HENDRICKSON: Mr. Chairman. I'm in complete agreement that at the time an interview is going on for a position such as this, it should be a confidential one between those interviewing and the interviewee. This is one of the basic rights, although I would like to ask our lawyers, since this — this "right" is the word that bothers me. The interview should be secret, but is "rights" the word we want in the sentence? Aw, come on. There's a lot of lawyers around here. I really want an answer to this, because I wonder if "rights" — I mean is it securing a job as a president of a university — a situation such as that? Is that considered a right?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, I would attempt to answer it, but, Style and Drafting is going to do what they want anyhow, so it doesn't make much difference. (Laughter)

PRESIDENT WENSTROM: The question — Delegate Hendrickson.

DELEGATE HENDRICKSON: I'm on Style and Drafting. I want an answer.

PRESIDENT WENSTROM: Can anyone answer the question?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I've been threatening for days to get up and say this; but, as a practicing farmer, I don't think I can help you. (Laughter)

DELEGATE HENDRICKSON: Well, I'll just take it for granted then that Style and Drafting can do what they want with this word.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I, also, would attempt to answer it; but I'm afraid I would be accused of practicing law without a license. (Laughter)

PRESIDENT WENSTROM: The question before the Convention is on the amendment to the amendment as offered by Delegate Jestrab. Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay." The "ayes" have it and the amendment is adopted.

And now we're back on the amendment as offered by Delegate Paulson. Any further discussion?

The question is on the adoption of the amendment as amended. Those in favor of the adoption will say "aye;" those opposed will say "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay." The "ayes" have it and the amendment is adopted.

We are back on Committee Proposal No. 1-15 as amended.

Delegate Maxwell.

DELEGATE MAXWELL: Mr. President. I wonder if Delegate Knudson would yield to a couple of questions.

PRESIDENT WENSTROM: Would Delegate Knudson yield?

DELEGATE KNUDSON: Yes, sir.

DELEGATE MAXWELL: Thank you. Did I understand you to say that it is a belief of the Committee that the words "free public education" — that the word "free" in that phrase means merely open and not free of charge?

DELEGATE KNUDSON: Mr. President and Delegate Maxwell:

I think I should say that that's my opinion, basing it on the derivation of the language from the Enabling Act which required that North Dakota should have a system of public education which would be open to all children.

Now, there was a great deal of discussion at some of the early meetings of our Committee as to what this word "free" meant, and we couldn't define it at that point any better than just to leave it the way it was, and perhaps what I said was misleading. If — if I gave any other impression, that was my interpretation — that it means open, rather than free of expense.

DELEGATE MAXWELL: What would be the purpose, then, of having the final phrase on it — “except that provision may be made for tuition and fees in schools of higher education,” unless that is to modify the word “free”?

DELEGATE KNUDSON: Mr. President. Delegate Maxwell, I'm afraid you're showing me the error of my original explanation. Of course, this part of the language was inserted just a few years ago. It's a very recent amendment to our Constitution, because that exact question was coming up in regard to our colleges and universities, which were charging student fees which were, in effect, and very obviously, tuition, but were contrary to the general interpretation of the language of the Constitution.

DELEGATE MAXWELL: Well — Mr. President. Thank you, Delegate Knudson.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I wouldn't want to leave the record of this Convention indicating that the word “free” merely means “open,” and I, therefore, have an amendment at the desk which would clarify, I think, what I think “free” means.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-15:

On page 1 of the engrossed proposal, in line 14, after the word “free” add the words “of charge”.

And renumber the lines accordingly.

DELEGATE MAXWELL: Mr. President, I move the amendment.

PRESIDENT WENSTROM: Delegate Maxwell moves the amendment as read by the desk.

Do we have a second?

DELEGATE SONDRAL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sondreal. Any discussion?

DELEGATE DEVINE: Mr. President.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I yield.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President and Fellow Delegates:

We discussed this, as Delegate Knudson indicated, at length in our early Committee sessions. We had several interpretations of the word “free”. We even visited with the Attorney General's office. I think I could safely say that it is the Committee's intent that the word “free” means precisely what it means in the present Constitution, and this is what is in the present Constitution.

Now, when Delegate Maxwell raised this question, I think he was looking at the Committee Proposal before it was amended, and there it says “free, except that provision may be made for tuition and fees in schools of higher education.”

Now, we've corrected that somewhat in the Committee Proposal as it is now before the floor and as now shown on page 293 of the Journal. In the Committee Proposal as it is now before the floor, we say “free public education”, period, and then, in Section 3, under higher education, we say, “The legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.” So I think the answer, Delegate Maxwell, is we mean the word “free” means precisely what it means now, and so I would resist the amendment and not clutter up the situation that could have some ramifications.

PRESIDENT WENSTROM: Any further discussion? Delegate Lander.

DELEGATE LANDER: Mr. President and Fellow Delegates:

I would also rise to resist the amendment. We kept the word “free” in it in order to maintain the philosophy, as Delegate Devine stated, in the present Constitution. As a practical concern, as most of you recognize, the schools are being asked from time to time to do a whole lot of things which, at least at any particular moment, are in a questionable ground as far as their responsibilities are concerned. In most of these instances, there are charges made; such things, for example, as driver's training, certain highly technical courses, et cetera. I don't think we want to raise extraconstitutional issues at this point about things which are going to continue to be practical problems from time to time, and so I urge the defeat of the amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate Hubrig.

DELEGATE HUBRIG: Well, I think, since there's a question about what "free" means, we ought to find out what "free" means before we put something in the Constitution that we can't even explain ourselves what is "free."

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Well, Mr. President, I think that we are embarking upon a very dangerous course when we start muddying up the Constitution with some question of what "free" means in connection with public education. Are we opening the doors to the charging of fees and tuitions in our public school systems? If so, then I say this is extremely dangerous and I say adopt this amendment and secure free education to our students and pupils.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: May I ask Delegate Maxwell a question?

PRESIDENT WENSTROM: Does Delegate Maxwell yield?

DELEGATE MAXWELL: Surely.

DELEGATE JESTRAB: Would your "free of charge" then indicate that there couldn't be a charge for workbooks or any of the things that over the years have been considered a normal situation when we operated under the old Constitution, which says "free public education to all"?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: To me "free education" means completely free of all charges and that pupils should not be charged for anything in connection with getting an education in this State. Now, if — if there has been a custom developed which is contrary to what the Constitution says, I don't think that that's proper and I don't think that it should have been permitted to develop and, if it has developed, then it's time to stop it.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates:

I have been connected with schools for over 26 years and I've seen this develop over the period of years. Originally, there was a small charge for workbooks; ultimately there was a charge for typewriters. Ultimately there was a charge for education, and I agree with Delegate Maxwell that, if we're going to have free school systems, we should have free school systems for all of the children, whether they can afford the \$25 for driving education, whether they can afford the \$10 for a typewriter. If our school system is going to give this to the children, let's give it to all of them — not to those that can afford it. And I also would like to know what does the word "free" mean under our present Constitution? It means exactly what individual school boards think it means, and I implore the amendment. Let's either make it free or let's take the word out and let it wide open.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Rude.

DELEGATE RUDE: Mr. President. This is going to work a terrific hardship on many school districts, if we are not going to be able to charge for our workbooks and other fees. We have had in our districts a large percentage of people pay these fees; but, at the same time, there are people who could have afforded to pay the fee who did not pay the fee. But the school board has had no alternative, because they do not have the funds to furnish all of these services, like workbooks and typewriters and driver education, without making a charge. So I would certainly be happy if we could really determine what "free" means or if we should just say "open to all students."

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, I'll yield to Delegate Devine.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, I think it's becoming clear why we stay with what we have. We're getting a little emotion into this. We're raising some dust. Personally, I am of the opinion that "free" means free of charge. I have so

ruled on a couple of cases and, in a sense, forced a school to either graduate or give the students report cards where they have charged fees for activity tickets, and this type of thing. But why do we insist on muddying up the waters? We have free public education in our present Constitution. Let's stay with it. Why stir up all these people? If there's a question as to what the word "free" means, go to court. That's what our courts are for.

Now, there was a recent case in South Dakota that went precisely into this point, and they said "free" means free of charge. Let's not start acting like courts or legislatures.

PRESIDENT WENSTROM: The Chair will recognize Delegate Poulson.

DELEGATE POULSON: I will yield to Delegate Hubrig.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. President. A statement was just made, "Why get emotional about this?" Probably we ought to think twice. I've got six children. One of them's graduated from college now. The rest of them are in school yet. I've got to worry about paying for what the charges are myself for my own children in the school. They'll get through school, I'm sure, if I live so long. But what about the child where the parents are at the point where they can't afford it? What do those children think when they come home and say, "I need two bucks for school tomorrow." Dad and mom say, "Well, we don't have the two bucks. Can't you get along without it?" Well, the neighbor boy or girl across the street, the parents give it. What position do you leave that child in? The child probably goes along with it. But are we not putting that child psychologically in a bad feeling toward their parents?

I think we ought to clarify the fact. Is it right or is it wrong on that part of it? And I see Delegate O'Toole's got his microphone there, and I think that I'd like to hear from O'Toole, psychologically, about this matter. (Laughter)

PRESIDENT WENSTROM: The Chair will recognize Delegate Fritzell.

DELEGATE FRITZELL: Fellow Delegates: I'm sorry I'm smiling, but if you had known the many hours our Committee went on just like you people are doing now — an identical type of discussion, with a smaller group of people — and we finally came up with leaving "free." We didn't have any substitute. So, unless you can find a substitute for us to put into this section that will give us the same meaning, the same interpretation as our original Constitution, as the people meant, we'd be tickled to death if you could do it.

PRESIDENT WENSTROM: The Chair will recognize Delegate O'Toole.

DELEGATE O'TOOLE: Mr. President. Fellow Delegates:

I think that the amendment of Delegate Maxwell speaks for itself and certainly clears up the question about what "free" actually means. It means free of charges for people. In my experience in working with the schools kids and my work with welfare, I find that there are many, many school dropouts because of this nickel and dime and dollaring and five-dollaring of many of the young children in our day. The free education will — on those that cannot pay, of course, will be taken out of their welfare payments — of many of these people throughout the State. Either they're reimbursed by welfare or they will have to forego meals or food or clothing or something else to help their children get through school, and I think that the "free of charge" certainly clears up the meaning of this section.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I would like to ask a question. Hasn't this ever been tested in the court? I'm wondering if parents have protested the paying of these fees and if it has gone into legal action and if we've had a determination by the courts on this one question of charges by the school districts. I hope maybe somebody can answer that, since Delegate Devine said, "Leave it to the courts."

PRESIDENT WENSTROM: Could someone answer Delegate Geelan's question? Delegate Poulson.

DELEGATE POULSON: Mr. President and Delegate Geelan:

I'll eventually get to the answer to this question, Mrs. Geelan and ladies and gentlemen.

During the course of our deliberations in the Committee this summer, this word was not bandied around; it was worked on, tromped on and explored in every conceivable way you want to. We asked the Attorney General's office, who has had, as I understand it, more correspondence on this word "free" than he ever received from the draft board. Well, frankly, the word "free" means free.

Now, I sat in this Committee for six months and this was my interpretation when I went in, and this is what it means to me now. If the school district has charged fees, they have done so wrongly. However, to our knowledge, this has never come to a court of law for a complete determination, because, as I think the attorneys in this room will admit, each one of these situations is a different set of facts and would have to be tried on that set of facts. At one time I had to admit that it said it would be free for those whose attendance was required by the law, and I think this has some merit. If you say "free of charge," this, I think, might encompass a lot of problems where you've got continuing education programs, adult education programs, extracurricular programs. But I have always felt that where the law says this young man or this young lady has to be in school until a certain age, they should be there free.

Now, I pay book rent and I know a lot of you others do, and I would much rather pay book rent than buy the books and, frankly, as a practical matter, we have grown up with this fringe area of thinking on this word "free." At least it's fringe in my opinion. But, as far as I'm concerned, the word "free" means exactly what it says — free of charge. But you're going to have to qualify this. If you put "free of charge" in there, as Delegate Maxwell has attempted, I'm just a little bit afraid we might be opening the door to any charge by any school for anything. But I do think that, if we want to clear the water and, believe me, it's getting muddy, we perhaps could insert — and I'm not good at writing amendments — where it would be free where the young person's attendance is required. I don't think any of us feel that our schools should offer everything free — basket weaving and things like that; but I do feel that where any young boy or any young girl — I don't care whether his parents are millionaires or on welfare — their education in America had better darn well be free. If we can't afford education in North Dakota and in the United States, what can we afford? For crying out loud, I think this is really important, and I'm not getting emotional, either, Doctor. (Laughter) This is what I have felt, and I still feel. Does that answer your question, Delegate Geelan?

(Delegate Geelan nodded.)

PRESIDENT WENSTROM: Any further discussion? Delegate Burbidge.

DELEGATE BURBIDGE: I have two questions for someone.

Is public education interpreted to mean, also higher education, and at present what percentage of the higher education support is involved with fees, tuition, et cetera?

PRESIDENT WENSTROM: Can someone answer? Can a delegate answer the question? Delegate Jestrab.

DELEGATE JESTRAB: I'll try.

No, Mr. President, in Section 3 it specifically says that the legislative assembly may — and I believe it's the second paragraph — "The legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education."

Does that answer your first question?

(Delegate Burbidge nodded.)

DELEGATE JESTRAB: Second, and in the past, many times the Legislature has requested that these fees for higher education be raised in order to balance the budget and add to the money that is appropriated for higher education. As to the percentage, I'd have to check a figure on that. Maybe somebody else has that information. I don't.

PRESIDENT WENSTROM: Delegate Miller. Excuse me. Do you have an answer to —

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Do you have an answer to Delegate Burbidge?

DELEGATE DEVINE: Yes.

PRESIDENT WENSTROM: Proceed.

DELEGATE DEVINE: Would you look at Section 148 of the present Constitution, where all of this revolves around? It talks about free public schools throughout the State, beginning with the primary and extending through all grades, up to and including the normal and collegiate courses — course.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President and Fellow Delegates — and I remain to intend as unemotional as Delegate Poulson.

As a member of a school board, this has been disturbing to us. I think we've got to establish — can you tell me what is the intent of the Committee? I sure don't want to quarrel with committees, because I can sympathize with you, Delegate Fritzell. All of us have spent many hours dealing with these various words — as to what they mean, and so on. Now we've become accustomed to paying these little fees, and if we've been doing this in violation of the Constitution, then we ought to either stop it or else word the Constitution so that what we're doing is legal. What is your intent? Is your intent that we should continue to pay these? If it is, then let's get the wording straightened up so that there will be no more question.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President. I will attempt to speak as far as what the Committee says, and if there's disagreement within the Committee, then they can correct me.

The word "free" means several things. I believe that it is the intent of the Committee that it means free of charge. It also means that it is open to all. So it means several things. This is why I hate — I don't want to see the amendment.

Now, there was a suggestion, even, by the Superintendent of Public Instruction that we take the word out — the word "free" out of the Constitution, so that we wouldn't approach this problem. But it was our intent — at least my intent, and I think Poulson expressed the same thing — that free means several things; first, that it is open to all and, second, that it is free of charge.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. I agree with Delegate Devine. Nobody can speak completely for any committee. I do, however, believe that it was the intent of the Committee that the word "free" meant just what it says.

Delegate Daniels, did you wish the floor? Delegate Daniels.

DELEGATE DANIELS: I agree with these people that say "free" means just that. And I believe when our Constitution writers in 1889 wrote the Constitution, they also meant the same thing, and I think we have over the years just kind of slipped to the side and let some of these things go by and changed the wording to suit ourselves. I think, if we mean "free" in this Constitution, we better say "free." If we don't mean "free," then we better take it out, and I think, if we do put "free" in there, we better all go home and refuse to pay some of these fees we have been paying.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

The custom of many school boards has been to not charge the people that can't pay. I know in my experience any fees were waived for about three or four families that were on relief, so that the children wouldn't be hurt psychologically. But I admit it is not the way it should be, and I agree with the amendment offered by Judge — or Delegate Maxwell; not so much as to what we're going to do, but we're just inviting court cases. We're going out here saying, "We don't know what the word 'free' is. We'll leave it up to the judges." And then we complain that the judges are passing legislation.

Now one reason this hasn't gone to court is simply because the people that can't pay the fees can't afford a lawyer either; and the person that can afford to pay the book fees and things for his children would be ashamed to take it to court. And I certainly agree that we should pass this amendment or some other one. If we can't define the word "free" here, what about the people that have argued for six months on that?

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I hope we can resolve this thing, because I don't think there's been any committee in this Convention that has not struggled with the real interpretation of a word. If we think we're going to write a document here that's going to be absolved from any court decision on the part of words and interpretation thereof, then I think we're trying to do something that's impossible, because words are most interesting, Mr. President, because I think of the fellow who said, "My wife is a light eater. The minute it gets light, she starts eating." (Laughter)

So how do you define "light" then? How do you define "free"? I think it's something that we must take for granted here.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: As a member of the Committee, I can certainly say that we did discuss this in many aspects and, as a mother of five daughters who have run up against this problem time after time — in fact, to the point where my husband has often wondered, "I wonder how the neighbors can afford this." People who have very little are in the same spot. But it is my feeling that the word "free" is now in our Constitution and we have used it in the same context, and if the school boards have been abusing this privilege, then it's time that the parents challenged them, either in the courts or through legislative process.

Now, we have been saying time and time again in this Convention that we do not have to spell out everything; we could leave it to the Legislature. Well, now this is one we can put right in the lap of the Legislature, and certainly all these school boards who have been so concerned with the many aspects of our programs we have been trying to develop can have a chance to answer us, and since they have not to this point explained to us exactly what the word "free" means, let's leave them the opportunity to explain it either to a legislative committee or to the judge.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I'd like to support the amendment of Delegate Maxwell, because I think it is time that we resolve this very important thing that we're on. I think it was Delegate Rundle that mentioned that we tried to separate people — those who can pay and those that cannot, and I think this is one of the damaging things that has occurred with the kind of a system that we have followed and what we've run into about free education. I don't think that much of the damage has been done to those who have been able to pay. I think the real damage is being done to those who somebody feels unable to pay because that, in a sense, classifies people, which, I think, is unjust.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Mr. President. I speak in opposition to the amendment. After listening to a lot of testimony here this morning, I think the Maxwell amendment creates more problems than it hopes to solve.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I think when Delegate Maxwell entered his amendment, he wanted to sort of clear the muddy waters, and he was concerned about the intent of what this Convention felt the words "free public education" meant. I think the discussion has been good. I get the impression from the Committee that their words "free education" meant just that — free education. I think that, as far as I'm concerned, I'm ready to vote on that. I think our vote will show that intent that Delegate Maxwell is talking about.

Now, if "free public education" as the Committee sees it is what this Constitution's meaning has been all along, then we have been in violation of that; but, on the other hand, if we put in "free" — "free of charge," as Delegate Maxwell says, we will be just as well in violation of that fact if we go back home and continue to operate as we have. So I hope that we're ready to vote on this question.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President. I've been looking at Webster's for the last few minutes, and the definition of the word "free" — and it covers about half a column in the dictionary. There's many, many uses described there. But I would like to call this to our attention: That our original Constitution provided for free public education. We have a land grant based on free public education, and we're tamper-

ing with a pretty touchy subject if we start out and eliminate or change this definition so that even the Congress might challenge what we were doing out here with our land grants and our public funds that they may appropriate.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. President. This debate this morning has really surprised me. I sat here yesterday for a couple hours and I listened to the argument on eminent domain, and I heard that there was more at stake than just money. I heard that we have certain rights as individuals — certain freedoms. I've listened to many arguments as far as the Preamble Committee's proposals have come in, and time and time again we've talked about freedom and "free" — how we should be free. I've listened to Delegate Paulson in his open meetings, and we've agreed with him. But now we sit here and we're going to eliminate all of this free part that we have to obtain in this Constitution by limiting this word to only apply to the money angle, and I'm very much against this amendment.

PRESIDENT WENSTROM: Delegate Kretschmar.

DELEGATE KRETSCHMAR: Mr. President, I'll yield to Delegate Lander.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President. Thank you, Delegate Kretschmar.

Last Thursday, in the Invocation which was given here, one of the sentences began, referring to us as "imperfect representatives of an imperfect people," and I think that speaks very much to the problem that we have here. We all would like to have the "free" be absolutely free of any kind of responsibility, as well as of payment, I think, sometimes. If we — and, again, I urge your defeat of this particular amendment, because I think we clarify it as well as we can clarify it the way it is, and in the meantime, whether we pass this or not — either way — I hope that you will go home and recognize that your school boards are being asked by all of the parents of the children to provide all kinds of services for those children, many of which we have not had in years past, while another group of citizens — often the same people — are saying, "We at the same time are going to have all these services; certainly don't ask us to pay any more money for those services in taxes. We certainly don't want to do that." So, you see, we are an imperfect people in what we ask. We are not consistent.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I'd like to refer to the Illinois amendments. Most other constitutional conventions have struggled with this very same thing, and we studied those provisions when the Committee looked at our own word "free." Except Illinois, on page 401, has a rather interesting statement. It says this:

"The provision that the schools must be free has caused little difficulty."

However, they do give us a direct statement as to what they meant. "It does not require that schools provide free textbooks."

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I yield to Delegate Kessel.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Thank you, Delegate Kelsch.

I originally stood up to support the amendment, and I did that because of the fact that we were told that "free" means what it means in the old Constitution, and I wasn't able to find out what it means.

Now I have found out that the intent of a great majority of the delegates is that "free" means exactly what it says — free of charge. And with that explanation and with that intent on the record, I now am satisfied that "free" means what we think it should mean — free of charge — and that the school boards and all of the school authorities will find out that that was the intent of this body, and I do not now care which way the amendment goes.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. Chairman, I was about to say just what he said along that line. I think, if "free" means just exactly what it says, then, evident-

ly, it doesn't mean much, because the situation is getting worse. I definitely want to support the amendment.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I thought before this debate I understood what it meant, and now I'm so confused I don't know what it means.

Now, it seems that we have two categories of education here — higher education and secondary and elementary education. It would seem to me, from the way this proposal has been brought in by the Committee, they think that we ought to have free education in the secondary and elementary schools, but not free education in the colleges and universities. And, if that's the way they mean it, that's fine with me. But it would seem to me that in the other section of the Constitution, which says free education means to go through colleges and the normals, that we're still up in the air, and I do think we ought to clarify it. If we are going to qualify it so that we can charge these tuitions in schools of higher education — and I'm in agreement with that — then we ought to say it will be free, "except as otherwise provided in this Constitution," because now we are in a confused position because in one section we say it is free, and then, in the other section, we say it isn't.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Am I permitted to speak again?

PRESIDENT WENSTROM: You are.

DELEGATE MAXWELL: I was sitting here placidly filing my fingernails when I was startled by the interpretation of the word "free" offered by Delegate Knudson — that it meant "open." I thought it mean free of charge. Apparently the Committee feels it means free of charge, and almost everyone here concedes that's what it means. Then I think we should put "free of charge" in the Constitution, and then it would be settled once and for all.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President and Fellow Delegates:

I still think Delegate Maxwell is missing part of it. If we adopt his amendment, we have to adopt further amendments, because not only shall they be free of charge, they shall be open to all, and whatever else the word "free" means. So, if you adopt the amendment — I'm speaking against the amendment — but what I'm saying is if you adopt the amendment, we're not done, because then we'll have to go on and describe and define what else "free" means, because we can say, "Fine," 'free of charge,' hooray! But only these people shall go." And that's not the intent of the Constitution. I'm speaking in opposition because "free" means free, which means several things. It means open and free of charge.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President and Fellow Delegates:

I think this is a tempest in a teapot, and the "of charge" would certainly muddy the issue.

Now, as an attorney for a school board, I advise them on what they can and cannot do under "free," and I have told school boards that the charging for work-books, for example, is a very dubious legal matter, and it could be successfully challenged. The charging of shoe rental, towel rental, locker rental, is certainly valid. It's an extracurricular activity. The charging of rental for band instruments is certainly legitimate, even if you had "free of charge" in there.

So this is just a tempest in a teapot, and Delegate Maxwell has warned us about embarking on dangerous voyages; but this old ship is still floating, and I would urge strongly to vote down this cloudy amendment, which is muddying the issues.

DELEGATE SULLIVAN: Mr. President.

PRESIDENT WENSTROM: Delegate Sullivan.

DELEGATE SULLIVAN: Fellow Delegates: I would like to second the remarks of Delegate Burke over there. He has sized the situation up correctly. We are maintaining here the status quo, and this is the twenty-third day, and I don't think we can settle this problem today, and I know that most of you don't want to upset your present school board's position, and I liked what Delegate Peterson said — that this is still a matter for the courts and it's still a matter for the Legislature, and I urge you to support the Committee at this time.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Maxwell.

Those in favor of its adoption will vote "aye;" those opposed will say "nay."

As many as are in favor of adopting the amendment say "aye;" those opposed say "nay."

The "noes" have it and the amendment lost.

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: I have an amendment at the desk.

PRESIDENT WENSTROM: Delegate Simonson has an amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-15:

On page 1 of the amended engrossed proposal, line 14, delete the word "free".

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson — wait! Excuse me. May we have a second to the proposed amendment?

Seconded by Delegate Rude. Delegate Simonson.

DELEGATE SIMONSON: I, too, feel strongly about the principle of this. Either the word should be in there or more definitive, or we should take it out. We are not now providing free public education. I have three children yet in grade and high school, and we are constantly paying for things which, according to the Constitution, should be free. It's difficult to explain to your children, when you're here attempting to write a constitution for their rights, when you leave in a word and then go home and try and explain why you left it in and force people into the courts. I don't know why we should write things in this Constitution wherein we have to force people to go to the courts. I would like to see that word "free" taken out or made more definitive, and I move that it be removed.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'd like to oppose the amendment. I think it's very unnecessary. I think our last vote showed the intent of this assembly. The area is clear, I believe, for the school boards to see the intent, for the Legislature to see the intent, and for the courts to see the intent. I think we have done our job and I oppose the amendment.

PRESIDENT WENSTROM: Further discussion?

The question before the — Delegate Peterson.

DELEGATE PETERSON: Just one comment. This is a basic right, and to take out the word "free" would take out a very basic right for our children. And I would move, if it's in order, that Mr. Kessel's remarks be put in the Journal.

PRESIDENT WENSTROM: I believe we would have to rule that out at this time. I doubt if they've been kept.

The question before the Convention is on the adoption of the amendment as offered by Delegate Simonson. I think you're aware of the proposal. Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "no" — "nay." The "noes" have it. The amendment failed.

We're back on the Committee Proposal No. 1-15 as amended. Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, I now move that the Rules be suspended, that Proposal 1-15 be deemed to be properly — not yet?

PRESIDENT WENSTROM: No, Delegate Meidinger. We have not yet adopted. We have been working on amendments. We have not adopted the main motion. 1-15 is still before the Convention as amended.

The question — the Chair is in error. Delegate Billey.

DELEGATE BILLEY: Mr. President. Fellow Delegates: I regret that some of the delegates had a hard time hearing me in my remarks on education last Monday. Hopefully, my comments today will come through loud and clear!

Mr. President: I respectfully request a division of this Proposal so that we can have one vote on Section 1 and one vote on Section 2, 3 — and I believe there was

a new section 4 added. This is a logical separation and will permit the delegates, like myself, to vote for Section 1, but against Sections 2, 3 and 4.

PRESIDENT WENSTROM: Delegate Billey, how are you dividing it? Do you request that it be divided so we vote first on Section 1 and then on — en masse on Section 2, 3, and so forth?

DELEGATE BILLEY: Yes; unless someone else prefers to divide it some other way.

PRESIDENT WENSTROM: Then we would vote on Section 1; then we'd vote on Section 2 and 3 together — 2 and 3 together.

DELEGATE BILLEY: Well, Mr. President, wasn't there a Section 4 added by amendment?

PRESIDENT WENSTROM: There has just been added. So those three would be together; and 1.

DELEGATE BILLEY: Right.

PRESIDENT WENSTROM: Your request is granted.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, should it be on the calendar first?

PRESIDENT WENSTROM: You may make your motion.

DELEGATE MEIDINGER: Mr. President, I now move that the Rules be suspended and that Proposal 1-15 be deemed to be properly re-engrossed, and I move that it be placed on first passage.

PRESIDENT WENSTROM: Delegate Meidinger moves that the Rules be suspended, that Committee Proposal No. 1-15 be deemed properly re-engrossed that placed on the calendar for first passage as amended.

Do I have a second?

DELEGATE PETERS: Second.

PRESIDENT WENSTROM: Seconded by Delegate Peters. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and Committee Proposal No. 1-15 is before the Convention.

First for consideration then will be your vote on Section 1. Delegate Billey.

DELEGATE BILLEY: Mr. President, I would like to take this opportunity to explain my vote in opposition to the last three sections —

PRESIDENT WENSTROM: Delegate Billey, we'll take the Section 1, first. Then you may have the floor.

The question before the Convention then is on the vote on Section 1.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: I'm very seldom a nit picker, but yesterday I raised a question. In my mind there was an uncertainty between 1-15 and 1-100, and, to me, that still has not been cleared up.

For example — and I'm speaking on Section 1, Mr. President — (a) under 1-100 it says that the executive powers shall be allocated among 15 principal state departments. Well, I don't think there's any difficulty there because we set up one and, in fact, under 1-15, it goes further and says the head of the department shall be a single executive, unless otherwise provided by this Constitution. Well, you can provide it in 1-15 — that there will be 18 or probably 20 at the head of this department — two executive directors; but the next is where I believe we get into a dispute between 1-15 and 1-100. It says, "The legislative assembly shall prescribe the duties for each executive department and shall also provide for the periodic reorganization."

Now, 1-15, in effect, does prescribe the duties, and so on, of this department, and it seems to me one or the other is in conflict, and it would seem to me that 1-100 should perhaps have in it "except as otherwise provided in this Constitution."

And there is a further conflict, in my opinion, under (b); but as we are not — Mr. President, as we are not on that, I do not believe I can speak on it; is that correct?

PRESIDENT WENSTROM: That is correct.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke — Delegate Burke, just a question. I didn't — it isn't -- I don't think I misunderstood you. That is in another proposal; isn't that correct? Your reference is to another proposal?

DELEGATE BURKE: My information is that the question is divided and all we can speak on now is the first question.

PRESIDENT WENSTROM: On the first section.

DELEGATE BURKE: Yes.

PRESIDENT WENSTROM: That is correct. The question before the — Delegate Devine.

DELEGATE DEVINE: Mr. President, in response to Delegate Burke, he raised an excellent point. It is our thought that, after Section 1-15, if it is adopted by the Convention, that we'll attempt to correct that problem.

PRESIDENT WENSTROM: The question now before the Convention is on the first passage of Section 1 of Committee Proposal No. 1-15. Those in favor of its passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

The vote is closed.

DELEGATE ROSENDAHL: Mr. President, may I explain my vote "no" for the record?

PRESIDENT WENSTROM: You may, just as soon as the vote is announced, Delegate Rosendahl.

Fellow delegates, there's something wrong with the tally. We would ask your indulgence, and we will re-vote on this first section of Committee Proposal No. 1-15.

Has every delegate voted? Any delegate wish to change? The vote is closed. We have to proceed with the roll call.

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: Aye.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: Aye.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: Yeah — yes.

CHIEF CLERK GILBREATH: Bassingthwaite.
(No response.)

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: Aye.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: Aye.

CHIEF CLERK GILBREATH: Benz.

DELEGATE BENZ: Aye.

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Aye.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: Aye.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Aye.

CHIEF CLERK GILBREATH: Birkeland.

DELEGATE BIRKELAND: Aye.

CHIEF CLERK GILBREATH: Brakke.

DELEGATE BRAKKE: Aye.

CHIEF CLERK GILBREATH: Burbidge.
DELEGATE BURBIDGE: Aye.
CHIEF CLERK GILBREATH: Burke.
DELEGATE BURKE: Aye.
CHIEF CLERK GILBREATH: Butler.
(No response.)
CHIEF CLERK GILBREATH: Byrne.
DELEGATE BYRNE: Aye.
CHIEF CLERK GILBREATH: Cart.
DELEGATE CART: Aye.
CHIEF CLERK GILBREATH: Chase.
DELEGATE CHASE: Aye.
CHIEF CLERK GILBREATH: Christensen.
DELEGATE CHRISTENSEN: Aye.
CHIEF CLERK GILBREATH: Daniels.
DELEGATE DANIELS: Aye.
CHIEF CLERK GILBREATH: Dawson.
DELEGATE DAWSON: Aye.
CHIEF CLERK GILBREATH: Decker.
DELEGATE DECKER: Aye.
CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Aye.
CHIEF CLERK GILBREATH: Diehl.
DELEGATE DIEHL: Aye.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Aye.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Aye.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Aye.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Aye.
CHIEF CLERK GILBREATH: Fallgatter.
DELEGATE FALLGATTER: Aye.
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Aye.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Aye.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Aye.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Aye.
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Aye.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Aye.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Aye.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Aye.
CHIEF CLERK GILBREATH: Hendrickson.

DELEGATE HENDRICKSON: Aye.
CHIEF CLERK GILBREATH: Hernet.
DELEGATE HERNETT: Aye.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Aye.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Aye.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Aye.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: No.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: No.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Aye.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Aye.
CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Aye.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Aye.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Aye.
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Aye.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Aye.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Aye.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Aye.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Aye.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Aye.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Aye.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Aye.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Aye.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Aye.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: No.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Aye.

CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Aye.
CHIEF CLERK GILBREATH: Nothing.
DELEGATE NETHING: Aye.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Aye.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: Aye.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: Aye.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Aye.
CHIEF CLERK GILBREATH: Pearce.
(No response.)
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Aye.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Aye.
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: Aye.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Aye.
CHIEF CLERK GILBREATH: Rosendahl.
DELEGATE ROSENDAHL: No.
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Aye.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: Aye.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SANSTEAD: Aye.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Aye.
CHIEF CLERK GILBREATH: Scheel.
DELEGATE SCHEEL: Aye.
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: Nay.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: No.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: Aye.
CHIEF CLERK GILBREATH: Solberg.
DELEGATE SOLBERG: Aye.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDREAL: Aye.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: Aye.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: Aye.
CHIEF CLERK GILBREATH: Thompson.

DELEGATE THOMPSON: Aye.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: Aye.
CHIEF CLERK GILBREATH: Tudor.
DELEGATE TUDOR: Aye.
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: Aye.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: Aye.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: Aye.
CHIEF CLERK GILBREATH: Wallin.
DELEGATE WALLIN: Aye.
CHIEF CLERK GILBREATH: Warner.
DELEGATE WARNER: Aye.
CHIEF CLERK GILBREATH: Wicks.
DELEGATE WICKS: Aye.
CHIEF CLERK GILBREATH: Wenstrom.
PRESIDENT WENSTROM: Aye.

The roll call discloses 90 "aye" votes, 5 "nay" three delegates absent and not voting. So Section 1 of Committee Proposal 1-15 has passed.

The Chair will recognize Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President: I would like to explain my vote "nay" for Section No. 1. I merely feel that I believe we have failed to identify "free education."

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: Mr. President: I, too, should like to qualify my "nay" vote by explaining that "free" should either have been deleted or made more definitive.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: I would like to explain my vote of "no" because I don't feel that word "free" was clarified here, and I didn't want to make a court heyday out of this.

PRESIDENT WENSTROM: Delegate Schmit.

DELEGATE SCHMIT: Mr. President: I'd like to explain my vote. I think the Committee could have written this up to clarify the intent brought out here on the floor. I don't think this is going to change much. There's been this proliferation of charges in our schools, and it's come over such a long period of time. It's wrong — it is really wrong, and I think we should have said it.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention, Sections 2, 3 and 4. Delegate Billey.

DELEGATE BILLEY: Mr. President. Fellow Delegates:

I plan to oppose Sections 2, 3 and 4 for several reasons. First, like Burke, I cannot reconcile these sections with the actions of this Convention in approving Committee Proposal 1-100, which call for the organization of the Executive Branch of our government into no more than 15 principal departments.

By approving these three sections, we are laying the groundwork for three separate departments of state government — one for higher education, one for elementary and secondary, and one for vocational — and we're tying the hands of the Legislature so that it will be virtually impossible for them to accomplish the proposed reorganization of the Executive Branch.

If we aren't planning for three departments, then it will be two departments, which is even worse, in my opinion, since it will mean the eventual consolidation of vocational education board with either the higher education board or the public school education board.

Should these two sections of the new Constitution be approved, I foresee nothing but a continuous battle in the Legislature to designate one of the two proposed constitutional boards as a board for vocational education.

Now, my belief is based on the following reasons: The Superintendent of Public Instruction, in his letter to our Committee on July 14th, expressed his concern over not having clear supervisory control over vocational education in the elementary and secondary schools.

Second, the Legislature, in the '69 session, had a bill which would have designated the Board of Higher Education as the board for vocational education, and it was defeated.

Incidentally, our Chairman referred to South Dakota, and I might just say that our neighbors to the south, with a similar structure in the administration of education, during the current session had a bill that combined the vocational education department with their Department of Public Instruction. It was defeated. To me, it looks like it would be just a plain, simple struggle for who is going to have control of the vocational money that is allocated by the Federal Government.

On Monday, a delegate expressed concern over the need for vocational education in the elementary and secondary schools, and I share that concern. If the Board of Higher Education should become the board for vocational education, there would be good reason for this concern. Under federal law, there is no requirement and, therefore, no guarantee that any federal funds would be spent on vocational education in our elementary and secondary schools. The federal law requires only that at least 15 percent of the federal money be spent on post-secondary vocational education.

If the Board of Higher Education, whose members are already concerned about the amount of work they have to do, receives this additional responsibility, we would really have taken a step backwards — all the way back to 1955, when they originally had the authority over vocational education.

In conclusion, I think we're telling the Legislative Assembly two stories; on the one hand, we say "Organize the state government into 15 departments," and, on the other hand, we establish the organizational structure for education without creating one department. We should either be consistent and face the problem, or not hinder the Legislature by locking these two boards and their administrators into the Constitution.

PRESIDENT WENSTROM: The Chair will recognize Delegate Burke.

DELEGATE BURKE: Mr. President and Fellow Delegates:

I wish to speak only as a technician — not in opposition or in favor. I wish to point out the Education Committee did a very fine job, and it seems that this is the direction we're going to go — with two boards. However, I wish to point out, again, in 1-100, that there is a possibility that everything you have done may be wiped out. It says that the governor may — this is under (b) now of Proposal 1-100:

"The governor may, for more effective administration, make changes in the allocation of functions, powers, and duties among and within the executive departments, other than those departments headed by constitutionally elective officers."

Now, your Education Department is not a constitutionally-elective office.

Now, I merely wish to point out that there is a danger that reorganization may undo everything we've done in 1-15. The only saving possibility I see is that when these changes affect existing laws — and I'm sure the Legislature will pass laws setting up the board, and so on — it says when these changes by executive order affect existing laws, then the Legislature does have the power of vetoing the governor's executive order; and I merely bring this out in case the Education Department or the Executive Functions wants to insure that the work of the Education Department will go out without executive reorganization.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: In answer to Delegate Burke: The Style and Drafting Committee is working on this problem, because we saw it coming, and we haven't quite finalized our thinking on it; but we'd like to invite you down to our luncheon meeting, if you'd like to interject your thoughts on it. But we are working and we think we can resolve the problem.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I don't believe the problem is anywhere near as serious as is being contemplated, because I think the language in 1-100 indicates that the kinds of departments that are going to be involved are those that are only within the control of the governor and the Legislature, and when we set out in the Constitution a specific board, I don't believe that the language in 1-100 could be construed in any way to include a proposed Board of Higher Education. I think there would be a serious question as to whether or not it could even include the other boards. So I don't really think it is a problem; and even by the wildest stretch of the imagination, that these could be construed to be executive boards. I don't think it's going to be a problem for the Legislature to deal with the fifteen anyway.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President. I know that everybody gets tired of technicians, but I think it is extremely important that we do go ahead and try to prevent problems, and this matter has been raised, as Delegate Unruh pointed out, several times, and there is at the moment a draft being prepared to hopefully correct whatever problem there might be there, and the amendment would be to list the departments in 1-100 as those departments under the control of the Attorney General, the Secretary of State, the Public Service Commission, Board of Higher Education, and the State Board of Public Instruction, so that it would clarify exactly what the areas were that were not within the area of review.

PRESIDENT WENSTROM: Further discussion? The question before the Convention — Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. I believe that the question is on the motion of Delegate Billey —

PRESIDENT WENSTROM: No. The question is on the passage. The question is on the passage of Sections 2, 3, and 4 of Committee Proposal No. 1-15.

Any — hearing no further discussion, the question — we're voting on the first passage of Sections 2, 3 and 4 of Committee Proposal No. 1-15.

Those in favor of passage will vote "aye;" those opposed will vote "no."

The key will be opened — no. You'll have to use the roll call. We will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 85 "aye" votes, 8 "nay" votes, five delegates absent and not voting.

Committee Proposal — Sections 2, 3 and 4 of Committee Proposal 1-15 have passed.

The Chair will declare a 15-minute recess.

DELEGATE MEIDINGER: Mr. President: May we be on the eighth order for a moment? I would like to invite the Education Committee down to G-1 for a very short discussion.

PRESIDENT WENSTROM: You invite your committee. Go ahead and invite them.

DELEGATE MEIDINGER: The Education Committee is invited to a short meeting in G-1.

(The Session recessed at 10:29 A.M. until 10:48 A.M., the same day.)

VICE PRESIDENT SAUGSTAD: All right. Will you please take your seats so we can come to order?

The Chair will recognize Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President. In deference to yourself, who has an amendment for 1-74, and I would imagine you'd like to pose that amendment from the floor, so at this time I'll move Proposal 1-74 down below on the calendar, below 1-86.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE CART: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Cart.

All in favor of the motion signify by saying "aye" —

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: I would have appreciated being consulted about this. I have mentioned to several members of the Committee that I have a — that I have a responsibility that will take me from the Chamber this afternoon for two or three hours, and I was hoping — really hoping that we could get these tax things out of the way this morning. I understand then we'll go on with 87.

DELEGATE TRENBEATH: Well, Mr. President, I did this at the request of Delegate Saugstad, so that he could offer his amendment.

Now, if the Chair wants me to make the amendment from the floor, I can do that also. How does the Chair feel?

DELEGATE HAUGEN: I would not want to curtail Delegate Saugstad's right to make his amendment. I will have to say that I will have to leave the Chamber after lunch for about three hours.

VICE PRESIDENT SAUGSTAD: Delegate Haugen, if — could you give us some indication as to about when or for how long a time you will be absent?

DELEGATE HAUGEN: I would be leaving at — my plans are to leave at the noon recess, and I would expect to be back around 3:30 or four o'clock.

VICE PRESIDENT SAUGSTAD: Well, I think it would be quite probable then that this could be held over then until you have returned.

DELEGATE SOLBERG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Solberg.

DELEGATE SOLBERG: Does that mean then that Proposal 1-74 and 1-87 will not be heard until three o'clock? This is the twenty-fourth day. I had my plans made for the twenty-fourth for committee meetings, board meetings, and so on, and I'd like to be here for those commitments.

VICE PRESIDENT SAUGSTAD: I believe, in answering your statement there, Delegate Solberg, that Committee Proposal 1-87, I believe, is next on the calendar. Is that correct, Mr. Chief Clerk?

CHIEF CLERK GILBREATH: Yes.

DELEGATE SOLBERG: Mr. President: What's the status of 1-15?

VICE PRESIDENT SAUGSTAD: That has been passed.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I would surely not oppose the deferral of action on 1-74. I can designate — I mean the members of my Committee are certainly well able to take care of the discussion on it — whatever the Committee — or whatever the Convention decides is satisfactory to me. But I will make this announcement: That I will have to be absent this afternoon.

VICE PRESIDENT SAUGSTAD: Thank you. Delegate Kelsch.

DELEGATE KELSCH: Mr. President, could we solve the problem by all agreeing that the Chairman can speak as a delegate from the Chair, and go right ahead with it? I don't think any delegate here would object to that — unless you'd rather not.

VICE PRESIDENT SAUGSTAD: Well, I do not feel that that would be quite fair and that I would prefer to speak from the floor. I could relinquish the Chair. President Wenstrom.

PRESIDENT WENSTROM: Mr. President: In the event something comes before the Convention that you would like to take part in, Delegate Saugstad, I'll be here and I'll relieve the situation and you may return to the floor.

VICE PRESIDENT SAUGSTAD: Thank you.

DELEGATE TRENBEATH: Then, Mr. Chairman, I'll revise my motion. Frank, did you say you'd go to the Chair now, or later? Would you like to wait until later?

PRESIDENT WENSTROM: I'll go right now, if this is what's on your mind. If the question is before the Convention now, I'll go to the Chair right now.

DELEGATE TRENBEATH: The question is before the Convention.

PRESIDENT WENSTROM: Okay. I will relieve Stan.

VICE PRESIDENT SAUGSTAD: Okay. Thank you.

(President Wenstrom returned to the rostrum to preside.)

PRESIDENT WENSTROM: For consideration by the Convention is Committee Proposal No. 1-74.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-74, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 182 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to state debt.

"SECTION 1. REPEAL.) Section 182 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"STATE DEBT. The state may issue bonds and make loans, and guarantee the payment of such bonds and loans and interest thereon. A statewide property tax based on value shall not be used to retire or guarantee such bonds or loans.

"Each issue or guarantee shall require sixty percent approval of the members-elect in each house of the legislative assembly.

"Except as otherwise provided in this constitution any tax levied or other provision made to retire a bond issue shall be irrevocable until such debt is paid."

PRESIDENT WENSTROM: The Chair will recognize Delegate Erickson.

DELEGATE ERICKSON: Mr. President. I've been waiting for this one for a long time. I'd like to explain a little bit about what the old section does and give our Committee — what they had their feelings on.

Section 182 of the present Constitution is a rather long section that would provide, basically, that the State may issue and guarantee bonds, provided that the bonds in excess of two million dollars have to be secured by a first mortgage on real estate, not to exceed one-half of the value of the real estate, or upon real and personal property of state-owned utilities, enterprises or industries in amounts not to exceed its value.

Now, it further provides that the State may not issue or guarantee bonds upon the property of state-owned utilities in excess of ten million dollars.

There is another restriction written into this section that no further indebtedness can be incurred by the State unless evidenced by a bond issue authorized by law for certain purposes clearly defined. There is further language in the section providing that if a bond issue is authorized, it should provide for the levy of an annual tax or make other provisions sufficient to pay the interest and principal within thirty years from the date of issuance of the bond. It shall also especially appropriate the proceeds of that tax to the payment of the principal and interest, and that this appropriation should not be repealed nor the tax or other provision discontinued until the debt, both principal and interest, have been paid.

The final sentence of the section provides that no debt in excess of the limit therein can be incurred, except for repelling invasion, suppressing insurrection, defending the State in time of war, or providing for the public defense.

Now, the Committee had the benefit of considerable testimony on the contents of this section and decided that it should be revised considerably. It was the feeling of the majority of the Committee that no specific limitation should be written into the Constitution. The reasoning behind the Committee's decision was that it is impossible now to determine what the needs of the State will be years into the future. Thus it is also difficult to determine now the amount of indebtedness which would be necessary to promote the continued growth of the State in the future. These matters can hardly be decided at this time; thus it would be unwise to include such a limitation in the Constitution.

The Committee was advised by the members of the Industrial Commission and by officials of the Bank of North Dakota that one of the areas in which State debt would perhaps be necessary in considerable amounts in the future would be the development of the Garrison Diversion Irrigation Project, and it was the opinion of these individuals, and concurred in by a majority of the Committee, that the debt limitation as in the present Constitution is totally inadequate to cope with these

future needs. The Committee thus provided that the State could issue bonds and make loans and guarantee the payment of such bonds and loans and interest thereon.

We have stated that a statewide property tax based on value cannot be used to retire or guarantee such bonds or loans, and this was done to protect the already often-overburdened taxpayer.

There is no dollar debt limit stated, but there certainly is a restriction on incurring debt written into the section. Those restrictions are the requirement that the issue or guarantee must be approved by sixty percent of the members in each house of the Legislative Assembly. Further, each issue or guarantee must receive sixty percent approval. This will require that every plan that the State incur indebtedness will have to be subjected to scrutiny by all the legislators and will have to receive the approval of sixty percent of them.

The last sentence provides, "Except as otherwise provided in this constitution any tax levy or other provision made to retire a bond issue shall be irrepealable until such debt is paid." The exception relates to the language of Committee Proposal 1-116. The need for the exception arises because 1-116 calls for reenactment of a property tax every two years, if one is used. Thus it allows that if it is not reenacted, it would lapse, and thus it would be irrepealable.

The Committee discussed the language of this section at length and felt that the Legislative Assembly would be responsive to the wishes of the people. If the Legislative Assembly was not responsive, the people would then have the right of initiative and referendum available to them. The Committee members further felt that, in order to gain a sixty percent approval of the members-elect, it would be necessary to have considerable discussion on whether or not the debt should be incurred, and if sixty percent of the members were convinced that it was proper and reasonable, the debt then should be incurred.

PRESIDENT WENSTROM: Any further discussion? Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President. I have a proposed amendment at the desk, which I'd like read.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Proposal 1-74:

On line 11 of the engrossed committee proposal, after the word "thereon", insert the words "not to exceed forty million dollars".

And renumber the lines accordingly.

DELEGATE SAUGSTAD: I would move for the adoption of this amendment.

PRESIDENT WENSTROM: Do we have a second for the motion?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

Delegate Saugstad.

DELEGATE SAUGSTAD: Actually, I am in agreement with Proposal 1-74 as prepared by the Committee, with the exception of the fact that I happen to be one of the minority on that Committee that felt that there should be a ceiling — that is, in other words, that there should be a debt limit provided for in this section, in view of the fact that we have had, up to this time before, a rather low — what I would call an extremely low ceiling or a low debt limit; and, actually, what, of course, the Committee has proposed in Proposal 1-74 is for an unlimited debt; in other words, there is no ceiling whatsoever, other than the requirement of a sixty percent vote on the part of the Legislature.

Now, those who oppose writing in a debt limit advanced the following arguments:

One, if it could be based on a percentage, say of the assessed valuation — that's the way we are handling the debt limits for the political subdivisions — expressed as a percentage of the assessed valuation. However, as it was pointed out in this instance, that the State is not levying a tax against real property. Therefore, that method would be inapplicable in this instance.

The other was that maybe it should be expressed in a percentage of income, and that seemed impractical. The argument against using a flat dollar amount was this matter of inflation. We speak of forty million dollars today or ten million, or some

such set figure could be and may be meaningless, say in another 25 or 30 years or sometime in the future, and I certainly am willing to grant that that is true; but my point is that — and I wanted to offer this alternative to this group: Do we subscribe to and do we want a ceiling or a debt limit expressed in the Constitution?

Now, I happen to feel that we should, and I feel that we should have some kind of a limitation, one of the reasons being that extreme pressures can be, and I presume will be, brought on the Legislature for extending the State's credit. I can foresee rather extreme pressures brought to bear. I would like to point this out: That in the past, whenever it has been necessary to bond the State — and we have had three bond elections in the not-too-distant past — and each time for paying a veterans bonus, incidentally — but those passed rather readily; it was not difficult to bring that to the people and let the people vote on it. And if the people approve of a debt — I mean in bonding the State, then I think that is perfectly fine and, by the same token, no one is going to promote or try to bring an issue to the State Legislature asking for large — floating a large bond issue, unless it is very sound, provided they know that it will have to be brought to a vote of the people.

The other factor involved is that there is a time element involved here where this can be scrutinized for some period of time.

Now, I'm going to vote for 1-74, regardless of whether it has this — my proposed amendment in it or not, because I feel that it is a good proposal; however, I feel that it would be slightly better with my proposed amendment.

Thank you.

PRESIDENT WENSTROM: Any further discussion? Delegate Fritzell.

DELEGATE FRITZELL: Mr. President and Fellow Delegates:

I, too, would like a debt limit. I agree with Delegate Saugstad, but I am a little worried. On an inflationary basis, do you realize that in ten years it would be down to twenty million at the rate we're going now, and in twenty years it would be no debt limit at all? And I do also have another question, but it is not germane to the Proposal, so I'll leave that. I would like some other method except a direct figure.

PRESIDENT WENSTROM: Any further discussion? Delegate McElroy.

DELEGATE McELROY: Mr. President. I rise to speak against the amendment. I think that you've all heard about how hard all of our committees have worked, and we did. I think the makeup of this particular Committee is probably one of the more conservative committees in the Convention. We tried to be consistent in all of our legislation in staying away from absolute limits. They're hard to define today — what might be twenty or thirty years from today — and we have felt, after exploring all kinds of limits, that this super majority of sixty percent is the best way to handle it. It takes care of the situation as it may be in the distant future.

Now, I think one thing you might bear in mind is that, as the State goes into debt further and further, you're going to meet increasing resistance. In other words, this sixty percent vote is going to be a lot more difficult to get if you're already quite a lot in hock. I think that this way of limiting state debt is quite reasonable and it is quite farsighted.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President. Will Delegate Saugstad yield to a question?

PRESIDENT WENSTROM: Will Delegate Saugstad yield?

DELEGATE SAUGSTAD: Yes.

DELEGATE ENGELTER: I'm concerned why — what's the basis for selecting the forty million dollars? — is the first question; and then, second, whether or not the proposition was discussed with regard to setting a maximum on debt limit with regard to the total income within a year or biennium which the State might have. Was this — the question was: Was this idea discussed — at setting a limit based on that figure or on those items?

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: In answer — is this on? It's on.

In answer to the first question: The forty million dollars was — I'll speak without it.

In answer to the first question — why forty million dollars — why that figure? There is nothing magic about that figure, and, in actuality, it could be fifteen million or thirty million or fifty million or some other figure. But we had to select or use some figure. We felt — and I discussed this with a number of other delegates — and they thought that forty million was sufficiently a large amount of money to allow appreciable leeway. Recall that we now have a bonded indebtedness for the Vietnam bonus of about — I believe about fifteen million. So this would then actually, if this were adopted — forty million adopted — then it would mean that we would have an additional twenty-five million that could be borrowed before it would have to be taken to the people.

In answer to the question — the second part of your question, it was discussed trying to set a percentage of the State income; but, actually, when you begin to talk to that, are you talking — what? Income to the general fund. What income would be or should be considered. And in view of the fluctuation that can occur, that this amount could move up and down appreciably. And so it was felt that that was an impractical approach.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President. Fellow Delegates:

I am strongly opposed to the amendment; but whether it is approved or not, I will vote for the section. However, it might be well to give you a little history on debt limits. Probably Mr. Cart is more able to do this than I.

The original Constitution, as you know, had a two hundred thousand dollar debt limit, and in 1889, this was regarded as an astronomical figure, and I believe within three years it was felt that this was inadequate and it was finally changed to two million. However, we are also repealing Article 76. As you remember, this was a provision proposed by initiative petition, which would allow the State to issue bonds and use the proceeds to privately or cooperatively own enterprises, structures and equipment, extend facilities for power and generating, and so on. And it stated in there that the State could issue general obligation bonds up to five percent of the full and true value of all the taxable property in the State, which is roughly thirty million — which would be roughly thirty million dollars, and in a case in North Dakota — **Kelly v. Guy** — it was provided that Article 76 was an exception to 182. So, in effect, we had a 32-million-dollar debt limit, and although I — in my way, I resent Delegate McElroy looking at me when he spoke of conservative people on the Committee. The danger with the debt limit is that you believe that you are very generous, and because of changing times and things of that sort, you will find that you are quite shortsighted. And from a conservative person, I would believe that the sixty percent provision that Delegate Erickson mentioned is a valid safeguard against wild spending.

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

I'm going to support the amendment of the debt limit, although I think it's a little high.

Now, Delegate Saugstad talked to me about it, too, and I thought this was a little high; but I'm going to support it, because I think there should be a debt limit. And there are a couple of things that you may find. In the past, a sixty percent vote of the Legislature, even a two-thirds vote, has been had on very, very many occasions, and it isn't the guarantee that some people might think it is, and there's one other thing that's bothering me about this, and we're talking irrigation and all these projects — we may need lots of money. Well, what's going to happen to private enterprise? Does the State have to go into everything?

Now, I have an irrigation system. I've had it for many years. I built my own dams and I've paid for the machinery and I may know as much about irrigation as some of the doctors and dealers of various kinds who are on this Commission, and I don't think the State has any business underwriting irrigation projects. I think that this is a personal obligation, and I would hope that the amendment to put a debt limit on carries.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. I would like to support some kind of debt limitation and, contrary to Mr. Rundle, I think perhaps it's too low. How-

ever, none of us have unlimited credit, and this is really what you're trying to say. This is not true in the case of individuals, corporations, sovereign nations and tribes, and I'm concerned with the cost of money to the State of North Dakota. I think when you have no debt limitation, you're going to have to pay a lot more for your money. Those of you who are familiar with the history of this State know that for many years six percent bonds were selling for eighty dollars a hundred, credit of the State of North Dakota. Now, North Dakota's credit is not all that good — that it can borrow on all the money that it wants; and I would like to think that you would like to have some kind of limitation to keep the cost of the money down.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: In response to the statement made by Delegate Burke: The original limitation of \$200,000 was carried until 1918, when the present situation was developed, where the State could go into the industrial business and such things as that. And, since that time, of course, it issued the various bonds for the veterans.

Now, I'm in support of the amendment offered by Delegate Saugstad for this simple reason: That we're not probably going to see continued inflation. We can also see deflation. And if we get ourselves so heavily overloaded, we could be in drastic circumstances, that even our grandchildren would have to repudiate. If we run this thing way up beyond any reasonable amount, we then would be in extreme difficulty and probably state bankruptcy would be the alternative.

So I think the forty-million limitation is reasonable.

Now, going back to the other developments, such as irrigation projects, and things like that: Certainly the land that is going to be subject to irrigation and get the benefits of irrigation should bear the cost there, except the digging of the main canals and such things as that. There's a lot of land in this State that is not irrigable. I know here some years back, when they had the so-called "shotgun marriage" of the Pick-Sloane Plan, they were going to irrigate all of the northern part of this State, starting way up by Crosby and coming down and running a canal over towards the Turtle Mountains, and then irrigate all of that land. Well, they set up a project there by Des Lacs Lake, about three miles from where my land is — some of it — and they alkali'd the land in about three years, because it's just a heavy clay subsoil — a good loam, but it will not stand irrigation. So that had to be abandoned. If that had ever gone through and all of that system built, we would have had to abandon our homes up there — our farm homes. So this will be to some degree limited. There are certain areas in this State that are suitable for irrigation and they should be developed; but, on the other side, they should be approached with caution, because the season — the growing season — the frost-free period under which crops can be grown will not change because we irrigate. It will be just as limited in that respect as it is today.

So I certainly support the amendment offered by Delegate Saugstad that we write in the forty-million limitation.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. Chairman and Delegates:

I, too, was on that Tax Committee, and I had sympathy — a great deal of sympathy for Mr. Saugstad's proposal, although we were not in the majority, and there's merits in the consideration of going both ways — leaving it open and leaving a limitation to the Legislature and with the super majority, or put a debt limit on it. Presently, our Constitution limits the debt limit to ten or twelve million dollars. There's a dispute on just what that figure is. But we thought — or at least Mr. Saugstad, I'm sure, thought that it was worth the merit to bring before this Convention and let you be the judge on whether there should be a debt limit or not.

Now, we've had this debt limit. We've done pretty well. When we've had to exceed that, we went to the voters and we went with a justifiable cause, and they have raised the debt limit beyond that ten or twelve million dollars in the past. So we've operated very successfully, and we can take and view what's happened in other states, where these things are left up to the Legislatures, and there's some of these states that are most certainly heavily burdened with debt. So it gets right down to whether you feel this should be left opened up and left to the Legislature with a super majority, or put a ceiling on it. It's just that simple.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President and Delegates:

Delegate McElroy referred to this Committee as being "rather conservative." I think we were so conservative that the very thought of forty million dollars was rather shocking to us, and Delegate Burke is the most conservative liberal that I know. I think this bears out that we were trying to leave this thing so that future generations could cope with the problems that would be at hand at the time that they arise. We left secure that the sixty percent would be a deterrent to unlimited spending — to unlimited debt limit. This would be an issue, and the fact that they're dealt with each separately, would give the Legislature an opportunity to view each project, each proposal on its merits alone.

The thought of this thing, I think, Fellow Delegates, is that the money needs may be so huge in the future that we would have problems in finding private lending agencies that might be willing to come out here and invest in this, and this is why we thought that, in trying to look 20, 40, 60 years ahead, that it was almost impossible for us to try to visualize just how large this ought to be. I recognize that this does disturb me a little to not have any limit on it, and the headlines that came out when this was determined a short while back, I'm sure, startled many of the voters in this State. But, if you stop and examine this thing carefully, I don't believe it's nearly as much of a problem as you think it is.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President. I was going to expound on that idea that was just mentioned — about each issue. I think that may need a little more explanation. The thought in the Committee was that if an agency of government came looking for a loan or for funds to build a project — whatever it was — irrigation has been mentioned — that the Legislature would have an opportunity through its committee work to study the feasibility, the methods of payments, recommendations as to interest rates, and look at each one to see whether or not indeed the land was irrigable, for one thing, whether the benefits would be justified, and that's — I can claim that I had something to do with putting that in there, and I think it's a business practice that would be very justified; and I think, in answer to Delegate Saugstad's motion, it would justify the Convention in voting down his amendment.

PRESIDENT WENSTROM: Will a delegate yield time to Delegate McIntyre — McElroy? Delegate Hendrickson yields.

Delegate McElroy.

DELEGATE McELROY: Well, I just wanted to thank Delegate Meidinger for bringing out another restriction on this debt limit. It is true that, as our debt grows, if it gets to a point where our credit is shaky and interest rates go up, it's going to be much more difficult to get this sixty percent vote.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I'd like to yield my time to Delegate Meidinger.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: In answer to Delegate McElroy: The opposite might be true. Delegate Miller has just suggested that perhaps the sixty percent would be a deterrent. I would suggest to you that \$430 billion dollars at the national level ought to be a deterrent, too; however, they are just going to raise it another \$50 billion, and it will carry by over sixty percent because the projects are so worthwhile!

PRESIDENT WENSTROM: Further discussion? Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I think the members of my Committee have been doing an excellent job in defending the language of the Committee. So far, we've followed the practice of not putting definite figures in this new Constitution. When we say how many signatures are going to be required for initiative and referendum, we say a percentage. I think the philosophy and basic principle — that it's wrong to put in the Constitution any set figure as we have had in many cases in the old Constitution. This is one of the bases for my support of this language in our section. The others have been well-explained.

I just want to ask Delegate Meidinger this: Where would this country of ours be if we had a 400-million-dollar debt limit that could be not repealed without going to the people?

DELEGATE MEIDINGER: I would submit that we would be in less trouble

than we are now. I would call to your attention that the price of gold on the international markets this morning was \$50 an ounce, and the American money is selling for very little abroad. I look forward to another devaluation.

PRESIDENT WENSTROM: The Chair will recognize Delegate Scheel.

DELEGATE SCHEEL: Mr. President. I don't think I can say anything that hasn't been said here, but maybe I can lend a little emphasis to some of the things.

First of all, when we started talking about some of these things, I think we were talking about projects — financing projects. Maybe some of us wouldn't be so concerned. But if we're talking about opening a back door here and using an escalation of our debt limit just to satisfy operating expenses, that's something else.

Now, first of all, it's been mentioned that what will happen when we see this word "unlimited" in the paper tomorrow again. The second thing: Forty million dollars. When they first take the first step toward this forty-million-dollar limit, in contrast to what has been said here, I think they'll be the most cautious group, and probably the next most cautious will be when they hit thirty-nine million. But in between, I think that the base will increase considerably.

Now, a hard and fast figure in the Constitution or in a business is not a good figure; but it goes something beyond that, because we have to represent a lot of people who don't understand this. They don't understand at all what two-thirds means or what sixty percent means in the Legislature. All they understand is what's happened at the federal level, and I believe, if I've been able to appraise, in talking with delegates here, that we are more conservative in North Dakota than the average United States citizen is. But, even more important, in the business world you can afford to go bankrupt. It hurts a few people; but bankruptcy or a poor credit rating does not carry with it the catastrophic connotations that it does in the government. And, furthermore, if you have a good enough reason and a good enough project and a good enough sales force, you'll sell a project. And that's what this increased debt limit ought to be for — it should be for operating expenses.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

Delegate Saugstad has had me almost convinced from the very beginning on this debt limitation; but I think we've illustrated some of the problems which the Committee has had. The question was asked, "Why the forty-million-dollar figure?" Others have said it's too high. Others have said it's too low. And this is a problem that the Committee faced all the way through. And we're talking about seeing the paper with the "unlimited debt." How about the forty-million-dollar figure? That's going to look pretty big, too, when we haven't had it there before. In fact, it might be more dangerous than to have the unlimited debt. It's just a problem that the Committee faced and felt that we should do the best we could with.

Now there are a lot of project ideas in the wind, I'm sure. There was talk that the State might need or might want to build some sugar beet plants or some other type of plants in the east, and that they will need a huge amount of financing. I'm not talking about the State doing this, but some private enterprise or some other organization that needs support. And the talk is that maybe we could use some state debentures to help finance this and sell the debentures. We could use this vehicle and, if we do have the opportunity without our Constitution, such a thing can be done.

Now, I'm sure that a lot of you would be opposed to doing this; but the fact that we had before the Committee — the Committee felt it would be better to approach it in the manner we did. We hope that this group can make a decision — a wise decision, and I'm not sure that the forty-million-dollar figure is the right one. I probably would have rather had fifty million, and you probably would rather have ten million; but at the same time, I hope you can give weight to what we have done and feel that you can rely on our Legislature in the future.

PRESIDENT WENSTROM: The Chair will recognize Delegate Lerberg.

DELEGATE LERBERG: I just want to make a couple of comments on this. I think you have to get this in perspective, and I doubt that the forty-million limit is any more relevant to what the dollar will buy than what the ten-million limit was in the old Constitution, and I allege that the forty-million figure may be as phony a figure a year from now as the five-dollar-per-day pay for the Legislature was in the

old Constitution. Sometime ago — a year or so ago — when we were in a high-interest-rate situation, I saw in one of the financial columns a figure that rather frightened me for many reasons. The lady was talking about what one dollar would be worth if it were invested at eight percent interest for thirty years, and the frightening figure is that it would be worth ten dollars at the end of thirty years; and so that it means that, if you had as much as eight percent inflation just for thirty years, you would depreciate the currency by ten percent.

So I would oppose — even though there are some problems here, I would oppose a dollar limit, because I don't think it's realistic, and particularly unrealistic today, when the dollar has so many appreciation problems, and I don't think it will help the dollar any by putting this limit in it. The individual goes into debt for a home, and I've seen the magic figure used at about two-and-a-half times his annual income, for instance, as a legitimate debt figure to buy a home.

So I think you have to compare this forty-million figure against maybe what the State operating expenses are, and I think they're something in excess of a hundred million a year now, and perhaps larger, depending on which figure is used. So it is a very small figure in today's world, and I think we would be locking an unfortunate thing in the Constitution if we passed it.

PRESIDENT WENSTROM: The Chair will recognize Delegate Chase.

DELEGATE CHASE: Mr. President. I think the delegates here are about ready to vote on this thing. The issue has been pretty clearly pointed out to us. I do want to remind us all here that I think Delegate Miller has probably hit upon the most important part of this thing — has spoken the most important part when he said, "Generations in the future being in a position to solve their own problems."

I support the Committee's position, and oppose the amendment.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: Mr. President, I'd like to direct my question to Delegate Meidinger on the matter of — as I understand it, the reputation of North Dakota's — North Dakota in the bond market at this time is very good.

DELEGATE MEIDINGER: Very good, sir.

DELEGATE BYRNE: In your opinion, in your background in finances, you touched on it for a moment. Would it not be true that this would continue better with a stated limitation, rather than unlimited?

DELEGATE MEIDINGER: I would think so; yes, definitely.

DELEGATE BYRNE: Stated in the Constitution?

DELEGATE MEIDINGER: Yes. In addition to that, I think the price of money would be less. I have no firm position as to what a limit should be — whether it's flexible or otherwise — but I simply think there should be some kind of a limit that the investor and the buyer of our bonds could look at.

DELEGATE BYRNE: Well, I speak of the reputation in the bond market. I'm speaking about the price. The cost of the money would be better with a limitation on it.

DELEGATE MEIDINGER: Yes.

PRESIDENT WENSTROM: Further discussion? Delegate Kessel.

DELEGATE KESSEL: May I direct a question to Delegate Saugstad?

PRESIDENT WENSTROM: Will Delegate Saugstad yield?

DELEGATE SAUGSTAD: Yes.

DELEGATE KESSEL: If 25 years from now the forty-million-dollar limit would be too low, could it not then be submitted to the people living 40 years from now, to decide whether they want to go above that forty-million limitation?

DELEGATE SAUGSTAD: Yes.

DELEGATE KESSEL: Thank you. In that respect then, I would say that all the way through our Constitution we felt that the things that are to come up are to be submitted to the vote of the people at that time, and I don't see then that the necessity of going 40 years hence to decide what would be the proper limitation is strictly in order. The people then could decide if forty million is sufficient. At least we do have a limitation of some type. I speak for the amendment.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: I yield my time to Delegate Aas.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, I just wanted to make one comment on the statement — the answer which Delegate Meidinger made to Delgate Byrne.

We did have Art Whitney, an attorney for the law firm that does all of the bonding, I think, in the State of North Dakota, with us. He was the bonding attorney that appeared before us, and he did not see anything wrong with an unlimited — a removal of the limitation.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Saugstad.

Will the Clerk read the proposed amendment?

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Proposal 1-74:

On line 11 of the engrossed Committee Proposal, after the word "thereon", insert the words "not to exceed forty million dollars".

PRESIDENT WENSTROM: Those in favor of adopting the amendment will vote "aye;" those opposed will vote "no."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "no."

The "noes" have it. The amendment failed.

DELEGATE CART: Division.

PRESIDENT WENSTROM: A division has been requested.

Again, the question is on the adoption of the amendment as offered by Delegate Saugstad.

Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates 50 "aye" votes, 46 "nays," two delegates absent and not voting. The amendment has been adopted.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I have an amendment at the desk I wish you would read.

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Committee Proposal 1-74:

Page 1, line 10, after the word "state", insert "or its instrumentalities" and after "bonds" delete "and make loans,"

On line 11, after the word "bonds" delete "and loans".

On line 13, after the word "bonds" delete "or loans".

Renumber the lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do we have a second?

DELEGATE RONEY: Second.

PRESIDENT WENSTROM: Seconded by Delegate Roney.

DELEGATE HERNETT: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Meidinger — or Hernet. I'm sorry.

DELEGATE HERNETT: There are two parts to this, as you'll notice. First, I will talk about the amendment about "or its instrumentalities". My reason for wanting to put that in here is to clarify what we are talking about when we are talking about our debt limit. My thinking there is, for instance, our colleges. We have had a sort of a back-door approach for years on dormitory bonds and such type of bonds which are not technically called obligations of the State of North Dakota, and I think they should be, and I think that, if we pass this legislation here, that I think the Legislature should take these into consideration.

Now, they do authorize the issuance of these revenue bonds, but the State of North Dakota does not guarantee them, and of course it does not appear in our debt limit.

Now, we have had an instance just recently here at Ellendale, where the college — the school was closed. Now, the dormitory bonds would not be paid unless the State of North Dakota decided to pay them, and in the last session of the Legislature, the Legislature did decide to pay those bonds, and the reason was that everybody felt that it would be bad publicity for the State of North Dakota not to make those bonds good.

What I'm getting at and thinking of here is, if we are going to do this, and I assume we are going to continue this program of making our — of guaranteeing these indirectly, I think we might as well face up to it and guarantee them. If we do, the State of North Dakota will save hundreds of thousands of dollars in interest costs, because, as was mentioned earlier here this morning, the State of North Dakota's credit is good, and I would guess that we would get at least one percent better rate, and maybe as high as a two percent better rate, if we did guarantee them.

Now, this would be entirely up to the Legislature, as is stated in this Proposal, and they could still decide whether they're going to guarantee them and make them the obligations of the State of North Dakota or if they aren't going to.

The reason for putting this in here is so they could do it, if they wanted to, and as I'm saying here this morning, I would hope they would do that, because we are going to guarantee them anyway; we're making good on the Ellendale bonds.

Now, my other amendment is simply to take out the words "and make loans". I can see no need for that here. I can't imagine the State of North Dakota going into the loan business. We have — at one time in our past history, North Dakota did go into the real estate loan business and it turned out to be a very expensive experiment for the State and the Bank of North Dakota, and I have heard no good explanation this morning yet as to why this phrase should be here. I just don't think there's any need for us guaranteeing loans.

Now, it is true that the Bank of North Dakota doesn't make loans down here, and I'm not going to get into that this morning; but they aren't doing it, and this is not involved here. What we're saying here is guaranteeing loans — not making loans — and it says "make loans," and then further on it says "and guaranteeing them," and I can't imagine when that time would ever be when the State of North Dakota would be — that implies they would be selling these loans to somebody else and guaranteeing them, and I just can't see the need for it.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, I would just like to comment that, if you add the "instrumentalities" in there, and if we're going to include the bond issues for the dormitories, I suspect that we're already over the forty-million-dollar figure. Perhaps some of the people on the Board of Higher Education would know the figure; but we have a rather substantial amount of bond issues and we are not beyond it, if we add the — if we add the institutions to this. This was one of the problems which we ran into on the limitation, and while I have no objection to the "instrumentalities" being in here, as I visualize it now, I could see some real problems if we have the forty-million-dollar limitation in there; and as far as the loans are concerned, this was in clarification of a debenture-type of issue, if the State should choose to make such an issue, and it was on the recommendation of counsel that we did place this "and loans" in there.

PRESIDENT WENSTROM: Further discussion? Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I believe the amendment is a dangerous one. The Committee talked about the language and we talked about the same possibilities and, as Delegate Hernet pointed out, revenue bonds are a separate thing by themselves. They are revenue bonds. They're paid out of revenue, and they would not enter into the State debt limit, and I can also envisage — imagine or envisage instrumentalities that might be considered extending down into political subdivisions, and we've already established debt limits for political subdivisions.

Now, I'm sure that the Committee would have no serious objection to striking out the "loan" matter; but as to "or instrumentalities," we believe it would be a dangerous extension, and we in the Committee believe that any bonds or any debts to be granted by the State should be centralized in the State in the Legislature. The question that would arise in my mind: Would an instrumentality like the University be able to go ahead and advertise and sell these bonds by themselves? I believe it would put so many questions of doubt into this section that I would vote against the amendment.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Mr. President, I'd like to yield. I have an amendment at the desk which does just exactly as Delegate Burke has proposed — that I would strike out the words "and loans", and if this is defeated, I would then offer my amendment.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Oh, I only wanted to reiterate and mention in the question that Delegate Burke brought up about the instrumentalities or the State dormitory revenue bonds being sold without the general obligation of the State. They are so much in demand because of the higher interest rates, where Delegate Hernettt was right — that they were a little precious item that we couldn't even get enough of them for our investors because of the higher rate of interest, and they would not be as enticing at the rates that they would be offered at if they were general obligation bonds of the State, rather than revenue bonds.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, I would just like to defend Delegate Hernettt and, also, Delegate Fritzell, that the State indirectly or directly is paying more interest — much more interest — because these revenue bonds do not have the guarantee and, on the other hand, we'd hate to see any of these revenue bonds go in default, because it would be a black eye on the State. I'm not entirely clear on how we should work this out, but I know we can save the State millions and millions of dollars if the guarantee were available, and I think Delegate Hernettt's proposal has a lot of merit.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Delegate Hernettt, I think, is absolutely correct. There is a problem, however. I think that the figure I got quickly is 39 million that's presently — we're in obligation for. The objection that Delegate Fritzell raised, I don't think, is an objection, Mrs. Fritzell, because these bonds were sold on the open market and the bid should be lower, if they do have the backing of the State, and it's not the State in these revenue bonds itself; it's the kids. One percent of interest on a dormitory makes the — the figure's kind of vague, but it's something like seven or eight dollars a month for a student and it's — I think Delegate Hernettt is absolutely correct. I can't conceive of the State ever defaulting on a revenue bond that it buys or that it sells, and I think what he is suggesting is absolutely important and absolutely accurate — that we should do it.

Now, we may have to amend that other figure, and I'm not prepared to suggest what that figure should be. I wish that, if we do adopt Delegate Hernettt's amendment, which I hope we do, we can have time over dinner to get these figures nailed down a little more accurate.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McELROY: Mr. President.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: I'd like to ask Delegate Hernettt a question.

Is there any reason that the Bank of North Dakota can't issue guaranteed bonds and then turn around and loan this money to such projects as you are talking about, thereby achieving the same saving, with the present wording?

DELEGATE HERNETT: Well, Delegate McElroy, the Bank of North Dakota is an instrumentality, too, of the State, and I don't know how the Bank of North Dakota could issue bonds. I'm sure that they can't. They might be able to borrow in other ways, as all banks can, but I don't think they could issue bonds. I would have

brought this up when Delegate Saugstad's amendment was on the floor, but I hesitated to do so because I kind of wanted to see what the feeling was here, too, and, by the way, I voted against his proposal — or his amendment. But I — I have one other comment to make, and I have to leave, too, for an hour or so this noon. But I would — possibly this is the way to do it, if you feel like you agree with me — is to vote this in and then reconsider your other one. But I have felt strongly about this for years, because — for two reasons: Not only the interest rate thing and the guarantee — and of course the Ellendale thing was the first example we have had of it, and I felt that we would make good on them — but I think it is a more honest approach, too, because, as Delegate Scheel mentioned this morning, something about a back-door approach, and this is what we've been doing, and I think this would be a more honest approach, and I would — I think that the way this is drawn — I haven't checked — but I think the way it is, that the Legislature would make the determination as to whether they would be guaranteed by the State or not; but I'm just assuming that they would say they would have them be guaranteed because of the difference in the interest rates. So, as a practical matter, I would suspect that all that would be issued from now on, if this passes, would be guaranteed bonds or revenue bonds.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I'm a little concerned about the word "instrumentality" — as to what an authorized instrument would be authorized to issue bonds. I don't think that was the intent, but I wonder if Delegate Hernet or any other member of the Tax Committee — whether or not the authorization which states "to issue bonds" wouldn't include the power to issue guaranteed bonds for the purpose of building dormitories, if they want to, because we really do — we need the word "instrumentalities" if the power is broad enough.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'm going to pass until the last question is answered. I have another point here.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I think I might address myself to that.

I agree with everything that Delegate Hernet has said. I disagree that his amendments will get the job done. Yes, this was one of the reasons we considered the State — that the Bank of North Dakota is an instrumentality of the State and that the institutions of higher education are also instrumentalities of the State and will be covered by that word "State". The word "loan" was put in there because the question was, "What is a debenture and what are some of those other credit instruments?" They may not be bonds, but the two words were put in there so that they would cover, and they're both under the legislative control, and I think it has been pointed out here that one of the arguments against putting a dollar limit in this thing is we have at present a Vietnam bonus of fifteen million-plus. This was also discussed — the same thing that Delegate Hernet mentioned — these bonds of the Board of — or of these revenue bonds for the dormitory buildings, and it was felt that these should be more closely controlled by the State than they are now. But, you see, these could not now, under the way this amendment has been proposed, be considered by us, because we would already be over the debt limit before we've even passed the issue of the Constitution. So I think that the original wordage that the Committee has in that first section is very adequate to do just the things that all the people have spoken about and the problems that may arise — you see, you have some other problems in terms of the Bank of North Dakota, and I am not suggesting, and I don't think any member of the Committee is suggesting, that we want the Bank of North Dakota involved in any more individual lending; but you do have some group things, such as the student loan things, and some of these, many of which, of course, are guaranteed by the Federal Government and covered under statute; some of which, however, are not a hundred percent guaranteed by the statute and in which there is a gray area for the Bank of North Dakota to operate. And we didn't feel that this was opening any barn door, but that it was clarifying some things and making the possibility of the Legislature to do some things without any cloud of legality.

PRESIDENT WENSTROM: Further discussion? Delegate Unruh. No?

Delegate Sinner.

DELEGATE SINNER: Mr. President, I have spoken once already, but I think

I should clarify one more thing. The Board now doesn't issue a revenue bond without the approval of the Legislature, and it isn't as though there was any — any certainty that the Board will not and maybe hasn't already made some mistakes in revenue bonds, and this is a real issue, I think. What's pathetic is that if we could help our interest rate, it would help the kids in the State, both in the overall cost of the building and the liability that might some day fall upon the State, and it would help the student who has to pay the revenue. So I think, if there is some way that this thing can be clarified, we should do it.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Mr. President and Fellow Delegates:

I get the feeling that we're close to taking a vote on this; but I think Delegate Hernet has brought out two individual points in his amendment. At least that's the way I view them. And I would like to call for a division on the question — separating the question on the one on the "instrumentalities" and one on the "loans", if I may.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I believe Delegate McIntyre is right in there being two questions here. I am opposed, and I believe the majority of the Committee would be opposed, to either amendment. In our discussions, it was pretty well agreed by the Committee that the Bank of North Dakota is an instrumentality of the State and we believed that the institutions of higher learning are instrumentalities of the State; so we don't think that that adds a great deal to it. So I wouldn't have any particular objection. But on the matter of the deletion of the loans, I think that you would affect the operations of the State and its Bank by deleting that.

Now, if there was to be a loan made to a group of people who were promoting a sugar beet plant in the Red River Valley, it would be far in excess of the amount that the Bank could lend on its limitations as a lending institution; but it would — it would require the Bank or the group wanting the money to come to the Legislature and prove to them that there was substantial security and that there was a general purpose for the public good to be served, and then the legislature would authorize the issuance of the bonds or the debentures, or whatever you might call them, and then the Bank would make the loan to this institution, and the same is true of an irrigation district, for instance. The Bank could not raise the money, except through a bond issue, to make a loan to an irrigation district; and, again, the bond issue would have to be approved as a separate issue by the Legislature. The Legislature, again, would have to be convinced that there was value to the people of North Dakota in making that loan; then the Bank would make the loan to the irrigation district. And so I think we hinder the operations of both the State and its Bank by deleting the word "loan."

PRESIDENT WENSTROM: Delegate McIntyre, in response to your question as to dividing this amendment, the Chair is going to rule that that cannot be done.

Now, Delegate Roney.

DELEGATE RONEY: Mr. President. In answer to Delegate Haugen's statement, I think that, in talking to you and some of the members of the Committee, one of the reasons that I am in favor of Delegate Hernet's proposal to do away with this section that says "and loans" is that this is a highly-dangerous thing. Now, the Bank of North Dakota makes the loan to some institution. It could be an irrigation district, as you refer to, because that irrigation district has assets upon which it can issue some form of a debenture, but the debenture is not issued by the State of North Dakota. The State of North Dakota buys that debenture from that area.

Now, I think that we're confusing the issue here on this thing as to notes. We want the instrumentalities of the State of North Dakota to be able to raise money by issuing bonds; but, by issuing notes we get right back to the same thing that everyone is talking about here, and that is that when you issue an unsecured note, and whoever buys then buys because there is nothing pledged behind it, there is nothing to pay — not revenue now from the dormitory, but a debenture or an open note — it's naturally going to be more costly. We would be writing something into this which I contend is legislation, incidentally, but we would be writing something into the Constitution that is going to cost us many millions of dollars and, individually, lots of dollars to the individual, if we let even the State of North Dakota or if we let any

instrumentality raise money by the means of a debenture. This would be one of the worst things we could do. I say this: I don't know what the ramifications are of Delegate Hernet's proposal to include instrumentalities, but I do know that the words "and loans" must be stricken. You must take the word "loans" out, and you can substitute something else, and I don't mind telling you that I have talked to some of the other bankers and I have talked to the members of the Bank of North Dakota, and they favor the words "and loans" be taken out.

PRESIDENT WENSTROM: Fellow Delegates — Delegate Hernet.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Might the Chair comment? Is there any objection?

It appears to the Chair that one of the big stumbling blocks right here is the matter of — the two words "and loans". Well, in order that this can come to a head, why don't someone move to amend the amendment, and then we'll find out what the Convention wants to do with "and loans"?

DELEGATE HERNETT: Well, Mr. Chairman — or Mr. President. Maybe I can solve that — can't I?

PRESIDENT WENSTROM: Well, you have the floor.

DELEGATE HERNETT: All right. Let's start out with the "instrumentalities" and leave that in and I'll move to delete the other part of the amendment.

PRESIDENT WENSTROM: Delegate Hernet moves to delete the part of his amendment — everything after "or its instrumentalities".

Now, do we have a second?

DELEGATE McINTYRE: Second.

PRESIDENT WENSTROM: Seconded by Delegate McIntyre.

Now, do we have a question? Any discussion?

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

I can say that I think that adding the word "instrumentalities" is going to create some problems —

PRESIDENT WENSTROM: Delegate Aas, now that's not the question. The question right now is on deleting that word — the two words "and loans" as offered by — the question is on the amendment to the amendment.

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

Now we're back on the amendment as amended. Delegate Hernet.

DELEGATE HERNETT: Well, now all we have in there is the amendment to add "or its instrumentalities", and I just have one comment to make, because I asked the clerks down in the Legislative Council, and I had the clerk from our stenographers check it out from a half-a-dozen dictionaries, and it means, generally speaking, agencies, although its broader than the word "agency." I think that it should be left in there, because Delegate Lerberg said that you folks on the Committee felt that the word "state" included these; but I'm not sure that it did, and about all this would do would be to make this real plain that it does include all of the colleges and all the agencies or instrumentalities.

Now, this does not say that they have to be sold as government-guaranteed bonds. They still could be sold as revenue bonds and, as I observe this thing, they maybe won't have to apply to your debt limit any more than they do now, if they want to do it that way.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, I do feel that this could create some problems with the forty-million-dollar debt limit, because I could read into this that if we added the instrumentalities, and all the debts of these institutions are now part of our debt, and certainly they would be, and I think Delegate Sinner is right — that it's close to that thirty-nine-million-dollar figure for the dormitories alone, and we have not now included a separate provision for the Vietnam bonus, and we have a fourteen-million-dollar bond issue there, and so with those two, we're going to be well over our forty-million-dollar debt limit before we get out of this room for lunch, and so we're going to have a problem.

Now, I think that I can support Delegate Hernet's amendment, but it creates a real problem if we have his amendment and have the forty-million-dollar limit.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: My amendment here on the little sheet that's inserted in here says, "The state or its instrumentalities may issue bonds." It doesn't say "shall".

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think we should stay with the word "state." I think the word "state" includes its institutions; and if you say — the way this reads, if you take out the word "state" it says an instrument of the state may issue bonds. Do we contemplate that the University of North Dakota can issue bonds?

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President: I agree thoroughly with Delegate Kelsch, because all we poor bare-footed lawyers have to go by is language, and if it says an instrumentality may issue bonds, that's what it means; and that would mean that the State Mill and Elevator may issue its own bonds and guarantee them and pledge the credit of the State. So I believe that "state" is sufficient, and I would urge the deletion of the "or its instrumentalities."

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Hernet. Are you aware of the amendment?

Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "noes" have it. The amendment lost.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Could we now have the first paragraph of 1-74 read to us?

CHIEF CLERK GILBREATH: "STATE DEBT. The state may issue bonds and make loans and guarantee the payment of such bonds and loans and interest thereon not to exceed forty million dollars. A statewide property tax based on value shall not be used to retire or guarantee such bonds or loans."

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: I have an amendment at the desk and I'd like to have it read.

PRESIDENT WENSTROM: Your mike isn't working.

DELEGATE RONEY: Pardon me. I have an amendment at the desk, and request it be read, please.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: It's my understanding that the reference to "loans" was removed — no?

PRESIDENT WENSTROM: It was removed in the amendment as offered by Delegate Hernet originally. That was the part that was deleted. It was an amendment to an amendment, and the amendment failed.

DELEGATE SINNER: Mr. President. Read Delegate Roney's.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-74:

In 10 of the engrossed proposal, after the word "bonds", delete the following: "and make loans,".

In line 11, delete the words "and make loans".

In line 13, after the word "bonds," delete the words "or loans" and renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE FRITZELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fritzell.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: I think we have had adequate discussion on this, but I would like to raise this point: That the Bank of North Dakota is an instrumentality of the Legislature, and the only place it is in the Constitution is where we just put it in the Constitution to say that the Bank of North Dakota will remain. I'm not here to speak against the Bank of North Dakota. I am for it. But I don't think we want the State, nor do we want the Bank of North Dakota, whether it's an instrumentality or an agent, or whatever it is, to come on out and issue debentures or an open note, because it's going to be a costly thing. There'll be no limitation on it, and all I can say is that you must take the words "and loans" out of it, because if it cannot issue a bond, which is a general obligation bond, a revenue bond or a bond which is paid for by a specific allocation of some form of income, then you're going to ruin the State of North Dakota's credit rating, so to speak. You will make all bonds issue at a higher yield, and a debenture bond, by the name of it, stands as something issued without collateral and is going to be a costly item. I, therefore, ask you to approve the amendment.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'd like to ask Delegate Roney a question.

Delegate Roney, you are aware that the Bank of North Dakota issues many, many hundreds of thousands of dollars of student loans. What would your amendment do to this possibility?

DELEGATE RONEY: It would do nothing to it. The Bank of North Dakota can continue to do whatever the Legislature has proposed it to do, and the Legislature has provided, under 6-06-15, that it can make these kind of loans.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the adoption of the amendment as offered by Delegate Roney. Maybe the Clerk should again read the proposal.

Delegate Lerberg.

DELEGATE LERBERG: I think I should bring to your attention, before we vote on this, that we do have a constitutional revision which we passed before in terms of the — and this was a bill which our Committee had under consideration, too — which prohibits the State, except as otherwise provided in this Constitution, from giving aid to an individual. So this is a constitutional thing that might give us some problems, too, that Delegate Unruh raised a question about, if we removed this word "loans."

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President, I move that after the announcements at the desk, that we recess until 1:30 — until 1:00?

PRESIDENT WENSTROM: Could you make that 1:00?

DELEGATE SINNER: Until 1:00.

PRESIDENT WENSTROM: Would you read any announcements that there are at the desk, or would you read the amendment again, so they'll all have it?

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-74:

In line 10 of the engrossed Proposal, after the word "bonds", delete the following: "and make loans,".

In line 11, delete the words "and loans".

In line 13, after the word "bonds", delete the words "or loans".

PRESIDENT WENSTROM: You've heard the reading. It has been — we have a motion before the Convention that we do recess until one o'clock. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Stanton. It's been moved and seconded that the Convention do now recess until one o'clock.

As many as are in favor of the motion will say "aye," —

Delegate Pearce.

DELEGATE PEARCE: Mr. President, may I announce my presence for some time past? I've been voting on these things.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: You gave Style and Drafting a dandy 45 minutes for its meeting for lunch.

PRESIDENT WENSTROM: As many as are in favor of adopting the motion will say "aye;" opposed "no." The "ayes" have it and we'll be in recess for 45 minutes.

(The Session recessed at 12:16 P.M. until 1:00 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:10 P.M., Thursday, February 3, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

May we have order in the Convention room?

We have before the Convention the amendment as offered by Delegate Roney. The motion was moved, it was seconded, it was read from the Chair. We had some discussion.

Is there further discussion? The question — Roy, would you read the amendment again?

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-74:

In line 10 of the engrossed Proposal, after the word "bonds", delete the following: "and make loans,"

In line 11, delete the words "and loans".

In line 13, after the word "bonds", delete the words "or loans".

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Well, Mr. President and Fellow Delegates: I'm sorry. I've got something wrong with this thing. I've got a weak thumb. But just so that we know what we're talking about again: This will not affect — and I assure you this, if you will take my word for it — and someone else may have a different angle, will not affect student loans that we now know as federally-insured student loans. What we're really talking about in this 1-74 is debt limitation and the State debt. What I contend is that we have confused two issues. We have confused the issue of raising funds with that of spending funds. How do we raise money? We raise money under this statute here by the issuance of a general obligation bond. This is really what we're talking about. There are other ways, such as you have heard about — the revenue bond, based upon the revenue of dormitories, and that revenue is used to retire that bond. You can issue a debenture. A debenture is nothing more than an unsecured note, or you can issue a note and you can raise money. But what you have done in this section by putting the words "and loans", you're talking about two things: You're talking about raising the money, and then you're talking about spending it for loans or making an investment with loans. If you want the Bank of North Dakota or you want some agent or you want the State of North Dakota to go into the lending business, I contend it should be someplace else besides the debt limitation statute. I, therefore, say that in this portion of it, it has no place. I don't think the State of North Dakota as such wants to get into the lending business any more than it now is in the Bank of North Dakota.

Now, just so that you don't think I'm here to attack the Bank of North Dakota, I want to tell you that I think this would actually hurt the Bank of North Dakota if you left "and loans" in there. One of the things that you provide in the second paragraph is that 60 percent of the Legislature must approve those loans. The Bank of North Dakota can now make loans. I happen to have a bank. I use the Bank of North Dakota. If I have Farmer Jones as a hundred-thousand-dollar loan and my bank isn't big enough to take care of it, the law says the Bank of North Dakota can't go directly to John Jones and make that loan; but it says that I can retain my customer and I can sell the portion or a participation of that loan to the Bank of North Dakota, and they do this with me. What happens is that I can't make the whole hundred-thousand-dollar loan to John Jones. The Bank of North Dakota can't do it

directly; so they do it indirectly by buying a participation. But their limitation — their bank has a limitation, also. The Bank of North Dakota needs, when they buy a participation from me in my bank and Joe Lamb's bank and Fred Hoghaug's, and a bunch of other bankers, including Gary Lerberg's — when they buy these, they, in turn, have to raise money. What they're talking about is what they want to be able to do is to raise money. They can make these loans you're talking about. Therefore, I say the words "and loans" in here has no place. I, therefore, ask you to approve the amendment.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention — Delegate Fritzell.

DELEGATE FRITZELL: I just want to say that I concur with Delegate Roney, and we had quite a bit of conversation over the lunch hour, and I urge you to support the amendment.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the proposed amendment. Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." The "ayes" have it. The amendment is adopted.

DELEGATE ERICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: May I request that — of this body that this bill or Proposal be moved down until our Chairman, Donnell Haugen, can get back?

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: It's been moved and it's been seconded — seconded by Delegate Sinner — that further discussion of Committee Proposal No. 1-74 be delayed until such time as the Chairman of the Finance and Tax Committee, Donnell Haugen, returns to the Convention floor.

As many as are in favor of the motion will say "aye;" those opposed "no." The "aye" have it and the request will be carried out.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I would move now that Committee Proposal 1-44 be put at the head of the calendar.

PRESIDENT WENSTROM: Delegate Hoffner moves that Committee Proposal No. 1-44 be placed at the head of the calendar. Do we have a second?

DELEGATE McINTYRE: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate McIntyre.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No. 1-44 is at the head of the calendar.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I had an amendment that I proposed yesterday for Section 5 of this Proposal. We did not discuss that amendment in detail. However, at this time I — if whoever seconded my motion to offer that amendment — I would like to withdraw it, and we will then offer another amendment, which, I think, will suit everybody.

PRESIDENT WENSTROM: Delegate Longmire, at the time you offered the amendment, it was seconded by Delegate Litten.

DELEGATE LITTEN: Fine.

PRESIDENT WENSTROM: And if it is agreeable with him —

DELEGATE LITTEN: Fine.

PRESIDENT WENSTROM: Is it agreeable with the Convention that we grant permission to Delegate Longmire to withdraw Section 5 of his amendments as offered yesterday? Hearing no objection, permission is granted.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Delegate Dobson and I would like to offer another proposed amendment, and we ask it be read from the desk.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-44:

On page 1 of the engrossed Proposal, delete lines 14 through 23 and insert in lieu thereof the following:

“Section 5. The legislative districts shall be numbered consecutively and be divided into two classes, even-numbered districts constituting one class and odd-numbered districts constituting the other class, so that one-half of the legislators, as nearly as practicable, may be elected biennially. When the legislative assembly is redistricted, the legislators elected prior thereto and retaining their constituencies shall continue in office until the expiration of the terms for which they were elected; but the terms of legislators removed of their constituencies shall be deemed to have expired immediately.”

And renumber the lines accordingly.

PRESIDENT WENSTROM: Does Delegate Dobson second the motion?

DELEGATE DOBSON: Second.

DELEGATE LONGMIRE: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I want Delegate Dobson to have, also, the credit for the first part of the amendment, and if there is any credit for the last part, why that is part of the amendment which I have offered yesterday. There were two main objections that I had to Section 5 the way it was originally proposed; number one, it divided single districts into seats which, in effect, subdivided the single districts, and as Delegate Rundle mentioned, it's a little confusing, or it was to me, to be representing a seat number so-and-so instead of representing people.

The other thing in that, of course, meant that legislators in the same district would not be running at the same time for election. I did not think that was proper, because I thought, again, there would be confusion and maybe extra expense for a district, in the event we all went on — or everything went on the four-year basis in the future. Also, there was a third objection that I had to old Section 5; namely, that if you did reapportion and you left a legislator out of his district, he could still be serving a district when he did not actually live in that district. And that was the reason for the short amendment which I proposed.

Now, Delegate Dobson has offered another addition to the new amendment, which, I think, is good. I think it's all right to divide districts on a numbered basis, so long as you don't split the districts; and, in fact, that's the way it was in the old Constitution. The odd-numbered districts were one class, the even-numbered another, and you would elect one of them one biennial election and the other one the next. That way you insured that you would have enough — a new Legislature coming in each time when you did have an election. It would carry on with inexperienced people continually coming in and you'd have some holdovers coming in — at least in the Senate part of it.

Now, with the four years, it will work out the same way with the House. So you will note in the latter part of this amendment that we provide that the person who — or the legislator who is still in his district and resides there, can continue his office for the term for which he was elected, until the next — or until the end of his term. But if he is residing outside of his district, under the new apportionment, then his term ends immediately and you have to have a special election, or something, to finish out his term, and whoever, no doubt, ran for his term would just run for the balance of it, which would be two years. I think this here gets in the idea, certainly. It removes the objection I had, and I think it's further improved by Delegate Dobson's suggestion as indicated, because it keeps a continuous flow of people coming to the Legislature, and they're not all dropped at any particular biennial election.

PRESIDENT WENSTROM: Further discussion? Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I wonder — we're going to have the first Legislature following this with the four-year term, and I wonder — can the Scheduling Committee take care of the first section? Can the Chairman of the Committee

answer that? This thing doesn't speak to it, and I assume it can be handled in the schedule.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Yes, I believe that's correct. The schedule will have to address itself to this section, among others.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: As I read this, the districts will be numbered. That means that a district which is a large district, like Fargo, would, presumably, have at least probably four senatorial districts, it would mean that all of the Senators and all of the legislators in that district — all of them — would be elected only once in four years, and so that there would be a space of four years in which those twelve people would be elected, and not that half of them would be elected at one biennial election and the next one at the next biennial election; is this correct? May I rise to ask?

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Are you answering Delegate Vogel?

DELEGATE PAULSON: Yes.

PRESIDENT WENSTROM: The Chair will recognize Delegate John Paulson.

DELEGATE PAULSON: That is not correct, Mrs. Vogel. The reapportionment provision which we have already passed specifics that no more than two Senators can be combined in one district, and on top of that, the re-districting commission can cut Fargo into four separate districts, and then you would have four separate elections; you'd probably have two districts a year or one district with two Senators.

DELEGATE VOGEL: Thank you. So there would be biennial elections still?

DELEGATE PAULSON: That is correct.

DELEGATE VOGEL: Thank you.

PRESIDENT WENSTROM: Further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President, I'm not as easily sold on that answer as Mrs. Vogel is. For instance, in our district we have two Representatives and one Senator. In District No. 3, they have two Representatives and one Senator. Now, in our district, are we going to every four years elect a Senator and the two Representatives, but in District 3 they'd do it at another time?

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President. Let's assume in District 4, which is an even-numbered district, those seats will be up in the presidential year. Very well. In that election you elect your one Senator and your two Representatives. Then the odd-numbered districts will elect their one Senator and Two Representatives in the nonpresidential election year.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention —

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: If the commission puts two districts together or combines two districts, do all of the people in that district run at once?

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President. Yes, that would be correct; and I am not excited about that angle of it. But I think it is a little more understandable and probably more workable to go to a district-numbering system, rather than a seat-numbering system.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: May I ask Delegate Dobson one question?

Does that mean then, Delegate Dobson, that the same people from District 4 will be elected on the presidential election every year from then on; then the odd-numbered district will be elected in the off-presidential year every year from then on? Now, this may turn out to be quite a — maybe some of those odd-numbered districts would like to have their election with the presidential election sometime. Is there any way of solving that?

DELEGATE DOBSON: You're correct. One set of districts will always be allowed in the presidential election year; the other set of districts will always have their election in the nonpresidential election year, and the only way to avoid that is to go back to the system of numbering the seats; but, due to the objections to that, we have gone to district number — rather retaining district number.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. President, I do think this is an improvement over the original 1-44, Section 5. I do regret in a way, however, that every district isn't able, for voter interest, to have an election every other year. The only way I would have seen this at that point would be Senators one time, House of Representatives the other. However, this has its faults, too, because it denies any kind of a house a turn-over, of course, except every four years. I think there's no way to do it that's absolutely ideal for everyone, and this may be the best compromise plan we can have on it.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment to Committee Proposal No. 1-44 as offered by Delegates Longmire and Dobson.

Those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." The "ayes" have it. The amendments are adopted.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: If it's proper then, I would move that Proposal 1-44 be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Kelsch moves that the Rules be suspended, that Committee Proposal No. 1-44 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and Committee Proposal No. 1-44 is before the Convention for first passage as amended.

Any further discussion?

Those in favor of adopting will vote "aye;" those opposed will vote "nay." The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses Committee Proposal 1-44 — there were 81 "ayes," there were 12 "nays," and five delegates absent and not voting. The Proposal has passed.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Would it be proper to ask to be on the twelfth order for a minute?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE RUNDLE: I would like to ask the unanimous consent of the body to withdraw Delegate Proposal No. 2-13. This was the open meetings of the Legislature, and it was a true statement when they said they took the principle and adopted it. The wording was changed. So I request it be withdrawn.

PRESIDENT WENSTROM: Delegate Rundle requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-13. Hearing no objection, the request is granted.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: May we be on the eighth order of business for a short announcement?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE OMDAHL: Unpack!

DELEGATE LONGMIRE: Mr. President. I never packed!

PRESIDENT WENSTROM: Delegate Longmire.

Next for consideration, Committee Proposal No. 1-87.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-87, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that article 56 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to revenue from gasoline and motor vehicle registration and license taxes.

"SECTION 1. REPEAL.) Article 56 of the amendments to the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"DEDICATED HIGHWAY USERS FUND."

PRESIDENT WENSTROM: Mr. Clerk, I notice that this —in the reading of this, that this is another proposal from a committee that is chaired by Delegate Haugen, and I believe the Chairman should be here when we discuss this Proposal.

Now, unless there is objection, I think we should dispense with considering this at this time and move on to — there must be one on the calendar that doesn't come from the Committee on Finance and Taxation. So, unless there's objection, we'll defer consideration of this until Mr. Haugen is back. Has he, by chance, made arrangements with other members of his committee to carry this?

DELEGATE ERICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: He didn't say anything to me about this section or 1-87. I would assume that we would go ahead with it.

PRESIDENT WENSTROM: One question that comes up: Do you know if Delegate Haugen will return to the Convention this afternoon?

DELEGATE ERICKSON: He gave me word he would be back roughly about 3:00-to-3:30.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: As I recall, this morning Mr. Haugen said it was perfectly all right to go ahead with, particularly, 1-87, and the other one was something else again.

PRESIDENT WENSTROM: If it was understood that this is agreeable with Mr. Haugen, why then we will proceed; but it's customary not to consider a proposal unless the chairman is present. So, if it's agreeable, why we'll just proceed, if it's agreeable to Mr. Haugen.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I think we should not do this. I move that we lay consideration of 1-87 at the foot of the calendar.

PRESIDENT WENSTROM: Delegate Unruh moves that we move Committee Proposal No. 1-87 to the foot of the calendar.

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Knudson. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it. 1-87 is placed at the foot of the calendar.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: A time on this should be exact, because I'm interested in this particular piece of constitutional makeup, and I don't know if I can be here at the time that Mr. Haugen is here. So I don't know whether it's more fair to have the Chairman or someone else absent; but if it was a time exact, then I'd make it a point, and I think right now I would say I would be here.

PRESIDENT WENSTROM: Well, it's real difficult for the Chair to say when

Mr. Haugen was going to be here, and I can surely appreciate the question raised by Delegate Solberg. Would someone inform me of the Committee Proposal being set?

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I would certainly share your concern that when the Chairman is gone, a bill from his committee shouldn't be considered, and also in behalf of what George Unruh said; but I do believe that he wasn't too concerned about this being considered when he was gone, because he asked me if I was going to carry this thing on the floor, and I told him, "Yes." But, Mr. Solberg, did you say you had to leave by 3:30?

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: I should go make a telephone call and make it a point to be here. Now —

DELEGATE TRENBEATH: Okay. Then, Mr. President, I would say that moving it to the bottom of the calendar is proper, and when Mr. Donnell Haugen gets back, we'll immediately discuss it.

PRESIDENT WENSTROM: Now, what about 1-86?

DELEGATE MAXWELL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: The balance of the proposals on the calendar are in my committee.

PRESIDENT WENSTROM: In your committee?

DELEGATE MAXWELL: I'm going to stick around, however. (Laughter)

PRESIDENT WENSTROM: Next for consideration will be Committee Proposal No. 1-86.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-86, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to making all persons over eighteen years of age adults for all purposes, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Persons eighteen years of age or older are declared to be adults for all purposes."

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment — or Proposal.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President and Fellow Delegates:

The proponents of 1-86 addressed themselves to this initially about a week ago or ten days ago, and I want you to know from the beginning that the remarks that I make are to encourage you to indefinitely postpone the same.

Now, we can take this particular proposal and bring into it the matter of a decision being made as to whether or not we feel that eighteen-year-olds should have the right to drink and limit ourselves to that issue alone; however, I think there are many other overriding factors that must be considered before you arrive at your decision.

Regarding the eighteen-year-old drinking issue, personally, I think eighteen's the wrong age. I would much prefer to see it at nineteen, if we were to have — to reduce the age, and the reason being that today our high school seniors, with the exception of those born during June, July, August and, in some school districts, September, are eighteen years old when they graduate. The difference of the nineteen-year-old is that is the college student or the nonhigh school student who is associating with a different age group — primarily his college friend or his friends who have finished high school — as opposed to the sophomores and juniors in high school. Then you might think, "Well, if you feel that way, why don't you amend this to be nineteen years of age?" And the reason is because I don't think we should speak to this matter in our Constitution. You will recall a few days ago that Delegate Burbidge

pointed out that he had received some information from the Attorney General's office regarding some questions that he had submitted; and for those of you who wanted to read the opinion, it was available. I think the thing that sticks out most in my mind was the comment in the opinion that said, "A serious question exists whether or not the Legislature could prohibit the sale, possession and consumption of alcoholic beverages over eighteen years of age."

Now, to me, this is where this authority should lie — is with the Legislature. I think it is not only for the matter of alcoholic beverages, but there's several other things that are involved. We have some criminal statutes that relate to certain actions by people of certain ages. I think they're primarily called "protective statutes," wherein the young are protected against the older. This is true within our statutes regarding rape and, also, our statutes regarding seduction. It would seem to me that, if we were to pass this proposal, we might well be repealing those sections; and I'm not so sure that we should. We have some provisions within our Juvenile Court Act that relate to age. An example is the provision under the definition of "child." For purposes of the Act, it says "child" means "an individual who is under the age of twenty-one years who committed an act of delinquency while a child." And it would be my thought that that would probably be repealed, if we were to pass this constitutional provision.

Now, we have an industrial school at Mandan provided by statute and we have a provision that talks about who may be sent to this training school, and we say, "Whenever a person under the age of twenty-one years is found guilty in the district court" and so on, he can be sentenced to that school. I think, if we were to pass this provision, we would be automatically reducing that to eighteen; and while, as a practical matter, that may be the thing to do, I think it would be the Legislature that should do it.

We also have a provision that says — 12-46-16 — "A person committed or sentenced to the state training school is a minor until twenty-one." And this is another area of conflict where we may be trespassing as to where the Legislature should have the control.

We have a provision that says, "A male under the age of twenty-one years old must have parental consent before he marries." I, last year, attempted to get that removed in the Legislature, and it was pointed out to me that the statistic I gave you earlier regarding our high school seniors could mean that the male high school senior could make a decision as to whether or not he wants to marry without his parental consent; yet he still is living at home and, oddly enough, parents still feel that they should have some say in those matters. I think the repeal of — or the passage of 1-86 would probably nullify that provision.

And then there's something that has come to light recently that I can't say exactly what the effect would be, but it involves considerable dollars and cents in the State of North Dakota for those of you that live in college cities or near them, particularly in the eastern edge or, probably, even the western edge.

We have a lot of out-of-state students that attend these colleges, and out-of-state students pay more tuition when they come to college in North Dakota than in-state students do. A District Court in the State of Kansas has recently ruled that such a provision is no longer proper because that court has said that, since an eighteen-year-old has the right to vote, that he is now emancipated and, therefore, he can choose his own residence.

Now, in North Dakota, we've relied somewhat on our out-of-state tuition, applying the principle of where does the student reside — with his parents — when he's not in college, and, if so, then he's a non — or he does not have his home residence; his residence is that of the parents. And that's the way we've been handling this tuition matter. The matter of dollars involved in that Kansas decision is estimated to be five million dollars to the State of Kansas. I don't know what it would be here. My point is this: That if we say that every eighteen-year-old is an adult, then we are saying he is emancipated; and of course then he is free to choose his residence based on intent and coupled with act, as we discussed earlier in this Convention, and what we would be doing is taking away the authority that the Legislature has in regulating this particular issue.

These are a few of the things that enter into the picture over and above the matter of drinking, and I think that these are overriding enough in themselves so that we should leave this area to the Legislature; and if we defeat 1-86 now, they

will be free to act, and then I think they can meet the question as to whether or not the person nineteen years of age or older should have some privileges that those of twenty-one or older do have.

I urge you to defeat 1-86.

PRESIDENT WENSTROM: Further discussion? Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman. Fellow Delegates:

I agree with Delegate Nething that this should be defeated. About a year ago, when we were at the symposium in St. Mary's College, the matter of eighteen-year-old voting was not settled yet. We were told by the gentlemen from Illinois that this will be one of the issues in their constitutional convention. Since then, federal law has made them eligible to vote at eighteen. This Convention has sort of taken the ball and they have run without any interference whatsoever. We've taken it there, and I don't know how so suddenly we have become so liberal.

At any rate, we do have many statutes which are conflicting with this eighteen-year-old for all purposes. We have already passed several of our committee proposals making eighteen-year-olds qualified for elections; but we did pass 1 — 1-28 — which makes you twenty-one years old before you can run for a state office. We already have run into conflicting thoughts. If we're going to make them adults for all purposes, we'd better go back and start amending some of the things we've already done. I say no matter whether you put this phrase into the Constitution or into statute that your eighteen-year-olds or older are adults for all purposes, this is not going to happen. Eighteen-year-olds are not now and probably will not for many years be adults for all purposes. So why not leave this to the Legislature as time goes on, and this probably may be proper. This is fine. But why should we, adults who are looked upon by these teenagers to use good common sense — why do we toss this out of the window? I know that there are many eighteen-year-olds today and nineteen-year-olds that would not want the opportunity to go into the liquor establishments. I had two young people tell me the other evening, "I would not want that opportunity. I'm going to college. After I leave my home, my parents are against drinking, and I don't want to go in the bars. I would take a drink if I get it, but I don't want to go into the bars. And if the others say, 'Let's go,' I at least have an opportunity 'o say, 'No; it's against the law.'" So a lot of them feel that way.

Now, we bring this down to the eighteen-year-old and we're going to find this fringe line of sixteen-year-olds that look like eighteen, and so they're going to be able to acquire liquor just like the eighteen-year-olds do today. So what are we doing? We are finally giving them the red light to all of these kids by reducing it to eighteen in the Constitution. We're going to have many sixteen-year-olds acquiring this. They look like eighteen-year-olds. I doubt if a bar owner would even want this; and we're putting it in the Constitution. I say let's let the Legislature do this as time permits and it is needed.

PRESIDENT WENSTROM: Further discussion?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. I stated this the last time we acted on this: The 1971 Legislature, by Chapter 145, amended Section 14-10-02 of the Century Code to read as follows: "Adults defined. All persons eighteen years of age and over are adults." They also amended Section 14-10-01: "Minors defined. Minors are persons under eighteen years of age."

Now, the only thing that is not on that statute, which went into effect last July — July of '71 — are the words "for all purposes." The only point I made the other day was that it is a strange thing that the Legislature says that everybody eighteen is an adult, and we object to saying "for all purposes." So, in effect, we don't really mean adult in the usual sense of the term. We say a qualified adult and we will give him some rights, but we won't give him other rights.

Now, on that principle then, all persons of any age that are adults could be sorted out and classified by age.

Now, Delegate Kessel has pointed out in this very body we've already done that, on qualification for certain offices, and I was against that, too. Someplace we have to set a limit, and what we're doing now is setting a hazy zone. You enter the zone and you're an adult, but you're still not fully qualified yet. Now, there are many

objections to setting it at eighteen, and many of the things that Delegate Nething has said are perfectly true; but I don't see how we can set a mating season. Maybe we ought to go right back to eighteen. If we put it in the Constitution, why we will effectively adopt the '71 Session Law. Maybe we ought to go back to eighteen. There are many good reasons for that. But we ought to have one or the other.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Thank you, Mr. President.

Fellow Delegates: I'll make this quite short. I don't want to get up at all, because I agree with Delegate Nething and I also agree that it would be perhaps good to allow the State Legislature to take care of these things. But we have in this Convention spoken to many questions on rights and freedoms of the individuals of this State, and I, for one, feel that I — I can't go home after this thirty-day session not having spoken to this one. I don't think that I can speak on one hand the issue of eighteen-year-olds for some purposes and not speak to the issue of eighteen-year-olds for all purposes. I think that we have to speak here now on this very question, and I would hope that you would support the Proposal — 1-86. Speak to it in any way, but let's make a decision. I'm going to have to support it, even though I sympathize and recognize the many problems that this thing will do to the State of North Dakota, to our eighteen-year-olds, to our parents. Thank you.

PRESIDENT WENSTROM: Further discussion? Delegate Thompson.

DELEGATE THOMPSON: Mr. President. I, first of all, would like to address myself for a moment to some of the remarks that Mr. Nething made. I think one of the first points he made was that eighteen-year-olds would still be in high school and so, therefore, they'd have to drink while they're in high school. I doubt that that's true, and I know that that statement, in effect, came from the high school principals, who, incidentally, were the first people that called me about this matter.

Now, I've been a State's Attorney since 1961, and not since that time have I had any school official in my county call me and make reference to the fact that kids in his school were using pot during school hours; and we know they are — or they were popping pills. Apparently that's all right; but no drinking booze.

Two days ago I checked with the Solicitor General of Manitoba, and he assured me he was going to send me some facts and figures, which have not arrived. I asked him what problem they have created in Manitoba with the 18-year-old right to drink. He told me that the only complaint that he has had has come from bar owners, and their major complaint is that the kids are coming in to watch the entertainment and drinking pop, so they can't make enough money on it.

Now, I think "emancipated," as Mr. Nething indicated, is exactly the point. They're emancipated now because they have been given the right to vote. There's been reference made to the big cost of the statutes — if this Constitution passes, those statutes will be unconstitutional. I want you to understand now that we have criminal code legislation against the 18-to-21-year-old. Let me give you a few examples:

You charge them with unlawful possession. You charge them with illegal purchase of alcoholic beverages. Even when they're 20 years old and eleven months, and I don't think that that's legitimate.

Now, the big worry seems to be that these children are going to be going into bars and, apparently, spending a lot of money. Well, I don't know. I remember, as an 18-year-old, I didn't have enough money to spend a lot of time in bars. If these children are as bad as you would lead me to believe, why don't we have as many, percentagewise, charges for DWI as we do for adults?

I'd like to refer you to an article that was in one of the papers — Mr. Paulson's incidentally — on the 31st of January, and this was a poll or a study taken of colleges in the United States, and this one gave a report on the juvenile freshmen that were entering NDSU. "Sixty-seven percent of the freshmen entering NDSU drink beer." And that's about the percentage that would drink beer if it were legal. The article goes on to say — and this might not set too good — but they say, "Kids are becoming more conservative," which is a vice, I'm sure, to a lot of you, and that, therefore, they're better thinkers.

(Laughter)

I believe that the only thing left after the section that Mr. Pearce referred to that we discriminate against these people in other than the criminal matters that I have already referred to, would be the fact that they can't get married and they can't

drink beer. Now, they can go to Manitoba and drink beer legally and they can go to South Dakota and get married legally, and I don't see why they can't do these things in between. Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Stanton.

DELEGATE STANTON: Mr. President, I voted against this Proposal when it first came forth, and I think it was January 24th, or whenever. I generally agree with Delegate Thompson's statement; but this time I take a drastic parting of ways with him. I don't think the children are all that bad either. I think they're really pretty good. My main objection is I get tired of the old argument that eighteen-year-olds are drinking anyway. A lot of them are and they're having booze bought for them by twenty-one-year-olds, and I certainly don't want the eighteen-year-olds buying booze for the fifteen and sixteen-year-olds. Proposal 1-86 is a brand new section of the Constitution. It really doesn't need to be there at all, because it really doesn't address us to anything. All this is covered in statute. So I think we should exhibit some good, common sense and a high degree of responsibility by soundly defeating the Committee Proposal 1-86.

DELEGATE BENSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: Mr. President, I'd like to — I'd like to reply a little bit to Delegate Thompson. I happen to be a high school principal, and we, of course, have had our problems — not too many, but our experience has been this: That when we have tried to go to the law and complain about our young people having this and trying to prosecute this and follow it up and find out where they got it, that our attempts, with very few exceptions have proved futile. We just haven't been able to do much about it. So that is probably the reason why there haven't been too many complaints lodged with the State's Attorneys. On the other hand, I certainly agree with what Mr. Nething said. I think, if we're going to monkey with this drinking bit and the age, that we would be much better off to start, if we have to lower it, with the 19-year-olds, because they are going to be with a different group, and certainly try to keep this out of our high schools. I will vote to indefinitely postpone 1-86.

DELEGATE WARNER: Mr. President.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: Mr. President, I was one of the little band of twenty that voted "no" in the first place. I want to urge sincerely that this measure be defeated. Leave this matter up to the Legislature entirely. I urge a vote "no" on Proposal No. 1-96 — is it? — 1-86. I sincerely urge you vote "no" on 1-86.

PRESIDENT WENSTROM: The Chair will recognize Delegate Burbidge.

DELEGATE BURBIDGE: Mr. Chairman and Fellow Delegates:

When the Committee considered this originally, not much of our dialogue was around the drinking problem, because we in the Committee have felt, perhaps erroneously — I think now erroneously — that the classification for drinking was twenty-one — not the adult classification — and the Attorney General's opinion on another matter — mostly a voting matter — however, on September 1, '71, said as follows: "They also amended Section 14-10-02" — I think the one that Delegate Pearce is speaking of — "which defines adults, and provides as follows: 'Adults Defined — All persons eighteen years of age or over are adults'."

And here's a comment: "It is thus observed that an eighteen-year-old person is now deemed to be an adult, even though age limitations still apply to certain activities, such as possessing or purchasing alcoholic beverages and entering into contracts for marriage."

A more recent Attorney General's opinion, which has been alluded to here, holds a different view for a different reason. He feels that the constitutional provision had so much more strength than the statutory one that he would define it differently now.

I bring this to you, and I'm glad you are reconsidering this, to point out that the dialogue in the Committee and the dialogue on the floor was quite different.

Now, there's one dialogue that we haven't had on the floor that perhaps, if we want to consider this more, we should think about. We talked about the privileges of an eighteen-year-old, and we would grant them privileges, I think we voted last time. We didn't think much about the responsibility, and we still haven't talked

much about that. But, certainly, we have to think both of the privilege and the responsibility. And now that the issue is much more clearly before us, we have to think of the alcoholic question, and so forth.

PRESIDENT WENSTROM: Delegate Peters.

DELEGATE PETERS: Mr. President and fellow Delegates:

I think this body has a responsibility to help the eighteen-year-olds to be able to stand the responsibilities that an adult has. If we think about automobile insurance, we know that the automobile insurance rate goes up on the eighteen-year-olds and continues on until about twenty-five. I don't believe they can stand the — they have the responsibility that it takes to drive a car just as they should. The insurance rates back that up. I think we should protect them by putting a few restrictions on, and I think the eighteen-year-olds, when they get to be twenty-four, twenty-five years old, they'll thank us for putting on some restrictions that we can put on for them.

PRESIDENT WENSTROM: Any further discussion? Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman. I believe that our minds have changed considerably since the last time we voted on this. I did vote "no" last time on it. I intend to vote "no" this time, too. I think that there was a lot of feeling last time that this would be a popular issue to try to get out the vote of the young people for the Constitution. I think it was the wrong thinking at that time, and I think we should probably take it back, and I would hope a majority would vote it down today, after having an opportunity to think it over.

Actually, what we're doing is we're adding responsibility on the heads of young people, trying to make them adults faster than what they should be or would want to probably be. I think we're just trying to load them down with a bigger burden. People that are over twenty-one know what the burdens are. Probably they don't realize what the burdens are. I would urge your support to vote it down.

PRESIDENT WENSTROM: Further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

There's one thing that hasn't been mentioned on this. I intend to vote to eliminate this — to vote "no."

One thing that hasn't been mentioned, and of course I speak with absolutely no personal experience in this matter, but I look this delegation over and I see a few that may have had experience, and my statement is this: If you wait until twenty-one, you have plenty of time to drink after that time.

PRESIDENT WENSTROM: Further discussion? Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman, I have an amendment at the desk.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-86:

In line 8, after the word "adults" delete "for all purposes".

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE HARTL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hartl.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates:

I am hopeful that the main question will be defeated, but I am running a wee bit scared that if it isn't in view of the fact that it carried 73-to-20 the last time, that at least, if we vote a deletion of "for all purposes", then it wouldn't be quite as harmful. The statutory laws would still have some effect. I, therefore, ask that, first of all, you allow the amendment, and then, even with that in there, when it comes to the main vote, that you defeat that, also.

Thank you.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Kessel.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I did get some of this information from the Attorney General — the Solicitor General of Canada, and there are —

PRESIDENT WENSTROM: Delegate Thompson, does this material that you have relate to the proposed amendment?

DELEGATE THOMPSON: Yes.

PRESIDENT WENSTROM: You may proceed.

DELEGATE THOMPSON: The parts of it that I wanted to indicate to you are that we are not alone in considering making these adults for all purposes. The State of Alaska has done this at age nineteen, and there for all purposes, and at the time that they did it, the children still had to be twenty-one to vote, and that was the only exception there. New Hampshire, for all purposes, has the age of eighteen, and they have little problem there with marriage. Kentucky is for all purposes. I think those are the states in the United States that have already taken this far-reaching move, including Britain, Ireland and two provinces in Canada now.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: I'd just like to encourage a "no" vote on the amendment. I don't know whether we would just be then really having window dressing, attempting to attract some votes for the Constitution, or what the effect would be. The same language in the Constitution, of course, would make the statutory provision that much stronger, but I'm not so sure that — in my opinion, the best thing to do is to let the Legislature govern this whole area, and we will do that by defeating the amendment, and then defeating the Proposal.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Kessel. Those in favor of its adoption will say "aye;" those opposed will say "nay."

Those in favor of adopting the amendment will say "aye;" those opposed will say "nay."

The "nays" have it and the amendment fails.

The question before the Convention is on the adoption of the first passage of Committee Proposal 1-86.

Delegate Berg.

DELEGATE BERG: Mr. President, may we have a roll call on this?

PRESIDENT WENSTROM: You will have.

The question before the Convention is on the first passage of Committee Proposal No. 1-86.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Do I understand there's no motion to indefinitely postpone? This is a motion for first passage?

PRESIDENT WENSTROM: That's correct.

DELEGATE KELSCH: And, if you want to kill it, you vote "no"?

PRESIDENT WENSTROM: That is correct.

Those that are in favor — again, I will repeat: Those in favor of passage will vote "aye;" those opposed will vote "nay." And the question, again, is on the first passage of Committee Proposal No. 1-86.

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 30 "ayes," 63 "nays," five delegates absent and not voting.

Committee Proposal No. 1-86 has failed.

DELEGATE KESSEL: Mr. Chairman. Mr. President, may I rise on a personal privilege?

PRESIDENT WENSTROM: State your privilege.

DELEGATE KESSEL: I wish to thank the delegates for voting down my amendment. (Laughter)

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: May I explain my vote in favor of that — the Proposal 1-86?

PRESIDENT WENSTROM: You may.

DELEGATE GIPP: I think, like so many of the other delegates here, I personally believe in the concept here that we attempted to deal with; but in the final result, I do agree that it is a legislative matter and it is on that basis, however, that, as I say, I do believe in the concept, and it was on the basis that I did vote "yes."

PRESIDENT WENSTROM: Further discussion? Hearing none, the question before the Convention, Committee Proposal 1-85.

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman —

PRESIDENT WENSTROM: Delegate O'Toole, wait until we read the Proposal.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-85, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that sections 121, 122, 123, 124, 125, 126, 128 and 129 of the constitution of the state of North Dakota and articles 36 and 40 of the amendments to the constitution of the state of North Dakota be repealed; and that three new sections to the constitution of the state of North Dakota be created; all of which pertain to the elective franchise.

"SECTION 1. REPEAL.) Sections 121, 122, 123, 124, 125, 126, 128 and 129 of the constitution of the state of North Dakota and articles 36 and 40 of the amendments to the constitution of the state of North Dakota are hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The legislative assembly shall by law provide that the general election of the state be held biennially.

"Every citizen of the United States who has attained the age of eighteen and who shall have been a resident in the state six months, in the county ninety days and in the precinct thirty days preceding an election shall be a qualified elector. When a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moved until he establishes voting residence in the precinct to which he moved. The legislative assembly shall by law provide rules for determining residency, other than physical presence, for voting eligibility. No elector shall be deemed to have lost his residency for voting eligibility solely by reason of his absence from the state.

"The legislative assembly shall insure secrecy in voting, provide for absentee voting, provide for administration of elections and the nominations of candidates."

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. President, this is a combination of the previous bill — 1-85 — and the bill 1-83, which we had returned to us sometime last week. I do have a few very minor technical amendments. I think it's at the desk. Would you read those for me, please?

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-85:

On page 1, line 4 of the engrossed proposal, delete the word "three" and insert in lieu thereof the word "a"; and delete the word "sections" and insert in lieu thereof the word "section".

DELEGATE O'TOOLE: I move their adoption.

PRESIDENT WENSTROM: Do we have a second? Seconded by Delegate Maxwell.

DELEGATE O'TOOLE: Now, both of these bills — 1-83 and 1-85 —

PRESIDENT WENSTROM: Delegate O'Toole, now you're not talking on the amendment, are you?

DELEGATE O'TOOLE: No.

PRESIDENT WENSTROM: Okay. We'll work on the amendment, first.

The question before the Convention is on the adoption of the amendments as offered by Delegate O'Toole. Are there any questions?

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted.

Now, Delegate O'Toole.

DELEGATE O'TOOLE: Yes. Actually, I was going to explain that we had made them into one section, and that was to clean up — this technical amendment was to clean up the language from "sections" to "section," but that's been taken care of now.

I wish to say that this came up and we had a considerable discussion. We went through a great deal of explanation on this, on why we have done a number of things; but the Convention deemed it important to change the State residency requirement from six months — or to six months from the previous ninety days, and to include a county residency of ninety days, and they left the precinct as before.

We talked with our counsel and a number of other people, and we felt that the Legislature should provide some rules for determining residency, other than physical presence, which had been a big — cause a big debate on the floor, and we felt that there were other things, besides physical presence, that were included in residency.

We have included parts of the other sections where "No elector shall be deemed to have lost his residency for voting eligibility solely by reason of his absence from the state," which is an inclusion of two of our other deleted sections. I don't have the exact numbers at hand. We felt that the Legislative Assembly then should be deemed or authorized to insure secrecy in voting, provide for absentee voters and voting, and provide for administration of elections and nominations of candidates. This, as I say, was what we felt was the mandate of the delegation. With the condemnation of these two, I have some — I would like to have personally had it a much lower residency requirement, but I subject myself to the delegation.

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: I have an amendment at the desk, Mr. President.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-85:

On page 1 of the engrossed proposal, line 17, after the word "months" delete the comma.

On page 1, line 18, delete the words "in the county ninety days" and renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This phrase "in the county ninety days", was added the other day by a very close vote. I feel that anyone who has resided in the State six months and in the precinct thirty days should be able to vote. Those are residency qualifications enough. The only purpose that I can see that the ninety days in the county is going to serve is to disqualify a few voters for no good or sufficient reason. In addition, it's going to cause additional and unnecessary problems in the cities where we have institutions of higher learning located. Therefore, I urge the Convention to adopt the amendment.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Dobson. Delegate Rundle.

DELEGATE RUNDLE: Mr. President and Members of the Convention:

I thought this item was settled, but I guess nothing is going to be final until the last minute. The reason that I've always felt there should be some county residency requirements, or the same as they were, there could be an awful lot of shifting around, especially where there's a town with a lot of school elections and country voters moving back and forth. I've seen it quite a few times. Sometimes a person who is slightly concerned will vote "no" on the school election proposal because it costs money; and then he will also very soon vote in a township election, and I think it should be one or the other, and this ninety days slows that down, at least, and it's very

— it's not a bit unreasonable to say you have to be in a county ninety days before you can vote. I would hope this amendment is defeated.

PRESIDENT WENSTROM: Further discussion? Delegate Thompson.

DELEGATE THOMPSON: I think the other day, when we talked about the percentage of voters, North Dakota ranked, I believe, in the top ten, and probably higher than that, and that was during a period of time when, incidentally, we had one year in the State, ninety days in the county and thirty days in the precinct. Well, apparently it hasn't been a problem.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Dobson. Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of the adoption of the amendment will say "aye;" those opposed say "nay." The "nays" have it. The amendment lost.

The question — Delegate Erickson.

DELEGATE ERICKSON: Mr. President, may I direct a question to Delegate O'Toole?

PRESIDENT WENSTROM: Does Delegate O'Toole yield?

DELEGATE O'TOOLE: Yes, sir.

DELEGATE ERICKSON: It says here that "The legislative assembly shall by law provide that the general election of the state be held biennially."

Now, in the section — or the Proposal 1-44, we put all of our legislative districts — or consolidated the Senators and the Representatives in one election year. Now some districts might not have an election one year. How are you going to account for that?

DELEGATE O'TOOLE: There are other offices, besides the legislators and Senators, too, that may perchance come up in the biennial year. We also have our U. S. Legislature that comes up every two years.

PRESIDENT WENSTROM: The question before the Convention — Delegate Maxwell.

DELEGATE MAXWELL: Mr. President, I merely wanted to state that Delegate Haugen, who is still absent from these chambers, was the one who was particularly concerned about the problem that we think we have dealt with here, and I just merely wanted to say that he said to me, after we presented this new version to him, that he thought that the Committee had done a good job. I took that as a compliment. (Laughter) And, also, that he approved of our work. So I thought I should indicate that to the assembly, as long as he's not here.

PRESIDENT WENSTROM: Thank you, Delegate Maxwell.

The question —

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I'm not going to belabor the point, but I do intend to vote against this, not because I'm necessarily against the six months residence in the State, but because I'm afraid that this is going to be held unconstitutional by the federal courts, and I don't see any sense in us putting things in the Constitution that we're dubious about.

PRESIDENT WENSTROM: Delegate Devine, did you wish the floor?

DELEGATE DEVINE: Mr. President, I hate to stand up, but I was just wondering who, besides the Congressmen, will be up in half the districts.

DELEGATE LANDER: Public Service Commission and sometimes district judge.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: There will be at least one Public Service Commissioner that will be up.

PRESIDENT WENSTROM: Or one Congressman.

DELEGATE VOGEL: Mr. President. Aren't the county officials on the off-year?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: County superintendents are elected out of context or out of step with the other county officials, I believe. They've got their four-year term at a different time. That's one example.

PRESIDENT WENSTROM: Further discussion? Delegate Scheel.

DELEGATE SCHEEL: Mr. President. Did I misunderstand? The Legislature — isn't half of it going to be elected one time and half the next two years?

PRESIDENT WENSTROM: Can someone answer the question?

DELEGATE SCHEEL: That's what we were talking about.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Every two years there's going to be a lot of business at the polls. We have the county officials coming up, we have some of the State officials coming up, and we have U. S. Congressmen coming up, sometimes we would even have a U. S. Senator coming up. So there would be a good purpose for biennial elections.

Now, the way the provision went through earlier, Section 5 — I forget what it was attached to — what bill it was on — but half of the legislators are going to come up every two years. Now it is true that some districts might not have a legislator coming up in that particular biennial election, but in other districts they will; so there will be elections every two years. So rest assured there will be things to vote for.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: I would just like to say the article merely provides for the election; it need not provide candidates. (Laughter)

DELEGATE BENSON: Mr. Chairman, I have a question I would like to ask someone on the Committee.

The way this proposal is now being brought in, where you have to be in the county, say, ninety days, wouldn't that prevent college students from voting in an election if they went away from home, or could they vote absentee?

DELEGATE O'TOOLE: May I answer?

PRESIDENT WENSTROM: Yes, Delegate O'Toole.

DELEGATE O'TOOLE: Yes, it would prevent them from voting in the college town, but it would still insure that they could vote absentee voters, however.

PRESIDENT WENSTROM: The question before the Convention —

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole — Delegate O'Toole?

DELEGATE O'TOOLE: Yes, Sir?

PRESIDENT WENSTROM: We have to — before we can proceed further here, we have to suspend the Rules; but will you wait for that until I recognize Delegate Burbidge? Delegate Burbidge.

DELEGATE BURBIDGE: I, personally, question Delegate O'Toole's answer to the last one. I may be wrong, but I think we should explore the thing a little bit, in that the freshmen would, of course, have not resided ninety days, but the upper-classmen could have claimed that they — the college town of their residence from the time they started as freshmen and, I would think, would qualify. Would you explain that?

DELEGATE O'TOOLE: Could I yield to Delegate Lamb?

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President, I think the question that Delegate Maxwell raised was in regard to the presidential election, and the federal statutes read that you only have to be a resident for thirty days in the voting district to vote for President, and that's just for President and Vice President alone.

Does that answer the question?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think that Delegate Burbidge's question — I agree that after the student had been there at least ninety days, he could elect to claim the town — the school town as his residence. I think the combination of presence and intent would allow him to vote, providing he's been in the State for six months.

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: Well, that was one of the reasons I moved the amendment to strike out the ninety days, because this is simply going to cause problems in your college towns, with election officials perhaps trying to prevent college students from voting where they go to school, and I thought the amendment would carry, and I'll renew it.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President, were you expecting to have a vote on suspension of the Rules?

PRESIDENT WENSTROM: Pardon?

DELEGATE PEARCE: Was it your intention that we vote on the suspension of the Rules to move this on for passage?

PRESIDENT WENSTROM: Well, we have to have that motion, but I thought possibly there was some other discussion before we have the motion.

DELEGATE PEARCE: Oh! Well, I rise to a point of order.

As I interpret what we did yesterday in amending the Rules, we have to act on it today, and we eliminated the rule that a proposal has to wait for one Convention day before it could be passed after it's amended. So I say we have to act on it today, as we ruled on page 391 of the Journal.

PRESIDENT WENSTROM: He's correct. We no longer need the — we took care of that by rule change yesterday. The Chair is correct. I question though but what we're going to have to deem it engrossed. Delegate O'Toole — Delegate Aubol.

DELEGATE AUBOL: Mr. President, I think we're moving awfully fast on this thing. People are jumping up and down and giving interpretations all over the place. But Delegate Dobson said that he would perhaps offer his — reoffer his amendment with reference to the counties, if he thought it would carry. Now —

PRESIDENT WENSTROM: State that over, will you, please?

DELEGATE AUBOL: Delegate Dobson said that he would reoffer his amendment on the question of residency in the counties, if he thought it would carry. Now, the other day Delegate Rundle's motion carried by a vote of 51-to-44. I'm not so sure that a vote today that will be taken by a voice vote was that clear. I would think that Delegate Dobson should reoffer his motion and ask for a recorded vote on it.

PRESIDENT WENSTROM: The Chair is going to rule that particular suggestion out of order.

Delegate Paulson.

DELEGATE PAULSON: Just a comment. We've been talking about how smart these eighteen-year-olds are, and if they aren't smart enough to figure out where they want to vote, we certainly don't have to take them by the hand. If they want to vote in their college town, all they have to do is register and vote there, and if they want to vote at home, they can vote on an absentee ballot. If they vote at home in the primary by regular ballot, then they must vote at home by absentee ballot in November. But, by April, they can qualify to vote in the city where they go to school. That's their choice, and they're smart enough to figure it out, I'm sure.

PRESIDENT WENSTROM: The question — I still would like a motion to deem this properly re-engrossed.

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: I yield to Delegate Longmire.

(Delegate Longmire shook his head.)

DELEGATE O'TOOLE: I move, Mr. President, that the Rules be temporarily suspended and the Proposal be deemed properly re-engrossed and placed on the calendar for first and final passage.

PRESIDENT WENSTROM: Delegate O'Toole moves that the Proposal No. 1-85 be deemed properly re-engrossed, that it be placed on the calendar for first passage as amended. Do I have a second? Seconded by Delegate Engelter.

Any discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President, I hesitate to rise at this time. Delegate Maxwell indicated that our absent member, Delegate Haugen, had given his assent and approval to this Proposal as amended. I recognize that he did, and I, too, did. However, I do have a question to present before the body, since I am going to vote "no," and I am going to explain why. I have to agree, as I seldom do, with Delegate Omdahl. The age of eighteen —

PRESIDENT WENSTROM: Delegate Hartl, are you talking to the motion that's before the Convention or are you talking to —

DELEGATE HARTL: I'm sorry, Mr. President. I'm out of order at this time on the amendment.

PRESIDENT WENSTROM: The question before the Convention at this time is on the motion to deem the Proposal properly re-engrossed and placed on the calendar for first passage.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the Proposal is now before the Convention.

Now, Delegate Hartl.

DELEGATE HARTL: Thank you, Mr. President.

To continue: I, too, believe that eventually, in short order, we are going to have to amend this Constitution as proposed for passage — amend or delete our requirement here that we, as eighteen-year-olds and over must reside in the State six months, in the county ninety days and in the precinct thirty days. I think it is a good idea, but we are back to the registration provision. Delegate Paulson indicated the eighteen-year-old moving to the college town can declare his residence by reporting. I question where.

The second question, and I will leave the delegates with this, is we are providing in this Proposal for an election in the State to be held biennially. We have in previous motions and passage this afternoon provided that biennially in half of our districts we shall have a special election, where we shall vote for one Public Service Commissioner and one United States Congressman — an exceptional constitution!

PRESIDENT WENSTROM: The question before the Convention is on the first passage.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Maybe we could save a lot of "no" votes on this. Would it be in order to renew my amendment?

PRESIDENT WENSTROM: Well, I'm afraid, Delegate Dobson, that I'd have to rule you out of order. The Convention voted it down a few minutes ago. However, you can always appeal from the decision of the Chair.

DELEGATE DOBSON: I have no desire to appeal the ruling of the Chair. I can offer a different amendment. This would simply delete "in the county ninety days."

DELEGATE SANSTEAD: Second.

DELEGATE KELSCH: Mr. President, it wouldn't be reconsidered if we did that.

PRESIDENT WENSTROM: Yes, you can move to reconsider.

DELEGATE DOBSON: Very well. I move to reconsider, Mr. President, the vote by which this Convention defeated my amendment to delete "in the county ninety days."

PRESIDENT WENSTROM: We have a motion to reconsider the action whereby the amendment as offered by Delegate Dobson, seconded by Delegate Omdahl, was defeated. And do we have a second to the motion to reconsider?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sanstead.

Now, the question: I think you are all aware of the question. The question is on the motion to reconsider an amendment. Those in favor of reconsidering will say "aye;" those opposed say "no."

The "noes" have it and the motion to reconsider failed.

Now we are back on the Committee Proposal No. 1-85 as amended. You're on the first passage of Committee Proposal No. 1-85.

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 81 "ayes," 12 "nays," five delegates absent and not voting. Committee Proposal No. 1-85 is passed as amended.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE HOFFNER: We have a — the Legislative Functions Committee has a number of proposals — Delegate Proposals — that are being held at the desk, and I'd like at this time to make a motion — or ask the unanimous consent to ask Delegate Proposals 2-7, 2-16, 2-52, 2-73, 2-8 and 2-76 be withdrawn. The subject matter has been passed. I believe Delegate Cart has indicated that he would prefer to have his brought up for indefinite postponement; that he would like that done now, if he could do that. If not, why I'd ask the unanimous consent to have them all withdrawn.

PRESIDENT WENSTROM: Will you repeat the numbers, Delegate Hoffner?

DELEGATE HOFFNER: 2-7, 2-16, 2-52, 2-73, — and these four all deal with initiative and referendum; and 2-76 — this is unicameral — or 2-8 — I'm sorry — and 2-76.

PRESIDENT WENSTROM: The numbers are 2-7, 16, 52, 76 and 80? Is that right?

DELEGATE HOFFNER: Mr. President, 2-73 as well as 2-7, 2-16, 2-52, 2-8 and 2-76.

PRESIDENT WENSTROM: Delegate Hoffner has requested unanimous consent of the Convention to withdraw Delegate Proposals No. 2-7, 16, 52, 73, 8 and 76. Are there any objections?

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I would prefer to have the record show that 2-52 is indefinitely postponed; so I object.

PRESIDENT WENSTROM: You object to having 2-52 included in that group?

DELEGATE CART: Yes.

PRESIDENT WENSTROM: You do not object to the withdrawal of the others? (Delegate Cart shook his head.)

PRESIDENT WENSTROM: Thank you, Delegate Cart.

Then the numbers would be 7 — 2-7, 16, 73, 8 and 76. The unanimous consent has been requested. I hear no objections. Your request is granted.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: What is the — on 2-52, would it be in order to move that 2-52 be indefinitely postponed, or is that necessary?

PRESIDENT WENSTROM: Delegate Hoffner, then we can go on the fifth order of business, at which time we can adopt the Report, and that Report is to indefinitely postpone it, if that's satisfactory with Delegate Cart.

(Delegate Cart nodded.)

PRESIDENT WENSTROM: We will be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Legislative Functions, to whom was referred Delegate Proposal No. 2-52, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Hoffner, Chairman.

Delegate Hoffner moved the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Delegate Proposal No. 2-52, that the Proposal be indefinitely postponed. Is there any discussion?

Those in favor of adopting the report will say "aye;" those opposed "no."

The "ayes" have it and the report is adopted. Delegate Proposal No. 2-52 is indefinitely postponed.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: As long as we're on this order — let's see — well, I would like to ask permission to withdraw Delegate Proposal 2-35 and 2-42, the material having been incorporated in committee proposals.

PRESIDENT WENSTROM: Delegate Saugstad requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-35 and 2-42. Is there any objection?

Hearing no objection, the request is granted.

We'll continue on the tenth order of business — Committee Proposal No. 1-119.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-119, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that section 7 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to jury trial.

"SECTION 1. REPEAL.) Section 7 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The right of trial by jury shall be secured to all, and remain inviolate. A person accused of an offense punishable by imprisonment in a penitentiary has the right to trial by jury of twelve, whose verdict must be unanimous. In all other criminal cases, in civil cases and in juvenile delinquency proceedings, the legislature may regulate the size of the jury and the number required for a verdict."

PRESIDENT WENSTROM: You have heard the reading of the Proposal. Is there any discussion?

The question before the Convention — Delegate Pearce.

DELEGATE PEARCE: Mr. President. I was waiting for someone to speak in favor of it, first, because I speak against the Proposal, and I would urge that the Proposal be defeated, which would leave in effect then the present Section 7 of the Constitution of the State, which is a very nice, terse statement and says: "The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record may consist of less than twelve men as may be prescribed by law."

I think that the right of trial by jury is one of the most precious rights of Americans, and I believe that any tampering with it, even as to amounts or in leaving it subject to legislative manipulation, would be deeply resented. The Legislature can take advantage of smaller juries under the present Constitution in courts not of record, which would mean the inferior courts or municipal courts, justice courts, and so forth.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: May I ask, Mr. Chairman: The very last line or two: Judge Burdick proposed and was very concerned about the statement "the number required for a verdict." If the size of the jury is only three, do I understand it need not be unanimous? Can someone of the Committee inform me?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Yes, that's exactly what it says. They could provide that it could be less than unanimous in all cases, except those of a felony.

Incidentally I'd like to also speak, if I may, relative to Mr. Pearce's statement.

What we're proposing here is quite a change from the law as it was in the past. This will allow the Legislature to provide for less than twelve as a jury in civil cases and in misdemeanor cases, and includes, incidentally, the county — well, all of the courts that are presently in existence now, and some of them not requiring, incidentally, a jury of twelve.

I don't know whether you're aware of it or not, but probably in December, the U. S. Supreme Court upheld the criminal case in Florida where they had provided for six as the jury. This type of action was requested by the State Bar Association when they appeared before our Committee — not quite the same as this. They were indicating that they would like the minimum limited to six. However, we didn't have any idea what the future is going to be relative to the caseload, and things like that, and so we felt that we'd leave it up to the Legislature to make that determination in the future. Incidentally, having less than twelve does speed up the trial of civil cases, because it doesn't take quite as long to pick the jury — would be one major reason, incidentally.

PRESIDENT WENSTROM: Further discussion? Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman. In the Committee meeting — I have no objection to the Proposal the way it comes on the floor here; but I object to less than unanimous on a jury conviction, regardless of civil or any jury. I don't get too concerned about the amount of six jurors or if it's eight; but I cannot for the life of me see, if we've got a six-man jury, that five can convict. There must be a shadow of a doubt if you are guilty, if one person can't go along with a unanimous decision of a jury. As long as one person holds out, then there's a shadow of a doubt that you're not guilty. We start out with even a shadow of a doubt before, when we are convicted of something. I can't see something like this go on.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President, I rise to say that I'm going to vote against this particular thing because I think it restricts the right of juries to all people, because of the amendment that was put on it the other day, and I'm giving my explanation now, instead of after the vote, so that I won't clutter up the Journal with my feeble excuses.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-119.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Do I understand, if we vote "no," we will not be repealing the original Section 7 as in the Constitution, or do we have to bring that back and enact it?

PRESIDENT WENSTROM: Well, I'm sure that if you defeat this, that anything on this sheet is defeated. If you pass — if you vote this down, you have to vote it down in toto, unless somebody divides the question, and so forth.

DELEGATE KELSCH: Well, I realize the repealer would be defeated, Mr. President, but where we'd stand — we'd have — Section 7 hasn't been repealed. Is that going to be in the Constitution in the final draft? And I favor the old Section 7, and maybe we should amend it instead of this one.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President. If I may offer my opinion on this.

Nothing happens to the old Constitution unless we offer a repeal of it and that's approved by the people, and the Style and Drafting Committee — it is my understanding that they're trying to present a whole Constitution. They would simply put Section 7 from the old Constitution in that draft. But even if they didn't unless it was a repeal of Section 7, it would still stand and be part of the Constitution of the State.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think that they would be wise at this time to direct the Chairman of the Style and Drafting to see if this is the procedure they're going to follow. Maybe a document from this floor to which they refer their action, and

if that's the case and they don't get any action on this Section 7, it could be we might lose Section 7 someplace. I wonder if Chairman Unruh would respond to that.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President, we had not considered any possibilities like this as yet; but in the total process, it is our plan to put the whole Constitution together on a board, committee by committee, and to look and see if there's any sections that haven't been repealed. If they need repealing, it's our opinion we should bring in the proposal. We would do that. Maybe that's the way it would fit.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I feel we are probably going to end up with a general repealer, instead of separate repealers, and I think, to directly get at the issue, I would move that we delete everything in lines 1 through 16 in Proposal 1-119, and insert in lieu thereof the language of the old Constitution, Section 7.

PRESIDENT WENSTROM: You've heard the offer of the amendment to Committee Proposal No. 1-119, and as I understood, you would strike everything after — starting with line 1 through 16. We'd delete everything and insert Section 7 of the former or our present Constitution.

Now, can we have a second to that motion?

DELEGATE NICHOLAS: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nicholas. The Chair will recognize Delegate Decker.

DELEGATE DECKER: Mr. President. Fellow Delegates:

The Committee took a lot of time on this and we had a lot of testimony on it, and with our testimony, I'm going to resist the amendment. I wish you would vote to approve the Committee Report. We had a lot of testimony and it all indicated that the Legislature isn't going to turn the court system upside down, as far as the number of people, in most cases. There are some cases where, in the civil proceedings and different things like that, that it can be handled with a smaller group, and if the Legislature so desires, and the people who don't want it will be there having their say and their piece, and I'm sure it isn't going to change overnight and you're going to end up with a three-man jury, or anything like that. I think we should stick with the Committee Proposal because it's flexible, and let them take care of future needs at future times.

PRESIDENT WENSTROM: Further discussion? Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I'm quite concerned that we preserve a jury of twelve — at least in criminal cases — and the Committee's proposal limits it only to felonies, and there are many crimes that carry a sentence up to one year in the county jail, and I — many people are in county jails on minor offenses, and others are charged with felonies and never are confined, and we're giving them a twelve-man jury — a unanimous jury — and yet the Committee is not in the case of something less here. I think that feature in the old Constitution should be retained. I think we have some problem with the language of the old section. It refers to "twelve-man." It should probably just say "a jury of twelve." And I have no strong feelings on civil cases, that we should reduce the jury in courts of record in civil cases; but I do think in criminal cases, that's one thing that the old section does, and I would urge we adopt this, and then, if you want to amend it to take out the word "men" or if you want to amend it further to allow a jury of less than twelve or less than unanimous in civil cases, I have no objection.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Kelsch that we strike everything in line 1 through line 16 as the proposal is printed in the Proposal Book and insert in lieu thereof Section 7 of our present Constitution.

Those in favor of the amendment —

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal No. 1-119:

Delete lines 1 through 16, inclusive, and insert in lieu thereof the following:

"Section 7 of the present constitution of the state of North Dakota, which pertains to trial by jury, be retained.

"SECTION 1.) Section 7 of the present constitution of the state of North Dakota is retained in its present form and reads as follows:

"The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record may consist of less than twelve men, as may be prescribed by law."

PRESIDENT WENSTROM: You've heard the reading of the amendment. The question, again — Delegate Jestrab.

DELEGATE JESTRAB: Mr. President, I move to delete the word "men".

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Delegate Jestrab moves an amendment, to strike the word — she has an amendment to an amendment.

CHIEF CLERK GILBREATH: Do you want me to read it?

PRESIDENT WENSTROM: Read her amendment.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment:

In the last sentence under Section 1, after the word "twelve," the word "men" be deleted.

PRESIDENT WENSTROM: The question is on the amendment to the amendment as you heard read from the desk.

Those in favor will vote "aye;" those opposed vote "nay."

As many as are in favor of adopting the amendment say "aye;" those opposed say "nay."

The "ayes" have it. The amendment's adopted.

Now we're back on the amendment as amended. The question is on the amendment as amended.

Any further discussion?

Hearing none, those in favor of its adoption will say "aye;" those opposed will say "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay."

The Chair will rule that the "ayes" have it.

DELEGATE DEVINE: Mr. President, division.

PRESIDENT WENSTROM: A division has been requested. That is sufficient. Again, the question is on the adoption of the amendment as amended.

Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your preference.

Has every delegate voted?

DELEGATE SINNER: Sinner votes "nay."

CHIEF CLERK GILBREATH: Sinner votes "nay."

PRESIDENT WENSTROM: Has every delegate indicated his preference? The vote is closed. There were 54 "ayes" and 38 "nays." There were six delegates absent and not voting. The amendment has been adopted.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: May I rise on a question of personal privilege?

PRESIDENT WENSTROM: State your privilege.

DELEGATE THOMPSON: I want to thank the Convention for doing this, because now I don't have to submit the amendment I was preparing. (Laughter)

PRESIDENT WENSTROM: The question before the Convention — Delegate Pearce.

DELEGATE PEARCE: Mr. President: I move the Proposal 1-119 be deemed properly re-engrossed and placed on the calendar.

PRESIDENT WENSTROM: Delegate Pearce moved that Committee Proposal 1-119 be deemed properly re-engrossed and placed on the calendar for first passage as amended.

Seconded by Delegate Kwako.

Is there any discussion? Hearing none, as many as are in favor of the motion

will say "aye;" those opposed "no." The "ayes" have it. Committee Proposal No. 1-119 is before the Convention as amended.

The question. The question before the Convention is on the first passage of — (The voting machine controls emitted an electrical spark.)

PRESIDENT WENSTROM: The question before the Convention is on the first passage of Committee Proposal No. 1-119. We'll have a voice vote.

CHIEF CLERK GILBREATH: It's still smoking!

PRESIDENT WENSTROM: Fellow delegates, maybe we better hurry and vote here, before one of these fellows gets killed. We'll wonder if he'll have a jury trial or what!

Do you have a tally here?

The question before the Convention is on the first passage of Committee Proposal No. 1-119 as amended.

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

The Clerk will take the roll.

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: Here — yes.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: Yes.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: Aye.

CHIEF CLERK GILBREATH: Bassingthwaite.

(No response.)

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: Aye.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: Aye.

CHIEF CLERK GILBREATH: Benz.

DELEGATE BENZ: Aye.

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Aye.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: Aye.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Aye.

CHIEF CLERK GILBREATH: Birkeland.

DELEGATE BIRKELAND: Aye.

CHIEF CLERK GILBREATH: Brakke.

DELEGATE BRAKKE: Aye.

CHIEF CLERK GILBREATH: Burbidge.

DELEGATE BURBIDGE: Aye.

CHIEF CLERK GILBREATH: Burke.

DELEGATE BURKE: Aye.

CHIEF CLERK GILBREATH: Butler.

(No response.)

CHIEF CLERK GILBREATH: Byrne.

DELEGATE BYRNE: Aye.

CHIEF CLERK GILBREATH: Cart.

DELEGATE CART: Aye.

CHIEF CLERK GILBREATH: Chase.

DELEGATE CHASE: Aye.

CHIEF CLERK GILBREATH: Christensen.

DELEGATE CHRISTENSEN: Aye.
CHIEF CLERK GILBREATH: Daniels.
DELEGATE DANIELS: No.
CHIEF CLERK GILBREATH: Dawson.
DELEGATE DAWSON: Aye.
CHIEF CLERK GILBREATH: Decker.
DELEGATE DECKER: Aye.
CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Aye
CHIEF CLERK GILBREATH: Diehl.
DELEGATE DIEHL: Aye.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Aye.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Aye.
CHIEF CLERK GILBREATH: Engstrom.
DELEGATE ENGSTROM: Aye.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Aye.
CHIEF CLERK GILBREATH: Fallgatter.
DELEGATE FALLGATTER: Aye.
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Aye.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Aye.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Aye.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Aye.
CHIEF CLERK GILBREATH: Griffin.
DELEGATE GRIFFIN: Aye.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Aye.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Aye.
CHIEF CLERK GILBREATH: Haugen.
(No response.)
CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: Aye.
CHIEF CLERK GILBREATH: Hernettt.
DELEGATE HERNETT: Aye.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Aye.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: No.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Aye.

CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: Aye.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: Aye.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Aye.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Aye.
CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Aye.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Aye.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Aye.
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Aye.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Aye.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: No.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Aye.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Aye.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: No.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Aye.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Aye.
CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Aye.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Aye.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: No.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Aye.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Aye.
CHIEF CLERK GILBREATH: Nething.
DELEGATE NETHING: Aye.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Aye.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: No.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: No.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Aye.
CHIEF CLERK GILBREATH: Pearce.

DELEGATE PEARCE: Aye.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Aye.
CHIEF CLERK GILBREATH: Peterson.
(No response.)
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Aye.
CHIEF CLERK GILBREATH: QUAM.
DELEGATE QUAM: No.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Aye.
CHIEF CLERK GILBREATH: Rosendahl.
DELEGATE ROSENDAHL: Aye.
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Aye.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: Aye.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SANSTEAD: Aye.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Aye.
CHIEF CLERK GILBREATH: Scheel.
DELEGATE SCHEEL: Aye.
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: No.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: Aye.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: No.
CHIEF CLERK GILBREATH: Solberg.
DELEGATE SOLBERG: Aye.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDREAL: Aye.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: Aye.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: Aye.
CHIEF CLERK GILBREATH: Thompson.
DELEGATE THOMPSON: No.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: No.
CHIEF CLERK GILBREATH: Tudor.
DELEGATE TUDOR: No.
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: Yes.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: No.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: No.
CHIEF CLERK GILBREATH: Wallin.
DELEGATE WALLIN: No.

CHIEF CLERK GILBREATH: Warner.

DELEGATE WARNER: Aye; reluctantly.

CHIEF CLERK GILBREATH: Wicks.

DELEGATE WICKS: Aye.

CHIEF CLERK GILBREATH: Wenstrom.

PRESIDENT WENSTROM: Aye.

The roll call discloses 78 "ayes," 16 "nays," four delegates absent and not voting Committee Proposal No. 1-119 has passed.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE Aubol: Does the record indicate that we voted on Delegate Pearce's motion to have 1-119 properly re-engrossed? I thought that's the vote we were about to take when the big bang happened.

PRESIDENT WENSTROM: That was a voice vote.

DELEGATE AUBOL: I don't recall voting on it, however.

PRESIDENT WENSTROM: I'm glad some of the delegates have trouble. I have trouble, too. (Laughter)

(A disturbance was noted in the area of the desks of Delegates Longmire and McElroy, apparently being a minor wastebasket fire, followed by applause upon extinguishing.)

PRESIDENT WENSTROM: Fellow delegates, I think that this would be a good opportunity to take about ten minutes. Please be back on time.

(The Session recessed at 3:12 P.M. until 3:25 P.M., the same day, with Vice President Saugstad presiding.)

VICE PRESIDENT SAUGSTAD: All right. Everyone take their seat.

DELEGATE THOMPSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: I'd like a ruling from the Chair. I thought that we could put in alternate proposals longer than today; but someone told me today, and then another delegate told me three days before we could put one in, and I would like to know whether we can request an alternate proposal after today — submit one, I mean.

VICE PRESIDENT SAUGSTAD: Delegate Thompson, I do not believe there is any final limit on alternate proposals that are to be introduced.

The Chair will call on Mrs. Geelan — Delegate Geelan — to explain to Delegate Thompson the status of introduction of alternate proposals.

DELEGATE GEELAN: Mr. President. There is a limit that you can't — there is a limitation on the time that you can introduce them, and I'm looking it up now. I think it's three days after it's been voted on. There is no end limit, as I understand it. You'll find the Rule on page — it's 18.2. The first paragraph reads: "An alternate proposal covering the same subject for incorporation in the final constitutional draft may not be introduced until three Convention days after first passage of a proposal covering the same subject; except that the three-day limitation shall not apply after the twenty-second Convention day."

VICE PRESIDENT SAUGSTAD: Does that answer your question, Delegate Thompson?

DELEGATE THOMPSON: Yes, it does. Thank you.

DELEGATE DAWSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dawson.

DELEGATE DAWSON: May we be on the eighth order for a moment?

VICE PRESIDENT SAUGSTAD: We may.

DELEGATE DAWSON: While we are talking about alternate proposals, the Alternate Proposal and Ballot Committee will meet on Monday morning at nine o'clock up in the west balcony.

VICE PRESIDENT SAUGSTAD: Did everyone hear that? Chairman Dawson

of the Alternate Proposal Committee announced that there will be a meeting on Monday morning — what do you say? — nine o'clock?

DELEGATE DAWSON: Nine o'clock.

VICE PRESIDENT SAUGSTAD: Nine o'clock, in the west balcony.

DELEGATE DOBSON: Mr. President —

DELEGATE DAWSON: While we're at that, I agree that alternate proposals can be made at a later date; however, if you have any in mind, we would appreciate knowing it, so that we can take that into consideration on Monday; and we expect to get alternate proposals after that time.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Mr. President. Will Chairman Dawson yield to a question?

DELEGATE DAWSON: Yes. Go ahead.

DELEGATE DOBSON: Can Delegates come in at that time to express their support or views or objections, as the case may be, to these various alternate proposals?

DELEGATE DAWSON: I think that would be very much in order. They're open to the press, also, I understand. (Laughter)

VICE PRESIDENT SAUGSTAD: We will now be on the eighth order of business — Communications and Announcements.

CHIEF CLERK GILBREATH: Wives of delegates and Staff wives are invited to a no-host luncheon Wednesday, February 9th at 1:00 P.M. Please make your reservations by Tuesday noon with President Wenstrom's secretary.

VICE PRESIDENT SAUGSTAD: We'll now be temporarily on the fifth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-13, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

VICE PRESIDENT SAUGSTAD: Committee Proposal 1-13 will be on the sixth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-27, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

VICE PRESIDENT SAUGSTAD: Committee Proposal No. 1-27 will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-28, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

VICE PRESIDENT SAUGSTAD: Delegates, for just a technical correction here, I will say that on motion of Chairman Unruh, Committee Proposal 1-13, 1-27 and 1-28 will be placed on the sixth order.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it and they will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-32, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: We are on the motion of Chairman Unruh that the Committee Proposal 1-32 be placed on the sixth order of business. All in favor of the motion say "aye;" opposed "no." The "ayes" have it and that will be placed on the sixth order.

CHIEF CLERK GILBREATH: President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-46, has had the same under consideration and recommends that the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: On motion of Delegate Unruh that Proposal No. 1-46 be placed on the sixth order, all in favor signify by saying "aye;" opposed "no." The "ayes" have it. It will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-58, has had the same under consideration and recommends that the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: We are on the motion of Chairman Unruh that Committee Proposal 1-58 be placed on the sixth order. All in favor signify by saying "aye;" opposed "no." The "ayes" have it and it will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-59, has had the same under consideration and recommends that the same be amended; and when so amended, recommends that the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: We are on the motion of Chairman Unruh that Committee Proposal 1-59 be placed on the sixth order. All in favor signify by saying "aye;" opposed "no." The "ayes" have it. It will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal 1-63, has had the same under consideration and recommends that the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: We are on the motion of Chairman Unruh that Committee Proposal 1-63 be placed on the sixth order.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it. It will be on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal 1-73, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: We are on the motion of Chairman Unruh that Committee Proposal 1-73 be placed on the sixth order.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it. It will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-91, has had the same under consideration and recommends the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: We are on the motion of Chairman Unruh that the Committee Proposal 1-91 be placed on the sixth order.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it and it will be placed on the sixth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting to whom was referred the following Committee Proposals: Committee Proposal No. 1-1, 1-4, 1-19, 1-47, 1-48, 1-49, 1-50, 1-52, 1-54, 1-56, 1-62, 1-64, 1-65, 1-66, 1-67, 1-68, 1-78 and 1-94 — has had the same under consideration and recommends the same not be amended, and be re-referred to the Committee on Style and Drafting.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

VICE PRESIDENT SAUGSTAD: Is there a second to this motion?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Litten.

We are now on the motion of Chairman — or Delegate Unruh, the Chairman of the Committee on Style and Drafting, that the Committee Proposals which were read from the desk be re-referred to the Committee on Style and Drafting. They were not amended; so, therefore, no further action is necessary at this time.

Any discussion?

Hearing none, we are on the motion of Delegate Unruh.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it and the motion prevails.

We'll be on the tenth order, and next we shall have under consideration Committee Proposal 1-104.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-104, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to governmental immunity, be created.

"SECTION 1.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"Suits may be brought against the state and its political subdivisions for negligent injury to a person or his property; and the legislative assembly may provide reasonable limitation on the amount of recovery."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

DELEGATE URDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Urdahl.

DELEGATE URDAHL: Fellow Delegates: This is a new section to the Constitution, part of which has been lifted from the last sentence of Section 22. Section 22 says: ". . . Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct."

Although the doctrine of governmental immunity has been strongly entrenched in the United States for approximately 200 years, it is now being met with considerable disfavor from the judicial branch of government in various states. The courts which have been critical of this doctrine feel that it should not make any difference who injures a person; therefore, some courts state that the person causing the injury, whether a state agency or a private individual, shall be liable for the damage caused.

While the sovereign state must be afforded protection, it is a question if total protection should be called for. A sovereign state needing property or goods held by a sovereign individual or group of individuals must utilize the courts and necessary procedures to acquire such property. Why, then, should the state have the immunity to the extent it has, as revealed by many court decisions?

The state and lesser subdivisions exist for the benefit of the citizens; not only benefits, but for the well-being of the citizens. Why, then, when there is negligence on the part of some officer or of the State and/or municipality, should the State have immunity for remedies sought in the courts by its citizens? It must be

recognized that state or municipal entities should not be wide open for nuisance suits. It would appear where there is harm done by negligence of the state or municipalities, officers, or agents, the citizens should have the same access to the courts for remedies.

The State is given considerable authority and responsibility. Such responsibility, or failure of it, should be backed by liability.

The "Divine Right of Kings" as a sovereign state principle was abandoned years ago. I wonder if immunity of the state is a vestige of the old principle of "Divine Right of Kings," in that the state can do no wrong.

Criticism of the governmental immunity rule has not gone unheeded, as the doctrine has now been revoked in many states either through court decree or through legislative enactment. One of the first court decisions completely abrogating the governmental immunity doctrine was issued by the Florida Supreme Court in 1957. The case was entitled **Hargrove v. Town of Cocoa Beach**. In that case, the Florida Supreme Court recognized that the doctrine was anachronistic, that it violated the fundamental concept that the person injured should have redress, and that traditional justifications for the rule were indefensible.

A number of legislatures have enacted legislation restricting the operation of governmental immunity. Some of the states which have enacted statutes abolishing it, in whole or in part, are Alaska, California, Hawaii, Illinois, Iowa, Minnesota, Nevada, New York, Utah and Washington. Such statutes generally provide for liability, with certain exceptions in some circumstances.

North Carolina and South Dakota have taken another route, wherein North Carolina has chosen not to eliminate its immunity, but has, instead, created a commission to hear cases involving claims against the state and to award payments therefor from the state treasury.

South Dakota created a board for the purpose of hearing claims against the state, but the board is advisory only and reports its findings to the legislature.

It should be noted, too, that North Dakota also has been chipping away at the foundation of governmental immunity.

In the 1967 session, Senate Bill 256 was introduced, which would have abrogated the doctrine of governmental immunity; but that bill was indefinitely postponed.

Pursuant to a Senate Concurrent Resolution passed by the 1969 legislative assembly, the Judiciary Committee of the Legislative Council was charged with conducting a study of the feasibility of modifying the doctrine of governmental immunity. The results of that study are found on page 83 of the 1971 Report of the Legislative Council.

The most important result of this study was a questionnaire sent to political entities, which indicated 61 percent of the political subdivisions that answered had liability insurance in one form or another. As a result, Senate Bill 2064 was introduced in the 1971 Legislative Assembly, requiring the State and all its political subdivisions to carry liability insurance. Had this passed, it would have been effective July 1, 1972. However, that bill also was indefinitely postponed.

The Committee feels, with the exception of one member, that it is time to come to grips with this important matter; and I urge you to give this proposal a favorable vote. And I'd like to yield now to Delegate Decker.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President. Fellow Delegates:

Governmental immunity is something like eminent domain. Until you get into it and work on it awhile, it's kind of hard to understand; in fact, a lot of people even get mixed up when they're talking about one thing or the other, even though they aren't related.

Governmental immunity, to explain some of what it does mean, is that — it's a functional, not a proprietary, protection; but in establishing that, the courts in **Mountain v. Fargo**, in 1917, decided that a private — or a public garbage-hauling operation is a proprietary — isn't a proprietary, but it's functional. Well, that means, for instance, that in Devils Lake, where they've had a private garbage hauler, this fellow had his liability insurance to protect him. When the City takes it over now — and they did take it over, because they felt that his bid was too high — probably

we're even running people out of private business because of this governmental immunity deal. But they don't have to take insurance to protect them because of the court decision in **Fargo**, and the people, if the garbage truck causes damage, the city doesn't have to pay, if they don't want to. Negligence must be proved, according to the proposal that we have here, the same as if you were being sued.

Another thing that's been brought up is a plane crash. If we had a plane crash out here at the airport, the City could be sued for everything — all the people on it and everything like that. But the negligence would still have to be proved. The City would have to do something to cause negligence.

It's been proposed in our Committee that the coordinating committee would put this into effect in 1976, and the reason for that was that political subdivisions could straighten out their budgets. We've had many people tell us in our Committee that they wouldn't mind it if they had time to arrange their budgets to purchase insurance to cover it. The insurance rates in California, which is one of the states without immunity, are not excessive. I have some of the costs here from the State of California, for instance. The Department of Education, its officers, agents and employees, acting in their capacity for that, the comprehensive-liability for everything in the State of California is \$4,372. The State of Colorado, acting through the Department of Parks and Renovation, Division of Beaches and Parks, a division of the Small Crafts and Harbors, their officers, agents and employees, their liability insurance is \$2,675.70. The reason I'm giving you some of these figures is that we've had a lot of estimated figures bandied around in our Committee, and they were primarily figures picked out of the air, as far as we could get in the Committee hearings. The Department of Water Resources and all of their operations, comprehensive-liability would be \$25,000. This is for the State of California, where there are a lot of people, too.

Another one, the California State College, their officers and employees, would be \$5,178. The total cost wouldn't be — wouldn't be an increase, either, because many of the subdivisions now carry liability insurance, and the present law now allows the political subdivisions to grant — or to remove immunity up to the amount of insurance that they carry. So that they can waive the immunity for what insurance they carry, if they carry it, and I believe there's over half of the subdivisions now carrying it on many items.

The same legal protection is available for the government, the same as it is for you and I. We've heard some talk about nuisance suits and different things like that. In order to bring the suit, the person would have to do anything the same as they would if they were suing you or I, and nuisance suits would be bad for the government. They're bad for you and I. Probably the best examples of how governmental immunity would work is an example I used in Committee, and my contention is that you and I, operating as a group, operating with, oh, in a township or county, or anything else, shouldn't have any immunity that you as an individual shouldn't have. For instance, if you, as an individual, own a road grader and leave it parked on the road or your employees does, and without lights at night, or something like that, and a man with nine children comes down the road and gets killed, well, he's in just as bad shape if you and I had owned that road grader — his family is going to suffer just as much — than if the contractor who has liability insurance and would be liable owns the road grader, and that's — when you are talking about governmental immunity, that's really what you are talking about; you are talking about either you or I, as an individual, or you and I as a group performing a function, and if we should be liable in one case, we should be liable in the other; and that's really the sum and substance of governmental immunity.

VICE PRESIDENT SAUGSTAD: Delegate Hubrig.

DELEGATE HUBRIG: Yes. I want to speak on the question, too.

In our Committee, Cal Waldron, attorney from Minot, appeared before the Committee. He pleaded that we should write into the Constitution "Governmental immunity shall be forever barred," you might say, and he referred to two drownings in the swimming pool at Minot. He, evidently, defended the parents in the drowning of the children there, and he spent a considerable length of time at our Committee meeting, talking on governmental immunity. He felt that, due to the fact that the Park Board was charging for swimming in the swimming pool, therefore they ought to carry insurance that if something happened, that there would be coverage there for the parents. And I strongly believe, myself, that we

should abolish governmental immunity. Like Decker said about the road grader — there's been other instances that I've been told about around the State since this thing's come up, where many people felt that it should be abolished.

An incident that happened: Just in the **Fargo Forum** — you might have seen on Tuesday here — I'm not going to take a lot of time — a picture of a cab that fell in a sewer in Chicago. I realize we're not in Chicago, but we get sewer places like this in Bismarck and Minot and several of the other cities. But I wonder if this cab company — and, evidently, Checker Cab, the way the cab looks, is going to be able to get a refund from the City of Chicago or from an insurance company for its cab falling into the sewer place. But this is just an example, and I don't believe that the government can — and, actually, who is the government? — it's us — that we should be going by without having some kind of insurance and responsibility if something does happen to the public. I definitely feel that we do need something done in this area, and I would hope that the delegates would support the Committee Proposal.

VICE PRESIDENT SAUGSTAD: The Chair will recognize Delegate Chase.

DELEGATE CHASE: A question for a member of the Committee:

On that last line, I'm having a little trouble understanding that — or the last two lines — excuse me — “and the legislative assembly may provide reasonable limitations on the amount of recovery.”

What do you have in mind?

VICE PRESIDENT SAUGSTAD: Does anyone wish to answer that? Delegate Decker.

DELEGATE DECKER: Mr. President. This was added as a suggestion in Committee by somebody that didn't like the original one, where governmental immunity is hereby abolished. I resisted this a little bit in Committee, but we ended up with it. But what it says, in effect, is that the Legislature can put a limit on the governmental liability — on the removal of the governmental immunity. They can still put limits that you would be able to collect. I think it weakens the bill a lot, but it is there.

VICE PRESIDENT SAUGSTAD: Is there any further discussion? Delegate Fritzell, and then Delegate Miller.

DELEGATE FRITZELL: Mr. President. Fellow Delegates:

As a member of a park board for ten years, I can assure you we've had a lot of things that might have come up under this thing, due to playground equipment, people hurting themselves, slipping on the edge of swimming pools, and so forth.

Now, it isn't that I'm against it, and I would vote for it on the assurance that the definite intent was that there would be a definite limitation on the amount of recovery and that this would not be just a — that it would be a shell, because how are we going to cover ourselves with insurance if we have unlimited amount of insurance? We must have assurance that our insurance will definitely cover an amount — an unlimited amount — a limited amount.

VICE PRESIDENT SAUGSTAD: Delegate Miller, I believe, had asked for the floor.

DELEGATE MILLER: Well, Mr. President, I'm not sure. Maybe my question's already answered in reading this thing. I guess I just wanted assurance that this would only be to the political subdivisions that are the State, and that the officers involved — and I'm thinking like city officials or township officials, or whatever officials — the person — if this would allow a person who is in charge of a department to be held. But I — maybe the Committee would like to speak to this. But I suppose it's self-explanatory.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President. I believe that all your organizations are the same as corporations, and you would have the same effect as a corporation officer, I believe. I'm not an attorney, but I believe it would fit into the same category.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: I'm the one that yelled out. I see a real problem here and, incidentally, yesterday, when I wrote the last amendment, I just sent this around so you'd start thinking about it. I am sure that, in answer to Kyle's — or Delegate Miller's question, that I, as a plaintiff's attorney, am going to shotgun

everybody that had anything to do with whatever supposed negligence caused injury; and if that includes the city commission and the street department plus the city, I'm going to do that when I bring suits, if this thing passes the way it is.

Incidentally, I favor the language that is in old Section 22, and it is the last sentence in there that reads as follows: "Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct."

Now, I believe that the Legislature has not now completely relieved the problems that these people are talking about today. They did, however, allow the municipalities to insure themselves for liability in some cases, and I believe it was at the last Legislature that they considered it again, and if they would have cured — not "cured" — cleared with everyone that would have been involved in that bill, I think that bill would have passed the Legislature and would have provided for more suits against the State. Just the fact that we're going to blanket this thing and throw it open the way it says now, it is extremely dangerous.

Now, let me take that word "reasonable" that somebody was asking about. For instance, the Legislature sets a limitation, say, on wrongful death of, say, a hundred thousand dollars, and the city insured for a hundred thousand dollars, and Mr. Pearce, in his inimitable way, got a \$250,000 judgment against the city. You're going to look to the city for that other 150 thousand bucks, and they would not be covered and he's going to go to the Supreme Court and say, "Now the Legislature said this was reasonable, but here we have a jury of twelve people who determined that they weren't right and the 250 thousand bucks is reasonable; so the city is going to have to dig up the 150 thousand bucks somewhere," and it's going to have to come out of the taxpayers' pockets.

Now, I agree there are many areas, such as swimming pools, where you should have coverage. There should be coverage on those. These people should have a right to get paid for injuries caused by negligence. The drowning ones are an example, because there you have a specific agent of the city who's supposed to be taking care of the children when they're swimming — or adults; and if that person is negligent enough in not rescuing people, well, then maybe there should be a suit against the city.

Now, it goes farther than that, because — and let me give a few more examples of what would be involved. You could have lawsuits for libel, slander and assault by police officers. I don't know — did you notice the other day in, I think it was, the Fargo paper — or maybe the Minneapolis — where a police officer in an attempt to make an arrest on a drug pusher who he had just paid nine hundred dollars to, was attacked by this person and he shot him. He's now being sued for that act — trying to make an arrest. Well, the question is going to be: Was he negligent in using that much force? And, if he was, then the city is going to be liable, because he was in the performance of his duties. It's going to cover your school districts, your park boards, drainage boards. It might give Grant an answer to his problem — whether the drainage board should be responsible because they created a situation where all those farmers down there are now being flooded. It could affect them. I think, also, it could affect judges — district judges — for making a mistake in sentencing, and in that way embarrass him, or slandering a person. If that person would happen to get the case reversed in the Supreme Court, I'm afraid that district judge is going to be responsible. I think there has to be some limitations on this thing, and that's the reason why I favor the language in old Section 22. What I sent around is really no good, because it doesn't completely cover the problem, but it does present another thing, where you have a limitation on the amount — minimum and maximum, and you could set the minimum amount, which they can under the old section. You would avoid all that — a lot of these hundred-dollar claims for broken tires, and things like that, and maybe we would have something accomplished then. I urge you to defeat this proposal.

However, there's one little problem. This Proposal doesn't have a repealer section in it, for some of the rest of you that are interested in resisting this; so there would have to be some kind of amendment made, if this thing were voted down.

DELEGATE URDAHL: Mr. President.

DELEGATE BYRNE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Byrne is next.

DELEGATE BYRNE: Mr. President. Being in my profession of insurance, if I have some personal reason for being here as a delegate, I should be very quiet this afternoon and probably be most interested in quietly seeing that this bill or Proposal passes. It reminds me of a quotation or a statement by one of our delegates on Monday on another bill, in which he mentioned about bringing lawsuits where the impact was not known.

I would like to review with you just a little bit the background on the situation and the cost of this, because it's been referred to as being comparatively minimal. So, if you will at least be prepared to tell your county commissioners and your city officials when you go back home what this involves. I want to point out that there's a reference to the Legislative Council study.

Of course, there are three ways to approach this matter. I might list them. One is take no legislative action and, therefore, keep the present governmental immunity. Then there's legislation which would waive the immunity establishment by the doctrine of governmental immunity and thereby declaring that the state and its political subdivisions would be liable to the same extent as a private individual. This is the approach here. Third, enact legislation which would modify the doctrine of governmental immunity, but only to a limited extent. This, after two years of study, was the decision of the Legislative Council study.

I want to refer to the bill that Delegate Urdahl mentioned that came out of that study — Senate Bill No. 2064. This bill provides for the normal hazards that we are all told about that should be provided for to protect the public. In substance, it requires all political subdivisions — the state and all political subdivisions to carry insurance for the use or operation of any motor vehicle, including the grader and the snowplow, and so forth.

Number two, a dangerous condition of a public building, including the sidewalk of that building.

Three, a dangerous condition during the period of construction or maintenance of a highway, road or street. This is during construction. I want to make that point at the moment.

Now, this bill was introduced. I discovered later it was indefinitely postponed, and I was curious to find out what had occurred. It was merely said that it was indefinitely postponed. I found out the reason — or one of the contributing reasons for it — and I think one of the major reasons for it, which Delegate Thompson has referred to in general. The survey that they referred to was to the counties, cities and school boards, as to what insurance they had. Through an oversight and for some reason or another, the Council did not inquire of the state institutions. It did not inquire of the State Highway Department as to what would be involved, so that they'd get some information as to what the cost of this was going to be. This bill was introduced. It was on its way when the Commissioner of Higher Education found out about the bill. He's not opposed to it, but he did make some inquiries as to what all this hazard would entail, as far as cost were concerned, for all the educational institutions in the State, and discovered the cost was going to run about 150-to-180 thousand dollars a year. He had nothing in the budget for it, and I believe that contributed to the postponement of the bill. The bill is good, and that is the approach, it seems to me, that we should take from the legislative standpoint in properly protecting the people and requiring the theory of governmental immunity, instead of dropping it entirely and discovering the massive consequence by doing so.

It was mentioned a moment ago that it appeared, at least, there was a comparatively small cost on this, and some figures were given in California. I have here the complete policy of the State of Oregon. This does not take in the political subdivisions. This is the State of Oregon and all of its departments. The cost of that coverage is \$556,000 a year. This takes in road hazards — normal road hazards, rather than just under construction. If you open this thing up, that would be included — the normal highway travel. Most of the policies in the county and city and state highway departments, and so forth, cover while they are under construction and maintenance. They do not cover the normal exposure or risk of the travel on those roads.

Fergus Falls, for example, the cost there is approximately ten dollars a mile. I think that is a small city. The cost on this would be hard to estimate because of the mileage involved, but I would say that the cost would run anywhere from \$7.50 up to \$20, depending upon the size of the political subdivision. I point this out to you so

you can have an idea as to the impact. The State highway road system is 6800 miles, the county road system 17,870 miles, and your township roads are 78,000 miles. The problem with eliminating governmental immunity entirely is the difficulty that you have. I know the intent is right on the part of the Committee in solving the problems, which, I feel, too, are, to a great extent, covered by the Senate Bill I have referred to. But when you drop governmental immunity, you, at the same time, accept all unknown and known. Voters, no more than you do, just buy liability insurance itself. What about the areas of airports, state products, state institutions, pollution, ecology libel, slander, assault? You go far beyond them insofar as the liability of the main, normal hazards that we consider which would normally protect the public and the park districts and the swimming pools in the normal course of events of the operation of a political subdivision. I think that, to vote to eliminate governmental immunity entirely, isn't wise. I think the proper method, which the study committee agreed, is to do it through a legislative act, because, otherwise, you'd drop all of it, and there is no way that you can limit the amount of liability. You may limit the liability as you now have — legislate by having a governmental immunity clause attached to the liability policy — and that is the extent of your liability; but the moment you drop the doctrine of governmental immunity, as was pointed out, there's no way that you can set what may be considered a reasonable limitation, because the courts may tell you that it wasn't high enough. I think you ought to have that information and think about it deeply, and I believe sincerely that this is a matter that should be handled as has been proposed, and I believe it would have been successful if all of the political subdivisions had been advised and had had a chance to budget themselves and put themselves in order for it to be handled on a legislative basis, limiting it to normal, regular exposures.

VICE PRESIDENT SAUGSTAD: Delegate — I believe Delegate Pearce has been trying to get the floor for some time. Delegate Pearce.

DELEGATE PEARCE: Thank You, Mr. President. I had been waving at you.

All things come to him who waits, and Delegate Thompson and I are now in agreement on this. It would take too long to reiterate what has been said. It would take many more days than we have at our disposal to dream up the lawsuits that could be brought. You can never underestimate the ingenuity of the litigant and his lawyer. I did last night, knowing this was coming up, look through the Code, wondering how judgments were to be paid.

Now, if you had liability insurance, that's all right up to the limit of the liability, and the common situation is that liability insurance, which is written for a municipality, the insurance company who has the obligation to defend the suit and pay the judgment agrees when it writes that policy to waive the governmental immunity. Otherwise, of course, the insurance would be meaningless.

But let's assume that we have and could have unquestionably many, many cases which are not covered by liability insurance. The cost of the liability insurance may be too much for many districts and divisions. We have some school districts that are on the ragged edge of poverty now.

Well, Section 11-11-45 provides that if you have a judgement against a county, the county levies one mill on the real property for as long as it's necessary to raise the funds; and with a few good, fat judgments that might be forever. For a city or any municipality, Section 40-43-02 provides for a levy for five mills to pay these things. Townships are in rather tough situations. By 58-14-07 they're supposed to levy simply an amount sufficient to pay, and for a township, if that isn't enough, the judgement holder can levy on township property — now whether that's a bridge or a township hall or a road, or whatever they have.

Now, if you have a judgment against the State, you have to go to the Legislature. The Legislature has to pass an appropriation bill to pay you. So, if we had many, many judgments, in order to have redress, we would have a plethora of private bills that would require the Legislature to pay. And, certainly, if they paid one, they would have to pay all. And, certainly, if they thumb their nose at them, we would be right back to governmental immunity. They wouldn't get paid.

I don't want to take the time to dwell on the horrors that could result. I do believe that, when you consider how it has to be passed, there's only one way to handle this, and this is by insurance, and it seems to me that the judgment ought to be left up to the Legislature to decide what insurance they should require and what of the many types the State and its political subdivisions ought to buy to protect the people.

VICE PRESIDENT SAUGSTAD: Delegate Geelan, and then Devine.

DELEGATE GEELAN: Mr. President. One of the things that we have been cautioned about all the time is that we should state principles and then leave everything to the Legislature to implement. And so most of our thinking has been along that line. And so, when we brought out 1-104, though it was originally attached to another bill, we simply stated that suits may be brought for negligent injury. We would then assume that attached to that — that the Legislative Assembly may provide reasonable limitation; that we had stated all that we should state. However, every time we seem to bring up a principle, then it is criticized because we don't go into detail. I'm not going into the philosophy of that, but that was the thinking behind this particular Proposal that we brought up — that we felt it was something important enough that we should state the thinking of the Committee in protecting the rights of the people who suffer from these injuries caused by the State and its political subdivisions.

Then, in answer to Delegate Byrne, if this had passed, I was instructed by the Committee to submit a motion directed to the Committee on Transition and Coordination that this should not go into effect until July 1, 1976. Now, that might answer Judge — or Delegate Byrne's objection that they should have had some time to prepare.

Now, I want to make one other point. I have read with a great deal of interest the history of workmen's compensation and all the prophets of doom who said that you must not have workmen's compensation because of all of the things it would do to the employers. I doubt very much if there's an employer in the State of North Dakota who would want to be without workmen's compensation. I predict — I'm not so sure that it's going to happen in this Constitutional Convention, but some day I predict that either a constitutional amendment or the Legislature itself is going to enact some very reasonable governmental immunity.

VICE PRESIDENT SAUGSTAD: Delegate Devine.

DELEGATE DEVINE: Mr. President and Fellow Delegates:

I am thankful that the Chair recognized Delegate Byrne first, because I think he adequately covered the subject.

I also agree with Delegate Geelan that, in the years to come, we're going to see limitations on governmental immunity. I do not want to see Committee Proposal 1-104 adopted by this Convention.

Two reasons: One, it has a basic defect in that there's no limitation on the kind of action. Now, they provide for negligent injury. Everything is a negligent injury. You're talking about person, property, reputation, or what? So I feel that — this was brought out by Delegate Byrne, so I'm not going to belabor this. I think that this is a matter for the Legislature, and allow them to put some reasonable limitations on the kinds of action.

Number two is a point I wanted to make, and I think Delegate Pearce made this, as well as Delegate Byrne — is that this is a matter for the Legislature. There's a lot more to it than appears at first blush. This Convention showed, I think, good judgment an hour or so ago, when they realized that they were off into a field that should be left for the Legislature — or the legislators, and I hope that they show the same good judgment on this Committee Proposal.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. All this Proposal does is say that the State stands in no better position than you or I.

Now, some of you have said that negligence injuries do create all kinds of problems. I will assure you, for every act I do, I'm responsible, and all we're saying with this Proposal is the State should have no better position and if someone is injured by virtue of the negligent conduct of the State, they should face the same responsibility to pay for those damages as you or I would have to pay for were we to cause injuries to someone else negligently.

Now, I agree with the delegates that talked. I agree with Delegate Pearce that it could wreck havoc the way our laws are presently set up if a township were to have a hundred-thousand-dollar judgment brought against it or recovered against it and they had to levy against the property. It could break the township. It would break some school districts. I think we could answer this problem by stating the principle

here in this Constitution that the State's in no better position than any of its citizens. Give the Legislature until 1976 to set up either a program where all subdivisions might contribute to a general insurance, so that they'd all share the risk, so that one township or one county or one school district couldn't be wiped out. After all, we're a combined group of people of over 600,000 and I think together, combined, we can face that risk.

Now, what we're saying is we don't want to face it, so we'll let the injured have no remedy. Now that doesn't apply to you or I. I have to insure if I slander someone. I need insurance for that, or I take the risk of my conduct. I don't think it's too much to ask. I think the Legislature can either, through a state insurance, if you can't buy commercially — I prefer commercially — but I think it can be done. All it would do is take time. I think there's some wisdom in doing it now in the Constitution. We can't see in the future, but I think some day the courts are going to say the State should stand in no better position than the individual, and wouldn't that raise havoc if the high court of this State said that and we had nothing in preparation — no planning?

But, by saying in the Constitution that the people accept it, you will have four years in which to set up a program. If you want to make it '78, that's fine with me. But if you give them time, they know it's coming and they can set it up on a sound actuarial basis, just like private insurance carriers set it up, or give it to private insurance carriers who could bid on the whole state. But it would take some time to acquire experience. But they have experience with individuals, and I think we have to be realistic and face the future of it.

VICE PRESIDENT SAUGSTAD: Delegate Hougen.

DELEGATE HOUGEN: Yes. Mr. President and Fellow Delegates:

A few years ago I was involved in an accident. As a result of this accident, the insurance company awarded me, without going to court, a settlement of fifty thousand dollars. Now, this sounds like a tremendous amount of money. I'm sure that I'll never have anything like that given to me again. But, after I paid the attorney fees and all the other damages that were caused to me and my family, I ended up with less money, after receiving this fifty thousand dollars, than what I had before I had the accident.

Now, what does this have to do with governmental immunity? The only thing is that if I would have been injured — in an accident involving a governmental agency, and that the government said that it was not responsible, I could have been ruined, and along with me, my family, too. I think that this provision, No. 1-104, with a built-in period of four years, is what we need. I think our State has for too long said that we are not responsible, and I think that the State or any agency in the State should be fully responsible for any negligent action. I urge that the delegates support 1-104.

DELEGATE URDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Urdahl, we have two others who have not spoken before that have asked for the floor — Delegate Engstrom, for one.

DELEGATE ENGSTROM: Mr. President, may I yield to Delegate Decker, please?

VICE PRESIDENT SAUGSTAD: Yes, you may.

DELEGATE DECKER: Thank you. A couple things that have come up here that I think we should cover. For one thing, I was talking about going back to your municipality and telling them they will have to protect their streets and everything. Well, in a Supreme Court decision — **Hanson v. Barry** — I believe this is in the Fargo area, it permits a municipality to be liable for failure to maintain a street in a reasonably safe condition. And so we have a hodgepodge now of partial immunity and some immunity and some exemptions.

Another thing: Delegate Kelsch mentioned that our courts could get us into trouble. In fact — and we wouldn't have the time to take care of it up to 1976, like we do now. That's what happened in California. California didn't vote to remove the governmental immunity. The courts in 1969 — the California Supreme Court — said, "The rule of governmental immunity is without original basis and has existed only by the force of inertia." And they abolished it right there, and the State has lived since then. They've got along all right. But they had to adapt

to it in a hurry. We're trying to do this in a reasonable fashion, so the State and the subdivisions will have time to take care of it.

VICE PRESIDENT SAUGSTAD: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman — Mr. President. Fellow Delegates:

This Proposal on governmental immunity is actually a compromise proposal coming out of our Committee. We didn't believe, in our Committee, in the old philosophy that is archaic — the Divine Right of Kings. We felt that that's long passed. I, personally, working for a political subdivision, am a government employee at times, and we, in many of our agencies, have some types of insurance for ourselves to cover what happens that may be negligent.

Now, I want to point out, and especially to Mrs. — or Delegate Fritzell — that this is negligence. Negligence has to be proved, and we want to make our government more important. We want to make responsible people of the people in the government. We don't want it a hiding place for the old and decrepit. It isn't now, and we don't want to make it that way. From what we understood in Committee now, is that on some cases of suits brought against the government, they have to do it surreptitiously. They have to go around and sue the individual. You can't sue the government now. So you sue the individual — this driver who left the grader in the road or driving it.

Now, each one of us — you and I and everyone of us — has some type of insurance on our homes for accidents that happen in our home. Why? Why? As Delegate Kelsch and many of the others said, why can't the government? Why do we have to go back into medieval England?

VICE PRESIDENT SAUGSTAD: Delegate Urdahl, I believe, had asked for the floor.

DELEGATE URDAHL: Well, I just want to say this: If I'd been aware of all the ramifications and all the dangers that have been pointed out, I doubt if I'd have dared ever to be in business and carry liability insurance. Because I think that every move that is ever made would have been one that would have threatened a lawsuit. Well, I can say that I was in business about twenty years and never was sued, and I think we're just building up a lot of things when we begin to imagine all the things that can happen, because, after all, this is due to negligence — that we shouldn't have a built-in protection here for the collective group of us that we are not willing to give to the individual citizen, and I wonder sometimes, you know, if it isn't in direct violation of some of the things we do say in the Constitution. When I look at the last part of Section 20, for instance. Well, the whole thing says, "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."

And then another area — a thing that bothers me a little bit, and I think it's in Section 11: "All laws of a general nature shall have a uniform operation." And I don't know why we should collectively not want to do and carry our responsibility as a government, and I certainly hope that we can, for once and for all, do away with the idea that the State is supreme in all things it does.

VICE PRESIDENT SAUGSTAD: Delegate Burbidge, I believe, had asked for the floor.

DELEGATE BURBIDGE: Mr. Chairman and Fellow Delegates:

The question before us is basically simple. Is government a responsible party?

VICE PRESIDENT SAUGSTAD: The question —

DELEGATE DEVINE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Devine.

DELEGATE DEVINE: Excuse me. I have an amendment at the desk. It's not typed yet, but I can possibly read it to the group while it's being typed.

VICE PRESIDENT SAUGSTAD: Yes, you may.

DELEGATE DEVINE: On the Committee Proposal, on line 8, delete the word "and" and insert in lieu thereof the word "but".

On line 8, after the word "provide", insert the word "for".

On line 8, put in "s" period — "limitations" — and insert the word "limitations" instead of the word "limitation". Then put a period and delete line 9.

If I have a second, I'll explain the motion.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE ENGSTROM: Second.

VICE PRESIDENT SAUGSTAD: Delegate Engstrom seconds the motion.

DELEGATE DEVINE: Mr. President. The purpose of amendment is not — is to allow the Legislature to provide certain limitations, and I am concerned more about the kinds of actions that may be brought, rather than the recovery. The recovery I'm not so concerned about, because you can take the same argument and you can say, "Why should you be able to recover less from the city than you can from an individual?" So I am not concerned about the amount of recovery. What I'm working for is reasonable limitations in this kind of action. Now, in the action that was referred to by Delegate Thompson in the paper, where the City of Minneapolis and the County of Hennepin were sued for \$150,000, it was charged — I'm reading the last paragraph — "that the deputy shot her son either intentionally or negligently and that the city and county were negligent in their selecting, training and supervising their narcotics officers." So, what I'm looking for is some reasonable type of limitations on the type of action that can be brought.

VICE PRESIDENT SAUGSTAD: If you will wait just a moment, the desk force will have the amendment typed.

DELEGATE SINNER: Mr. President, while we're waiting, would Delegate — excuse me, Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Would Delegate Devine read the new language as it would read with the amendment in it, please?

DELEGATE DEVINE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Devine.

DELEGATE DEVINE: The first two lines would read the same. Line 8 would read, "but the legislative assembly may provide for reasonable limitations."

VICE PRESIDENT SAUGSTAD: The Chief Clerk will now read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-104:

On line 8, delete the word "and" and insert in lieu thereof the word "but".

In line 8, after the word "provide", insert the word "for".

In line 8, delete the word "limitation" and insert in lieu thereof the word "limitations".

In line 9, delete the words "on the amount of recovery".

And renumber the lines.

VICE PRESIDENT SAUGSTAD: Is there any further discussion? Delegate Daniels.

DELEGATE DANIELS: Mr. President, I oppose this amendment. It would just go back to what the old Constitution says — "in such manner, in such courts, and in such cases."

VICE PRESIDENT SAUGSTAD: Delegate Kelsch, I believe, asked for the floor.

DELEGATE KELSCH: Mr. President. I think the amendment — I have no objection to the amendment. I think it gives the Legislature some leeway. We don't know exactly what the courts are going to do. They may say that a limitation on the type of action is not right, or they may say that the limitation as to the amount of damages is not right; but it does give the Legislature some choice, and I think it — I have no objection to the amendment.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Thompson.

DELEGATE THOMPSON: It goes much farther than the old language. I think it does provide that suits can be brought and it will force the Legislature to provide the limitations, if they're going to provide any, and it might be what we're trying to accomplish.

DELEGATE SCHMIT: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Schmit.

DELEGATE SCHMIT: I'd like to address a question to Delegate Kelsch.

Would it be wise, in the second-to-the-last line, after the word "assembly," to strike "may" and put in "shall"?

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I prefer to say that "may". I think that their inclination will be to set the limitation. If they feel, on the other hand, that they can work out a plan that will cover all districts in the State without the need for limitations, we should leave that open to them. If we put the word "shall" in, then they'd be required to put in those limitations.

VICE PRESIDENT SAUGSTAD: Any further discussion? Then hearing none, we are on the motion of Delegate Devine that Delegate Proposal — or Committee — I beg your pardon — Committee Proposal 1-104 should be amended.

DELEGATE BURBIDGE: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Burbidge.

DELEGATE BURBIDGE: It would seem here then that if the Legislative Assembly did not act, that there would be no limitation; therefore, this amendment would require them to act. If I am wrong, I would hope that someone would correct me.

VICE PRESIDENT SAUGSTAD: Does anyone care to answer Delegate Burbidge's question? Delegate Kelsch.

DELEGATE KELSCH: Mr. President. As I interpret it, they wouldn't have to act. If they wanted to have no immunity whatsoever, they wouldn't act. If they decided that it was too dangerous and wanted it, with some limitations, they could put them on; and whether they would stand the test of a court case on limitations that would be reasonable — if the court said that would be reasonable, why they'd stand.

VICE PRESIDENT SAUGSTAD: We are now on the motion of Delegate Devine. If you favor the amendment, vote "aye;" if you do not, vote "nay."

All in favor signify by saying "aye;" opposed "no."

The "ayes" have it and the motion — and the amendment has been adopted.

DELEGATE DECKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President, I'll move that 1-104 be deemed properly re-engrossed and put on the calendar.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE DEVINE: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Devine.

It's been moved by Delegate Decker that Committee Proposal 1-104 be deemed properly re-engrossed and that it be placed on the calendar as amended. All in favor signify by saying "aye;" opposed "no." The "ayes" have it. It is now — now Committee Proposal 1-104 is on the calendar before this body. What is your wish?

The question has been called. If you vote "aye" — we're on the main proposal now. If you vote "aye," you favor passage of 1-104. If you vote "nay," you're against it.

The board will be opened. You will record your vote. Saugstad votes "aye."

Has everyone voted? Does anyone wish to change his vote? If not, the board will be closed and the Clerk will take the record.

The record discloses 74 "ayes," 17 "nays," seven absent and not voting. Therefore, Committee Proposal 1-104 has been adopted.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: May I inquire as to the state of the calendar right now? I'm sorry I missed part of the session.

If there is any question, I would like to move that Committee Proposal 1-87 be placed at the foot of — or at the head of the calendar.

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: All right. It is the motion of Delegate Haugen that Committee Proposal 1-87 be placed at the head of the calendar. You have heard the motion. All in favor —

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: Mr. President, I would simply urge a "no" vote, if possible. We have been on the Bill of Rights. We have one more to go, and then the other two are in the Finance and Taxation Committee. Then we can go home.

VICE PRESIDENT SAUGSTAD: Delegate Haugen's motion has been taken and accepted, so we are now on the motion of Delegate Haugen that Committee Proposal 1-87 be placed at the head of the calendar.

Delegate Haugen.

DELEGATE HAUGEN: Well, Mr. President, I was informed that the members were very anxious to have this considered at this time. If I am in error — but I believe that is true —

VICE PRESIDENT SAUGSTAD: Delegate Litten.

DELEGATE LITTEN: Mr. President, Delegate Haugen is absolutely right. We deferred to him, and we also had Delegate Solberg on the griddle at the same time, and I believe we had an understanding that we felt Solberg — that Delegate Solberg would wait until Delegate Haugen came back, and I believe we should pass this motion.

VICE PRESIDENT SAUGSTAD: All right. Then we're on the motion of Delegate Haugen that Committee Proposal 1-87 be placed on the top of the calendar.

All in favor say "aye;" opposed "no."

The Chair rules the "ayes" have it and Delegate — or Committee Proposal 1-87 will now be at the head of the calendar and is next under consideration.

CHIEF CLERK GILBREATH: Committee Proposal 1-87, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that article 56 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to revenue from gasoline and motor vehicle registration and license taxes.

"SECTION 1. REPEAL.) Article 56 of the amendments to the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"DEDICATED HIGHWAY USERS FUND. Revenue from excise and license taxation on gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways; and vehicle registration and license taxes imposed for the use of public highways shall be used solely for payment of obligations incurred for construction, reconstruction, repair, operation and maintenance of public highways after the deduction of funds for enforcement of highway safety, drivers education, tourist promotion and for administrative and collection costs as authorized by the legislative assembly."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

DELEGATE HOGHAUG: Mr. President.

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: The Chair will recognize Delegate Trenbeath and then Delegate Hoghaug.

DELEGATE TRENBEATH: Well, Mr. President, I think all the delegates can remember all the battle we had the other day. At least I hope those sixty-some members who voted for it will remember it.

This bill, as you know, it simply requires those who receive the benefits of government service to pay for it, and when those beneficiaries of the certain public service are a distinct group and when they pay a particular tax or a set of taxes, these taxes should be tied to the special use, and this benefit principle appeals on the grounds of fairness and appeals on the grounds of equity. Those who receive the

special benefits should bear the cost, but they should not be required to pay for other services through that special tax. It is a pay-as-you-go tax and pay-as-you-use tax, and I'll defer to Delegate Hoghaug. I believe he has an amendment.

VICE PRESIDENT SAUGSTAD: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, I have an amendment at the desk, and could I have it read at this time?

VICE PRESIDENT SAUGSTAD: It will be done. Would the Clerk read the proposed amendment?

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-87:

In line 13 of the engrossed proposal, delete the word — delete “; and”.

Delete all of line 14.

In line 15, delete “public highways”.

And renumber the lines accordingly.

VICE PRESIDENT SAUGSTAD: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Fellow Delegates:

You know about the time this first Constitution —

VICE PRESIDENT SAUGSTAD: Delegate Hoghaug, I believe that the first — did you wish to move us —

DELEGATE HOGHAUG: Correction. Mr. President, I move that we adopt the amendment.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE RUNDLE: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Rundle.

We're now — now, Delegate Hoghaug, do you wish to speak on it?

DELEGATE HOGHAUG: Thank you, Mr. President.

About the time the first Constitution was written back in 1889, in this small community there was a banker who also served as a judge. A farmer was in visiting with this banker-judge and he wanted to borrow \$25, and the banker hemmed and hawed and stood, and he just used up a lot of time. Finally, the farmer says, “John,” he said, I've seen you in court sentence a man to hang in less time than you can make up your mind about this loan.” The banker-judge replied, “Yes, but now, you see, we're talking about hard cash money.” And, members of this Assembly, we now are talking about money. It's a lot of money. From the figures from last week, or whenever this was first presented, we're talking about 15-to-17 million dollars each biennium. I do not have the eloquence of Delegate Solberg to present my story, and I do not claim to be an expert, but I have some experience in city and state government in the handling of money.

Early yesterday morning, I had distributed some sheets giving — listing some of the salient facts about my proposal. I hope that this didn't get mixed up with the flood of amendments that were attached to 1-89. Mine was 1-87. It had my name on it, and if you have it, I wish, while the discussion is going on, you'd glance at it. If this amendment should prevail, we would, in effect, take about 40 percent of the total dedicated funds and put them in the General Fund. We have a good Highway Department — a good highway system. There's no doubt about it. The dedication of funds was reported, but you must give the economy part of the credit for our good roads. The Good Lord gave us rain, good crops, a lot of money was available for new cars and trucks and travel. This fund has increased each year.

During the discussion last week, it was brought out to our attention that most of the states do not have dedicated funds. I'm practical enough to know that there's strong support for the dedication of highway funds, but I urge you to consider this compromise approach. Once a department has funds, it is very difficult to get any of the money for different uses. While I served in the House, a bill was presented to give a little higher share of the fund to the cities. The bill passed the House, but the Highway Department then used its muscle. The bill was defeated in the Senate. And this only required a majority vote. Most of us remember 1961 — a very dry year with a very poor crop. There may be years like that in the unknown future. There may be even two 1961's in a row. At times like that, the real estate tax money

comes in very slow. But the license fees must be paid. This means, then, one department of the government will have about the same amount of money to operate and the others that are dependent upon real estate taxes will have less and will be hard pressed to operate properly. I feel that at times like this it would be good for the Legislature to be in a position to divide the dedicated funds according to needs. This compromise is not taking money away from any department; it would only put 40 percent of the present funds in the General Fund, where the Legislature could go over the need of all departments and divide these funds to the best of their ability. I trust in the Legislature, and I hope you do, too.

Just to reemphasize one of the points that's on the sheet that I passed out: The license fees were established years ago as a personal property tax. They were established in lieu of personal property taxes. In that thousands of farm trucks and city delivery trucks are used almost exclusively on farm-to-market roads and city streets, many counties have levied a special real estate tax of up to ten mills, and the new streets are paid for by a special tax upon the property owners to pay for those new streets.

Ladies and gentlemen of the Assembly, this action takes courage to contest the old established way. This Assembly has shown courage in adopting other proposals. Accept this compromise proposal by voting in favor of this amendment.

Thank you.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President. In connection with the material — explanatory material circulated by Delegate Hoghaug to support this amendment, I should like to repeat and emphasize once again what was said here the other day when we debated this matter on the first round.

The ten-mill levy that is referred to in, I guess, about the third paragraph of the explanatory material, is for the purpose of matching federal funds, and unless the whole subdivision chooses to divert some of the highway users funds, which come from the — come out of this special dedication, it has nothing whatsoever to do with it. The inference is given here somewhere farther down, along about the second-to-the-last, that the constitutional provision about the dedication of these funds has something to do with the distribution of the money. This is not the case. This is set by the Legislature, and subject to review at every session of the Legislature, and I would be surprised if there had been any session of the Legislature where there has not been at least some attempt to make a change, and in many of them some change is made. So that this action today would have nothing whatsoever to do with distribution of the funds between the counties and the cities the way they are now. And so far as the use of the money for road purposes, there would be no reason why the Legislature couldn't expand that, if it could be connected directly to the construction and maintenance, and so on, according to the language of the Constitution.

And then there is another point that I think seems to be quite cloudy here. If you take forty percent of this dedicated fund out and put it into the General Fund, then, in addition to the same competition that there is now — primarily, I suppose, between cities and counties — there would be additional competition from all of the other interested parties who come to the Legislature for funds of one kind or another, and I cannot for the life of me see how this would in any way improve the situation of the cities. I'm sure it would make it harder for the counties, particularly those who rely heavily on this fund — and all of it — not just sixty percent of it — and I hope that this amendment is defeated.

VICE PRESIDENT SAUGSTAD: Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. Speaker, I find myself in full agreement with Delegate Baker this time, and I urge the defeat of this amendment.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Burke.

DELEGATE BURKE: Mr. President and Fellow Delegates:

It's a peculiar thing to me. When I came — first came to the Convention, I studied some of the work of experts on the Constitution and I read Lloyd Omdahl's articles and I read all the articles in the **Dakota Law Review**, and it there said there's one rule of constitutional law that you should follow: Do not dedicate any

funds to a special purpose; and if we were to take a poll of all the 98 delegates here, I'm sure you would agree that this is a good principle of constitution-making. And why suddenly reverse our principles of constitution-making and say that this must be a state dedicated fund, is beyond me.

Now, one of the fallacies of the funds advocates is that this user's tax is a sacred tax that must be dedicated to this purpose only, and this is a fallacy which I would like to explode, because this users' tax is used in the nondedicated-fund states; it isn't a sacred tax there. Another reason — I look forward to the day, because of the great proliferation of automobiles on our highways, that there will have to be some kind of limitation to cut down on pollution and to cut down on the crowded conditions. Puerto Rico at the present time has such a policy. They have a huge licensing arrangement by which automobiles purposely are restricted. It seems to me that it would be a very shortsighted position of this Convention to go into the next 82 years with a new Constitution with 16 percent of the total revenue of this state tied up to a special purpose. The danger of misallocation of funds in such a dedication is already apparent in the State of North Dakota, and I strongly urge you support the amendment.

VICE PRESIDENT SAUGSTAD: Delegate Knudson.

DELEGATE KNUDSON: Mr. President: I'd like to back up the remarks of Delegate Burke.

In addition, I'd like to ask: What taxes are not user taxes? The only one I can think of is the income tax. The taxes we pay on our property are simply for the privilege of owning the property for that year, are they not? The last time that matter was debated, Delegate Haugen listed a number of other user taxes which our State collects which are not dedicated. I think Delegate Burke has spoken very eloquently for those of us who do not support the idea of dedicated taxes. I hope this evening we're not going to be subjected to a lot of long-winded repetitions of the speeches which we heard several days ago.

DELEGATE SOLBERG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Solberg.

DELEGATE SOLBERG: Mr. President: I can assure Delegate Knudson that I never repeat a speech, unless I go to some community that's never heard it before.
(Laughter)

And, also, I must admit that a hangover is the burden of too much proof. And so we had a great deal, and I'm not going to belabor the point, because I spoke on it the other day, and I have no axe to grind in this area. I merely believe that I have had the privilege in my life-time of studying economics in its truest sense, and that when we talk about user taxes, can you show me — I mentioned the other day that a cigarette is a user tax. Yes. But where does it go to work in the economy? It must be used for something — in the payment of — in the creation of revenue and in the payment of some kind of a social program. Many of these others — and they may be important to the social order — but where can you find a tax that is levied against a specific segment of the economy and then used for the development of the economy? I again raise the question: Are we willing to give up the ability that we now possess to move foreign products to any market that we may desire from farm-to-market? Are we willing to develop so that the school buses and the mail carrier routes and all of these can be fully developed? Then I also raise the question with Delegate Hoghaug, so I can be very brief here. I wonder if he knew that in 1970, that Devils Lake alone as a city received \$61,648.66.

Now, one-half of the registration fee that is collected for the registration of motor vehicles in North Dakota — one-half of that amount automatically goes back to the county, and then the county division to the city. So that, you see, you're going to lose one-half of the \$61,648 that you now get — or more in years to come.

And so I don't want to go into this again, because I sit here and I wonder what do we gain? And I have no axe to grind. I merely believe in the truisms of economics, and that is that, if we have too much money in the highway fund, and if we have too much revenue that's going into highways, then let's reduce that tax and tax the vehicle or tax the user in some other way so that it can go into the General Fund.

But, you see, a user tax — a highway-user tax is designated against and is levied against the user, and the user then, by paying this revenue into this fund, is help-

ing to develop the economy. And, as I said the other day, 25 cents out of every retail dollar in North Dakota is related to highway economics in some way or another, and this is very important, because it relates it not only to the basic economy, but to all of the subsidiary areas of the economy; and, to me, this is very important. So it isn't a matter of arguing, Mr. President, with dedicated funds or no dedicated funds; but when you put it into the General Fund, if that's going to be the purpose and the intent in the future, then I would say, "Go ahead and develop some kind of a tax that will not be just against the user."

President Nixon, through the invitation of the Governor of North Dakota, has set up a trial experiment for the purpose of getting some first-hand information of the economic impact of farm-to-market roads, and they have chosen this area of right in here, and many of you read about it the other day. I've been in on that somewhat, because I'm interested in the economics that evolves around this type of industry and, as a result, we are going to start developing and promoting special development of these highways that lead into central places on these particular highways, with Bismarck as the center of it. It could have been any other city, but the designation was made by the Governor, and each governor in each state had this particular designation. So we must match this.

Another thing that's going to happen to us is that we spend about 21 million dollars — between 18 and 21 million dollars that go to the Federal Trust fund in Washington, and we must match our own money with our own money to get our own money back, and that seems to me to be a very expensive method of putting money into a general fund — that you can't match that way. So that in these cities — now, the Transportation Committee, during the interim between the legislative session, is studying this same thing. Remember that in North Dakota today the Department of Transportation in Washington makes it mandatory on the Highway Department to classify all highways, and classification then, when complete, will determine the areas into which they shall be moving and where they shall be built and what cities and towns they shall serve. So that thinking on this from the standpoint of economics, then let the Legislature broaden this base, because if the cities are getting too little of this money, let them go to the Legislature and get more of this. In 1969, Public Law 580 was passed for the purpose of allocation of these funds to counties and cities. It was increased. This interim study in transportation is studying this thing now and it is possible that, when they get through, they're going to recommend to the Legislature that we're going to have a per capita allocation of funds, and so on. So I'm not so concerned about the highway funds being dedicated or not. That isn't my champion. It's the economics involved.

Am I supposed to quit?

VICE PRESIDENT SAUGSTAD: You're somewhat overtime.

DELEGATE SOLBERG: Well, I didn't know anybody had ever been limited here before.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: That's the first eight-minute second I've ever heard!
(Laughter)

Well, Mr. President, since I voted to repeal the one-mill levy and legalize lotteries, and yesterday I talked against the single-member district, I thought I might as well continue my record in this Convention in the waning minutes.

It is true that political scientists as a rule condemn dedicated funds, and it was one of my objectives when I was elected to this Convention, and right until I arrived here for the Plenary Session, to undedicate the State Highway Fund. So, as a political scientist I should really be in favor of undedicating this fund. As one in the field of education, who would most likely benefit from the undedication of highway funds, I probably should be in favor of undedicating the fund. Coming from a railroad family, I suppose I should be for undedicating the fund which has made possible what I often had considered unfair competition to the railroad industry. But when I came here and talked to a number of delegates, they impressed on me a number of arguments.

In the first place, having been around the Legislative Assembly in the waning days and waning hours of a legislative assembly, I know that it would be possible to get the two-thirds vote to solve a very difficult financial problem, and we all

know that at the end of each and every legislative session there is always a very serious financial problem. So we look over at the hundred million dollars in the Highway Fund and they say, "Let's take off two or three million." Well, now that might sound pretty innocent, except which two or three million is it? Well, the federal bargain basement says, "We'll give you 90 percent if you put up 10 percent for interstate, and then we'll give a good match on the primary system and we'll give you less of a match on the secondary system." And so it tends to be the highways that would be built with the lower federal match that are sacrificed with that two or three million, and of course these roads are feeder roads out in the rural parts of the country. So I think that it would be adverse to the interests of the rural areas.

Another thing we should keep in mind is that, with the diversion of this highway money to the cities and counties, we are, in fact, relieving the property taxes in those areas, and I would estimate that at the present time the diversion must constitute somewhere between eight and ten millions on property taxes, and this amount of diversion can be managed by the Legislature, since it has complete control over the allocation formula. I like the inclusion in the Committee bill of such things as highway safety, driver's education, tourist promotion. I think these could very easily come out of the dedicated fund.

I was trying to help develop some language that would get at some environmental management or some environmental protection problems that are caused by highway transportation, but I couldn't design any simple language, and we've had enough trouble with complicated language, so I just let it go.

The question before us, I believe, is do we want to dedicate such a substantial source of revenue over a period of fifty or sixty or seventy years? I think, with the flexibility that is available to the Legislature in diverting this money, that it is very easy to shift this money to the local areas, and I foresee for the next fifty or sixty or seventy years that we're going to continue to have a problem with the property tax burden and, if it is possible to divert money from the state level to the local levels and we leave the property tax burden for highways and street maintenance, that the relief then can be furnished in the field of education and other local uses. So I don't really have a great concern over the fact that we're tying up this money for a long period of time, because we're going to have to have the property tax problems for a long time and we're going to have local governmental problems for a very long time; and so, therefore, I urge the defeat of the amendment that's before us and the support of 1-87 as originally drawn.

DELEGATE AAS: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

I thought that, Delegate Omdahl, you gave a real good support — speech in support of the amendment, and I appreciate the words you have said. I think that you have heard a lot here today in the statement and the previous time we debated this that we should continue this dedicated fund, and then, if we do get too much money in this fund, we can reduce the tax. I submit to you that it's going to be much easier to increase the expenditures, and this is what is going to happen, rather than reducing the tax. Even the most vigorous supporters of the dedicated fund do believe and will concede that sometime down the road, perhaps in the half-light of a new Constitution we're forming, that we won't need as many funds in the dedicated area as we are now giving them, and certainly one way to collect money from tourists, from people who travel through our State, is through our gasoline taxes. And why should these be dedicated and all our other funds should not? I see no reason for limiting this and I do not expect any tax reduction when we come to the time that we are reaching our ultimate in roads. We will just continue to spend the money.

VICE PRESIDENT SAUGSTAD: Delegate Hoghaug.

DELEGATE HOGHAUG: May I speak again, Mr. President?

VICE PRESIDENT SAUGSTAD: Yes, you may.

DELEGATE HOGHAUG: Just one short comment. You will have different departments of the government that are competing for these funds. I'm glad that was brought up. I think that's good. Competition is what makes this country of ours good, and if these fifteen or seventeen million are in the General Fund, the Highway

Department, if they get through that — they have the highest and best priority for these funds — they're going to advance our economy. I'm sure the Legislature will give it to them. If not, then the League of Cities will be here to present their case and the county commissioners will present their case and there will be many others. I think the idea of competition is excellent. I'm glad it was brought up.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

I support the amendment. Delegate Hoghaug just said that the competition is fierce. Well, I want to tell you people that the competition and the power of the Highway Department in the Legislature is very, very great. I don't think that they will suffer much. And the fact that — the statement was made that Devils Lake would probably lose half of sixty thousand dollars, or some such amount. It isn't correct, necessarily. I think the Legislature would reallocate this share of the money right back to the cities and counties and build some of these secondary roads that they need so badly. The more money the Department has been getting lately, the more they spend on interstate, and we're fairly well-fixed with interstate now. I drove 106 miles in exactly the — I wouldn't want to fib, but it was about an hour and thirty-five minutes the other night, and I was the rest of the night trying to get 20 miles. I didn't make it. So the interstate is in pretty good shape. The Highway Department has a beautiful building that cost probably three million, built out of user — gasoline users' money. I think that the amendment is a good one.

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Just one last jab, delegates.

I submit to you that, if you take this 40 percent away from the counties and the cities, you're going to destroy completely the planning of roads that needs to be done by these counties and these cities. These roads and these streets are not built overnight or planned overnight; they're planned for five, ten years ahead, and you take away the earmarking of these funds and you destroy that plan. So I submit to you that you are going to hurt the counties and cities if you go for this amendment.

VICE PRESIDENT SAUGSTAD: We're now on the motion of Delegate Hoghaug, which, in effect, would eliminate the motor — the vehicle registration and license taxes imposed for the use of public highways — to remove that from the public fund — dedicated funds. If you vote "aye" you are voting for the amendment; if you vote "no," you are voting against the amendment.

DELEGATE HOGHAUG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, may I ask for a recorded vote?

VICE PRESIDENT SAUGSTAD: Yes. That's sufficient. There will be a recorded vote.

If you vote "aye," you are voting for the amendment; if you vote "no," you're against it.

The board will be opened and you may record your vote. Saugstad votes "no."

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed. The Clerk will take the record.

The record discloses the vote on the amendment to Committee Proposal 1-87 shows 24 "ayes," 66 "nays," eight absent and not voting. Therefore, the motion lost.

Now, the Chair will recognize Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I think we've well-established that we're going to have dedicated highway funds, and the only point I would like to make to the delegates is the purposes for which the funds are dedicated are a little too narrow — talking about construction, reconstruction, operation and repair and maintenance of highways.

Now, I have an amendment at the desk that would add the words "and transportation of persons and property on" highways. I would move that amendment, and the Clerk has it.

VICE PRESIDENT SAUGSTAD: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-87:

On line 16, following the word "operation", insert a comma and delete the word "and."

On line 17, following the word "maintenance", insert the words "and transportation of persons and property on" and delete the first word "of".

And renumber the lines accordingly.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE FRITZELL: Second.

VICE PRESIDENT SAUGSTAD: Delegate Fritzell. All right. Now, Delegate Kelsch.

DELEGATE KELSCH: Mr. President. With the amendment in the book, it would now provide that this money may be used "solely for payment of obligations incurred for construction, reconstruction, repair, operation and maintenance and the transportation of persons and property on public highways." Now note that what we'd be doing by this amendment would be expanding the use of the dedicated funds in not only the building of roads and the incidentals connected therewith, but also the transportation of persons and property on those highways. It's limiting it to transportation on the highways — not transportation by air or transportation by rail — and I think, if we're going to lock in dedicated funds, then we should have a broad enough concept for the future to meet future needs. I don't anticipate any right now, but we must remember that, as we lose rail passenger service, that many people don't drive or aren't able to drive cars or don't drive cars — the aged — and in cities we may need — we may have to consider some day in the future buses. We may decide that it is much cheaper to transport people on a subsidized or city-owned bus system, rather than build main or large and substantial thoroughfares through the cities to get people around. We're leaving the question up to the Legislature. I don't think the delegates should fear the use of these funds for other purposes such as transportation of persons and property on the highways, because there may be a broader concept; it might include rapid transit some day or subsidizing buses, or matters of that sort.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Chase.

DELEGATE CHASE: I'm not sure I understand this amendment; but, as I see what you're talking about here, Delegate Kelsch, is transportation of property. Well, now, to me, immediately I think of subsidizing truck lines, and here you're getting into a thing where you could be talking about various methods of transporting goods, and so forth. And so I — I think the amendment the way it reads would be subject to the opening up of a whole kettle of almost anything.

DELEGATE TRENBEATH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President and Delegates:

I was going to mention the same thing Delegate Chase did, but I think probably the meritorious part of this is what Delegate Kelsch is talking about, or what he feels is meritorious, is that the cities are in trouble as far as finding how they're going to run their bus systems, and there's a meritorious argument. The cities are in trouble. But I state to you again that I think the proper way is to come to the Legislature and plead your case and get a greater portion for the cities from the legislators. I don't think that — you know, in reality, North Dakota is still pretty much agricultural, and I think, if you analyze the license fees and the gas tax used, that you'd find a greater proportion used by agriculture, and I don't know as agriculture is too willing to be subsidizing bus transportation in the cities at this point, so I just bring that up for your attention.

DELEGATE SANSTEAD: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, will Delegate Kelsch yield to a question?

VICE PRESIDENT SAUGSTAD: Delegate Kelsch, do you yield?

DELEGATE KELSCH: Yes.

DELEGATE SANSTEAD: Mr. President. Delegate Kelsch, could this be con-

strued — in my view, it certainly could — to include the transportation of students to school districts?

DELEGATE KELSCH: I would say it's broad enough so that if the Legislature wants to go that way, they certainly could. They could build roads and haul the children in buses.

If I may expand a little bit. The way we are operating now, we can't find space for the cars. We're building parking lots and tearing down buildings, and at some point in the future we may decide this is the wrong direction and we may decide — and I don't expect they will do this immediately. I don't see any immediate demand or need, but we may decide in cities that, rather than redo cities and put in substantial funds, it may be better to put in parking lots at the edge of town and haul people in and out or between towns like Mandan and Bismarck, instead of building additional parking lots up nearer and handling these cars that they can't seem to handle. Maybe it would be smart to have a bus run around the city and people would come to work in buses, rather than put the money in parking lots.

DELEGATE STANTON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Stanton.

DELEGATE STANTON: Mr. President, I'd like to yield my time to Delegate Solberg.

VICE PRESIDENT SAUGSTAD: Delegate Solberg.

DELEGATE SOLBERG: May I first enter my apology to the delegates for speaking longer than I should have?

VICE PRESIDENT SAUGSTAD: Delegate Solberg, we're on a new question now, so it was not necessary.

DELEGATE SOLBERG: May I apologize, first, because I didn't mean it.

VICE PRESIDENT SAUGSTAD: That's all right.

DELEGATE SOLBERG: May I just very briefly now, Mr. President, state this?

That the Attorney General has ruled that on these dedicated funds, that under the interpretation of "administration," that that has included the Highway Patrol, the Tourist Promotion Division, the Safety and Licensing Division, and many of these other divisions have been included by the appropriations that they make from the dedicated fund.

Now, the Legislature then has the power to expand the base, Delegate Kelsch, so that it can include these buses, and I have no argument about that, because I think that anything pertaining to highways and the use of highways, this it should pay for; but I doubt very much if we should put it into the Constitution, for the simple reason that if I own the bus lines that ran from Williston to Bismarck, it seems to me that this would subsidize me, instead of it being and remaining free enterprise. The bus line between Bismarck and Mandan then would be subsidized. Now, if this is proper, I think the Legislature should give it some detailed analysis and some good study. I think one of the great joys that I had was riding a North Dakota-assembled Greyhound Bus from Chicago to Milwaukee on a special speedway or freeway that just moved in certain hours on highways that were built special for it out of special highway funds. Well, this, I agree with, Delegate Kelsch. I think it's right. But I don't think it should be in the Constitution, because we might put it into a position where we would be subsidizing Greyhound, we'd be subsidizing Interstate, the bus line from Williston, and so on. And if we're going to do it with school buses, I have no argument, or with Mandan-to-Bismarck or in Mandan and in Bismarck, in Fargo, and so on. But remember that when we established home rule, the City of Fargo was considering their own vehicle tax for the purpose of paying for buses in the City of Fargo. That's part of their program now. But I'd hate to have a farmer from Crosby help pay for a bus in Fargo.

Thank you very much.

DELEGATE THOMPSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: This looks like a dandy to me. I think I want to support it.

VICE PRESIDENT SAUGSTAD: Any further — Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, I hate to keep on. I know we don't

want to listen to anyone else, but I don't think — you're all talking about things that are now, subsidizing here and subsidizing there. Delegate Kelsch, I think, means what's coming in the future. You have all read about Washington, D. C., now is having so many problems that they're trying to do away with the car in the city and have tried very hard and are trying very hard to get some way to bring people in and out of the city without using automobiles, and I think this is what Delegate Kelsch is aiming at — not what's here and now.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. They used to have a streetcar here in Bismarck, and I would like to ask Delegate Kelsch if his plan would maybe have a bus line for the next Constitutional Convention on these cold mornings.

(Laughter)

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President, I think it should be laid right out on the table. But one of the things Delegate Kelsch is talking about is state aid to school bus transportation. That's a pretty sizeable sum. If you want to take this out of the transportation money, I think you better vote for his amendment.

I'd like to say one other thing. I voted against the one-mill dedicated fund for the Medical Center, and I said at that time that I thought dedicated general revenue funds were bad. I also voted against all cigarette taxes and all liquor taxes in the Legislature, because I think that the use of specific persons to supply the general fund is also bad. And, therefore, I have to support the use of taxes from specific persons for the benefit of those specific persons. So I vote against the amendment, Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lerberg.

DELEGATE LERBERG: I just want to make a short comment on the matter Delegate Fritzell has brought up, and I think it's very important here to consider in voting on this amendment. And I support the amendment. I was in Washington, D. C., about nine months ago and they report that 90 percent of the cars going into Washington, D.C., had one occupant in them and the streets and the parking ways are so tied up there now. They have beautiful highways leading up to the city, but there they stop and they are in the process now of clearing ground for a huge parking space — a three-story parking space for federal employees. I think they're going to spend about three or four times as much per lot there as the car that will sit thereon. And so I think this is important to think about in North Dakota in the future. We can have fine highways, but unless we can take care of the cars once we get into the city, we've got problems.

VICE PRESIDENT SAUGSTAD: We're now on the motion of Delegate Kelsch's proposed amendment to Committee Proposal 1-87. If you vote "aye," you're voting in favor of his amendment. If you vote "no," you're voting against his amendment. All in favor signify by saying "aye;" opposed "no."

The Chair is in doubt. The board will be opened and you may indicate your choice. Saugstad votes "nay."

Has everyone voted? Does anyone wish to change his vote? If not, the board will be closed and the Clerk will take the record.

The vote was 33 "ayes," 59 "nays." Therefore, the motion lost.

Now, we have before us Delegate Proposal 1-87, without amendments.

DELEGATE TRENBEATH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Trenbeath.

DELEGATE TRENBEATH: This wasn't amended, was it?

VICE PRESIDENT SAUGSTAD: No, this is not amended.

All right. We're now — excuse me. We will now be voting on the main question — for the adoption of Committee Proposal 1-87. If you vote "aye," you vote for it. If you vote "nay," you vote against it. The board will be opened. You may record your vote. Saugstad votes "aye."

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The tally shows 79 "ayes," 13 "nays," six absent and not voting. Therefore, Committee Proposal 1-87 was adopted.

DELEGATE AAS: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aas.

DELEGATE AAS: May we be on the twelfth order?

VICE PRESIDENT SAUGSTAD: Yes, without objection, we may be on the twelfth order.

DELEGATE AAS: Mr. President and Fellow Delegates:

At this time I would like for reconsideration of the vote by which we passed 1-29.

VICE PRESIDENT SAUGSTAD: Delegate — yes, that motion will be in order.

DELEGATE LONGMIRE: Second the motion.

VICE PRESIDENT SAUGSTAD: Delegate Longmire seconds the motion.

All right, Delegate Aas.

DELEGATE AAS: Mr. President: Yesterday, when this was passed, I believe there were a lot of implications and statements made that this was strictly political, and I think there is much more here than politics in this Proposal and something that should be considered on the basis other than politics, and I suppose that I could restrain my discussion, but I think it would be necessary to make it now to ask for reconsideration. There are problems that are serious that override the political problems that you heard yesterday in the implication of 1-29. Now, this Proposal prepares or authorizes the legislative reapportionment commissions and the reapportionment commission can — must divide the state into senatorial district and can prepare or authorize two-Senator districts. I think that this can really work a handicap on some of our cities. The cities like Minot, where I live, are divided into alderman areas. We have 14 aldermen. We have three senatorial districts, and it's going to be rather difficult and virtually impossible to divide our precincts by this method. It will be more than difficult to explain how we are going to do this to our voters back home.

The statement was made, again, by one of the representatives or one of the delegates from this Minot district that it was unfair to the minority party. Let me tell you that in 1964 in Minot all the elected officials but one in the House and the Senate were Democrats. In 1966 there were four elected Republicans in the House and two Democrats. There were two elected Democrats in the Senate — Republicans, rather — and one Democrat. In 1968 we had five Republicans and one Democrat, and the holdover Senators. In 1970 we divided four-and-two and two-and-one. Now, I submit that this is not all political at that point. We certainly have a division and we certainly have representation from both parties. But I served in the North Dakota Legislature, and I would hate to serve a divided city. You're asking us to divide and serve only a fraction or a portion of that city. I do not intend to serve again; however, I suppose I could always change my mind, but — so I don't expect that it would necessarily affect me. But I do think that it will create a serious problem and be a serious disadvantage to the candidates and to those that run and to the people within this district.

Candidates often live in one area of the city and work or have their business in another area. They're going to have quite a problem if this is the case, and this is going to happen more in these cities than it is going to happen in other areas. It is now difficult in most areas to get qualified candidates, and often the candidates in both parties will live in the same area — all of them that you may have, or most of them. It is true that most of the candidates may come from one area, from one party, and most of them from another party — the other party in the second area; but, just the same, you're going to divide the city. You're going to make it difficult to get the proper representation that you have now. You're going to seriously affect the incumbents in all four of the larger cities by this type of a proposal, and I think that incumbents should be considered when we approach this. The Commission, again, will still continue to have the final decision. We have not stated what this commission — what the size of this commission will be. We have not stated how big it's going to be, and I don't know what the end result will be as to what — the makeup of the committee is.

The statement has been made to us that this was a compromise; but I think in our cities it is an unworkable compromise and we should look at it a little further. We don't want to divide our cities. We don't want to serve a fragment of it. I would not want to, and I'm sure that none of the other delegates or representatives

from those areas would want to either. I would hope that we can reconsider our action on 1-29.

VICE PRESIDENT SAUGSTAD: Fellow Delegates, I had intended to call for a short recess before Delegate Aas made his motion. I know that the Reporter here is badly in need of rest. And, therefore, I'm going to declare —

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen — I don't know — who seconded your motion?

DELEGATE LONGMIRE: I seconded it.

VICE PRESIDENT SAUGSTAD: Oh, yes. Longmire seconded it, so we had a second by Longmire.

Delegate Haugen, did you wish to —

DELEGATE HAUGEN: You intend to call for a recess at this time?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE HAUGEN: I would like to request the members of the Finance and Taxation Committee to meet in the Large Hearing Room for a few minutes to consider a proposal that's been drafted to replace 1-74, and I would invite any other delegate who is interested in that Proposal to meet with us in the hearing room below us.

VICE PRESIDENT SAUGSTAD: Now I'm making an official statement from the Chair that, in view of the fact that we have but two proposals left, we feel that we can finish those and not stop for our evening meal. I think we can finish those all right. And so at this point I'm declaring a ten-minute recess. Remember that the Finance and Taxation Committee is meeting downstairs in the Large Hearing Room.

(The Session recessed at 5:35 P.M. until 5:50 P.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

We'll be on the ninth order of business — Introduction and Referral of Proposals to Committee.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-5, submitted by Delegates Aubol, Bassingthwaite, Hoghaug, Rude, Sondreal, Chase, Hoffner, Hildebrand, Sinner, Rundle, Longmire, Peterson, Urdahl, Hougen, Warner, Vogel, Hill, Hardmeyer, Griffin, Gipp, Sanstead, Omdahl, Rosendahl, Daniels, Kretschmar, Larsen, Hendrickson, Fritzel, Nicholas, Wicks, Dobson, Burke, Jestrab and Haugen:

"Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal 1-11 for submission to the electorate as an alternate proposal on the Constitutional Convention Ballot."

PRESIDENT WENSTROM: Alternate Proposal No. 4-5 is referred to the Committee on Constitutional Ballot.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-6, submitted by Delegates Stanton, Kwako, Warner, Thompson, Unruh, Tudor, Trenbeath, Solberg, Aas, Berg, Biley, Binek, Burke, Burbidge, Roney, Baker, Cart, Rundle, Meidinger, Kretschmar, Knudson, Vogel, Peters and McElroy:

"Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-44 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot."

PRESIDENT WENSTROM: Alternate Proposal No. 4-6 is referred to the Committee on Constitutional Ballot.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: May we be on the eighth order for a minute?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE PAULSON: To the members of the Public Information Committee: All of the day has gone by and there is no time left, so our meeting will be next Tuesday or the first date that we return to action in the Capitol.

PRESIDENT WENSTROM: Anything further under the eighth order?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I don't know quite whether this comes under the eighth order or not, but I was trying to determine whether or not I could file an alternate proposal on the 18-year-old adult for all purposes, and I find that I don't have a proposal to file — an alternate against, so I don't want to announce now. I want to announce now I want to do it next Monday, and I want to try to suspend the Rules so I can put it in as an alternate.

PRESIDENT WENSTROM: Does any delegate know what happened to the sponsors of this motion to reconsider that we have before us?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Delegate Aas is a member of the Tax Committee, most of whose members are still out, I believe.

PRESIDENT WENSTROM: Well, that's the motion that's before the Convention — is the motion to reconsider and —

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I am speaking to the motion. I know everyone's thinking about going home. I think it's unfortunate we are getting to the point where we're thinking more of time than of the document we're forming. Earlier in the Convention we gave thought and we gave time and we gave individuals the opportunity to reconsider each proposal that we brought up. We considered it and we considered it thoroughly. I hope you will just remember that this is still an important document. It should still be given just as much time, and whether we are here for two more hours or four more hours, I think there should be the feeling if you want to speak to a motion, if you want to speak to something, you should. And these proposals that were passed only yesterday or the day before, let's give them a chance, if they want to reconsider them. We gave others that were passed earlier the chance, and I just don't think time should be the most important thing we're thinking about now.

PRESIDENT WENSTROM: Delegate Hendrickson, I don't know that that was the question!
(Laughter)

DELEGATE BAKER: Well, Mr. President, I'd be willing to risk the good will of the Convention on this matter, and I think that it is clear that the larger centers of population are quite concerned about this in the State, and I'm confident that a majority of this body, even though we may be short of a sponsor, will support the motion to reconsider. We can argue the case a little later, and I think we should proceed.

PRESIDENT WENSTROM: Delegate Baker, with this many vacancies — and it takes the vote of 50 delegates to reconsider — I would be reluctant to put the motion without Delegate Aas here.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that we not take any further action on this motion for 30 minutes, and that then we go on to the other bill that's on the calendar.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I was not aware that the Tax Committee meeting had been called. I was out of the chamber; but I'll volunteer to go down and hurry them up.

PRESIDENT WENSTROM: Delegate Cart, a sergeant-at-arms has been sent down.

DELEGATE CART: All right.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I don't think that I've ever voted in this assembly not to reconsider —

PRESIDENT WENSTROM: Delegate McIntyre, I think we better wait. I hate to recess to a time certain — I mean not recess, but I mean to delay this to a time

certain; but that is the motion that's before the Convention; however, we can take up some other — one of the other proposals, if you are so disposed. Delegate Longmire.

DELEGATE LONGMIRE: I didn't know you had asked them to come up, and if it is your desire, I would certainly be glad to withdraw my motion.

PRESIDENT WENSTROM: Well, we can hardly get into another one, and most everything will take more than 30 minutes to debate. So, if we can get them here and proceed with this. I hate to have the Convention be at ease when there are things to discuss.

DELEGATE LONGMIRE: I withdraw my motion, Mr. President.

PRESIDENT WENSTROM: Thank you, Delegate Longmire. The Convention will be at ease until these people come up from the Finance and Taxation Committee.

(The Convention was at ease for approximately five minutes.)

PRESIDENT WENSTROM: The Convention will please come to order.

The question before the Convention is on the motion to reconsider Committee Proposal No. 1-29. The motion to reconsider was offered by Delegate Aas. It was seconded by Delegate Longmire.

Is there any further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President. Fellow Delegates:

This question of reapportionment and the formation of districts is not a political question. It was not a political question during the long months of the committee deliberation. It was not a political question, as far as I was concerned, on the floor yesterday, and I don't think it should be converted into a political question at this late date.

Now, I happen to reside in the same district as the movant of the matter before us. That district has 25 precincts. You can slice that three ways quite easily. You can also slice it two ways, and no matter how you slice it, the same people are going to be elected — I don't care whether Democrat or Republican.

It was suggested here that this Convention should go into the business of protecting incumbent legislators. I think that's deplorable. We're not down here to protect the Senate seat of Senator Wayne Sanstead or any other Senator or Representative from the City of Minot or any other district in this State. For a long time, Mr. President, the rural areas had an advantage in the North Dakota Legislature because of the reapportionment system and the lack of action thereon. Just because the rural areas enjoyed an unfair advantage for many years doesn't mean that we should now give the urban areas an advantage, and I submit that when a voter in an urban district can participate in the election of four or five Senators while his neighbor in a rural district can participate in the election of only one Senator, that is unfair. I wonder, Mr. President, whose arm is reaching into this Convention at this late date? I urge the Convention to stand by the Committee compromise on this proposal and reject the motion for reconsideration.

PRESIDENT WENSTROM: Further discussion? Delegate McIntyre.

DELEGATE MCINTYRE: I'm going to speak against the move to reconsider at this time. Now, I've never voted in this assembly against reconsideration, and I don't intend to, and I don't suppose — perhaps I'm not even in order at this time, but I think that we can best take care of the proposals that are on the calendar and awaiting first passage now, and then take care of those proposals that should be reconsidered. I know of several delegates that have talked to me about bringing up and moving reconsideration for various proposals. If we get that ball starting at this stage, we'll wind up here tomorrow morning on committee proposals that haven't received first passage. Now, if you want to reconsider, fine; but let's take care of the calendar, first, and then do our reconsidering.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I oppose the motion for reconsideration. We argued Proposal 1-29 at length yesterday for two-to-three hours and we examined it in detail and we examined it particularly on the question of whether we can establish two-Senator districts, three-Senator districts, or more. We voted down the proposal

for three or four-Senator districts with a resulting increase in House members, and there is no reason why a city cannot be divided as proposed in the Proposal as it now stands, and I trust that reconsideration will be voted down.

DELEGATE SULLIVAN: Mr. President.

PRESIDENT WENSTROM: Delegate Sullivan.

DELEGATE SULLIVAN: Fellow Delegates: I, also, ask that you vote down this motion. We had a good, long hearing on this yesterday, and there is no new information that can be brought to us, and I think we better get on with our work here and get the job done. We've got two bills that need to be taken care of, and then we should quit. Thank you.

PRESIDENT WENSTROM: Further discussion? Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President: In the motion for reconsideration, reference was made to my speech on this floor yesterday. I remind the delegate that in my speech yesterday — and I think the record will bear it out — I indicated that the Fifth District, the district that I represent in the State Senate and which I have represented in the State House, is a district that does elect minority representatives and has had a tradition in doing that. But we were talking about the three other most populous cities in this State in which that has not been the case, and if you will look at that vote from yesterday, the 79 people for, the 16 delegates against, you will find 11 of those come from those cities in which that is the case, that the majority party has had some dominance that in at least the recent election the minority party has not even run candidates, and I think those kind of facts need to be restated to this Convention.

I also would need time, I think — personal time — to call my newspaper and change the story I gave them yesterday about the fine impartiality of this Convention, because if this were the case and if this reconsideration motion carries, I have a feeling that something else has been put here.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Mr. President and Fellow Delegates:

I don't know — I've been down in Committee — has the substance of what was going to be gotten out in consideration been mentioned here?

PRESIDENT WENSTROM: Delegate Lerberg, I am happy to report that we waited until all the delegates who were at that special committee meeting were back in the Convention.

DELEGATE LERBERG: Well, I think we've been very generous here in reconsidering many things, and I think it would be inopportune to refuse that now so we can hear some argument on what's going to be considered, and then it would not take very long, I'm sure, and if it's going to be voted down, it could be voted down. Some righteous statements have been made just recently about politics, but certainly this was one of the main arguments yesterday — that we had to protect the minority party in three principal cities. Well, I submit to you that there's about 25 districts in this State which aren't involved in the three principal cities, and probably minority parties have problems there, also, and I don't think this speaks to this, and if we're going to speak in a Constitution just to solve minority political problems in three cities, I think we're making a big mistake, and the one that was voted down yesterday would lock us into the present system, and I think that we are now locking another thing into the present system which doesn't answer the problem and will give us just as many problems, perhaps, as what we're living with now, and I think we should reconsider and listen to the arguments as to why this should be changed. I think most of the argument yesterday was on the first part of this Section 4, which had to do with the makeup of the reapportionment commission, and I don't think there's going to be any changes made in that; but I think we should listen to the arguments on the other, and I would hope that you would give the opportunity for reconsideration and a little more argument on this situation.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President, I don't see Delegate Hoffner in the chambers. He's Chairman of the Legislative Committee, and I wonder if he shouldn't have the opportunity to be here and be a part of the debate on whether or not to reconsider. I believe he's gone home.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Before Delegate Hoffner left, he sent a note saying that he was forced to leave at 4:30 and, therefore, he requested the Convention not consider any legislative material until he came back. (Laughter)

I don't know if he went to Florida or where he went!

This has been a most interesting experience for every one of us, and back about six, seven months ago, as I looked at this project that we were about to undertake, I thought that it was really great that we were all elected on a nonpartisan ballot, even though I knew that most of us have identified politically with one group or another and we do have strong partisans in this group. But this partisanship never really developed and the reporter for the **Minneapolis Tribune** asked yesterday why partisanship didn't develop in this Convention, and I really was at a loss to explain why, except the fact that the political parties are not really that important in our Legislative Assembly either — at least it's only less than the amount of legislation that is involved. I thought that by this stage of the game there would be some polarization among alleged liberals and alleged conservatives, and if you can define those terms, you're better than most people, and that we would have run into a number of partisan political fights over certain issues, and here we are, the last day of the Plenary Session in which we are considering first passage, and until this time we have avoided the divisiveness of partisan politics, and I would like to see us go out of this Convention avoiding the divisiveness of partisan politics. Anyone who has studied what has happened in other states in regard to the adoption of new constitutions knows that when you get partisan politics involved in a constitutional convention you're out of business. Now, this is what happened in Rhode Island in recent years, and it happened in New York, and it can happen in North Dakota. Personally, I've lost a number of battles in this Convention, but I don't have everything in this document that I'd like to have, and I'm sure that many of you have lost something that you wanted and that you held dear, and even though we were defeated on the appointment of the judges, the deletion of Section 23 for the labor people, and a number of others, it seems to me that we were doing quite well. We all took our lumps. Every one of us took our lumps.

Now, I feel quite strongly about a few other things, too, that I've lost that I would like to bring back, and I think, if we're going to start reconsidering, that we ought to go back to some of these, because I feel as strongly about the appointment of judges for the next fifty years as maybe some people feel about a three or four-member district. I feel as strongly about a code of ethics for the legislators, and I feel as strongly about right-to-work and counsel in court proceedings for the indigent, the territorial integrity that we violated the other day when we got into the public utility and the REC battle. This is the time that's going to try us — whether or not we're statesmen enough to accept our defeats and go out of this Convention united. You know, it takes about an 85 percent consensus among the people to pass a constitution and to get constitutional amendments adopted. This is why it was possible for a very small number of people to defeat amendments to the Constitution that were proposed by the revision commission. A voice — just a small voice in the silence speaks out, and I tell you we have a document here that I feel I can go out and support, and I think most of you feel you can go out and support, too, and I'd like to feel that way when this whole Convention is over, and this is the only way we're ever going to get it. We're going to have to keep everybody together and we're going to have to mollify labor, we're going to have to mollify ourselves, and we're going to have to mollify everybody to provide anything, and we're going to have to pull together very hard, and I don't think we can afford to divide this Convention at this point as partisans, and I hope we can go about our business and finish our calendar and do our job.

PRESIDENT WENSTROM: The Chair will recognize Delegate Sinner.

DELEGATE SINNER: Mr. President: In the consideration of this whole question of multi-member districts the majority of the Committee, and I think it was a fairly decisive majority, supported the Proposal that's before you or that's in the measure that's been passed, and one of the overriding reasons for the Committee's doing that, and even in the language that allows two-Senator districts, made it only permissive. The overriding reason for doing even that was that the court decisions are getting closer and closer to saying that these are unconstitutional; and again, I'd like to quote from the **National Civic Review** of December, and this is a magazine

that's dedicated principally to the cities and the affairs of the cities, and Mr. Boyd, who writes the article, in speaking of the Louisiana case, as the court does throughout, he lists seven reasons why the court threw out the reapportionment plan in Louisiana. The fourth reason — I won't read them all, but the fourth reason is this: "Multi-member districting made it virtually impossible for minority groups to elect members of the legislature." And I should point out that in many, many cases the courts have spoken to minority political groups as well as racial groups.

The seventh reason that he gives for the court throwing out the Louisiana reapportionment plan is this: "The plan was designed to benefit incumbent legislators."

Mr. President, the question of minority and majority parties notwithstanding, the reasoning of the Committee doing what they did was substantially as in case after case of the leading of the court closer and closer to saying that multi-member districts are discriminatory to many groups of people, whether they be racial or otherwise; and I think they're going to be hard pressed to convince this body that what the Committee has done is not in the best interests of the State.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President and Fellow Delegates:

I had thought I had spoken for the last time on this Convention floor when we discussed Committee Proposal 1-104; but I keep hearing this shrill voice and I resent politics being brought into this Convention, and it is the shrill voices that are bringing it in.

Now, I was one of the apparently 16 people that voted against this Proposal when it was before the Convention before. I would vote to reconsider only if there was some new proposal, some new way to approach this.

Now, I voted against it because I kind of liked Delegate Cart's approach to this. I must say it is one of the few times during the Convention I've been in agreement with Delegate Cart. But I am concerned that we've created an animal here that we shouldn't have. If I remember correctly, his proposal was that every ten years we'd abolish the legislative districts and they can't run for election unless they reapportion. This kind of appealed to me. I think this would be a way to make them reapportion. But I do resent the shrill voices that I hear bringing partisan politics in.

PRESIDENT WENSTROM: The Chair will recognize Delegate Stanton.

DELEGATE STANTON: Mr. President: As I think everyone here knows, Committee reports are not sacred, and that's certainly true of the Legislative Functions Committee reports, too. I served on that Committee, and five of us just decided we'd no longer fight the Committee — we'd just take our fight to the floor, because you can just spend so much time arguing the same thing over and over again. I do not care for this Proposal and I'm really surprised that anyone here would speak against reconsidering Committee Proposal 1-29, which is really a very important issue and which was only before us yesterday. I'll vote for reconsideration and, if it is denied, I'll have to wonder, along with Delegate Sanstead, what's going on here.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President: I just would like to again remind this body that the people of North Dakota did not create the multiple districts. The Federal Courts did it on their own, and if the other courts want to reverse them, that's up to them.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the motion to reconsider. In that this is going to take for sure, 50 votes, we are going to open the key and you will record your choice.

The motion is to reconsider. Those in favor of reconsideration will vote "aye" and those opposed will vote "nay."

The Clerk will open the key.

Has every delegate indicated his preference? The vote is closed.

The vote indicates 45 to reconsider, 47 opposed. The motion to reconsider failed.

We'll be on the tenth order of business.

Next for consideration is Committee Proposal 1-82.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-82, introduced by Committee on Preamble, Bill of Rights and Suffrage:

"Be it resolved by the North Dakota Constitutional Convention that Section 127 of the constitution of the state of North Dakota is hereby repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to voting disqualifications.

"SECTION 1. REPEAL.) Section 127 of the constitution of the State of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"No person who has been declared mentally incompetent by order of a court or other body of competent jurisdiction and which order has not been revoked or rescinded shall be qualified to vote at any election; nor shall any person be qualified to vote who has been convicted of a felony, or otherwise under sentence in a correctional institution or jail, during the period his sentence is still in effect."

PRESIDENT WENSTROM: Any discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President, I have an amendment at the desk.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-82:

In line 13 of the engrossed proposal, after the word "election;" delete the remainder of the proposal and insert in lieu thereof the following:

"Nor shall any person be qualified to vote if he is confined in a correctional institution or jail, or if he is under sentence for a crime wherein the maximum possible period of confinement exceeded one year."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment? Do we have a second?

DELEGATE HILL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hill.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Most of you will recall the earlier amendment that I had to this. At that time I indicated that I had a question on the engrossed measure as we have it now, and it was referred to then as the "Longmire bill," and that question, in part, was, as I read the last portion of the bill in our book, with reference to the person convicted of a misdemeanor. Once he was convicted and confined to jail and then released, but subject to probation for a period of time, he would lose his right to vote. I do not believe that we, as a Convention body, wanted to go this far. The original Constitution did not go that far, and I do not think that we should currently impose that harsh a penalty upon our persons convicted of a misdemeanor. Therefore, I offered the amendment deleting any reference to felony; simply for the reason that Delegate Hill currently is revising by other methods the criminal code and it is possible in our modern times that within the next two or three years we will no longer have a designation of crimes as misdemeanor versus felony; rather, we would have them refer to the period of confinement time.

The amendment speaks to "maximum possible period of confinement exceeded one year." As it currently stands, a misdemeanor is a crime which is punishable by imprisonment for a period of time no greater than one year. Therefore, we would have a person confined in jail subject to the loss of his voting privilege, which we believe would be proper, since it would not lead to any undue influence by the individuals at the State Farm being given absentee ballots by the manager of the institution at the time, nor would it create a problem with a local sheriff handing absentee ballots to an inmate in his jail. Once the person under misdemeanor sentence walked out of the jail, even though he had a parole situation, he would be free to vote. It is for this reason that the amendment is offered, and I ask your support.

PRESIDENT WENSTROM: Any further discussion? Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, may I inquire of the desk?

As I understand it — it is difficult for me from the copy in the book to — you're not — or may I ask a question of Delegate Hartl?

DELEGATE HARTL: You may.

PRESIDENT WENSTROM: Does Delegate Hartl yield?

DELEGATE HARTL: I will.

DELEGATE LONGMIRE: The first part of that was the part that I was mostly interested in — in incompetency. That is still in there. You are not changing that. Is that right?

DELEGATE HARTL: That is still in there. If the delegates would refer to the lowest committee proposal on 1-82 that is inserted in the book and drop down to the semicolon appearing after "election" on line 3, we would delete the balance of the engrossed bill, commencing with the words "nor shall any person be qualified to vote." We have not done anything with the first three lines.

DELEGATE LONGMIRE: Yes. Well, that's fine.

Well, Mr. President, I certainly think this is a good amendment. As a matter of fact, when I offered the previous amendment, I was trying to satisfy some other delegates who had had some objection to the sentence part of a person voting who was still under sentence in any way, and I do feel this is a more fair way of looking at it, and certainly with a fellow that's in on a misdemeanor, or something of that kind, once he gets out of jail I think he should be permitted to vote. So I support the amendment.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman, this is one of my grand failures as a talker on the Bill of Rights and Preamble that I was supposed to defend last week and where I have voter disqualifications. I have one question that I would like to direct either to Delegate Hartl or Delegate Hill.

Now, in your proposal, you're automatically — you're automatically predisposing — or you are presupposing the automatic restoration of rights after sentence is finished. Is that right?

DELEGATE HARTL: It would be my interpretation that the right to vote would automatically be reinstated after completion of sentence. That is correct.

DELEGATE O'TOOLE: Well, I — I have not any great thing to say. I thought that what I had in the first place was the best; but this doesn't change any of the quality or quantity that I wanted, so it is a fair amendment, as far as I'm concerned.

PRESIDENT WENSTROM: The question before the Convention is on the proposed amendment as offered by Delegate Hartl.

No further discussion?

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

Those in favor of adopting the proposed amendment will vote "aye;" those opposed "nay."

The "ayes" have it. The amendment is adopted.

Any further discussion on Committee Proposal No. 1-82 as amended? Delegate Hartl.

DELEGATE HARTL: Mr. President, if there are no further amendments, I would move that Committee Proposal 1-82 be deemed properly re-engrossed and be placed on the calendar for first passage at this time.

PRESIDENT WENSTROM: Delegate Hartl moves that Committee Proposal 1-82 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Engelter. Is there any further discussion?

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. Committee Proposal No. 1-82 is again before the Convention as amended.

Any further discussion?

The question before the Convention is on the first passage of Committee Proposal No. 1-82 as amended. Those in favor will vote "aye;" those opposed will vote "nay." The Chief Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call indicates 88 "ayes," 1 "nay," nine delegates absent and not voting. Committee Proposal No. 1-82 has passed.

Now for consideration, Committee Proposal No. 1-74. Delegate Haugen.

DELEGATE HAUGEN: Mr. President — excuse me, Leroy. The Committee on Finance and Taxation has a proposed amendment to 1-74 that's been distributed and I believe it's at the desk. Perhaps it is fitting that this should be —

PRESIDENT WENSTROM: Delegate Haugen, we'll read the Proposal first. Then you offer your amendment.

DELEGATE HAUGEN: Yes. I think — well, I wonder if I could be permitted to remark that it is perhaps fitting that the matter of taxation should be the final — the final bill up. I am reminded of the old guy who put his false teeth in his hip pocket and he sat down and he said, "Taxes will get you in the end."

CHIEF CLERK GILBREATH: Committee Proposal 1-74, introduced by Committee on Finance and Taxation:

"Be it resolved by the North Dakota Constitutional Convention that section 182 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to state debt.

"SECTION 1. REPEAL.) Section 182 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"STATE DEBT. The state may issue bonds and make loans, and guarantee the payment of such bonds and loans and interest thereon. A statewide property tax based on value shall not be used to retire or guarantee such bonds or loans.

"Each issue or guarantee shall require sixty percent approval of the members-elect in each house of the legislative assembly.

"Except as otherwise provided in this constitution any tax levied or other provision made to retire a bond issue shall be irrevocable until such debt is paid."

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: I move that — there is an amendment at the desk. Would the Clerk please read the amendment?

PRESIDENT WENSTROM: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Is that the Committee amendment? Is that the proposed Committee amendment?

DELEGATE ERICKSON: You read the original bill. There is a proposed Committee amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-74:

Delete everything after line 9 of the engrossed Committee Proposal and insert in lieu thereof the following:

"STATE DEBT: The state may issue general obligation bonds and guarantee the payment of such bonds and interest thereon but no bond may be issued which would increase the outstanding indebtedness beyond forty percent of the state general fund revenue raised in the preceding biennium. In addition to the above debt limit, the legislative assembly may pledge the full faith and credit of the state to guarantee state revenue bonds and the deposits of a state owned bank. A statewide property tax based on value shall not be used to retire or guarantee such bonds.

"Each issue or guarantee shall require sixty percent approval of the members elected to each house of the legislative assembly.

"Except as otherwise provided in this constitution any tax levied or other provision made to retire a bond issue shall be irrevocable until such debt is paid."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second to the proposed amendment? Seconded by Delegate Hildebrand.

Now, do we have any discussion? Delegate Erickson.

DELEGATE ERICKSON: We had a short meeting of the Finance and Taxation Committee and a few other interested individuals down at the Large Hearing Room

just a few minutes ago, and I want to emphasize the changes that have been incorporated in this new amendment.

Now, the first thing is that we're defining general obligation bonds, and this more or less will determine that we're not including in this revenue bonds.

Now, there was an amendment that was passed this morning or — yes, this morning — not to exceed forty million dollars, and this is a compromise, so we're using a forty percent figure of the general fund revenue figure that's raised. This is to make it more flexible, instead of tying in a flat amount of money. Now, this debt limit, of course, would raise — or be a ceiling of roughly eighty million dollars, according to the last biennial figures of the general fund.

Now, the Committee felt that we didn't want this to have a rigid ceiling, but a flexible one. So this is why it is tied to the general fund revenue.

Also included — Delegate Sinner had tried to make an amendment, I think, earlier on the revenue bonds. He was saying that we could have a better rate if we could have it included in this debt limit and pledged the full faith and credit of the State to guarantee the revenue bonds. Now, some of the members felt that pledging the full faith and credit of the State wouldn't necessarily have to be in there, but this is a financial term that is generally used. I'm not a financial expert, but we'll probably get some more information on this from the bankers, if they're delegates here. And otherwise, the rest of the proposed amendment — the statewide property tax based on value — is still in there, and which I stated this morning, that we're already overburdened and each issue or guarantee of the bonds would require a sixty percent approval of each — of the members elected in each house. That still stands. And the grandfather clause, "except as otherwise provided in this constitution any tax levied . . . shall be irrevocable . . ." — this is standard language considered for bond issues, and I hope you give your favorable consideration to this amendment.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, I missed this meeting that was held. I happened to be out of the chamber when it was called, and I have gotten some figures from the Accounts and Purchases Department, and for the biennium that ended June 30, 1971, we find that \$188,802,165 in general revenue, and forty percent of that would be 75½ million dollars. Now that's almost doubling what we had adopted earlier today. But that isn't the most serious thing that I see in this new proposal. If we go up to that figure, and relying on this type of taxation, then we might run into an adverse year, both from production and from an economic standpoint, and the revenue would go way down and we might have far — bonds far outstanding beyond the limit. So this doesn't look like a good, safe proposal to me at all, and you could have, say, an adverse year when the sales tax and the income tax, and so forth, probably wouldn't yield more than 50 or 60 percent than it did in a normal period of time, and they're the main sources of revenue and they'll certainly be the ones most affected, if we go into adverse conditions, and I think this is rather a dangerous proposition, where we could well have bonds outstanding far beyond 40 percent of the income.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I think the proposal before you and the amendments that were made in the interim since we discussed this on the floor, are all very good. I like the idea of tying a percentage to the general fund revenue, because then you will be raising the debt limit as inflation sets in, and of course if deflation sets in, we have a section that says these bonds that are outstanding will be irrevocable. I like the provision, also, that gives the full faith and credit to the revenue bonds. I think this is a major step and it is too bad we didn't have it enacted ten years ago. We'd have saved the State and our students and our parents a whole lot of money. But, nevertheless, we've got it in here now. But the way it is in here, it is outside the state bonding debt limit and, as you well know, this afternoon the discussion on the floor, and I think there was a pretty big vote that was in favor of placing the debt limit at forty million dollars in the State of North Dakota, and at that time included in there, possibly, could be some obligation of the revenue bonds. Now, with the forty percent figure in there, we are getting up close to the eighty million, and I think we've gone too far.

Now, all the testimony we've heard previously through the summer and again

now downstairs a little while ago, every bonding company that comes in and looks at the State of North Dakota and thinks about picking up our bonds and how good they are and what kind of an interest rate they're going to pay, they look at the total debt limit of the State, and I think, because we had a ten-million-dollar — or twelve-million-dollar debt limit in the State previously, I think this was a factor in holding down our State debt limit, and I just fear that we've gone a little too far with the forty percent. So, Mr. Chairman, I move that the forty percent figure in line 5 of the sheet that we have on your desk be changed to 25 percent, which means the total state debt limit then will be around fifty million dollars, which, I think, is a fair compromise to the decision made this afternoon.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Delegate Trenbeath, did you say "twenty-five percent"?

DELEGATE TRENBEATH: Take out the word "forty" and insert "twenty-five".

PRESIDENT WENSTROM: Delegate Trenbeath moves that we strike the word "forty" and insert in lieu thereof the number "twenty-five." It's seconded by Delegate Rundle. Do we have any discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: When this idea first was presented, with the idea of having forty million dollars or what kind of a relationship, it was my first thought of it all being related to the revenue and exactly what this does, and for exactly the same reasons that Delegate Trenbeath expressed, I would heartily endorse his move.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the amendment as offered by Delegate Trenbeath that the figure "forty" be stricken and the number "twenty-five" be inserted in lieu thereof.

Delegate McElroy.

DELEGATE McELROY: Mr. President, I think I'd oppose this twenty-five percent amendment. I think we should remember that the forty million dollars that was proposed a little while ago is just about the same as ten million dollars was when we first put it in the Constitution. We have included now all kinds of possible future financing on a revenue bond basis, and it just seems to me that we're shutting down a little too much.

Now, I'm not in favor of going into debt in the amount of eighty million dollars, but I can't see over the hill twenty years from now to know that fifty million dollars is going to be sufficient, and I think that, with the other limitations — that is, the sixty percent vote by each house of the Legislature, I hope we never — we never approach this. But I would still think it would be wise to have the door open so that we can go to a larger debt limit than this twenty-five percent limitation we'd put on.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE TRENBEATH: Mr. President, I'd just like to make one quick comment on that.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: The ten million dollars or twelve million dollars we've had previously, we've been pushing that door hard, but every time we needed more money, we went to the people of North Dakota. When the time comes when we need more than the fifty million dollars, or whatever the figure represents when it is that's in the general fund, I think when it's justified the people of North Dakota will quickly amend the Constitution and give it to us.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I just want to make one comment before you vote on the twenty-five percent. If each of you who are voting on it will translate this to your own individual situation, you might find that you probably wouldn't have more than sufficient money to buy a car, let alone a house or educate kids, or any other thing, and I think this is too big a straightjacket on the State in the kind of society in which we're presently living.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Trenbeath. Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay."

Let's open the key.

Again, those voting for the adoption of the amendment will vote "aye;" those opposed will vote "nay."

Has every delegate indicated his preference? The vote is closed.

The tally indicates there were 48 "ayes" and there were 43 "nays." The amendment has been adopted.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Mr. President and Fellow Delegates:

I feel kind of like a culprit to have made you spend your last few hours to get pinched by some false teeth, but I must say that, since I raised an objection to this Proposal earlier today, that we have been in back-room conferences and in the halls with the vice president of the Bank of North Dakota; we have called New York City to talk to the president of the Bank of North Dakota. We've made a couple calls to the bonding attorneys in Minneapolis. I don't know who else there was to call. But it seems like we've been busy with everything. It seems like we have satisfied the bonding attorneys, we have satisfied the Bank of North Dakota that they could live with this. It seems as if we have satisfied everyone else. The Committee has been very patient with us and kind with us, and I strongly urge that you now vote to approve this amendment.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President, I have a couple of questions about the language here, which seems unclear to me in a couple of places. First, on line 4, just where it was amended now, where you're saying "no bond may be issued which would increase the outstanding indebtedness beyond forty percent of the state general fund revenue." Do you not mean beyond an amount equal to forty percent of the State's general revenue? Isn't that what the language attempts to say?

DELEGATE TRENBEATH: Mr. President, I think Delegate Knudson has a point, unless you pluralize the word "bond" in the third line.

DELEGATE HAUGEN: Yes — Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: This has been a rather hurried proceeding, and it has taken a lot of work, and I've not been involved in too much of it; but a lot of work and a lot of thinking by several people. I did suggest at one time that that wording be included in there — "beyond an amount equal or an amount" — yes — "amount equal to forty percent." Excuse me — "twenty-five percent" — yes. I have the wording — "but in amount not in excess of forty percent." Would you care to amend it, Delegate Knudson?

DELEGATE KNUDSON: Mr. President and Delegate Haugen: I have one more question regarding the language further down in the last sentence of the first paragraph. You say "A statewide property tax based on value shall not be used to retire or guarantee such bonds." Now, there, by "such bonds," do you mean the bonds which you mentioned in the first sentence or do you also mean the State revenue bonds? I think you mean only the bonds mentioned in the first sentence; but I believe that could be misinterpreted. Your intent would be misinterpreted, I'm afraid, from the language.

DELEGATE HAUGEN: It's my understanding that that sentence would apply to all of the bonds that are referred to in this section, both the general obligation bonds and the revenue bonds.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Well, there, Mr. President, I am satisfied on the third sentence then if the Convention understands that the intent is that the statewide property tax shall not be used to retire any of these bonds. So I will move that, on

line 4 of the proposed amendment, the amendment be amended. After the word "beyond" adding the words "an amount equal to".

DELEGATE DECKER: Second.

PRESIDENT WENSTROM: Delegate Knudson offers a further amendment to the amendment.

DELEGATE UNRUH: Second.

PRESIDENT WENSTROM: It's been seconded. Delegate Sinner.

DELEGATE SINNER: Mr. President, I think we're right on the second suggestion, too. I think you should also include, ahead of "bonds" there, I think you should do what you were talking about — put either "the general revenue" or the — either the "general obligation" or the "revenue bonds" in that last sentence. I really think you're right. I don't know what some of the other people think, but I think you have a good point.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Just one second, please.

Which one of the delegates seconded the amendment as offered by Delegate Knudson? I heard it seconded.

DELEGATE DECKER: I did.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Let's leave that other one out. I'm talking, Delegate Kelsch, about voting on — while we're voting on this other one.

PRESIDENT WENSTROM: Would you read the proposed amendment?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to Committee Proposal 1-74:

In the first sentence of the amendment, following the word "beyond", insert the following: "an amount equal to".

PRESIDENT WENSTROM: The question before the Convention is on the additional amendment as offered by Delegate Knudson and seconded by Delegate Unruh. Is there any discussion?

Hearing none, the question is on the adoption of the amendment.

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Is there any motion before the house?

PRESIDENT WENSTROM: Delegate Rundle, in answer to your question, we do have the amendment before the Convention. We have adopted two amendments to the original amendment as offered, so that is the question before the Convention right now. We have not adopted the original amendment.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Would you just hold on a minute? I'm not too satisfied that that injection of that amendment is going to work, probably. I think probably the heads back there — have you got it clarified? If it was written in there like it was in the previous proposed amendment, which said "The total amount of such indebtedness shall not exceed twenty-five percent" — is this what you got?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President: We were working on the last line and not the — there is some language that we kind of halfway agreed on that would clarify the problem of this in the last line, in case there was any doubt that the words "such bonds" included both general obligation and the general revenue bonds. I think we've got language for that, but not the other one.

DELEGATE TRENBEATH: Mr. Knudson, would you come back here a moment, please?

DELEGATE SINNER: Mr. President, while they're working on that, I'll move the amendment in the last line there, to strike the word "such" and insert in lieu thereof the words "either the general obligation or the revenue".

PRESIDENT WENSTROM: Now you are talking about "such" in the last line of the —

DELEGATE SINNER: Of the first paragraph, yes.

PRESIDENT WENSTROM: And what are you inserting?

DELEGATE SINNER: "Either the general obligation or the revenue".

PRESIDENT WENSTROM: We have an amendment before the Convention as offered by Delegate Sinner. The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to Committee Proposal 1-74:

In the third sentence of the amendment, following the word "such," insert the following: "either the general obligation or the revenue". Delete the word "such".

Delete the word "such" and insert in lieu thereof "either the general obligation or the revenue".

DELEGATE SINNER: I think that's the wrong line, though.

CHIEF CLERK GILBREATH: No. The third sentence. The third sentence of the amendment.

DELEGATE SINNER: Oh! I'm sorry.

DELEGATE FRITZELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fritzell.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Mr. President, had that motion been seconded?

PRESIDENT WENSTROM: Yes, it had been.

DELEGATE RONEY: Then I'd like to speak on the motion. I don't think that the motion is necessary to amend, because when we're talking about guaranteeing such bonds, we're talking about guaranteeing either a general obligation bond or the revenue bonds. What we're talking about when we're talking about the Bank of North Dakota, and what we meant by the second paragraph, is that we are now obligated by statute that the Bank of North Dakota and the deposits therein are not guaranteed except by the full faith and credit of the State of North Dakota. If either the revenue bonds became delinquent or if some way or other the Bank of North Dakota would happen to become deficient so that the State would become obligated to pay money to the depositors, or if we were going to have to pick up revenue bonds, they would become general obligation bonds, and that's the reason we put it in here. We tried to differentiate these, but you will have these bonds and we're just adding surplus words.

PRESIDENT WENSTROM: Further discussion?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: That same sentence prohibits a statewide property tax based on value. It does not prohibit a flat acreage tax. The Legislature of North Dakota has several times attempted to levy a flat acreage tax for one purpose or another, which has always been declared unconstitutional; but I don't know what would be unconstitutional in this Constitution. But that sentence would not prohibit a flat acreage tax.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I might inquire of Delegate Pearce: If we were to delete the words "based on value" would that prohibit the use of property tax?

DELEGATE PEARCE: Yes, it would. I just didn't want to be one of the fellows that offered another amendment!

PRESIDENT WENSTROM: The question before the Convention at the moment is the amendment as offered by Delegate Sinner and seconded by Delegate Fritzell.

Now, is there any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Could I offer an amendment to the amendment to the amendment now?

PRESIDENT WENSTROM: No, I don't believe you can.

Delegate Lerberg, did you wish to speak on the amendment?

DELEGATE LERBERG: Yes. I just wanted to speak on the amendment and amendments in general. I think what Delegate Roney said is correct here — that it is unnecessary — and I would like to remind you that this is a very important obligation — or a very important section in the State Constitution and it is a very, very technical one, and I think we have to be a little careful about these amendments, if there are going to be a great deal of them, and if the group isn't satisfied with them, I think we're going to have to recess and spend some time on them, rather than offer these quick amendments to these sentences, because I think we could get in some trouble.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Will Delegate Roney yield to a question?

PRESIDENT WENSTROM: Will Delegate Roney yield?

DELEGATE RONEY: Certainly.

DELEGATE KESSEL: You stated that those words are not necessary, but they wouldn't harm the situation any, and it would clarify it so even I could understand it.

DELEGATE RONEY: Delegate Kessel, I agree with you for once, and I give you far more credit than you give yourself. Even you will adequately understand it. It doesn't hurt a thing, I said. If you want to vote to put them in, it won't hurt anything. If you want to leave them out, it won't hurt anything.

DELEGATE KESSEL: I would favor leaving them in, because it is clear.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Well, Mr. President, I was going to speak on the words "a property tax based on value," but I guess it isn't germane to the amendment we're considering now.

PRESIDENT WENSTROM: That is correct.

DELEGATE HAUGEN: Yes. I don't believe, again, that the language that's offered by Delegate Sinner, I believe — was it? — is necessary; but I don't think it hurts any, if you want to put it in.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I'd just like to reiterate what Delegate Roney has said here.

Having been through a few of these bond considerations and being through one right now, if this was cleared by Whitney, Delegate Roney, I'd like to ask a question.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE SCHEEL: Was this cleared by Whitney — the very words you have here?

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: We have called the — I used to call it "Dorsey, Marquardt, Scott and Barber," and was it — I don't know if it's Mr. Whitney —

DELEGATE LONGMIRE: He's with them.

DELEGATE RONEY: Yes. But I think it was the other attorney that we talked to. We read this to them twice. Actually, everything in here, he thinks, is all right. He does not like, he doesn't think, one portion of this. Would you like to have me explain that?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Sinner. I think we should confine our argument at this time to that particular section.

Delegate Scheel, did you have further comment?

DELEGATE SCHEEL: Yes. Mr. President: The only reason I bring these up is because every word in here, when you get it to a bonding attorney to approve something, means — like if we have one deficiency, then we have to go all the way through the courts, to the Supreme Court, you see, and just a few words here could make that difference.

PRESIDENT WENSTROM: The Chair will recognize Delegate Lander.

DELEGATE LANDER: Yes. I think that I must speak against the amendment because it is an honest attempt to clarify; but when you use the word “revenue bonds” as you would in the amendment and do not use the word “deposits,” it seems to me that it simply raises one more question.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Sinner.

Any question? Hearing none, those in favor of adopting the amendment will say “aye;” those opposed “no.”

I believe the “noes” have it. The “noes” have it. The amendment lost.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I don't know whether you're ready to vote yet on it, but before we do vote, these words “based on value” as a qualification of the property tax are words that the Committee has used in all of its sections. For instance, in 1-116, we say that the Legislative Assembly may provide an annual property tax based on value for state purposes. Now, the reason for the “based on value” is that we have property taxes that are not based on value. We have the “in lieu” taxes that apply to the rural electrics and rural telephones and, I think, to the banks, and we have — I was trying to think of the other one — I just had it in my mind — but we do have several — many, in fact — of these “in lieu” taxes — oh, yes, oil — the oil tax is a tax based not on value, but it's a general property tax. So that we do have so many of these that you have to make a distinction when you're talking about property taxes in the Constitution, or at least the Committee thinks so.

PRESIDENT WENSTROM: Further discussion?

The question then before the Convention is on the adoption of the amendment as amended. Those in favor of adopting the amendment will vote “aye;” those opposed will vote “no.”

I apologize, Fellow Delegates; that was all my fault; but we get into a routine, and then I broke the routine, so it was my fault. It was the fault of the Chair.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would ask at least a record — not a record vote but a — what do you call this tally?

PRESIDENT WENSTROM: A roll call vote?

DELEGATE HAUGEN: Yes. I think this last one is important enough so that we have a true indication of the feeling of the delegates.

PRESIDENT WENSTROM: A roll call vote has been indicated — has been requested. We have a sufficient number to have it.

Delegate Aubol.

DELEGATE AUBOL: Mr. President, I think perhaps part of the reason for the weak vote last time was that a lot of delegates are still very confused. I, for one, am especially confused by the question that Delegate Pearce raised in this matter of property tax based on value, and I think it does need some clarification, and I think the use of the term in this section is different than the use of the term in some other sections, because here you are permitting a tax only based on value; but here I think it should be explained. I'd like somebody to expound on it.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Mr. President, I think I could respond.

I think Delegate Haugen has really explained it, but maybe hasn't gone into enough detail.

Now, if we took out that phrase there and just left it “A statewide property tax

shall not be used to retire or guarantee such bonds," we would not only eliminate a statewide real estate tax, but we would eliminate a considerable amount of taxes that are now collected at the state level. We would make them unconstitutional. These words were the best words that the attorney for the State Tax Department could come up with to differentiate the ad valorem attested value type of tax from the other types of tax that the state does now collect, which are in effect property taxes but are not based on value.

PRESIDENT WENSTROM: Further discussion?

The question is on the adoption of the amendment. A recorded vote has been requested. The way I understood just a — just division.

DELEGATE HAUGEN: Yes.

PRESIDENT WENSTROM: Then it will not be recorded.

So those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your preference.

Has every delegate voted? Any delegate wish to change? The vote is closed.

The vote indicated 88 "ayes" and 2 "nays." The amendment has been adopted.

DELEGATE ERICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: Mr. President, it gives me great pleasure to say that this, I hope, is the last proposal to consider; but let's put it on the enrolling and engrossing and put it up for first passage.

PRESIDENT WENSTROM: Delegate Erickson moves that the Committee Proposal No. 1-74 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Rundle. Any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Committee Proposal 1-74 is before the Convention for final passage — first passage.

Delegate Knudson.

DELEGATE KNUDSON: Mr. President, I'd just like to say that I hope the Tax Committee will have a written opinion from the Attorney they have been talking to on the telephone, in case there are any holes in this thing, before the final part of this Plenary Session.

PRESIDENT WENSTROM: The question — no further discussion?

Those in favor of adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote on the final passage — first passage of Committee Proposal No. 1-74.

Has every delegate voted? Any delegate wish to change his vote? The key is — the vote is closed.

The roll call discloses 89 "ayes," 2 "nays," seven delegates absent and not voting. Committee Proposal No. 1-74 has passed.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I think you still have two or three bills that need to be withdrawn here. I have one — Delegate Proposal 2-50. I move that it be withdrawn.

PRESIDENT WENSTROM: Delegate Trenbeath requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-50.

Hearing no objection, permission is granted.

We still have Delegate Proposal No. 2-60, 2-66, 2-70, 2-73 and 2-8. Oh, I'm sorry. 2-60 and 2-66 are still before the Convention.

DELEGATE SAUGSTAD: Mr. President, I ask unanimous consent to withdraw Delegate Proposal 2-66.

PRESIDENT WENSTROM: Delegate Saugstad requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-66.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: May I ask Stanley if he wants to withdraw each one of them separately? He has two others.

DELEGATE SAUGSTAD: Those have already been withdrawn.

DELEGATE HAUGEN: Oh! 2-35 and 2-42?

DELEGATE SAUGSTAD: Yes.

PRESIDENT WENSTROM: Hearing no objection, consent is granted to withdraw 2-66.

DELEGATE KETCHUM: Mr. President.

PRESIDENT WENSTROM: Delegate Ketchum.

DELEGATE KETCHUM: May I have permission to withdraw 2-60?

PRESIDENT WENSTROM: Delegate Ketchum requests unanimous consent of the Convention to withdraw Delegate Proposal No. 2-60. Hearing no objection, your request is granted.

Now, Mr. Clerk, is that clear? All those are off the calendar.

DELEGATE HUBRIG: Mr. President.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: You know, we were wondering why the machine wasn't working here. Well, in one of the breaks I didn't have anything else to do, and on my job as an agent for the Union, I went out and checked to find out if these were Union electricians, and I find out that they aren't, and I think this probably is a good reason why the guy should be in the union — the machine might work. This is a demonstration of right-to-work in North Dakota.

PRESIDENT WENSTROM: We have a few things to do. Could we have just a little bit of order now for just a few minutes and we'll get through?

Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President, I would move that Committee Proposal — da-da-da-da-da-da-da-da and da be transferred to the proper substantive committees or committees of origin.

Now, the reason I went "da-da-da-da," is there's quite a long number or list of them. I do not have that list handy.

PRESIDENT WENSTROM: Delegate Saugstad and Fellow Delegates: Delegate Saugstad is making reference to the committee proposals that have been returned to the Convention from the Committee on Style and Drafting. Those are the ones that he's making reference to.

The purpose of his motion is that these be re-referred to the committee of origination. And do we have a second to his motion?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Litten. As many as are in favor of the motion will say "aye," those opposed "no." The "ayes" have it and they will be re-referred.

DELEGATE KELSCH: Mr. President, I have a point of inquiry.

I understand that some of these committees are going to be meeting and I shall explain that. I am wondering about — I notice in the Illinois Constitution there was quite a bit of work done on sort of introductory remarks setting out the history of the Constitution and what was done. I wonder which committee would intend such a lead-in into the document itself. Which committee is going to be doing that? And the reason I raise this question now is that they should be doing that while they're meeting after we adjourn, if we intend to.

PRESIDENT WENSTROM: Well, that's a real good question and is one we'll have to settle. I'm glad you brought it to our attention.

I would like to state that — Delegate Byrne, you may have the floor.

DELEGATE BYRNE: Mr. President, I want to announce that on Tuesday afternoon at 1:30 the Committee on Coordinating and Transition will be meeting in the west balcony. I again want to mention this so that the chairmen of the various substantive committees will keep in mind when they are going over the various

proposals are referred back to them — will keep in mind to recommend to me those articles or those proposals that they feel should have a definite date other than what the normal revised Constitution will have. And if you have an extended date, as some of you will have, we'd like to have your views on that, so we can consider it during the time that we are meeting next week.

The meeting, again, is at 1:30 on Tuesday afternoon.

PRESIDENT WENSTROM: Now, Fellow Delegates, I think that it is about at this point that I should reveal — or the Chair should reveal just what we intend to do, and when I say “we,” I refer to Delegate Pearce, Delegate Saugstad, myself and then to the chairmen of the six substantive committees and Delegate Unruh, the Chairman of the Committee on Style and Drafting.

Now, Delegate Unruh feels that he needs four days to complete the work of the Committee on Style and Drafting. So we have agreed to give him and his Committee tomorrow, Saturday, Monday and Tuesday.

Now keep this in mind: We intend to have all the delegates back on Tuesday morning at nine o'clock, and then we are going to go into committee hearings — committee sessions. Now, the purpose of this is to review what the Committee on Style and Drafting has performed or their work on the proposals that came from the individual committees. One of the questions that we are going to be faced with when we come back into session is: Has the Committee on Style and Drafting changed the intent of this proposal?

Now, your committee chairmen and the officers that I have mentioned, they feel that there is no one that is in a better position to determine whether the Committee on Style and Drafting has altered the committee intent than the committee of origination. So, for that reason, we are going to have committee meetings on Tuesday. All these proposals that have come back from the Committee on Style and Drafting are going to go back to the committee for your review. Then, as you note, on Tuesday, the Committee on Style and Drafting will still be working. They may not be, but they also could be, so that at the same time they will be winding up their work and the Convention itself will be working on sorting over these committees' reviews. So we will be here Tuesday. We will be working Tuesday. And, again, I think that there is no one that is more capable of deciding whether the intent has been altered by the Committee on Style and Drafting than the committee in which the proposal originated. You were the ones that held the hearings, you were the ones that held the discussion; so that is the way we intend to proceed.

Now, just the way that my mathematics are, and according to the calendar over here and according to the calendar in my office and the one that Stan has, we have 24 days of the Convention that we have used. We have still six working days, as far as the Convention days are concerned.

Now, we have already used four of our recess days. Now we are granting four days to the Committee on Style and Drafting. That would be the 4th of February, the 5th, the 7th and the 8th. However, we will also be here working; but remember that the 8th, as far as the delegates are concerned, is a committee day. It is not charged to us as a Convention day. Remember the statute provides that we can hold committee hearings on the days in which we are recessed. So Tuesday will be a day when we will be working as committees. That leaves us two more days for recess, in the event that we have to back up somewhere along the line, which I don't expect to.

Now, are there any questions? Have I got you totally confused on what we intend to do?

Delegate Paulson, did you have a question? Delegate Saugstad.

DELEGATE SAUGSTAD: I would move that the absent members be excused.

PRESIDENT WENSTROM: Delegate Saugstad moves that the absent Senators be excused. Seconded by Delegate Nething.

As many as are in favor of the motion say “aye;” those opposed “no.”

The absent delegates are excused.

DELEGATE SAUGSTAD: Is the desk clear?

Mr. President, I make a motion to adjourn now. Again, I want to remind all the

delegates to be here — to report here at nine o'clock Tuesday morning, February 8th — not for Plenary Session, but for Committee meetings.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'd like to remind the genial Style and Drafting Committee — those people that can be here over the week-end, and I guess there's a couple exceptions — we will be starting tomorrow morning at 8:30 in G-7. We expect to work possibly even on Sunday, but we'll at least take time off for church.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BRYNE: You just excused the "Senators." I'm wondering if you would also excuse the other delegates.

PRESIDENT WENSTROM: Did I do that? That's pretty good! If I haven't excused any Senators up until now, why that's pretty good!

Delegate Lander.

DELEGATE LANDER: Mr. President: Then your silence would indicate that it is your intention to ask the Convention to make a decision about Saturday, February 12th, after we return, rather than at this time; is that correct?

PRESIDENT WENSTROM: I missed part of your question.

DELEGATE LANDER: I was just wondering, in terms of planning, again, that it is then your intent to ask the Convention to make its decision about taking Saturday, February 12th as a recess day — make that decision next week, rather than now?

PRESIDENT WENSTROM: That's right. It could be, Delegate Lander, that we could finish, if we worked Saturday; so we'd rather not make that decision now.

DELEGATE SAUGSTAD: On this — Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: On this very solemn and momentous occasion, I think that we should pause here to wish Happy Birthday to Delegate Decker.

(Applause)

I would now move that we stand adjourned — that we adjourn until 9:00 A.M., February 9th, which is Wednesday.

PRESIDENT WENSTROM: It's been moved that the Convention do now adjourn until 9:00 A.M. on Wednesday, January 9th — February 9th. Do we have a second? Seconded by Delegate McIntyre.

As many as are in favor of the motion say "aye;" those opposed say "no."

The Convention is adjourned.

(The Plenary Session adjourned at 7:28 P.M., Thursday, February 3, 1972, until 9:00 A.M., Wednesday, February 9, 1972.)

VOLUME XXV

(February 9, 1972)

MORNING SESSION

(The twenty-fifth day of the Plenary Session commenced at 9:20 A.M., Wednesday, February 9, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

Our Chaplain for this morning is the Reverend A. R. Aleson. He's Pastor with the First United Methodist Church of Bismarck.

REV. A. R. ALESON: Shall we pray?

Almighty God, unto whom all hearts are open, and from whom no secrets are hidden — be One in our midst in this hour as we begin to share the fellowship of each other's company. Your Almighty Power has been demonstrated from the beginning of time and it is not in question now. Your ministry of love on behalf of people around the world is deep and abiding and real. We acknowledge that!

We stand as citizens of a great state in a great nation. We pray in this moment of our national and state leadership — firm may they ever stand. We are all aware that we stand on hallowed ground in this hour. We remember those who fought desperately that the freedoms we all enjoy might be carefully thought through and retained. We call to mind those who earlier gave liberally of heart and mind and soul and strength that each one of us might have a solid place upon which to build our lives. Help us to remember!

And during these important days of convention which are times of challenge and opportunity, in which the work we do is most demanding and words we write can change meanings and purposes and intentions, be near to us. We have all been chosen to places of large responsibility. Help us to understand and to be understood. Allow us to reach forward to achieve the high calling of the One who does stand in our midst today and who calls us from the darkness to His light.

We have been allowed the further luxury of time. Help us to use wisely the challenges that come to us today. As we compare past with present, good with better, and better with best, allow no doubt to enter our minds as to what our course of action really ought to be. Allow us the privilege to keep on searching for better words that will more fully explain the spirit of truth which can then endure endlessly. Let no contradiction of purpose or interest interfere with the reaching toward the goal of each of us as persons or of this convention body. Inspire us with the kind of wisdom sought from each other and from above. Help us to recognize the giver of every good and perfect gift. In the name of Jesus Christ, we pray. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — roll call. The Clerk will open the key, you will record your presence.

CHIEF CLERK GILBREATH: Would you push Delegate Cart's button?

DELEGATE CHASE: I did.

PRESIDENT WENSTROM: Every delegate recorded his presence? The key is closed.

Roll call discloses 97 present, one absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Revision and Correction of the Journal.

Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 2nd day of February, 1972, and recommends the same be corrected as follows:

On page 379, following line 20, insert the following:

"Roll call was called and all Delegates were present except Delegates Butler, Solberg and Tudor.

"A quorum was declared by the President."

Your Committee on Revision and Correction of the Journal has also carefully

examined the Journal of the 3rd day of February, 1972, and recommends that the same be corrected as follows:

On page 396, line 5, delete the word "hoping" and insert in lieu thereof the word "laying".

On page 397, line 23, delete the numerals "1-74" and insert in lieu thereof the numerals "1-15".

On page 412, delete lines 28, 29, 30, 31.

And when so corrected recommends that the same be approved.

Delegate Simonson, Chairman.

Delegate Paulson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report under Revision and Correction of the Journal. Any questions?

Hearing none, as many as are in favor of adopting the Report will say "aye;" opposed "no." The "ayes" have it, and the report is adopted.

We'll be on the twelfth order of business — Introduction of Resolutions.

CHIEF CLERK GILBREATH: Resolution No. E, introduced by Committee on Resolutions.

A resolution expressing gratitude for the use of the library facilities of the North Dakota Supreme Court.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I'll move that the Rules be suspended, that the Resolution No. E be referred to the Committee — not be referred to committee, and placed before the Convention for final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that Resolution No. E — that the Rules be suspended and Resolution No. E be not printed as a resolution, be printed in the Journal, that it be placed on the calendar for final passage.

CHIEF CLERK GILBREATH: Resolution E —

PRESIDENT WENSTROM: Do we have a second?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fallgatter.

Read it.

CHIEF CLERK GILBREATH: Resolution No. E introduced by Committee on Resolutions.

"A resolution expressing gratitude for the use of the library facilities of the North Dakota Supreme Court.

"WHEREAS, the North Dakota Constitutional Convention met in organizational session in April of 1971; and

"WHEREAS, the North Dakota Constitutional Convention thereafter met in substantive committees to research, study and deliberate a revision of the constitution of the state of North Dakota; and

"WHEREAS, the North Dakota Constitutional Convention has been meeting in plenary session since January 3, 1972; and

"WHEREAS, during all this time, the North Dakota Supreme Court has granted unrestricted access to library facilities of the court to the delegates and staff of the North Dakota Constitutional Convention, and

"WHEREAS, the North Dakota Supreme Court judges have generously given of their time and knowledge to aid the Convention and its committees in their deliberations; and

"WHEREAS, the generous contribution of time, knowledge, experience, facilities, and research material has been of immeasurable benefit to the North Dakota Constitutional Convention in its study and deliberations;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the North Dakota Constitutional Convention extend its most sincere

appreciation to the North Dakota Supreme Court and the staff thereof and that the clerk of the Convention be instructed to forward an enrolled copy of this resolution to each of the judges of the North Dakota Supreme Court, the clerk of the North Dakota Supreme Court and the librarian of the North Dakota Supreme Court."

PRESIDENT WENSTROM: You've heard the reading of the resolution. Are there any questions? Any further discussion?

The question is on the adoption of the resolution. As many as are in favor of this adoption will say "aye;" those opposed "no." The "ayes" have it, and the resolution is adopted.

CHIEF CLERK GILBREATH: Resolution No. F, introduced by Committee on Resolutions.

"A resolution expressing the gratitude of the Convention to the University of North Dakota for its generous support and sponsorship of informational meetings on the subject of constitutional revision."

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President.

I move that the Rules be suspended and Resolution No. F not be referred to committee and be placed before the Convention for final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended and Resolution F be not sent — referred to a committee, that it be placed before the Convention for reading and final passage.

May I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

The Clerk will read the resolution.

CHIEF CLERK GILBREATH: Resolution No. F, introduced by Committee on Resolutions:

"A resolution expressing the gratitude of the Convention to the University of North Dakota for its generous support and sponsorship of informational meetings on the subject of constitutional revision.

"WHEREAS, the North Dakota Constitutional Convention met in plenary session in April of 1971; and

"WHEREAS, substantive committees of the North Dakota Constitutional Convention met during the summer and fall of 1971; and

"WHEREAS, the North Dakota Constitutional Convention has been meeting in plenary session since January 3, 1972; and

"WHEREAS, during all this time the Bureau of Governmental Affairs of the University of North Dakota has conducted research into areas relative to constitutional revision and made the results of this research available to delegates and staff of the North Dakota Constitutional Convention as well as to individuals interested in constitutional revision; and

"WHEREAS, the Bureau of Governmental Affairs of the University of North Dakota generously sponsored a seminar in the month of December, 1971, on the subject of constitutional revision; and

"WHEREAS, Sigma Delta Chi fraternity generously sponsored a seminar on the subject of the Constitutional Convention during the month of January, 1972; and

"WHEREAS, the University of North Dakota has made an immeasurable contribution to the North Dakota Constitutional Convention by the events and activities described above;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That most sincere appreciation of the North Dakota Constitutional Convention be extended to the University of North Dakota for its aid and assistance through these events and activities.

"BE IT FURTHER RESOLVED, that an enrolled copy of this resolution be forwarded to the president of the University of North Dakota."

PRESIDENT WENSTROM: You've heard the reading of the resolution. Are there any comments?

Hearing none, the question is on the adoption of Resolution F. As many as are in favor of adopting the resolution will say "aye;" those opposed "no." The "ayes" have it. The resolution is adopted.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I would now move that Committee Proposal 1-13, 1-27, 1-28, 1-32, 1-46, 1-58, 1-59, 1-63, 1-73 and 1-91 be returned from the substantive committees of origin and placed on the sixth order of the calendar.

PRESIDENT WENSTROM: You've heard the reading — you've heard the motion as offered by Delegate Saugstad. Do I have a second?

DELEGATE LONGMIRE: Second the motion.

PRESIDENT WENSTROM: Seconded by Delegate Longmire.

Do you have any discussion?

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: This motion is merely to put these various proposals back in the same positions in which they were before we adjourned last Friday.

PRESIDENT WENSTROM: In other words, to put them back on the calendar. It's been moved and seconded. I will not read those numbers again unless the delegates wish that I do. They are listed in your — under the sixth order on your calendar for the day.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. And the motion is adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Delegates:

The motion I'm going to make will continue this procedural juggling so we can handle proposals that were sent out of our committee last week.

Mr. Chairman, I will now move that the Convention reconsider the action by which the committee reports were adopted on Committee Proposals 1-13, 1-27, 1-28, 1-32, 1-46, 1-58, 1-59, 1-63, 1-73 and 1-91.

PRESIDENT WENSTROM: It's been moved by Delegate Unruh that the Convention reconsider its action whereby it adopted the committee reports as the numbers indicated by Delegate Unruh.

Do I have a second?

DELEGATE HOUGEN: Second.

PRESIDENT WENSTROM: Delegate Hougen seconded, Jim Hougen.

Any discussion? The question then is on the adoption of the motion as offered by Delegate Unruh.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The motion is adopted.

Delegate Unruh.

DELEGATE UNRUH: Mr. President.

I now move that Committee Proposals 1-13, 1-27, 1-28, 1-32, 1-46, 1-58, 1-59, 1-63, 1-73 and 1-91 be re-referred to the Committee on Style and Drafting.

PRESIDENT WENSTROM: You've heard the motion —

DELEGATE LITTEN: Second.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: — of Delegate Unruh, seconded by Delegate Kwako, that the Committee Proposals as enumerated be re-referred to the Committee on Style and Drafting. Is there any discussion? Any questions?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the proposals will be re-referred to the Committee on Style and Drafting.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that the Convention reconsider the action by which the committee report was adopted on Committee Proposals 1-1, 1-4, 1-19, 1-47, 1-48, 1-50, 1-52, 1-54, 1-56, 1-62, 1-64, 1-65, 1-66, 1-67, 1-68, 1-78 and 1-94.

PRESIDENT WENSTROM: Delegate Unruh moves that the Convention reconsider its action whereby the Committee Proposals starting at 1-1 on your calendar and down through Committee Proposal No. 1-94, that that action be reconsidered.

And do I have a second on that motion?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Now is there any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And the motion is adopted.

We'll be on the fifth order of business.

CHIEF CLERK GILBREATH: Report of Procedural Committee.

Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-8 be introduced, such proposal being a redraft of Committee Proposal No. 1-1.

Further that this Redraft Proposal not be referred to committee but be placed on the eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Style and Drafting pertaining to Proposal No. 5-8, formerly 1-1. You've heard the report. The question is on the adoption of the report. As many as are in favor of adopting the report will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

Do the delegates now have this sheet "Style and Drafting Redraft Proposal No. 5-8"? It's a green sheet. So then the question before the house is the redraft of 5-8, formerly Committee Proposal No. 1-1.

The Clerk will read the proposal.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-8, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposal No. 1-1.

"Be it resolved by the North Dakota Constitutional Convention that the preamble to the constitution of the state of North Dakota be created.

"SECTION 1.) The preamble to the constitution of the state of North Dakota is hereby created to read as follows:

"PREAMBLE

"We, the people of North Dakota, grateful to Almighty God and desiring to secure the blessings of civil and religious liberty for ourselves and our posterity, do ordain and establish this constitution."

PRESIDENT WENSTROM: You've reard the reading of the preamble. Is there any discussion? The question —

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I have no discussion on this particular proposal, but I do have a question, and it's a supposing question. If a negative vote is cast by the majority of this group on any of the proposals that will be put on the eleventh order, what happens?

PRESIDENT WENSTROM: They would go back to the Style and Drafting Committee for further consideration.

DELEGATE BUTLER: And in what manner does any one of these proposals get completely eliminated from the Constitution?

PRESIDENT WENSTROM: It would not get completely eliminated from the Constitution unless the Constitutional Convention as a body reconsider its action whereby it originally passed it on first passage.

DELEGATE BUTLER: And that reconsideration then would take two-thirds vote to bring it back to the body for action?

PRESIDENT WENSTROM: As of today, yes, it would take a two-thirds vote.

DELEGATE BUTLER: Thank you.

PRESIDENT WENSTROM: Remember, the purpose of considering what we are doing this morning is considering the changes in the style and in the drafting as carried out by our Committee on Style and Drafting.

So the question before the Convention is on the adoption of the preamble.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I'm authorized to say on behalf of the Bill of Rights Committee that we have examined all of the work of the Style and Drafting Committee and that we are in agreement with all of its work and content with its present form. Therefore, the Committee will not be offering anything in addition or to modify what the Style and Drafting has done.

As I understand it, all of the work of the Style and Drafting Committee on the Bill of Rights Committee drafts will be taken up first; is that correct?

PRESIDENT WENSTROM: That is correct.

DELEGATE MAXWELL: I think I should make that preliminary statement then for the information of the Convention.

PRESIDENT WENSTROM: Thank you, Delegate Maxwell.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I rise to a point of privilege. I wonder if the — so that all the delegates understand that the vote on second passage is only as to whether they want to accept or reject the changes of style and drafting, and that it's not a vote on the merits. And that even though they are opposed to an idea — of course, they can vote "no" if they want to, but if the majority vote "no" it then stays in the form in which we originally passed it, and it goes on to the Constitution in that form as you indicated, of course, unless we reconsider. So that everyone understands the votes on second passage, even though you may be opposed to an idea, if you would like the style changes I think you should vote for it. And it doesn't mean by voting "yes" that you're voting for the concept.

PRESIDENT WENSTROM: That is correct.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

First, I'd like to go back to Butler or Delegate Butler's question. When does a two-thirds majority to reconsider go off?

PRESIDENT WENSTROM: It's my understanding it goes off on the twenty-eighth day.

DELEGATE RUNDLE: Twenty-eighth day?

PRESIDENT WENSTROM: Twenty-eighth day. I believe that's the way the Rule read. Wasn't that the twenty-eighth day?

CHIEF CLERK GILBREATH: Yeah.

PRESIDENT WENSTROM: That is correct.

DELEGATE RUNDLE: And then in answer to Delegate Kelsch's advice on how to vote. If you don't like the proposal in the first place, it hasn't been changed, then you should vote on it now. No objection to style and drafting, because they didn't change it.

PRESIDENT WENSTROM: The question before the Convention is on the work done by the Committee on Style and Drafting. And the original — and the

original drafting has been adopted. So our question this morning is on the work of the Committee on Style and Drafting. So when we vote this morning that is what we are approving.

Delegate Baker.

DELEGATE BAKER: Mr. President:

Is it proper then at this time to continue the questions along the line that Delegate Butler and Delegate Rundle have begun in regard to the parliamentary situation for reconsideration of these — of the subject matter at this time?

PRESIDENT WENSTROM: Yes, any question you have, Delegate Baker, this is an excellent time to bring it up. Because this is the start of this matter, this procedure that we're going to go through. So if there are any questions this is an excellent time to bring them up.

DELEGATE BAKER: Since the Rule applies that the two-thirds majority is necessary for reconsideration up to the twenty-eighth day, and in view of the comments of some of the delegates and officers of this Convention and the press that there may be an effort made to actually conclude our work here in the Convention on Saturday of this week, which I believe would be prior to that date, would it be, or am I counting right?

PRESIDENT WENSTROM: I believe that would be prior to that date. I believe that would be the twenty-eighth day.

DELEGATE BAKER: That would be the twenty-eighth day?

PRESIDENT WENSTROM. I believe it would.

DELEGATE BAKER: So if we were still in session on Saturday there would be the possibility of reconsideration with a simple majority; is that correct?

PRESIDENT WENSTROM: On the twentieth day it would be.

DELEGATE BAKER: Yes. Thank you.

PRESIDENT WENSTROM: Delegate Hildebrand, did you have a question?

DELEGATE HILDEBRAND: Mr. President:

In regard to what Delegate Rundle had started to say, I don't think the explanation on it was very clear. Unless it's only me that it is not clear to. On work that Style and Drafting has completed, do we have a second reading on all proposals whether Style and Drafting made changes or not? I was under the impression that we would vote on the approval of the changes, if any, that this committee made.

PRESIDENT WENSTROM: That, I believe, is right. I believe that is correct, Delegate Hildebrand.

Any further discussion?

The question then before the Convention is on the approval of the preamble as submitted to the Convention by the Committee on Style and Drafting.

Those in favor of its adoption will vote "aye;" those opposed will vote "nay." The key will be opened, you will indicate your preference.

Has every delegate voted? Any delegate wish to change? The key is closed.

CHIEF CLERK GILBREATH: Ask Delegate Roney how he votes.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Mr. President.

Delegate Roney votes "aye."

PRESIDENT WENSTROM: Delegate Roney votes "aye."

The key is closed. Roll discloses that on Style and Drafting Proposal 5-8 there were 93 "ayes," there was 1 "nay," there were four delegates absent and not voting. It is passed on second passage.

Delegate Baker.

DELEGATE BAKER: Mr. President:

I'm back on counting the days again. I apologize for taking up the time on this, but I want to be perfectly clear. As I read the Rule 36 the provision regarding the suspension of the rules requiring only an affirmative vote of fifty

delegates applies to the last two days of the Convention. And I'm now thinking that the last two days of the Convention under the authority, if allowed, are the twenty-ninth and thirtieth days. Is that incorrect?

PRESIDENT WENSTROM: No, I think that would be correct.

DELEGATE BAKER: So then on the twenty-eighth day it would still take two-thirds vote to suspend the Rules?

PRESIDENT WENSTROM: Delegate Baker, rather than have me look it up, you did check the Rule, did you?

DELEGATE BAKER: If I have the up-to-date copy that's what it says.

PRESIDENT WENSTROM: I'm sure that hasn't been changed. I'm sure that's the way it's been. But I was thinking it went into effect on the twenty-eighth day. But if it says there it's the twenty-ninth, why then the Chair is in error.

DELEGATE BAKER: Thank you.

CHIEF CLERK GILBREATH: Mr. President:

Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-9 be introduced, such proposal being a Redraft of Committee Proposals No. 1-46, 1-47, 1-48, 1-49, 1-53, 1-57, 1-58, 1-59, 1-60, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-68, 1-72, 1-73, 1-71, 1-78, 1-79, 1-80, 1-89, 1-92, 1-98, 1-104, 1-119 and Delegate Proposal No. 2-23.

Further that this Redraft Proposal not be referred to a committee, that it be placed on the eleventh order for second reading and passage and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report, the Committee on Style and Drafting, Proposal No. 5-9, that it not be referred to a committee but be placed on the eleventh order for second reading and passage and be subject to debate and amendment only as to the style and drafting alterations.

Now do we have a second to the motion? Seconded by Delegate Hildebrand.

The question is on the adoption of the Committee Report.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Unless I'm in error, I believe the Clerk read 1-71. That does not appear at least on the copy I have.

CHIEF CLERK GILBREATH: That was a corrected error. If you will take off 1-77, strike 1-77, and insert in lieu thereof 1-71.

PRESIDENT WENSTROM: That's on the Committee Report?

The question before the Convention is the adoption of the Committee Report. As many as are in favor of this adoption will say "aye;" opposed "no." The "ayes" have it. And the report is adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that on line 1 — page 1, line 6, after the word "ARTICLE" we insert the Roman numeral "I".

PRESIDENT WENSTROM: Delegate Unruh moves that on page 1, after the term "ARTICLE" that we insert the Roman numeral "I".

Do I have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The report is adopted, and Roman number — Roman numeral I will be inserted.

CHIEF CLERK GILBREATH: You want me to read it?

PRESIDENT WENSTROM: I think you should.

CHIEF CLERK GILBREATH: Style and — Style and Drafting Redraft Proposal No. 5-9, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-46, 1-47, 1-48, 1-49, 1-53, 1-57, 1-58, 1-59, 1-60, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-68, 1-71, 1-72, 1-73, 1-78, 1-79, 1-80, 1-89, 1-92, 1-98, 1-104, 1-119 and Delegate Proposal No. 2-23.

“Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the declaration of rights, be created.”

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: To save time in having these read verbatim, I would like to move that the reading of the measure 5-9 be suspended.

DELEGATE SAUGSTAD: Second.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Delegate Unruh moved, and it was seconded by Delegate Kwako, that the reading of the individual sections be dispensed with.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I would resist that motion. Most of us haven't had a chance to read these proposals over after they came from Style and Drafting. I don't think we should pass them without hearing them.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HENDRICKSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: May I ask a question of the Chair?

PRESIDENT WENSTROM: You may.

DELEGATE HENDRICKSON: Will we be voting on this whole proposal as a whole or will we be discussing it section by section or what's the procedure from here on in?

PRESIDENT WENSTROM: You are going to vote on the — if the ruling of the Chair prevails, you are going to be voting on it section by section.

Delegate Miller, did you have a question?

DELEGATE MILLER: Mr. Chairman:

I would support this motion. Delegate Aubol, I think — is this working?

PRESIDENT WENSTROM: Yes, it is.

DELEGATE MILLER: All of these proposals were sent back to committee. And I know that we're not familiar with what went on in committees other than our own. But if the committee of origin passed on these, this means that the intent was not changed, only the style and the English and so on was dressed up a little. It would seem to me it's going to be very time-consuming and not serve much of a purpose if all of these are read here this morning.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I do this just to save time. But if it would help, you notice in the margin on the left side the original proposal number. For example, Section 1 of the green sheet is 1-46. So as you work through these you can turn to your bill book on your proposal book and check. If there are any questions on what's been changed someone from that major committee will be happy to explain. We didn't feel we had to redo the whole thing.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

The Committee on Preamble went through, which this is referring to, and there was only minor changes made yesterday that we found by going through all the way. And I think probably to expedite this motion and the work we're trying to do here, I think it would be very simple for Chairman Unruh or Chairman of the Bill of Rights to explain the few words that were changed so that everybody can follow along and this would dispense with the reading of each section.

PRESIDENT WENSTROM: The question before the — Delegate Baker.

DELEGATE BAKER: Mr. President:

I rise to support Delegate Aubol in resisting this motion for the reason that this particular Style and Drafting Redraft, 5-9, was just distributed this morning. Actually after nine o'clock, I believe, and there are parts of it where the — where the mimeographing, the duplication, is rather dim. And so for the full satisfaction of each delegate I think it would be well if we could have it read so that if there is any doubt as to whether that word actually is "communication" or something else, right there, that could be cleared up. And I wonder if we're under such great pressure for time anyway right now. Are we?

PRESIDENT WENSTROM: May the Chair comment?

DELEGATE BAKER: You're in charge here, Mr. President.

PRESIDENT WENSTROM: Well, you know I'm reluctant to comment. But at the same time I would be the last one to urge haste to the point that we do not adequately consider every section of this Constitution. I don't want it ever said that you didn't have adequate time to hear. And I don't think that — I think maybe later on, maybe later on after we've established a routine, then it might be all right to dispense with reading of some of the material. But this morning when we are really opening a new field, we're opening a new area, a new part of the work of this Convention, I think that it would be well if we did move cautiously, and we did read these particular sections so that each of us is satisfied that this is the way that it came out of the committee of origination. And this is what Style and Drafting did, if anything. So I would — I personally feel that we should read these this morning and we should not dispense with reading them this morning.

DELEGATE UNRUH: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: With the consent of my second I'll withdraw my motion that the material not be read.

PRESIDENT WENSTROM: Delegate Kwako?

DELEGATE KWAKO: Yes.

PRESIDENT WENSTROM: I really think we should do it, though, Delegates. I know it's on the basis of saving time, but I tell you this morning when we're starting out in a new area I think we should — that we should be a little more cautious than maybe we have to be in the next few days.

Delegate Pearce.

DELEGATE PEARCE: Is it working?

PRESIDENT WENSTROM: Yes.

DELEGATE PEARCE: Mr. President:

It would seem to me that if we are going to vote on each section at a time, as I really feel we should, then each section could be read at a time rather than one long-winded reading.

PRESIDENT WENSTROM: Sure.

DELEGATE PEARCE: And while I'm speaking on that, I feel that the delegates understand what we're doing. I think I do. My opinion has always been that we should vote on these sections one at a time. In the particular one that we now have before us I voted "no" on several of the included sections. I haven't changed my mind. I would hate to have to vote "no" on the whole of Proposal No. 5-9. So that it would seem that as each section came up the people would vote on it for inclusion or non-inclusion. At least that's my intention.

PRESIDENT WENSTROM: The question then before the Convention is on what was formerly 1-46 — 1-46 — and it is now Section 1.

Would you read that one? Section 1-46.

CHIEF CLERK GILBREATH: Are we dividing the question?

PRESIDENT WENSTROM: We are dividing the question unless the Chair is overruled.

Section 1.

CHIEF CLERK GILBREATH: **"Section 1. INALIENABLE RIGHTS:**

"All people are endowed with certain inalienable rights; among these are life, liberty and the pursuit of health and happiness."

PRESIDENT WENSTROM: Any question?

DELEGATE DECKER: Question.

PRESIDENT WENSTROM: Is there any alteration in the Committee on Style and Drafting? There was no alteration.

The question then is on the second passage of Section 1, Article 1. Those in favor of its adoption will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

DELEGATE KELSCH: Mr. President.

I think the record should show Delegate Roney isn't here, and it shows red on the board.

DELEGATE ROSENDAHL: Mr. President.

It's mixed up with mine somewhere. When I change mine it bounces back and forth.

CHIEF CLERK GILBREATH: How does Delegate Rosendahl vote?

DELEGATE ROSENDAHL: "Aye."

PRESIDENT WENSTROM: Then vote Roney absent.

Roll call discloses 93 "ayes," 1 "nay," four delegates absent and not voting. 5-9, Section 1, has been passed on second passage.

Next for consideration will be Section 2 of Article I.

CHIEF CLERK GILBREATH: **"Section. PURPOSE OF GOVERNMENT.**

"All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require."

PRESIDENT WENSTROM: You've heard the reading of Section 2. Any discussion? No change made.

The question then before the Convention is on the second passage of Section 2, formerly Committee Proposal No. 1-64. Those in favor of passage will vote "aye;" those opposed will vote "no." The Clerk will open the key, you will indicate your vote. Delegate Roney continues to vote "no" and he isn't here.

CHIEF CLERK GILBREATH: Show him as absent.

PRESIDENT WENSTROM: Any delegate wish to change his vote?

DELEGATE ROSENDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: How does mine record on your board?

CHIEF CLERK GILBREATH: "Yea."

PRESIDENT WENSTROM: Mine records "aye." The vote is closed. Roll call indicates 94 "ayes," no "nays," four delegates absent and not voting. Section 2 of Article I has been passed.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Sometime last week I offered a suggestion that on any proposal on which there are no "no" votes cast that the Journal indicate that all members present voted "aye," none voted "nay," then list those absent and not voting. And in the interest of saving — I think now we're talking of several hundreds of dollars. Rather than ask for a suggestion, I move that this proposal be adopted in the recording of the Journal.

DELEGATE SINNER: Second the motion.

PRESIDENT WENSTROM: I'm afraid I'm going to have to rule the motion out of order in that the statute requires that the vote be indicated by a show of "ayes" and "nays". And I don't believe that years from now, regardless of if it was unanimous, I don't think that would be adequate.

One of my attorneys have any comment on it?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I'm afraid my comment isn't apropos. The Journal, the cost is rising, it is now between \$22 and \$23 a page. You get two roll calls per page, so it costs about \$11 per roll call printed in the Journal.

I'm not a sufficiently good parliamentarian to know whether the actual roll call is required. I would think, however, that if the Convention were shown to have voted unanimously, if the vote exceeded fifty, the Journal somehow or other could reflect that more than fifty. The difficulty is how do you do that without making a count? It would take longer to count a show of hands, time spent, than it would to take roll. So I see no alternative myself even though it gripes me to pay that much money out to take the roll.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President:

Would we have to have each section as a roll call? Could we take each section as an indication of passage and then take the final proposal 5-9, or whatever it is, and have a recorded vote in the Journal on that?

PRESIDENT WENSTROM: Well, fellow delegates, I know there is an item of money involved. And it seems like there should be some simpler way of doing it. But until someone shows me that you don't have to have a recorded roll call vote on adopting of a section of the Constitution at a Constitutional Convention, I'm going to have to rule that that's what we have to have.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

It would save some space if the roll call was listed across the page instead of in a tabular fashion. Only a suggestion.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President:

If Delegate Decker would make his idea in the form of a motion, I would second it.

DELEGATE PAULSON: Mr. Chairman

PRESIDENT WENSTROM: Delegate Paulson

DELEGATE PAULSON: I'll start saving a little money. If anybody will agree with me, I will agree that Sections 3, 4, 5, 6, 7 and 8 be read and considered, and if there is any objection or request for a division of that section, that then we will vote one roll call on the sections to which there are no objections.

DELEGATE BAKER: Second the motion.

PRESIDENT WENSTROM: Sections 3 —

DELEGATE PAULSON: 4, 5, 6, 7 and 8.

PRESIDENT WENSTROM: It's been moved — we had a second over here. Seconded by Delegate Baker. — moved by Delegate Paulson, seconded by Delegate Baker, that we have one roll call on Sections 3, 4, 5, 6, 7 and 8.

You've heard the motion. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And we will vote then on the next — we will consider these sections and the Clerk will read them.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Jim Hougen.

DELEGATE HOUGEN: Yes, I have a question. First of all, there are — I would like to have some discussion on Section 7, what was just mentioned, where we refer to the — where we refer to the courts not of record.

PRESIDENT WENSTROM: Delegate Hougen, let's let the Clerk read the proposal and then you enter your comment.

Will you read it?

CHIEF CLERK GILBREATH: "Section 3. **RELIGIOUS FREEDOM.**

"The free exercise of religious belief and worship shall be forever guaranteed in this state.

"Section 4. **FREEDOM OF SPEECH.**

"Freedom of the press and of all individuals to write, speak and publish their opinions on all subjects is guaranteed, and each must be responsible for the abuse of these freedoms.

"Section 5. **FREEDOM TO ASSEMBLE.**

"The right of the people peaceably to assemble and to petition or address the government shall never be abridged.

"Section 6. **SEARCHES AND SEIZURES.**

"All people have the right to be secure in their persons, houses, papers and other possessions against unreasonable search, seizure, invasion of privacy or unreasonable interception of communications by artificial sensory device. No warrant shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

"Section 7. **TRIAL BY JURY.**

"The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record, may consist of fewer than twelve, as may be provided by law.

"Section 8. **OPEN COURTS.**

"Courts shall be open to all, and every person shall have remedy by due process of law for any injury to his lands, goods, person, privacy or reputation. Right and justice shall be administered without denial or delay."

PRESIDENT WENSTROM: Now Delegate Hougen.

DELEGATE HOUGEN: Yes, Mr. President. I am asking a question. I don't know how to do this, but I would like to have your advice. I think many of us, when we voted on Section 7 last Thursday, I believe it was, or maybe it was Wednesday, were under the impression that there was going to be an amendment to this. I think right now that we are saying that all courts, because of the change in our judiciary, we are saying right now that all courts have to have a jury of twelve. Now many of us feel, I think, that there should be some instances where a jury of twelve is not mandatory. We feel that it should be as provided by law. How do I ask for a vote on that particular section?

PRESIDENT WENSTROM: Do you wish that section voted on separately?

DELEGATE HOUGEN: Yes, I do.

PRESIDENT WENSTROM: Just ask that you vote on it separately and it will be granted.

DELEGATE HOUGEN: Yes. I now ask, Mr. President.

PRESIDENT WENSTROM: Then we will take No. 7 out. We will not be voting on No. 7.

Any further discussion?

Delegate Baker.

DELEGATE BAKER: Mr. President:

I may be assuming something that I should not be. But I'm assuming that the complaint that Delegate Hougen has registered here is not with the work of the Style and Drafting Committee but the substance. And my understanding is if we vote "no" on this all that would do is send it back to the Committee on Style and Drafting. And about the only instruction that they could read out of that is to go to the material that was passed on the tenth order, whenever that was, in this regard. And from reading it, I think it's about identical, isn't it, now? And so I'm wondering what practical effect there is. I wonder —

PRESIDENT WENSTROM: Delegate Baker, the question on No. 7, I've already granted him the privilege of voting — of it being voted on separately.

DELEGATE BAKER: I see.

PRESIDENT WENSTROM: So your comment at this particular point is well taken, but the substance in Section 7 will not be debated except at this time — at this time except on matters of style and drafting. But Delegate Hougen has asked that that be voted on separately, and the Chair has granted it.

Delegate Hill.

DELEGATE HILL: Mr. President:

I have a question on that point also. Since that section was passed only last Thursday, our last Convention day, can we reconsider that now by a simple majority?

PRESIDENT WENSTROM: Yes, you can.

DELEGATE HILL: When would it be appropriate to make a motion of that nature?

PRESIDENT WENSTROM: Well, I would say that it would be appropriate when we get the matter of these six — the question before the Convention off the schedule, I would say that the motion to reconsider would be in order.

DELEGATE HILL: Well, even though we should pass Section 7 as it currently stands, we still could reconsider it later in the day, couldn't we, by a simple majority?

PRESIDENT WENSTROM: Yes, certainly. Because all — all you are doing now is style and drafting. You're adopting what Style and Drafting has done.

DELEGATE HILL: Thank you.

PRESIDENT WENSTROM: Any further questions?

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

These sections originally passed I'm sure we didn't all have a chance to read them in our book. Now I would appreciate one word from the Preamble, Bill of Rights Committee assuring us that they are in accord with the changes and point out the changes that were made.

PRESIDENT WENSTROM: Delegate Aubol, I'm sure that Delegate Maxwell would be happy to repeat. But he did say — he has made that announcement this morning.

Delegate Maxwell, would you care to comment to Delegate Aubol's question?

DELEGATE MAXWELL: Mr. President:

I can merely restate that the Bill of Rights Committee has examined the work of the Style and Drafting Committee, and it is in complete accord and we are content with the present form of all of the sections that the Bill of Rights Committee has had under its consideration.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: The delegates will look at the pink sheet of 1-19 immediately preceding the white sheet with all the amendments, you will notice the way it came out. We made no changes in Style and Drafting.

CHIEF CLERK GILBREATH: The pink sheets in your bill book are the engrossed proposals as they passed the first time, as they went to Style and Drafting. The pink sheets in the bill book are the bill — are the proposal just as you passed it amended. And this is reprinted and put in your bill book. So this is the way it went to Style and Drafting, the pink copy with all the amendments in corrected.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: No sooner you open your mouth you find you made a mistake. On line 11 we did omit a comma which should be in there after the words "civil cases". I would like to move that this comma be inserted this morning.

PRESIDENT WENSTROM: What line, Delegate Unruh?

DELEGATE UNRUH: Line 11, Section 7.

CHIEF CLERK GILBREATH: Page 2.

DELEGATE UNRUH: After the word "cases".

PRESIDENT WENSTROM: Delegate Unruh moves that we amend in line 11, page 2, that after the word "cases" — "a jury in civil cases" that we insert a comma. Do we have a second?

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Maxwell.

The question is on the amendment. Are there any questions?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Before that motion is placed in the book, I was wondering about the comma after "record" in line 11. Now that comma does not appear on line 7 on the pink sheet. I'm wondering if the chairman would like to further correct his amendment?

DELEGATE UNRUH: The chairman would further correct his remarks, but not the amendment. That was a change in Style and Drafting. Sorry about that.

PRESIDENT WENSTROM: The question then before the Convention —

DELEGATE HERNETT: Mr. President:

I think they changed the word "prescribed", Delegate Unruh, changed the word to "provided".

DELEGATE UNRUH: That's right.

PRESIDENT WENSTROM: The question before the Convention is on the amendment on page 2, line 11, after the word "cases" insert a comma. As many as are in favor of the motion will say "aye," those opposed "no." The "ayes" have it. The amendment is adopted.

The question before the Convention is on the passage of Sections 3, 4, 5, 6 and 8 of Article I. 3, 4, 5, 6 and 8 of Article I.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I would like to inquire of Judge Maxwell whether the wording in the Section 8 makes a change? The original passage of Section 8 provided "All courts shall be open"; the revamp shows "Courts shall be open to all". I think there is a slight change in meaning there. "All courts shall be open" would mean that the public is entitled to go in and watch the proceedings; "Courts shall be open to all" means the public has the right to use the court but it doesn't necessarily mean the public is entitled to witness it. Am I right in that interpretation?

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: The Committee felt that the consensus of the Convention was to make sure that the courts were open to all persons to go there and to seek remedy for grievances and not merely that courts were open, that is in the sense that the doors and windows would all be open. And that's the way it presently read in the first instance.

PRESIDENT WENSTROM: Any further comment?

The question before the Convention —

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Also on this section as we worked on it in our subcommittee in Style and Drafting we felt the section does refer to the rights of people; that is, the fact that the people have the courts open to them. That was the idea that was being projected in this particular proposal.

PRESIDENT WENSTROM: The question before the Convention is on the passage of Sections 3, 4, 5, 6 and 8. And you will recall we have the motion to vote on those in toto.

Those in favor of their adoption will vote "aye," those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Delegate Roney votes "aye" and "nay", too, on my board.

CHIEF CLERK GILBREATH: "Aye?"

PRESIDENT WENSTROM: Any delegate wish to change his vote? The vote is closed. Roll call discloses 97 "ayes," no "nays," one delegate absent and not voting. Sections 3, 4, 5, 6 and 8 of Article I have passed.

Next for consideration would be Section 7.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: I move, Mr. President, and fellow delegates, that we reconsider not the action on the Style and Drafting, but reconsider the action of the Convention as a whole when we adopted Section 7. And if I get a second, I'll attempt to explain why.

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hendrickson.

DELEGATE HOUGEN: Mr. President, Fellow Delegates:

If my interpretation is correct, we have the Section 7 returned to the wording to the old Constitution. This is fine with me except that the wording in the old Constitution now is going to change the number of people that have to be on a jury. Our old Constitution said that only courts of record would require a jury of twelve. Now in our new judicial article we are going to say that all courts are courts of record, and actually we are going to be adding the number of jurors that are required in certain instances.

Now I do think that the Legislature should have the responsibility of deciding, if they want to, that there can be some court trials that would require less than twelve members on the jury.

And I would like to direct this question to Judge Maxwell or to Delegate Maxwell, if he would. Am I correct, Delegate Maxwell, in making this statement?

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President:

I would say that that is substantially correct. I don't know that this Constitution will fix exactly the proposition that there will be no courts of record. Under the Unified Court System, however, which this Constitution will provide for, I doubt that there will be any courts that will not be courts of record, at least any courts of significance. So in its present language it is tantamount to saying that there will be no juries in civil cases of less than twelve.

DELEGATE HOUGEN: This, Mr. President, is why I would like to have this action considered.

PRESIDENT WENSTROM: Did I get a second to Delegate Hougen?

DELEGATE HENDRICKSON: Yes.

PRESIDENT WENSTROM: Yes, I did.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I rise to support and urge a reconsideration of this particular section. If you remember correctly, this was brought up the last day we were in Convention. It was a floor amendment that we returned to the old Constitution in place of the proposal that was before us. I'm hoping or wondering if some of you were as lax as I was as far as considering this. I was not knowledgeable about what courts of record or which courts kept records any more. And after working in subcommittee and learning that very few courts are courts of no record, and possibly in the future there will be none of this type, I know that I would have voted differently on this because of the fact that we are having so many jurors for so many court trials. So I urge that you do help support the idea that we bring this back for reconsideration.

PRESIDENT WENSTROM: The question —

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Courts of records are those courts ordinarily that have court reporters in which the entire proceeding is taken down subject to a transcript being prepared. For many years we have had courts that were not courts of record; we've had justice courts of various kinds over the years, they are not courts of record; the municipal courts are not courts of record; and for the most part county courts are not courts of record. Now we have not, to my knowledge, in this Constitution eliminated courts not of record. The Legislature still has that power. If we are at some future stage to make a number of lower courts, and we'll have to have lower courts whether we call it part of the Unified Court System or not, there are going to be lower courts which take care of what they — whether they are called traffic offenses, whether they are still called courts, or whether it's going to be automatic and you give some computer the parking fine.

Nevertheless, I was very much in favor of the language as it is at present, because I feel that it provided trial by jury, and I think to most people a jury means twelve people and should absolutely remain inviolate until such time as the people specifically and alone want to amend that section of the Constitution. I see no problem in the future for the Legislature with the section as we now have it before us. And I would hope that we would not reconsider our action; it will be misconstrued, it will be considered dangerous and it will be considered an endangering of people's rights. I think at this stage we should be very conscious of the things that we do if we expect to get a favorable vote on this Constitution. And I hope that it will not be reconsidered.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President:

I would support the motion for reconsideration. I'm a member of the Bar Association. I believe the American Bar Association is in favor of the reduction of numbers of jurors in certain cases. It doubles the price per day for jurors. And what I am meaning to say, if a court is not of record, you have a trial and a court is not of record, that means you can have another trial in the District Court that is a court of record. Because if there is no record you have nothing to appeal from to get a new trial. And this simply gives the person the right to have two trials, and the cost of trials, of course, are tremendous. And there is ample evidence to support the fact that a smaller jury can return just as good a verdict as a large one, especially in civil cases, which is all we are talking about here.

And I would think that the work of the Committee, the position of the Bar Associations, on this matter should be given considerable weight. And I would hope that the least we could do would be to allow the Legislature to regulate the size of the jury in all courts in civil cases. And this is certainly no matter which would cause any undue public concern. In fact, I think it would cause concern if the Legislature didn't have this authority. I hope you will support the motion. Thank you.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: I would also like to support reconsideration on this. Delegate Larsen and I were contacted this morning from one of the county commissioners in our district. And he informed us that with the large number of cases that are handled that this is going to cause a very large drain on the county coffers in the upcoming years if this remains and the Legislature is not given some option as to being able to lessen this number of jurors. So I hope that you will vote for reconsideration.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates:

I'm going to take the position that it's going to take strong, clear and convincing argument before I vote in favor of any motion to reconsider. I think, unless we can show that the Convention operated under a misconception or if there is a conflict that we were not aware of, that we should not reconsider.

PRESIDENT WENSTROM: Any further discussion?

Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I would ask that the Convention reconsider. If you recall, the Committee came in with a proposal that would allow a — said only that it would provide for a twelve-man jury only in cases of felonies and would have allowed two changes; one, a lesser number of jurors in civil cases, and would also allow the Legislature to set a less than unanimous requirement for a verdict or division for a verdict.

Now I opposed the Committee Report, as did a number of other delegates, and moved that we go back to the old Constitution. And I know the Convention took out the reference to "men". But there was some question on whether or not we should allow in civil cases the reduction in size of a jury.

Now this provision does allow that, but it says "only courts not of record". And they are lesser courts. And I would expect that possibly some day in the future we may very well not have courts not of record. Although that subject is up to the Legislature. But I think if you favor the idea of leaving legislation in civil cases it should only be the right to reduce the number of the jurors.

Still the average jury I don't think, Delegate Hougen, is addressing to that problem. I think all we want to do is to amend by taking out the words "courts of record" — pardon me — "courts not of record".

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the motion to reconsider what today is Section 7 of Article I, but at the time it was passed was Committee Proposal No. 1-119.

The question then is on the motion to reconsider. And in that this is going to require a minimum of fifty votes, the key will be opened then and you will record your choice — you will record your wishes.

Has every delegate voted? Any delegate wish to change his vote? The key is closed.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: There were 59 "aye" votes, 1 delegate absent, and 38 "nay" votes. So the motion to reconsider has passed.

And now Delegate Hougen.

DELEGATE HOUGEN: Yes. Mr. President:

Can we now be on the tenth order?

PRESIDENT WENSTROM: You have the — you have the proposal before the Convention.

DELEGATE HOUGEN: Yes, I do. I would move then, Mr. President, and fellow delegates, that on line 11 of page 2 —

PRESIDENT WENSTROM: Let's put it on the tenth order then. You move that it be placed on the tenth order?

DELEGATE HOUGEN: Yes, I move that it now be placed on the tenth order.

PRESIDENT WENSTROM: Delegate Hougen moves that Committee Proposal No. 1-119, I believe, —

CHIEF CLERK GILBREATH: 119.

PRESIDENT WENSTROM: — 1-119 be placed on the tenth order of business. And do we have a second to that?

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Rundle.

Any further discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Committee Proposal No. 1-119 is before the Convention on the tenth order.

DELEGATE HOUGEN: Yes, Mr. President.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: I now move, Mr. President, and fellow delegates, that on line 11 of our page 2 that the words "in courts not of record" be stricken.

PRESIDENT WENSTROM: Seconded by Delegate Hendrickson.

CHIEF CLERK GILBREATH: That would be —

DELEGATE PEARCE: Mr. President.

CHIEF CLERK GILBREATH: Would that be on your pink sheet, Delegate Hougen? Would that be the pink sheet in your proposal book? Committee Proposal No. 1-119 in your proposal book in the pink engrossed copy? Line 7?

DELEGATE HOUGEN: Yes. Yes, that's correct.

CHIEF CLERK GILBREATH: After the word "cases" you want to delete "in courts not of record,"?

DELEGATE HOUGEN: Yes. "in courts not of record,".

Mr. Chairman.

Do we have a comma now after — after "record"?

CHIEF CLERK GILBREATH: No, not now. If you were just to delete "in courts not of record" it would read "cases may consist of less than twelve,". Is that what you desire?

DELEGATE HOUGEN: We should take out the comma after "pages" or after "cases", excuse me.

CHIEF CLERK GILBREATH: All right. Good.

PRESIDENT WENSTROM: The amendment — this will be on the pink, on the pink copies that you have in your books — on line 7 after the word "cases" delete the "in courts not of record".

You're heard the amendment.

Delegate Pearce.

DELEGATE PEARCE: Mr. President:

If this amendment is adopted it means that juries could be any number, I presume two, if not one, if the Legislature so saw fit in any civil case. Now we've talked on numerous proposals in this Convention in which people have said, "What are you considering; human rights or money?" And in almost every case, as far as I can remember, human rights won out, at least in the minds of the delegates, and not money. We are not a large urban populous area in which our courts are clogged. The only arguments I have heard for a jury smaller than twelve is that it saves money. In modern times one of the most frequent civil cases is an automobile accident. Suits are now being brought for multimillion-dollar amounts, sometimes way beyond any insurance protection that the average individual carries. Those cases make or break a man. I can see no reason why we should depart from the traditional twelve. If you have fewer people, you have a smaller cross-section of the community. Jurors are selected as supposedly a pure cross-section of the community. Anyone who is familiar with statistics knows that the smaller the sample, the less typical it will be. If the jury gets smaller you will have less and less a cross-section of the community.

You, as a result of going home from this Convention or going to lunch this noon if you leave the Capitol, might well have a situation which will make you a defendant in an action. I think that the — we have always said that we should have a jury of twelve. They are not judging the law, they are judging the facts. And I think it's dangerous for everyone to reduce the number of jurors. And I hope that the amendment will not pass.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HOUGEN: Yes, Mr. President.

PRESIDENT WENSTROM: Delegate Jim Hougen.

DELEGATE HOUGEN: If I understand it correctly, we are not saying that they are going to be — have to be courts that have less than twelve. But what we are saying is that we can let the Legislature, as they are now doing, determine what the size of the juries should be. And I think we want to keep things as they are. We do not believe in courts not of record, we are going to be insisting that there are some courts now that can have less than twelve members that will have to have twelve members.

PRESIDENT WENSTROM: Further discussion?

DELEGATE THOMPSON: Delegate Thompson.

DELEGATE THOMPSON: I'm not satisfied in my own mind that these are changes that have been made in the judicial section that we are removing all misdemeanor courts of record or not of record. I would hope then that you don't pass this amendment. And if the amendment was so that you would just add the word "or" after "cases", I think you'd be protected rather than strike your "courts of record," but a jury in civil cases or in courts not of record". That would be safer as far as I'm concerned.

PRESIDENT WENSTROM: Any further discussion? The question — Delegate Hill.

DELEGATE HILL: Mr. President:

I presume these delegates are aware that the number of jurors required right now in municipal court and county justice court numbers not twelve, I believe it's six. And as I stated before, the North Dakota Bar Association is in favor of this change. And I would really think that we have to presume that the Legislature will be aware of all the problems which Delegate Pearce mentioned and they will adequately protect the public interest. I urge you to support the amendment.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment offered by Delegate Hougén.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: In thinking of a remark made by Delegate Thompson — perhaps I can ask him this. Will you yield to a question? — wouldn't the Legislature be able to put this particular stipulation on courts with juries, that was not of record, would not need to have a twelve-man jury? Are we not leaving that open to them?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I think that they probably could in view of the present holdings by some of the federal courts I think that they could determine the right of trial by jury does not necessarily mean twelve. So I suppose they could, except for the specific reference in here where we refer to twelve. I think that that reference in itself is going to lock twelve into the situation.

DELEGATE HENDRICKSON: Thank you.

I think my feeling is I appreciate what Delegate Pearce was saying about the large sums of money that might be at stake and at trial or in a case. But I also think of the many court cases we have there is not a substantial amount. And that I feel a jury of six in these cases, as would be determined by law, based on how much would be at stake — I really don't know these legal terms enough to know how to say this and what I'm thinking — but I feel there are many cases where we don't have enough of a settlement that's going to be considered that we need to have twelve men there to make the consideration.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President, Fellow Delegates:

I think that we have become aware of a problem that exists here, and yet with the amendment that has been proposed I suspect that there are a number that will vote against it. I would suggest that some way or another we refer this back to the committee for further working. I do not believe that we should pass this out without an agreement amongst the group. I feel that — and I myself would like to see this worked on further. And I hope that one way or another we can kill this amendment or this proposed amendment and then send it back to Committee for reconsideration.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I may be alarmed unnecessarily, but I'd hate to get it back to committee at this point. I would rather you laid consideration over or to

the foot of the calendar until you've had a chance to work it out. I think the technicalities going back and forth might be more than we can handle here.

PRESIDENT WENSTROM: Delegate Unruh, I believe that when they made reference to referring it back to the committee that of course this is a substantive change. And I don't believe that it was the inference that it would go back to your committee.

The question — Delegate Aas.

DELEGATE AAS: Mr. President:

I want to make it clear I meant to the substantive committee, not the Style and Drafting Committee.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Jim Hougen.

DELEGATE HOUGEN: Mr. President.

PRESIDENT WENSTROM: Jim.

DELEGATE HOUGEN: Would it help if we delayed action on this for one day?

PRESIDENT WENSTROM: I — are you asking me?

DELEGATE HOUGEN: Yes.

PRESIDENT WENSTROM: I'd say no.

DELEGATE HOUGEN: I'm also looking at some of the delegates. Some are shaking their head that it would:

I move that we delay action on this for one day, and we will be given the opportunity to talk about it and make sure it is just what we want to say.

DELEGATE SINNER: Second the motion.

PRESIDENT WENSTROM: We do have a — we do have a motion to amend now before the Convention. And I'd like to feel that enough consideration, enough thought has been given to this particular question so that you would not have moved to reconsider had you not been convinced in your thinking that this was something that should be brought back before the Convention. And you have offered an amendment, and I think that we should — I think that we should continue. And either object — either adopt or defeat the proposed amendment. That's the Chair's feeling on it at this time.

DELEGATE HOUGEN: Can I speak again, Mr. Chairman?

PRESIDENT WENSTROM: Yes, you may.

DELEGATE HOUGEN: I would then withdraw my motion to lay this over one day, and also state that we did discuss this in Style and Drafting yesterday. And we did not feel that the deleting of these words "in courts not of record" would mean that it has to go back to Style and Drafting.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Hougen. And I will read that again.

In line 7 after the word "cases" delete the ", in courts not of record". That is the question; that you delete those words.

DELEGATE KESSEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: In our Judicial Functions Proposal 1-11 we provide that we shall have "the Supreme Court, district court, and such other courts as provided by law." We've already given that to the Legislature. Under the same matter, the Legislature can then determine what courts, when they set it up, and the number of jurors. So I do not feel Delegate Pearce's worry is well founded. They can set up a jury for less. And if they want to provide for a jury of twelve for civil cases in a certain amount, they can do so. We are giving the Legislature the prerogative in one case, I think we can do it in another. And therefore, I speak in favor of the amendment.

PRESIDENT WENSTROM: Any further discussion?
Delegate Hubrig.

DELEGATE HUBRIG: Could I ask Delegate Pearce a question? Last week, correct me if I'm wrong, I raised the question if the Legislature would have the authority to have lesser than a unanimous with regards to size of jury. Would this give the Legislature, if we adopt this amendment, direct the Legislature to make a lesser than unanimous on a conviction?

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I don't think it would. I don't think that question gets involved here.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I agree with Delegate Thompson that this amendment will only take care of civil cases. And if you're knocking out "other courts of record", then you are still leaving the twelve provision in a traffic case or something of that kind. I would agree with Delegate Thompson that if you add the word "or" after the comma on line 7 that you would more — you would better do what you're trying to do to have a jury of less than twelve if the Legislature so provides in civil cases, and also in courts not of record you are letting them even in criminal cases. So I would suggest that we further amend this if we're going to do exactly what you want to do.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I'm not so certain what Delegate Hougen wants to do. But I would oppose dropping jurors of less than twelve from a criminal case. Because you may say they are a lesser court, but they can put you in the county jail for one year. And I think that you're entitled to a jury of twelve in that situation.

As far as civil cases, I'm not — I'm not so concerned. I think that that might be a matter we can leave to the Legislature. But I feel quite strongly we shouldn't put in "or" in there. The right to reduce the size should be limited to civil cases.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Hougen. I have just read it, so I think you are aware of the question.

Those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." The "noes" have it.

DELEGATE HOUGEN: Request a division, Mr. Chairman.

PRESIDENT WENSTROM: Division has been requested. Division will be granted. Those in favor will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate indicated his choice? Any delegate wish to change? The vote is closed.

DELEGATE ROSENDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Rosendahl votes "nay." I'm still double.

CHIEF CLERK GILBREATH: Votes how?

PRESIDENT WENSTROM: He votes "nay."

The tally indicates that there were 48 "ayes," and 50 "nays." So the amendment failed.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Now the amendment has failed, I guess I will have to put the Style and Drafting changes back on 1-119, and then put it back into our committee report. So I now move that the comma after "civil cases" and after the word "record" on line 7 and on line 8 the word "prescribed" be changed to "provided" and the word "fewer" instead of "less" on line 8.

PRESIDENT WENSTROM: Delegate Unruh, are you offering those?

DELEGATE UNRUH: I'm offering those as an amendment, Mr. President. Then after we've acted on those —

PRESIDENT WENSTROM: Delegate Unruh, now is that to the old proposal?

DELEGATE UNRUH: Yes. I am trying to move it over.

CHIEF CLERK GILBREATH: Do you want on line 7, did you want a comma in line 7?

DELEGATE UNRUH: Comma after "cases".

CHIEF CLERK GILBREATH: That's in there.

DELEGATE UNRUH: All right. Comma after "record".

CHIEF CLERK GILBREATH: Okay. On line 7, after "record" insert a comma. Line 8, delete the word "less" and insert the word "fewer".

DELEGATE UNRUH: Yes.

CHIEF CLERK GILBREATH: Delete the word "prescribed", insert the word "provided"?

DELEGATE UNRUH: Yes.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: The question before the Convention is on the amendments to Committee Proposal No. 1-119. This is the pink sheet. This is the pink proposal that you have, the original, and they are placing on this proposal the amendments as offered by the Committee on Style and Drafting.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I just rise to a point of order. I believe this measure is still before the Convention. And I was curious why Delegate Unruh should offer an amendment to the substantive article.

PRESIDENT WENSTROM: Delegate Burke, you are correct.

I will rule — I will rule Delegate Unruh momentarily out of order in that the motion to reconsider the original — I'm wrong. I'm wrong.

CHIEF CLERK GILBREATH: He can amend it.

PRESIDENT WENSTROM: He has the authority. He has the right to offer an amendment. Yes. Yes. My ruling was in error.

Delegate Burke, you see when we brought back this, we brought back Committee Proposal No. 1-119 so it is before the Convention. So then we had an amendment offered, and the amendment failed. So the proposal is still before the Convention. So then Delegate Unruh moved to amend. So then that amendment is in order. So Delegate Unruh's motion is in order to amend.

DELEGATE LANDER: Question.

PRESIDENT WENSTROM: The question before the Convention then is on Delegate Unruh's motion to amend Committee Proposal No. 1-119. As many as are in favor of the amendment will say "aye;" opposed "no." The "ayes" have it, and the amendments are adopted.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Would it be in order at this time to move that this matter be laid over one Convention day?

PRESIDENT WENSTROM: It would be.

DELEGATE HILL: I so move.

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: It's been moved and seconded — it's been moved by Delegate Hill and seconded by Delegate Sanstead that further consideration of Committee Proposal No. 1-119 be laid over one Convention day.

As many as are in favor of the motion will say "aye;" opposed "no." I rule the "ayes" have it. It will be laid over one Convention day.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Just a point of information, too. What order are we on now?

CHIEF CLERK GILBREATH: Tenth.

DELEGATE HERNETT: Tenth order?

PRESIDENT WENSTROM: At the present time we're on the tenth order.

DELEGATE HERNETT: In other words if you lay it over a legislative or a Convention day it will still be on the tenth order, won't it?

PRESIDENT WENSTROM: That's correct.

DELEGATE HERNETT: 119?

PRESIDENT WENSTROM: That is correct.

DELEGATE HERNETT: What happens — where is —

PRESIDENT WENSTROM: That is Section 7, Article I.

DELEGATE HERNETT: Where is Style and Drafting Redraft Proposal No. 5-9? Where is it now?

PRESIDENT WENSTROM: It's before the Convention. It's not exactly before the Convention because if we take this one out of the way, then it is before the Convention.

DELEGATE HERNETT: What order is this one now?

CHIEF CLERK GILBREATH: Eleventh.

PRESIDENT WENSTROM: It's on the eleventh.

DELEGATE HERNETT: That's on the eleventh.

PRESIDENT WENSTROM: It's on the eleventh order.

DELEGATE HERNETT: Well, I just wanted —

PRESIDENT WENSTROM: When we moved to reconsider, we went back to the tenth order.

DELEGATE HERNETT: Well, I have no quarrel with it. I was just curious to know where it was.

Mr. Chairman, another question. How did this get on the eleventh?

PRESIDENT WENSTROM: Pardon?

DELEGATE HERNETT: How did this proposal get on the eleventh order?

PRESIDENT WENSTROM: How did it get there? It got there when we adopted the Committee Report.

DELEGATE HERNETT: Okay.

PRESIDENT WENSTROM: And then if you'd like to know how we got on the tenth, we got on there when we went in the tenth on the motion to reconsider:

DELEGATE HERNETT: Just like a yoyo, isn't it?

PRESIDENT WENSTROM: That's correct.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: May I suggest a recess?

PRESIDENT WENSTROM: Yes. We have a few announcements at the desk.

CHIEF CLERK GILBREATH: Delegate Engelter has the twelfth grade of the New Salem High School from New Salem, North Dakota, and their teachers, Mr. George and Mr. Mutzenberger, in the gallery.

The eighth grade from the Tuttle School of Tuttle, North Dakota, and their teacher, Donald Boe, with fifteen students, are in the gallery.

Delegate Sanstead has thirty students from the twelfth grade of Minot Senior High of Minot, North Dakota, and their teachers, John Standal and John Sandeen, in the gallery.

There are ten pre-school children from the ABC Pre-School, Mandan, and their teacher, Mrs. Bragg, in the gallery.

PRESIDENT WENSTROM: Will the visitors please rise and be recognized by the Convention?
(Applause)

One additional announcement.

CHIEF CLERK GILBREATH: The Constitutional Ballot Committee will

meet in the west balcony during the A.M. coffee break to hear Alternate Proposal 4-2. The P.M. coffee break will be in the west balcony to hear Alternate Proposals 4-3 and 4-6.

PRESIDENT WENSTROM: For the information of our visitors in the balcony this morning, the matters being considered are the reports of the Committee on Style and Drafting. I think maybe you are aware that the Convention has already passed the proposals and that this morning we are hearing the report of the individual sections as offered by the Committee on Style and Drafting. They have been reading this over, correcting the language. It's not the intent of the Committee on Style and Drafting that they change the intent of the legislation or the substance of this particular proposal; it's only that they can change, put in commas, make the reading better, take out surplus words and so forth. So that is the matter that we have been considering this morning.

However, we did run into one where they moved to reconsider action that we took on the last day of the Convention which I believe was last Wednesday, and that was what we were considering and debating here on the floor.

The Convention will be in recess for ten minutes. Please come back on schedule.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I'd like to announce a meeting of the Executive Functions Committee and the Education Committee, a joint meeting, right now in the Large Hearing Room.

PRESIDENT WENSTROM: Okay.

DELEGATE HERNETT: And we'll have coffee there.

PRESIDENT WENSTROM: Fine.

(The Session recessed at 11:10 A.M. until 11:30 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order? Will the Convention be in order?

Next for consideration is Section 9 of Article I.

CHIEF CLERK GILBREATH: **"Section 9. RIGHT TO KEEP ARMS.**

"The right of the citizens to keep arms for self defense, lawful hunting, recreational use and other lawful purposes shall not be abridged, but nothing herein shall be held to permit the unlawful carrying of concealed weapons."

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: As a procedural matter, I would like to move that we consider together Sections 9 through 28 with one recorded roll call vote. And then if anyone wishes to divide out a single issue, they may do so.

DELEGATE RONEY: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Omdahl that we consider Sections 9 through 28, of course giving any delegate the right to take out a section and vote on that separately if you so choose.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: 9 through 28. It's been seconded by Delegate Litten. 9 through 28 is the last section on this Proposal.

You've heard the motion. The motion is that we consider Sections 9 through 28, and that we vote on it in its entirety at one time. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and the motion prevailed.

The Clerk will read Section 9. I believe we just read Section 9. Then we will take Section 10.

CHIEF CLERK GILBREATH: **"Section 10. INDICTMENT OR INFORMATION.**

"No person shall be proceeded against for a felony other than by indictment or information, except in cases arising in the military forces. In misdemeanor cases,

offenses may be prosecuted by indictment, information or complaint. The legislative assembly may change, regulate or abolish the grand jury system."

"SECTION 11. SPEEDY TRIAL."

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I would like to ask a question of someone who is knowledgeable in this new wording in which appears the word "complaint" which was not in the other. Maybe that's only a style change, but it sort of raised a question in my mind.

PRESIDENT WENSTROM: Is that in Section 10?

DELEGATE LANDER: Yes.

PRESIDENT WENSTROM: Will someone answer Delegate Lander's question? Delegate Maxwell.

DELEGATE MAXWELL: Mr. President.

I'll take a whack at it.

In the Committee Proposal we had used the word "accusation" which would be inclusive of information and complaints. At present certain minor cases are prosecuted solely by complaint. But on the floor there were some amendments that took out the word "accusation". So we felt it was now necessary to add the word "complaint" so that minor cases could be proceeded by that method.

PRESIDENT WENSTROM: Any further discussion? Any further questions on Section 10?

Are there any questions on Section 9? I believe we passed over that without asking for questions.

Then we will proceed to Section 11.

CHIEF CLERK GILBREATH: "Section 11. SPEEDY AND PUBLIC TRIAL.

"In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."

PRESIDENT WENSTROM: Are there any questions on Section 11, Article I? Read Section 12.

CHIEF CLERK GILBREATH: "Section 12. BAIL.

"All persons shall be bailable. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are imprisoned."

PRESIDENT WENSTROM: Any questions on Section 12?

Hearing none, we will move on to Section 13.

CHIEF CLERK GILBREATH: "Section 13. NO DEATH PENALTY.

"Death shall not be prescribed as a penalty for any crime."

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Just a question, if I may, to Style and Drafting of the title of that section "No Death Penalty". It seems to me rather an odd title. I'm wondering if the word "no" couldn't be deleted there.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: To my fellow semanticist, I would say it sounds better when it says "No Death Penalty". That's a matter of opinion.

PRESIDENT WENSTROM: Any further discussion Any further questions?

Then we will proceed to Section 14.

CHIEF CLERK GILBREATH: "Section 14. TREASON.

"There shall be no crime of treason against the State of North Dakota."

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

Several of the members of Style and Drafting, as we came across this, it's sort of a — I'm partly responsible, partially responsible, I guess, for having this in the Constitution. The Committee had come out originally to indicate that there should be no reference to treason. I felt that we either should have the — we should have a prohibition against it. However, I don't know how people are going to react when they read it, when they say we are not creating treasonous acts. We are not trying to say that. We are trying to say there will be no prosecution in the state.

And I would like to move to reconsider our action by which we passed Delegate Proposal — or Committee Proposal No. 1-92 to enable the delegates, if they desire, to go back to the old language in the Constitution if they think that that reads better than this statement. It will take a two-thirds vote, I'm sure, Mr. President, because this was passed sometime ago.

PRESIDENT WENSTROM: Do you move to reconsider?

DELEGATE KELSCH: Yes.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I might explain, if the motion to reconsider prevails, I would then tender a statement that reads the language of the old Constitution verbatim. So I think it is a choice of the delegates; if they find this language objectionable, I think they should vote for the old language; if they don't find it objectionable, leave it go. If they would like to have the old language of the old Constitution placed in this language, they should vote to reconsider.

PRESIDENT WENSTROM: The question before the Convention is on a motion to reconsider Section 14 of Article I which is Committee Proposal No. 1-92:

Do we have a second?

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hendrickson.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I think that we're getting bogged down in a sea of trivialities if we go back and redo this all over again. I would be against reconsideration.

PRESIDENT WENSTROM: Further discussion?

Delegate Unruh.

DELEGATE UNRUH: Mr. President:

It's my view that the bill as passed on the pink sheet of 1-92 would permit a person to actually commit treason against the State and get away with it because there is no crime. That's the way it reads.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Well, my remark was going to be much the same as Delegate Unruh, since we worked on this in Style and Drafting. And I think the intent was to say the act of treason would be against the federal government and not against the State. But as it reads, I think that it's a very unfortunate thing to have in the Constitution.

PRESIDENT WENSTROM: Further discussion? The question is on the motion to reconsider Delegate Proposal No. 1-92 that is now known as Section 14 of Article I. In that this will require a two-thirds vote of the Convention to reconsider, if there is no further discussion, those in favor of reconsideration will vote "aye," and those opposed will vote "nay." The key will be opened, you will indicate your choice.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

CHIEF CLERK GILBREATH: Rosendahl, are they working?

DELEGATE ROSENDAHL: "Aye."

CHIEF CLERK GILBREATH: Just press the key to see if it is working.

PRESIDENT WENSTROM: There were 68 votes to 27, three absent. So the motion to reconsider has passed.

Committee Proposal No. 1 —

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: — 92 is before the Convention.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I would — there is an amendment at the desk. My amendment, I think, reads, however, to the green sheet. The lines in the pink sheet of the re-engrossed proposal would delete lines 10 and 11 and insert — and the Clerk has the wording.

PRESIDENT WENSTROM: You will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 1-92:

Delete lines 10 and 11 and insert in lieu thereof the following:

"Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court."

PRESIDENT WENSTROM: Mr. Clerk, is that against the pink sheet, the engrossed bill?

CHIEF CLERK GILBREATH: Yes, against the engrossed bill.

PRESIDENT WENSTROM: You heard the reading of the amendment as offered by Delegate Kelsch. Do we have a second to that amendment?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The only comment I would make to the fellow delegates is that this is the — I've asked the Clerk to type that exactly as it appears in the old Constitution. It's very close to the federal Constitution which appears on page 45 of your blue book which reads: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same Overt Act, or on Confession in Open Court." So I think it's essentially the same as what the federal Constitution contains.

PRESIDENT WENSTROM: Any questions? Further discussion?

The question is on the adoption of the amendment as offered by Delegate Kelsch. Do you wish it read again?

DELEGATE BAKER: Question.

PRESIDENT WENSTROM: The question before the Convention then, those in favor will vote "aye;" those opposed to the adoption of the amendment will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed "nay." The "ayes" have it. The amendment is adopted.

The question before the Convention is —

DELEGATE KELSCH: Mr. President.

I would move that —

PRESIDENT WENSTROM: — Committee Proposal —

DELEGATE KELSCH: — Committee Proposal No. 1-92 be deemed properly re-engrossed as amended, and be placed on the tenth order for first passage.

PRESIDENT WENSTROM: It's been moved that Committee Proposal — that the Rules be suspended, that Committee Proposal No. 1-92 be deemed properly re-engrossed, and that it be placed on the calendar for final passage as amended.

Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and Committee Proposal No. 1-92 is again before the Convention as amended.

DELEGATE DOBSON: Question.

PRESIDENT WENSTROM: Question; those in favor of first passage of Committee Proposal No. 1-92 as amended will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

CHIEF CLERK GILBREATH: How does Roney vote?

DELEGATE RONEY: Mr. President:

Delegate Roney votes "aye".

PRESIDENT WENSTROM: Delegate Roney votes "aye."

The vote is closed. Roll call discloses 86 "ayes;" 8 "nays," four delegates absent and not voting. Committee Proposal No. 1-92 has passed as amended.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I would now move that Committee Proposal No. 1-92 be placed on the eleventh order as Section 14 of Redraft Proposal 5-9.

PRESIDENT WENSTROM: Delegate Kelsch moves that Committee Proposal No. 1-92 as amended be placed in lieu of Section 14 — in Section 14 of Article I.

Do we have a second to that motion?

DELEGATE POULSON: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Poulson.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And we have a new Section 14.

Any further discussion on Section 14?

Hearing none, we will go then to Section 15.

CHIEF CLERK GILBREATH: **"Section 15. HABEAS CORPUS.**

"The privilege of release from unlawful detention or unlawful imprisonment shall not be suspended unless, in case of rebellion or invasion, the public safety may require."

PRESIDENT WENSTROM: Any comment?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Since we are doing this for posterity, I must rise again.

As I understood it several weeks ago when we still used the word "habeas corpus" in the title but felt that we have to redefine it, I think that we should go back to Section 5 of the present Constitution. Now as the section reads on the green sheet consider carefully what it says: "The privilege of release from unlawful detention or unlawful imprisonment." Now that I would think would never be suspended, because if that were suspended you would then unlawfully detain or unlawfully imprison. Now even in the time of rebellion or invasion we should be lawful. Now the writ, the privilege of the writ as provided in Section 5 of the present Constitution, is different from the privilege of release. A writ of habeas corpus does not release him. A writ of habeas corpus is the directive of the court to bring the body before the court. That's as far as the writ goes. Once the body is there, then the inquiry of the court is as to the lawfulness of the imprisonment or the detention. And that's why the writ can be used in other cases than people in jail; it can be used in child custody cases, it can be used in any case where the presence of a person is desired to be before the court so that the real question can then be raised, that is the determination of the lawfulness.

And as long as I have pondered this, since we did this some time ago, it still seems to me that we may well have presented the courts with a rather confusing

situation of what we were trying to do. In the title we say "habeas corpus". Now in most of the rest of these sections you will notice that the title, the words of the title, appear again someplace in the section. But here we have the title "habeas corpus" and then we don't talk about the writ of habeas corpus; we talk about the second question, after the writ has produced the man before the court.

Now, I'm sure that nobody was trying to change the right of the writ of habeas corpus. And I think in light of the hundreds of years and the many thousands of cases that we have that construe the type of constitutional provision which we now have, that we should go back and simply use the term and don't worry about the Latin. We've used it in other sections, and we've used Greek roots and Latin roots and every other kind of roots.

And, therefore, I do now move that we reconsider the section on Committee Proposal No. 1-58 which, if it is read, I would then move to substitute the language of Section 5 of the present Constitution.

DELEGATE RONEY: Second.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: The question to reconsider has been moved by Delegate Pearce on Committee Proposal No. 1-58, and the motion has been seconded by Delegate Roney.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I presume that since the committee and Delegate Pearce are in full agreement as to their purpose that we consider this a style and drafting change if we want to adopt the old provision. Can we go by simple majority?

PRESIDENT WENSTROM: I don't — I couldn't hear what he said.

DELEGATE PEARCE: Mr. President.

May I answer that?

PRESIDENT WENSTROM: Yes, you may answer.

DELEGATE PEARCE: This is not the language of the Style and Drafting Committee. This is the language of 1-58 which substituted this language for Section 5 of the present Constitution. So I don't think I am quarreling — I don't think Style and Drafting did anything to this.

DELEGATE HILL: But, fellow delegates, can we make style and drafting changes by a simple majority? All right. I'll drop that. But I think I'm in complete sympathy with the purposes of the committee that approved this proposal, but I believe I have to agree with Delegate Pearce in this case that the committee has really changed the meaning of habeas corpus. And I would support the motion for reconsideration.

PRESIDENT WENSTROM: Delegate — Delegate Hill, now do you say that the Committee on Style and Drafting has changed the meaning of this?

DELEGATE HILL: No. I was just wondering if it's a sneaky way of getting around the language, we could call it a style and drafting change, and get it by simple majority rather than two-thirds vote.

PRESIDENT WENSTROM: No, this has been voted on a few days ago. It was voted on back on the 17th. So this will take a two-thirds vote of the Convention to reconsider.

Delegate Geelan.

DELEGATE GEELAN: Mr. Chairman:

I'm certainly not going to be presumptuous enough to attempt to disagree with as eminent a lawyer as Delegate Pearce. But I had hoped that it would have been possible to write a Constitution for posterity in English so that people could understand what habeas corpus is, what bill of attainder and what ex post facto is. I had hoped — we had a judge and a lawyer on our committee — and lawyers in this committee — that they could have come up with English. But when I find that nobody can even agree among the lawyers what ex post facto is, and we found one authority, and Delegate Daniels brought this out to our attention, that it did not refer to crime, it referred to punishment. Then we had a

lawyer get up and say, "Oh, no, it refers to punishment and not crime." So I'm certainly not going to resist the motion to reconsider. I'm not going to attempt to do anything more. I will recognize the fact that we will have to have a Constitution written for lawyers, that lawyers can't even substitute English for posterity.

PRESIDENT WENSTROM: Any further discussion?

Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President: I rise to support the motion to reconsider. I am one of the delegates — as a delegate I was most unhappy with this thought of trying to replace some of these Latin terms with English. For this reason — for instance, I have worked in the field of —

PRESIDENT WENSTROM: It isn't working all the time, Stan.

DELEGATE SAUGSTAD: I'll throw it away. I have for a number of years been involved in, oh, some pursuits of biology, for instance, in which we use Latin terms consistently, particularly in taxonomy, naming things. And the reason Latin is used is that it is a dead language and the meaning of the words does not change.

The difficulty with the English language is that as time progresses words tend to change, their meaning tends to change. But in a dead language, such as Latin, there — naturally there are no changes of meaning. And, therefore, after something has been decided, and then decided many times in court, what, say, habeas corpus means, then there is no further change in the meaning. Therefore, I support this motion.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President.

I was going to point out an extremely unusual error in the pink sheet for 1-58. It does not include the amendment on line 12 which is inserted in front of the white copy 1-58 where we changed the language from "safety policy" to "public safety". First time I've ever caught the engrossers in an error.

CHIEF CLERK GILBREATH: I don't think it is, either.

DELEGATE KNUDSON: And, Mr. President, while I'm on my feet I would like to mention that we have included a Swedish word in our draft Constitution.

PRESIDENT WENSTROM: Any further discussion?

The question —

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I have to admire Delegate Pearce's persistency. He has brought this up several times. And it appears we have to face it again. I think he has an undue affection for the term "habeas corpus". The purpose for that — of the writ of habeas corpus is to test whether or not someone is being imprisoned illegally. Now it doesn't matter, just so we have in the Constitution that a person can test illegal imprisonment or illegal detention. And that's exactly what the language of Section 15 does. It gives a person a right to test illegality.

Now habeas corpus, of course, is a way of doing that. The Legislature might think of another way of doing it and call it something different. But I don't think that we have to have the term "habeas corpus" there. I think what the Committee has done, is we have made it understandable, we have made a right understandable by putting it into language that can be understood. And I hope that the motion to reconsider will be defeated.

PRESIDENT WENSTROM: Further discussion. The question before the Convention is on the motion to reconsider the action of the Convention whereby it passed Committee Proposal No. 1-58. Now this was voted upon a number of days ago, so it will take 66 votes to reconsider.

Those in favor of reconsideration will vote "aye," those opposed will vote "nay." The Clerk will open the key and you will indicate your wishes.

Delegate Sinner, how do you vote?

DELEGATE SINNER: I vote "aye".

PRESIDENT WENSTROM: Delegate Sinner votes "aye".

Any delegate wish to change? The vote is closed.

CHIEF CLERK GILBREATH: Delegates Roney and Rosendahl, was it recorded correctly on the board?

DELEGATE RONEY: Yes.

PRESIDENT WENSTROM: There were 57 "ayes," there were 37 "nays," with four delegates absent and not voting. So the motion to reconsider failed.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: It is my contention, Mr. President, that Delegate Pearce improperly moved his amendment as a style and drafting change because one of the Style and Drafting functions is to remove inaccurate and inconsistent language. That is under Rule 12.1, part 3. He has pointed out that the language if not inaccurate, is at least not precisely accurate.

There is also an inconsistency involved as between the title and the body of the section. Therefore, I urge Delegate Pearce to put his amendment as a style and drafting change, and I urge the Chair to accept the motion.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Still suffering from the wound of defeat, I don't have the courage to put such a motion.

DELEGATE BAKER: Well, Mr. President, —

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: — whatever it means, I'll move it.

PRESIDENT WENSTROM: Well, that's just a little bit irregular, I believe, for the Chair to make the motion. If you have a motion that you want to present, why then we will present it. However, I don't believe that I am supposed to.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: So far as I followed, Mr. President, I move that this Convention express as its opinion that the — that the language on page 3, lines 15, 16 and 17, be stricken and that the language concerned — language contained in Section 5 of the present Constitution be substituted for that because it is a more clear and concise expression of the same idea.

PRESIDENT WENSTROM: You have heard the motion whereby the lines 15, 16 and 17 of the green sheet, page 3, Section 5, be stricken, and that that section of the Constitution pertaining to the same substance matter — remember the number Delegate Baker?

DELEGATE BAKER: Section 5.

PRESIDENT WENSTROM: — Section 5 be inserted in lieu thereof.

De we have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: I feel somehow that I'm being out-manuevered here, and I don't know how to oppose it. I'm not that sharp on parliamentary procedure. But it seems to me to be an effort to do indirectly that which was not able to be done directly. And somehow it strikes me as being improper, but I don't know how to attack him, Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell, the question before the Convention at the moment then would be on an amendment as offered by Delegate — it would be an amendment as offered by Delegate Baker. This is an amendment to strike the material and offer in lieu thereof. And so this is an amendment being offered from the floor. And the Chair would rule that it's permissible. The only recourse you have would be to generate enough enthusiasm to vote down the proposed amendment.

The Clerk will read the amendment.

DELEGATE MAXWELL: Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: It strikes me as being a matter of substance. And I think the only way we can do that is through a motion to reconsider, and that's not what we are doing here; a motion to reconsider requiring two-thirds vote and this merely being a majority vote. In other words, the same thing is being accomplished but in a different direction and by lesser vote. And I don't think it is proper. But, as I say, I'm at a disadvantage.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I agree with Delegate Maxwell. I think this is just fun and games that's being played parliamentarily: We just voted on the identical question. At least it is identical as far as I can see. And I don't feel that you can take another vote without a motion to reconsider.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I don't feel that the motion to reconsider was necessary. The amendment that Delegate Baker has put relates to style, and therefore his motion is in order.

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I am in great sympathy with Delegate Pearce's proposal. However, I do not believe this is a proper way to handle it. Because if we can amend the Style and Drafting Committee Report in such a fashion after we had voted on the precise language, we're going to be here until July. But I certainly have some dandies that I'll have reconsidered then under this guise. So I would certainly — there is a motion before the body, but I will certainly move the defeat of it. Because this is an improper method of attacking the matter.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: I am sure, delegates, that probably there is a real gray area that we're treading on here in calling this an amendment to the Style and Drafting Proposal. It looks to me like it's — you're stretching your imagination quite far. I think there is a real out in this thing for those that wish to make this change. All we have got to do is wait until the twenty-ninth day and your vote of reconsideration only requires fifty votes. And I would think that would be the time to do it rather than to upset the apple cart, so to speak, on everything Style and Drafting is coming out with here in this fashion.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'm wondering, has the Chair ruled that the amendment is germane?

PRESIDENT WENSTROM: I don't believe the Chair has. But it's going to rule that it is not in order.

DELEGATE THOMPSON: That is going to be the ruling?

PRESIDENT WENSTROM: That is going to be the ruling, that it is not in order.

DELEGATE THOMPSON: Then we don't have the problem.

PRESIDENT WENSTROM: Then you don't have unless there is an appeal to the decision of the Chair. Because it has been determined by the Convention that this time through that we are to deal strictly with the amendments as offered by the Committee on Style and Drafting. And in that this it not one — and the motion to reconsider actually has failed, the Chair is going to rule that the amendment as offered by Delegate Baker is out of order.

We will be on the — we will be on the sixteenth section. Section 16.

CHIEF CLERK GILBREATH: In answer to Delegate Knudson, the pink sheet that you have is the engrossed bill. The printer got the wrong engrossed bill.

DELEGATE KNUDSON: I thought so.

PRESIDENT WENSTROM: We will take — fellow delegates, in looking at the clock on the wall, it is now ten minutes after twelve.

And do we have any announcements at the desk?

DELEGATE SCHEEL: Mr. President.

May we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we will be on the eighth order.

DELEGATE SCHEEL: We'll have a brief meeting, won't be over five or at the most ten minutes, of the Resolutions Committees in the west balcony room up here right after we recess.

PRESIDENT WENSTROM: Are there further announcements? Further announcements? Hearing none, we will be in recess until one-thirty:

(The Session recessed at 12:12 P.M. until 1:35 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:35 P.M., Wednesday, February 9, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order? The Convention will be in order.

We'll be on the eighth order of business.

CHIEF CLERK GILBREATH: Delegate Hoffner has the senior class of Esmond, North Dakota, and their teacher, Mr. Bachmeir, in the gallery today.

PRESIDENT WENSTROM: Will the students please rise and receive the recognition of the Convention? (Applause)

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Continuing on the eighth order, I would like to announce a meeting of the Public Information Committee immediately following the afternoon session of the Convention in the Large Hearing Room.

PRESIDENT WENSTROM: Any further announcements?

Hearing none, the Convention will be in order and we'll be on the eleventh order of business.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson:

DELEGATE PAULSON: Pardon me. I have an amendment that I would like to offer to Section 15, but some of my advisers and consultants are not readily available. I would suggest that we carry on and come back to 15 if the amendment is approved by my friends.

PRESIDENT WENSTROM: Do you wish to offer an amendment at this time or wait?

DELEGATE PAULSON: I'd rather wait.

PRESIDENT WENSTROM: Okay, fine.

Then we will proceed with Section 16. The Clerk will read Section 16.

CHIEF CLERK GILBREATH: **"Section 16. UNLAWFUL ACTS.**

"No bill of attainder, ex post facto law or law impairing the obligations of contracts shall ever be enacted."

PRESIDENT WENSTROM: You heard the reading. Is there any discussion?

Hearing none, we'll move on to Section 17.

CHIEF CLERK GILBREATH: **"Section 17. RIGHTS OF DEBTORS.**

"The legislative assembly shall provide for the protection of the rights of debtors and shall provide that homesteads of heads of families or single persons and reasonable amounts and kinds of their personal property, as defined by law,

shall be exempt from a forced sale. This section shall not be construed to prevent liens against a homestead for labor done and materials furnished for its improvement, in such manner as may be provided by law."

PRESIDENT WENSTROM: You've heard the reading of Section 17, Rights of Debtors. Any discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

Because the Chairman of Style and Drafting is an attorney, perhaps he can answer this question. For the non-payment, is alimony a debt?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'm not practicing law currently, but my experience would say that that's a contract. And that if it was not paid that you could then be cited for contempt, but they can't put you in jail for it.

PRESIDENT WENSTROM: Any further discussion on Section 17?

We'll move on and the Clerk will read Section 18.

CHIEF CLERK GILBREATH: **"Section 18. IMPRISONMENT FOR DEBT.**

"No person shall be imprisoned for debt."

PRESIDENT WENSTROM: Any question?

Hearing none, we will move on to Section 19.

CHIEF CLERK GILBREATH: **"Section 19. GRANTING PRIVILEGES OR IMMUNITIES.**

"No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."

PRESIDENT WENSTROM: Are there any questions? Any discussion on Section 19?

Hearing none, we'll move on to Section 20.

CHIEF CLERK GILBREATH: **"Section 20. UNIFORM OPERATION OF LAWS.**

"All laws of a general nature shall have a uniform operation."

PRESIDENT WENSTROM: Any discussion on Section 20?

Hearing none, we will move on to Section 21.

CHIEF CLERK GILBREATH: **"Section 21. EMINENT DOMAIN.**

"Private property shall not be taken or damaged for necessary public use without protecting the rights of the owner and without just compensation having first been made to the owner for all damages.

"However, the legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service, by depositing estimated just compensation for all damages into court for the owner. The legislative assembly shall provide the procedure and fix the time limit for determination of damages, necessity and public use in such cases."

PRESIDENT WENSTROM: You've heard the reading of Section 21. Is there any discussion?

Hearing none, we will move on to Section 22.

CHIEF CLERK GILBREATH: **"Section 22. SUITS AGAINST THE STATE.**

"Suits may be brought against the state and its political subdivisions for negligent injury to a person or his property, but the legislative assembly may provide for reasonable limitations."

PRESIDENT WENSTROM: Are there any questions? Any discussion on Section 22?

Hearing none, we'll move on to Section 24 — 23.

CHIEF CLERK GILBREATH: "Section 23. **DISCRIMINATION IN ACCOMMODATIONS.**

"All persons are entitled to the full and equal enjoyment of the goods, services, privileges, advantages and facilities of any public accommodation, without discrimination based on race, sex, color, religion or national origin."

PRESIDENT WENSTROM: You've heard the reading of Section 23. Any discussion? Are there any questions?

Hearing none, we'll move on to Section 24.

CHIEF CLERK GILBREATH: "Section 24. **SERVICEMEN AND SERVICE-WOMEN.**

"The people of North Dakota declare that North Dakota servicemen and service-women may be given special considerations as determined by the legislative assembly."

PRESIDENT WENSTROM: You've heard the reading of Section 24. Any discussion? Are there any questions?

Hearing none, we will move on to 25.

CHIEF CLERK GILBREATH: "Section 25. **NONDISCRIMINATION IN EMPLOYMENT.**

"There shall be no discrimination against a qualified natural person's right to practice a trade or profession or a citizen's right to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade, labor or professional organization."

PRESIDENT WENSTROM: Section 25. Any discussion?

Hearing none, we move on to Section 26.

CHIEF CLERK GILBREATH: "Section 26. **CIVIL POWER SUPREME.**

"The military shall be subordinate to the civil power."

PRESIDENT WENSTROM: Any discussion? Questions; Section 26?

Hearing none, we'll move on to Section 27.

CHIEF CLERK GILBREATH: "Section 27. **SUPREME LAW.**

"The Constitution of the United States is the supreme law of the land."

PRESIDENT WENSTROM: Hearing no questions or discussion, we'll move on to Section 28.

CHIEF CLERK GILBREATH: "Section 28. **RIGHTS RETAINED.**

"To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate."

PRESIDENT WENSTROM: Any question on Section 28? Any questions? No discussion?

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman:

I have an amendment at the desk for Section 15 which I think comes under the style and drafting.

PRESIDENT WENSTROM: You may read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-9. On page 3, line 16, after the word "imprisonment" insert the following: "through petition for a writ of habeas corpus".

And renumber the lines accordingly.

DELEGATE PAULSON: Mr. Chairman.

There should be a comma after "corpus".

CHIEF CLERK GILBREATH: There is. Forgot to read it.

DELEGATE PAULSON: Mr. Chairman:

Do I get a second?

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PEARCE: Second.

DELEGATE PAULSON: After hearing the argument this morning, I think

that the body of the section should conform to the title. And I think that we specifically explained what we're talking about if we insert these words. And if there is a difference between what the original section says as passed by the Convention and the addition of these words, then there is something wrong with the original definition, because we are guaranteed a right of the writ of habeas corpus. I would like to have some observations from the other people involved.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I would have to oppose this amendment because I believe that Delegate Paulson is putting a limitation on the section which he does not intend to do. There are several remedial writs besides the writ of habeas corpus. We in our articles in the judiciary did take out the Latin name for these writs. We felt that when we used the term "remedial writs" when we empowered the court to issue such remedial writs as were necessary in carrying out its duties and its powers that we would cover the situation specifically and broadly enough to include, of course, habeas corpus.

Now, I did not get into this debate this morning on the necessity of keeping the word "habeas corpus". As some may recall, I objected to it going into the title because I feel there that a title such as "unlawful detention" would have been better. And I share the opinion of some of those who feel that we ought to write this Constitution in good, clear, concise, simple English without reference to those. I do not share the concern, as some do, for eliminating the word "habeas corpus". Because I feel that in the other section, in the judiciary section, where we do empower the court to issue such remedial writs as it feels is necessary, that we would be protecting the rights of people in doing that and we would be keeping our Constitution simple and understandable to anyone who would care to read or refer to these particular sections.

I had asked someone, although I did not offer any amendment, to take that word out of the title. But someone felt that since this was a writ which has been used down through the years that we should retain it from precedent standpoint in court decisions. It seems to me that it would be very easy to go back and refer to cases that had come up prior to this time by referring to the old section of the Constitution and by referring — using a remedial writ. I could see where, as Delegate Maxwell says, that if somebody is being unlawfully detained you would petition the court or move the court for an order bringing this person before the court immediately. You could do that without referring to it as to habeas corpus. And I think you could do that under the other section in the judiciary part. For that reason, I think — or for those reasons I think Delegate Paulson would be limiting the powers of the court by specifically referring to the writ of habeas corpus in this particular section.

PRESIDENT WENSTROM: Fellow Delegates:

In line with the ruling of the Chair made this morning in a previous effort to amend this same section, the Chair is going to rule the motion out of order. And at some time, in the event that you would like this to be amended, I think that we will have to go through the process of reconsidering. This is quite technical, I will agree. But I believe that this is only a method of circumventing the decision that has already been made by the Convention this morning. And on that premise, the Chair is going to rule the motion out of order.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I wonder if we could refer to Section 23. We titled that "Discrimination in Accommodations", where in Section 25 we talk about "Non-discrimination in Employment". I wonder — I would move that we add the words — the letters "non" in front of "discrimination" and "accommodations" on 23 so it may read "Nondiscrimination in Accommodations".

PRESIDENT WENSTROM: You offer an amendment then to Section 23?

DELEGATE KELSCH: In the title of Section 23.

PRESIDENT WENSTROM: In the title.

DELEGATE SINNER: Second the motion.

PRESIDENT WENSTROM; Seconded by Delegate Sinner.

It's been moved by Delegate Kelsch, seconded by Delegate Sinner, that we amend in Section 3 — 23, that we change the word "discrimination" to "Nondiscrimination in Accommodations". Is there any further discussion, or is there any discussion?

What is the wish of the Convention? Question? The question is on the amendment as offered by Delegate Kelsch, that we add the word making it "nondiscrimination" in place of "discrimination" following Section 23, line 20.

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Along the same line, it's been suggested that Section 18 be renamed. And I think it's a good suggestion since we have up in 13 "No Death Penalty", I'm going to move that the title to Section 18 be "No Imprisonment for Debt".

PRESIDENT WENSTROM: You wish to offer an amendment, Delegate?

Delegate Unruh moves, —

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: — and it's been seconded by Delegate Stanton, that following "Section 18" in line 29, page 3, Article I, that the word "No" be inserted; "No Imprisonment for Debt," which would change the way it reads now.

DELEGATE SOLBERG: Question.

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: Again the question before the Convention is on the adoption of the amendment as offered by Delegate Unruh, that in line 29 after "Section 18" we insert the word "No" so it would read "No Imprisonment for Debt".

Any discussion? Hearing none, as many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted:

DELEGATE BURBIDGE: Mr. Chairman.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I know the conflict between Section 11 and Section 13 somehow slipped by Style and Drafting and also our Committee. On line 1, page 3, it says, "nor be deprived of liberty or property without due process of law", indicating that with due process of law you could be deprived of life, liberty or property; whereas in Section 13, line 10, of course. "Death shall not be prescribed as a penalty for any crime." It would therefore seem that on line 1 "life," should be omitted. And I will so move.

PRESIDENT WENSTROM: Where is that, Delegate Burbidge?

DELEGATE BURBIDGE: On page 3, line 1.

PRESIDENT WENSTROM: Yes.

DELEGATE BURBIDGE: Omit the word "life,".

PRESIDENT WENSTROM: It's been moved by Delegate Burbidge that on line 1 of page 3 that we strike the word "life" so that it would read, "nor be deprived of liberty or property without due process of law." Do we have a second to that proposed amendment?

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Jestrab.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I contend that would be a substantive change because it could be interpreted that it could permit abortion, and I don't think we intend to do that.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I would agree this interpretation could be made, and I see where it could, and I think I'm out of order so I would therefore withdraw my motion.

PRESIDENT WENSTROM: With the consent of your second. Delegate Jestrab, will you yield?

DELEGATE JESTRAB: Yes.

PRESIDENT WENSTROM: So the proposed amendment is stricken.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that we reconsider our action by which we amended Section 23. And if I get a second, I'll tell you why.

DELEGATE DIEHL: Second.

DELEGATE LONGMIRE: Mr. President:

If we reconsider this, I hope to offer an amendment to delete the word "non" that we just put into it and put in the word "no". And I do not do this for the purpose of just nitpicking, but I do it for the purpose of making it uniform. Because when we go back up to a previous section we have "No Death Penalty" and also as soon as some of us get some of these Latin phrases out of here somebody gets them back in again. And the word "non" is not an English word that I know of. So I would hope that we would make these sections uniform, and that we would stay in English as much as we can. So if my motion passes, that's what I intend to do.

PRESIDENT WENSTROM: What delegate — which delegate seconded Delegate Longmire's motion? Delegate Aubol.

DELEGATE KELSCH: Mr. President.

We don't need to reconsider it. Can't we just move the amendment?

PRESIDENT WENSTROM: I think you just as well.

DELEGATE LONGMIRE: Yes, I just moved the amendment on the amended section, Mr. President.

PRESIDENT WENSTROM: And that amendment has been adopted.

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: So you just amended.

DELEGATE LONGMIRE: Yes. I now move that we delete the word "non" and insert in lieu thereof the word "no".

PRESIDENT WENSTROM: Delegate Longmire moves that in line 20 on page 4, Section 23 of Article I, that we strike the word "non" and insert in lieu thereof the word "no".

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: It is true that there is no such word as "non". But there is such a word as "nondiscrimination". It's used in both Sections 23 and 25. I hope the amendment is defeated.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Longmire.

Those in favor of adopting the amendment will say "aye;" those opposed "no." The Chair will rule the "noes" have it and that the amendment lost.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Are you ready for an engrossing motion?

PRESIDENT WENSTROM: Yes. Unless there are further amendments.

Delegate Saugstad.

DELEGATE SAUGSTAD: I would like to rise just for a point of personal

privilege to ask a question of the Style and Drafting Committee. It is simply this: I noticed that in each instance following the title they have placed a period. And I was wondering — apparently that was done purposely. And I just would like a brief explanation as to why.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: In response to your very deep question, I will say that we have no particular reason for putting it except that that's the form we adopted, and we used it consistently, period.

Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Is it Section 7 we're holding over?

PRESIDENT WENSTROM: I beg your pardon?

DELEGATE UNRUH: Is it Section 7 we've laid over?

PRESIDENT WENSTROM: No. — yes, Section 7 is laid over.

CHIEF CLERK GILBREATH: Until tomorrow.

PRESIDENT WENSTROM: Until one Convention day. And the motion that we had at the time that we started considering this group from 9 through 28 was that we vote in toto on this group: So the question then before the Convention at the present time, we would need — we would need a motion to deem them properly re-engrossed and placed on the calendar.

DELEGATE UNRUH: Mr. President:

I now move that Sections 9 through —

CHIEF CLERK GILBREATH: 28.

DELEGATE UNRUH: — 28 be deemed properly engrossed and placed on the calendar.

PRESIDENT WENSTROM: Delegate Unruh moves that the Sections 9 through 28 of Article I be deemed properly re-engrossed, and that they be placed on the eleventh order for passage as amended.

DELEGATE LANDER: Question.

DELEGATE ENGSTROM: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engstrom.

As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and Sections 9 through 28 are before the Convention for passage.

Those in favor of passage will vote "aye," those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: If that vote was strictly on the approval of Style and Drafting's changes, I would ask the Chair to consider by request to change my vote from "nay" to "aye".

PRESIDENT WENSTROM: That is correct. It was on the Style and Drafting. Roll call discloses 92 "ayes," 4 "nays," two delegates absent and not voting. Sections 9 through 28 of Article I have passed.

CHIEF CLERK GILBREATH: Mr. President:

Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-10 be introduced, such proposal being a redraft of Committee Proposals numbered 1-82, 1-85 and 1-118.

Further, that this Redraft Proposal not be referred to a committee, but be placed on eleventh order for second reading and passage, be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the Report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report as offered by Delegate Unruh, Chairman of the Committee on Style and Drafting. Do we have a second?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Knudson.

Any question? As many as are in favor of adopting the Report will say "aye;" opposed "no." The "ayes" have it, and the Report is adopted.

CHIEF CLERK GILBREATH: Do you all have 5-10 on your desk?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'd like to move that on line 1 — pardon me — on page 1, line 6, that the numeral, Roman numeral "II" be inserted.

PRESIDENT WENSTROM: Delegate Unruh, would you let the Clerk read this first, and then we will —

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-10, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-82, 1-85 and 1-118:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the elective franchise, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE ELECTIVE FRANCHISE

"Section 1. ELECTIONS, VOTER QUALIFICATIONS.

"The general election of the state shall be held biennially as provided by law.

"Every citizen of the United States, who has attained the age of eighteen years and who has been a resident of the state six months, of the county ninety days and of the precinct thirty days preceding an election, shall be a qualified elector. When an elector moves within the state he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct. The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence. No elector shall lose his residency for voting eligibility solely by reason of his absence from the state.

"The legislative assembly shall provide by law for secrecy in voting, for absentee voting, for administration of elections and for the nomination of candidates."

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL; As in the previous one, I move that we have Sections 1, 2 and 3 before us as one unit. And then if a delegate chooses to divide, they can divide separately.

PRESIDENT WENSTROM: The question as moved by Delegate Omdahl is that we vote on Sections 1, 2 and 3 in toto, and that in the event a delegate wishes to have the question divided, that that privilege will be granted.

Do I have a second?

DELEGATE DECKER: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Decker.

The question; as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The article, Elective Franchise, Section 1 is before the Convention.

Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I would like to make a motion now. I move that on page 1, line 6, the Roman numeral "II" be inserted after the word "ARTICLE".

PRESIDENT WENSTROM: Do I have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

The motion is that as offered by Delegate Unruh, that following the word "ARTICLE" the Roman numeral "II" be inserted following that "ARTICLE".

Is there any discussion? Hearing none, as many as are in favor of the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

Are there any questions on Section 1 as read? Any questions on Section 1 as read?

Hearing none, we will read Section 2.

CHIEF CLERK GILBREATH: "Section 2. **VOTER DISQUALIFICATIONS.**

"No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote; nor shall any person be qualified to vote if he is confined in a correctional institution or jail, or while under sentence for a crime punishable by confinement exceeding one year."

PRESIDENT WENSTROM: Any discussion? Are there any questions? The question is on Section 2 of Article II. Hearing no questions —

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I just noticed one change in that the Style and Drafting Committee has taken out "competent jurisdiction" on page 2, line 1. This is Delegate Longmire's original amendment to 1-82, I believe. But I don't know whether that — what the deletion of that word "competent" — whether that is incompetent or not.

PRESIDENT WENSTROM: Can someone answer the question as raised by Delegate Aubol?

DELEGATE HAUGEN: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Yes. We felt that if someone or somebody did have jurisdiction it could be taken for granted they would have to be competent.

PRESIDENT WENSTROM: Any further discussion? Further questions?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: We discussed this in Committee, and it might have got forgotten somehow. Before I move, I'd like to ask the Chairman if he'd have any objection to taking the last paragraph of Section 1 and moving it up underneath the paragraph "as provided by law" and titling that section "Elections" and then taking the paragraph starting "Every citizen" and making that a separate section and titled "Voter Qualifications" and renumber the other sections accordingly? It evidently meets with his approval, so —

PRESIDENT WENSTROM: I would ask, Delegate Dobson, for comment from the Chairman of the Committee on Style and Drafting, if they had some special reason for leaving this section the way it is.

DELEGATE UNRUH: Mr. President:

I don't have any objection to the change except that it involves retyping and expense. It seems unnecessary.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: I believe that I would rule, Delegate Dobson, that this is satisfactory the way it is. And I think that it definitely is two subject matters, the one at the top and the one at the bottom. Whether they are separated by qualifications of a voter I don't think makes too much difference.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I can't give Delegate Dobson a good reason, except I know in subcommittee we tried to move these two sentences together and the four of us in that committee felt that it didn't fit as well as having them separated. But I can't give a good reason.

PRESIDENT WENSTROM: We'll consider Section 3.

CHIEF CLERK GILBREATH: **"Section 3. FAIR ELECTORAL SYSTEM.**

"Every candidate for public office shall have a justiciable right to an electoral system that is not prejudicial to his candidacy."

PRESIDENT WENSTROM: Is there any question or is there any discussion on Section 3?

Hearing none, then the question before us is on Article II.

May we have a motion to deem it properly reengrossed?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that Article II be deemed properly re-engrossed and placed on the calendar.

PRESIDENT WENSTROM: Delegate Unruh moves that Article II be deemed properly re-engrossed, and it be placed on the calendar for passage as amended.

May I have a second?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Solberg.

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: I'd like Section 1 voted on separately.

PRESIDENT WENSTROM: Delegate Simonson requests that we vote on Section 1 separately. The request will be granted.

We will therefore vote on Section 2 and Section 3 as a unit.

Delegate Cart.

DELEGATE CART: Mr. President:

I would ask that the question be divided so that we vote on Section 3 separately.

PRESIDENT WENSTROM: Request will be granted.

First for consideration then — the question for consideration before the Convention is Section 1 of Article II. Section 1 of Article II. Is there any further discussion? Hearing none, those in favor of it will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call indicates 89 "ayes," 4 "nays," five delegates absent and not voting. Section 1 of Article II has passed.

Next for consideration is Section 2 of Article II. Is there any further discussion on this subject? Question then; those in favor of adopting Section 2 of Article II will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 93 "ayes," 3 "nays," two delegates absent and not voting. Section 2 of Article II has passed.

Next for consideration, Section 3 of Article II. Any discussion? Hearing none, the question before the Convention is on the passage of Section 3 of Article II. Those in favor of its passage will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 84 "ayes," 11 "nays," three delegates absent and not voting. Section 3 of Article II has passed.

DELEGATE BYRNE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: I rise to extend a point of personal privilege and inquiry. Number one, to Delegate Pearce, what — Delegate Pearce can you answer me — what did you say the cost is for taking the roll call each time?

DELEGATE PEARCE; About \$11. Two to a page, \$22 a page.

DELEGATE BYRNE: Well, it's my — the question I have in my mind, and specifically on Article II, as I understand there were no particular amendments here that were in question on the floor. These folks here were primarily, as I understand it, approving the action Style and Drafting took. That had nothing to do with the first passage of the bill; am I correct on that?

PRESIDENT WENSTROM: That is correct.

DELEGATE BYRNE: That's what we were taking the roll call of?

PRESIDENT WENSTROM: That is correct.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I rise to a point of personal privilege to support the inference that Delegate Byrne is making, that we divided the question three ways to prove nothing for \$22. And personally I am going to be in favor of a personal assessment of people who want to divide questions when they have nothing to prove. (Applause)

PRESIDENT WENSTROM: It will be on the — we'll be on the next — we'll be on the next section.

Next for consideration is the Style and Drafting Committee Redraft Proposal No. 5-1.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-1 be introduced, such proposal being a redraft of Committee Proposals Numbered 1-99, 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112 and 1-113.

Further, that this Redraft Proposal not be referred to a committee but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report as offered by the Committee on Style and Drafting.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. The report is adopted.

The Committee Report 5-1 is before the Convention.

CHIEF CLERK GILBREATH; Style and Drafting Proposal 5-1, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-99, 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112 and 1-113.

"Be it resolved by the North Dakota Constitutional Convention that Article II to the constitution of the state of North Dakota which pertains to powers reserved to the people, be created.

"(SECTION 1.) Article II to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE II

"POWERS RESERVED TO THE PEOPLE"

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre:

DELEGATE McINTYRE: Mr. President:

I would like to move that this Convention take the Style and Drafting Redraft Proposal No. 5-1 and consider it in one roll call vote; vote on it in toto.

PRESIDENT WENSTROM: On Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10?

DELEGATE McINTYRE: That's correct.

PRESIDENT WENSTROM: It's been moved by Delegate McIntyre that we vote in toto on the sections in — the ten sections in this proposal, No. 5-1.

Do we have a second?

DELEGATE SCHEEL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Scheel.

Is there any discussion? Hearing none, as many as are in favor Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

It takes me a second or two. I would like to know why — I would like to ask Delegate McIntyre why he wants to do this, without argument about spending money. Remember, I didn't want my picture taken, either.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: My reason is the same reason that we have handled previous proposals in the same manner. This doesn't present anyone from asking for a separate question or dividing the particular section if they so desire. But it would be for the same reason that we have handled other proposals the same way.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I would resist the motion at this time. I think we should at least have a chance to hear what's in these things:

PRESIDENT WENSTROM: Delegate Aubol, you will have a question — you always have the privilege of dividing the question. That's one of the privileges. And then of course this hasn't been read — it has to be read, and the motion now from Delegate McIntyre is so that whatever part of this is not taken out by division we will vote on in toto.

Now did I have a second?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Solberg.

The question again is on the motion to vote on the ten sections in toto. As many as are in favor of that motion will say "aye;" those opposed "no." The "ayes" have it. The question before the Convention now is Section 1, which the Clerk will read.

DELEGATE BYRNE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: I wanted to call the attention of Delegate — the Chairman of Style and Drafting this Article V or this Proposal 5-1, we have this "ARTICLE II". We have just numbered the one previously as "ARTICLE II". Should this be changed to "III"?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I was going to move that shortly when it was the proper time.

PRESIDENT WENSTROM: Read the section.

CHIEF CLERK GILBREATH: "Section 1. POWERS RESERVED.

"Notwithstanding any other provision in this constitution, the people reserve these powers: to propose and enact laws by the initiative, including the call for a constitutional convention; to approve or reject legislative acts, or parts thereof, by the referendum; to propose and adopt constitutional amendments by the initiative; and to recall certain elected officials. This article is self-executing and all

of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict or impair these powers."

PRESIDENT WENSTROM: You've heard the reading of Section 1.

Delegate Unruh.

DELEGATE UNRUH: Mr. President.

I now move that the name — the number of the article be changed from "ARTICLE II" to "ARTICLE III" in line 6 of the first page.

PRESIDENT WENSTROM: Delegate Unruh moves that the number of the article be changed from "ARTICLE II" to "ARTICLE III" in line 6 of the first page.

Do I have a second?

DELEGATE BENSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Benson.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "on." The "ayes" have it, and the title is changed from "ARTICLE II" to "ARTICLE III".

DELEGATE DOBSON: Mr. President.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I'd just like to mention that the Legislative Functions Committee has gone through all the style changes in 5-1, and agree with all the changes that the Style and Drafting Committee has made. However, there are some amendments that will be proposed by the Committee on Legislative Functions. I have assigned those to Delegate Dobson. But we want to commend the Style and Drafting Committee for the changes they have made.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I notice that "ARTICLE II" also appears on lines 1 and 4.

CHIEF CLERK GILBREATH: We got that.

DELEGATE DOBSON: Did you get that?

PRESIDENT WENSTROM: There were no questions on Section 1?

Then we will next move on to Section 2.

CHIEF CLERK GILBREATH: "Section 2. PETITION.

"A petition to initiate or to refer a measure shall be presented to the secretary of state for approval as to form. A request for approval shall be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom shall be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure."

VICE PRESIDENT SAUGSTAD: Is there any discussion on Section 2?

Hearing none, we will go on to Section 3. CIRCULATION.

CHIEF CLERK GILBREATH: "Section 3. CIRCULATION.

"The petition shall be circulated only by electors. They shall swear thereon that the electors who have signed the petition did so in their presence. Each elector signing a petition shall also write in the date of signing and his postoffice address. No law shall be enacted limiting the number of copies of a petition. The copies shall become part of the original petition when filed."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we'll go on to Section 4.

CHIEF CLERK GILBREATH: "Section 4. SIGNATURE REQUIREMENT.

"The petition may be submitted to the secretary of state if signed by electors equal in number to two percent of the resident population of the state at the last federal decennial census."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we'll go on to Section 5.

CHIEF CLERK GILBREATH: "Section 5. **SUBMISSION.**

"An initiative petition shall be submitted not less than ninety days before the general election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at a special election or at a special election called by the governor."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will move on to Section 6.

CHIEF CLERK GILBREATH: "Section 6. **CERTIFICATION.**

"The secretary of state shall determine the validity and sufficiency of the signatures. If he finds irregularities, he shall notify the sponsoring committee and allow twenty days for corrections, but this time shall not be used for the addition of signatures. If the secretary of state finds a petition valid and sufficient, he shall certify it and prepare a ballot containing the full text of the measure and a ballot title summarizing the measure. If he finds a referendum petition insufficient, the suspension of the measure shall end and it shall not be referred."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we go on to Section 7.

CHIEF CLERK GILBREATH: "Section 7. **JUDICIAL REVIEW.**

"All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. If his decision is being reviewed at the time the ballot is prepared, he shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will go on to Section 8.

CHIEF CLERK GILBREATH: "Section 8. **ENACTMENT.**

"If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. For seven years from its effective date, a measure approved by the electors may not be repealed or amended by the legislative assembly except by a two-thirds vote of the members elected to each house."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none —

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: The Legislative Functions Committee has an amendment to this section.

VICE PRESIDENT SAUGSTAD: The amendment will be read from the desk.

CHIEF CLERK GILBREATH: Proposed amendments to Style and Drafting Redraft Proposal No. 5-1.

On page 3, line 14, after the period delete the word "for".

On page 3, line 15, delete the words "seven years from its effective date, a" and insert in lieu thereof the word "A".

On page 3, line 16, after the word "assembly" insert the words "for seven years from its effective date,".

On page 4, line 3, delete everything after the period.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: The amendment to Section 8 simply shifts the phrase "for seven years from its effective date" to another place in the sentence, so that the sentence will read this way: "A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected in each house." I move its adoption.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE KELSCH: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Kelsch.

Any further discussion?

Hearing none, then we are on the motion of Delegate Dobson that the amendment which was just read from the desk be adopted. If you are in favor say "aye;" if you are against say "nay." All in favor signify by saying "aye;" opposed "no." The "ayes" have it, and the motion is adopted and the amendment is adopted.

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: What was the last part of that amendment? I know part of it dealt with Section 8, but what was the last part of it?

VICE PRESIDENT SAUGSTAD: I believe, Delegate Aubol, that the amendment ended with the moving of "for seven years from its effective date" from line 3 — page 3 from line 15 down to line 16. And that was the extent of the amendment. They began to read — you may have been slightly confused because the Clerk began to read an amendment to a section farther on.

Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

A question to the Chairman of the Style and Drafting. You'll have more time to consider these. And in case you feel that an amendment does make a change in form and substance, will you so indicate the next time around?

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH; Yes. This is not a substantive change. I will if something comes up. I'm sure that those that are carrying on the floor are representing the committee at this time, too. But if they don't, I'll watch it.

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Mr. President.

I think that the suggested amendment by the committee makes the whole section read better and carries out the full intent of retaining the seven-year-period.

VICE PRESIDENT SAUGSTAD: Any further discussion?

All right. Next we will have under consideration Section 9.

CHIEF CLERK GILBREATH: **"Section 9. INITIATED CONSTITUTIONAL AMENDMENT.**

"A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to four percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. All other provisions relating to initiative measures apply thereto."

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, we'll go on to Section 10.

"Any elected nonjudicial official of the state of any county or of any legislative or county commissioner district shall be subject to recall by petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county or district in which the official is to be recalled.

"The petition shall be filed with the official with whom a petition for nomination to the office in question is filed, who shall call a special election if he finds the petition valid and sufficient. No elector may remove his name from a recall petition.

"The name of the official to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. The candidate receiving the highest number of votes shall be deemed elected for the remainder of the term when the election results have been officially declared. No official shall be subject twice to recall during the term for which he was elected."

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I think it would be a good time to explain the procedure we have followed in our committee with respect to the words "official" and "officer". We have treated throughout this thing the use of the word "official" for an elected official; and we have used the word "officer" where it is appointive. So where you see the word "elected" it will be followed by "official" and if he's "appointed" it will be "officer".

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: The Legislative Functions Committee has an amendment to this section.

VICE PRESIDENT SAUGSTAD: The proposed amendment will be read from the desk by the Clerk.

CHIEF CLERK GILBREATH: On page 4, line 3, delete everything after the period.

On page 4 delete all of line 4 and insert in lieu thereof the word "When".

On page 4, line 5, after the word "declared" insert a comma, and the following language: The candidate receiving the highest number of votes shall be deemed elected for the remainder of the term."

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: This amendment simply switches the phrase "when the election results have been officially declared" to the head of the sentence. Therefore, the sentence will read: "When the election results have been officially declared, the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term." I move its adoption.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE STANTON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Stanton.

Any further discussion? Hearing none, then we are on the motion of Delegate Dobson to adopt the proposed amendment to Section 10 of Style and Drafting Redraft Proposal No. 5-1.

Those who vote "aye" will vote in favor of adopting the amendment; those who vote "nay" will oppose adoption. All those in favor signify by saying "aye;" opposed "nay." The "ayes" have it, and the amendment is adopted.

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Redraft Proposal No. 5-1 be properly engrossed and placed on the calendar.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE SOLBERG: Second.

VICE PRESIDENT SAUGSTAD: Motion was seconded by Delegate Solberg.

Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

I'm asking that this be divided into two groups. They can do as they please about the one, but I would ask that 2, 4, 5, 8 and 9 be voted on separately.

VICE PRESIDENT SAUGSTAD: Would you repeat? Beg your pardon, but would you repeat those, please?

DELEGATE RUNDLE: 2, 4, 5, 8 and 9; these to be voted on as a unit. This would save money, which everybody seems to be worried about.

VICE PRESIDENT SAUGSTAD: 2, 4, 5, 8 and 9.

We still have Delegate Unruh's motion, so, Delegate Rundle, we will — I will ask you to withhold your motion until we have acted on Delegate Unruh's motion that we consider this proposal re-engrossed and so that we may place it on the eleventh order for second vote.

Now we're on the motion of Delegate Unruh. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it.

Now we have before us Proposal 5-1. Now, Delegate Rundle, you may request — make your request.

DELEGATE RUNDLE: Mr. President:

I ask that Sections 2, 4, 5, 8 and 9 be voted on as a unit.

VICE PRESIDENT SAUGSTAD: 2, 4, 5, 8 and 9 be voted on separately from the remaining sections. And then we would have remaining then Sections 1, 3, 6, 7 and 10. That request is granted.

DELEGATE BURKE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I appeal the ruling of the Chair.

VICE PRESIDENT SAUGSTAD: The Chair has not really ruled. And a part of our rules is, of course, that any delegate can call for a division of the question. And I believe — now, unless I'm overruled or President Wenstrom comes in and says otherwise — I'm going to ask that — I'll explain it this way to the delegates: That what I am going to suggest at this point is that we have a division vote on 2, 4, 5, 8 and 9. Not a recorded vote, but a division vote. If the division vote carries, then we will vote on a recorded vote on the entire package. So that we will have just the one recorded vote.

Delegate Butler.

DELEGATE BUTLER: Mr. President:

I'm kind of floating around in the air today. I'm a little confused again. We are on the eleventh order, are we not?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE BUTLER: And eleventh order says that's the second passage?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE BUTLER: This is then final. We get something out of here on this particular vote that's the end of it, is it not, unless it is brought back for reconsideration by two-thirds vote?

VICE PRESIDENT SAUGSTAD: It could still be reconsidered. Anything that is done — anything here can be reconsidered.

DELEGATE BUTLER: Right. But at the same time if it isn't reconsidered then this is the end?

VICE PRESIDENT SAUGSTAD: This is the end.

DELEGATE BUTLER: Thank you.

VICE PRESIDENT SAUGSTAD: Delegate Benson.

DELEGATE BENSON: Mr. Chairman — Mr. President:

I understood that this vote was simply on style and drafting; is that right or wrong?

VICE PRESIDENT SAUGSTAD: That is right. That is correct.

DELEGATE BENSON: Well, then every time that the division is asked I would assume that the division is asked because of the style and drafting and not the substance.

VICE PRESIDENT SAUGSTAD: That is correct.

DELEGATE KELSCH: Mr. President:

If any of the delegates have the sheet that was put out by the staff in January sometime ago telling what happens on the various orders, they state quite clearly that a vote "yes" to the proposal, the proposal goes back to Style and Drafting for incorporation in the final document; vote "no", the proposal goes back to the Style and Drafting in the form that as on the tenth order for incorporation in the final draft. So your "no" vote if you're opposed to the — I can see the problem some delegates have in not wanting to vote for something they are opposed to. But we've got to keep in mind that a vote at this stage, unless it's a vote to reconsider, a vote at this stage "yes" is simply we'll take Style and Drafting's changes or changes made to the style, a vote "no" means you don't want them and it goes right back in the form we passed it before.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

To those who say, "Vote yes," and make speeches, "Let's all be together," I would say "Speak for yourself, John." I've found if we don't like a change you shouldn't vote for it. You'll find it will be used against you later.

And another thing, the Committee on Alternate Proposals hasn't acted finally yet. I'm perfectly willing if this is laid over until after they act to withdraw my motion. But I have found that this one thing was put a way down the list before, it came up late, after the Rules had been tightened on the length of speeches and various things, came in late. Now the Alternate Proposal Committee hasn't met yet which concerns this very deeply. And this is why I ask that they be divided. And I didn't ask each one be voted on separately. But, as I say, I've found that if you don't like a proposal a "yes" vote will be used against you regardless of the explanations on this floor. And I'm going to stick to my — it's a perfect right. Everyone has been doing it up to now. And if you want to wait until each one comes up and ask it be separated, you can do that. I thought this would be better, you can vote twice. Where if you will put it down the calendar one day until after this other committee meets and makes a decision, I would have no objection there, either. I would then withdraw if you do that. But I don't think I am in a position to make a motion to that effect. If I am, I move that it be laid aside one Convention day.

VICE PRESIDENT SAUGSTAD: Unless someone moves at the present time, Delegate Rundle has called for a division to vote on Sections 2, 4, 5, 8 and 9 separately. The Chair has granted that permission. And the Chair is suggesting, unless someone from the delegation asks for a recorded vote, the Chair was just going to ask for a division vote on 2, 4, 5, 8 and 9.

DELEGATE BUTLER: Mr. Chairman. Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Butler.

DELEGATE BUTLER: A question for Delegate Kelsch, if I may.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch, will you yield?

DELEGATE KELSCH: Yes.

DELEGATE BUTLER: He made a statement that we are now voting on the style and drafting activity. When do we get the last vote on this thing? Because, as I read the rules and the way we wind up the procedures on this Convention, we are not going to vote on the whole document. Is there a third vote we're going to have on each one of these articles as we go through here now or are we done?

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

If I might review the progress of that rule. We started out with a rule that said that there would be three votes — three readings, three votes. We then changed the rules the early part of the session because there was some concern

that it was not clear as to whether we wanted to, when we got all done the third time, vote for the whole document as a package, vote for the whole document by article, vote for the whole document by sections, or not vote on it at all on the theory that it had been passed and we approved the style changes. The rule now simply reads third reading and signing. And it reads third reading and just signing purposely because the Rules Committee was not certain what this Convention wanted to do in the end. I think that's something we're going to have to face. But second reading I think clearly is covered in the rules as simply a reading for the purpose of giving us a chance to look to see what Style and Drafting did and whether or not we want to accept what the Committee did or reject it.

Now your question as to what would happen on third reading, in the final document, a complete Constitution in order with proper style that has been re-submitted by Style and Drafting, and the rule calls for signing it. And whether or not we'll vote and how we would divide it at that time, I don't know. That's something we'll have to decide.

VICE PRESIDENT SAUGSTAD: I believe Delegate Paulson is first.

DELEGATE PAULSON: Mr. President:

I think that I should point out that when Mr. Rundle has asked for a division, he wants a division on the vote on which these sections are being passed on second passage and not have a division and then a vote on the whole package. I think we have divided before, everybody's had a recorded vote on the division.

VICE PRESIDENT SAUGSTAD: The Chair is perfectly willing to go along with allowing having a recorded vote on Sections 2, 4, 5, 8 and 9 providing — how many request a recorded vote on Sections 2, 4, 5, 8 and 9? I believe that's sufficient. All right. Any further discussion?

Delegate Butler, did you wish to say something further?

DELEGATE BUTLER: No.

VICE PRESIDENT SAUGSTAD: All right. We are now on the question of the passage on the second vote on Sections 2, 4, 5, 8 and 9 of Proposal 5-1. If you vote "aye" you're voting for; if you're voting "nay" you're against. The Clerk will open the key, and you will record your vote.

Saugstad votes "aye. Wenstrom "aye"?"

Has everyone voted? Anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The record discloses 90 "ayes," 4 "nays," four absent and not voting. Therefore, Sections 2, 4, 5, 8 and 9 of Proposal 5-1 have been adopted.

Now we have remaining Sections 1, 3, 6, 7 and 10 of Proposal 5-1.

Is there any further discussion, if you vote "aye" you're voting for; if you vote "nay" you're against. The board will be open, you may record your vote.

Saugstad votes "aye." Has everyone voted? Does anyone wish to change his vote? If not, the board will be closed and the Clerk will take the record.

The record shows 92 "ayes," no "nays", six absent and not voting. Therefore, Sections 1, 3, 6, 7 and 10 of 5-1 were adopted.

Any announcements? One announcement.

CHIEF CLERK GILBREATH: In the balcony there are four Eagle Scouts from Minot — there are four Eagle Scouts. From Minot there is Jim Pence and his father, John Pence; from Grand Forks, Clinton Hanson; from the Fargo area, Kent Reiersen from Tower City, and his parents, Mr. and Mrs. Robert Reiersen; and from Bismarck, Jim McGannon. They are all traveling with Jeff Auch.

VICE PRESIDENT SAUGSTAD: Will these guests please rise and be acknowledged?
(Applause)

We're very happy to have you with us.

DELEGATE SIMONSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Simonson.

DELEGATE SIMONSON: It may be opportune at this time, to those who have a love of Scripture, and we haven't heard from them for a few days, I would remind them of Philemon, verse 18, which says: "If he has wronged you at all or owes you anything, charge that to my account."

VICE PRESIDENT SAUGSTAD: We will now stand recessed for ten minutes. (The Session recessed at 2:58 P.M. to 3:15 P.M., the same day.)

VICE PRESIDENT SAUGSTAD: Will the Convention please come to order? Next for consideration of the Convention is Style and Drafting Redraft Proposal No. 5-12.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-12 be introduced, such proposal being a redraft of Committee Proposals numbered 1-29, 1-36, 1-37, 1-38, 1-39, 1-40, 1-43, 1-44, 1-45, 1-70, 1-75 and 1-76.

Further that this Redraft Proposal not be referred to a committee but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

DELEGATE KWAKO: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Kwako.

All those in favor signify by saying "aye," opposed "nay." The "ayes" have it, and the report on Redraft Proposal No. 5-12 is adopted.

Delegate Sinner.

DELEGATE SINNER: Mr. Chairman:

I see that the Chairman of the Legislative Functions Committee was out. But it was my understanding that we were going to meet to consider some questions that had been raised since our meeting yesterday dealing with the language in 5-12. And I thought he was going to announce such a meeting. But I think I am going to move, Mr. Chairman, that 5-12 be delayed, or ask the motion be withdrawn for the moment and move on to another one if we may.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE KWAKO: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Kwako.

We are on the motion of Delegate Sinner that further consideration of Proposal 5-12 be temporarily suspended.

Do you want me to put the motion? We are now on the motion of Representative — of Delegate Sinner.

DELEGATE McINTYRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate McIntyre.

DELEGATE McINTYRE: I see that our Chairman Hoffner is here now. I wonder if we couldn't proceed.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President:

I think the concern that Delegate Sinner has has been resolved.

DELEGATE SINNER: Okay.

DELEGATE HOFFNER: And I think we can continue. I'm sorry I'm late.

VICE PRESIDENT SAUGSTAD: Delegate Sinner, do you wish to withdraw your motion?

DELEGATE SINNER: Mr. Chairman:

In view of that, I will withdraw the motion.

VICE PRESIDENT SAUGSTAD: Is that all right with the second, Delegate Kwako?

Delegate Sinner has now withdrawn his motion so that now we have before us Proposal 5-12.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-12, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-29, 1-36, 1-37, 1-38, 1-39, 1-40, 1-43, 1-44, 1-45, 1-70, 1-75 and 1-76.

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the legislative department, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE
"THE LEGISLATIVE DEPARTMENT**

"Section 1. LEGISLATIVE ASSEMBLY.

"The legislative power of the state is vested in a legislature consisting of a senate, composed of not more than forty-nine members, and a house of representatives, composed of not more than ninety-eight members, which jointly are designated as the Legislative Assembly of the State of North Dakota."

VICE PRESIDENT SAUGSTAD: Any discussion?

If not, we move to Article or to Section 2.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: There's an amendment at the desk from the Committee on Legislative Functions to delete the word "BRANCH" in the title — delete the word "DEPARTMENT" and insert the word "BRANCH". And I believe that we would also like to amend the "THE" out so the title would read "LEGISLATIVE BRANCH".

VICE PRESIDENT SAUGSTAD: You are making that as a motion?

DELEGATE KELSCH: I move that, yes.

VICE PRESIDENT SAUGSTAD: All right. Is there a second to that motion?

DELEGATE HOUGEN: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Hougen.

And the motion is that on page 1, line 7, of Proposal 5-12 that the word "DEPARTMENT" — delete the word "DEPARTMENT" and insert in lieu thereof the word "BRANCH".

Delegate Kelsch.

DELEGATE KELSCH: I'd also like to include in that motion — I don't know if the desk has it — the deletion of the article "THE" so it would be just "LEGISLATIVE BRANCH".

VICE PRESIDENT SAUGSTAD: Delegate Kelsch also wished the word "THE" be deleted.

DELEGATE PAULSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: Does Delegate Kelsch want to change the word "DEPARTMENT" to "BRANCH" in line 2?

DELEGATE KELSCH: Yes, that change should also be included. I don't believe it's on the written amendment.

DESK REPORTER KING: Where is it?
"DEPARTMENT" to "BRANCH" in line 2?

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: That material dropped off when we put it together. It's not necessary to amend the title.

VICE PRESIDENT SAUGSTAD: With Delegate Unruh's explanation then, Delegate Kelsch, your original motion will stand to drop the word "THE" and "DEPARTMENT" in line 7 and insert in lieu thereof the word "BRANCH".

DELEGATE KELSCH: Mr. President.

I'm wondering, Delegate Unruh, do we also have an article number on this one?

DELEGATE UNRUH: Mr. President.

I am going to make a motion following. But if you will include the "ARTICLE IV" in your amendment, that's fine.

VICE PRESIDENT SAUGSTAD: Then Delegate Kelsch's motion will also include that in line 6 after "ARTICLE" the Roman numeral "IV" be inserted.

Any further discussion, then we're on the main motion of Delegate Kelsch. If you're in favor you will say "aye," opposed say "no." All those in favor signify by saying "aye;" opposed "no." The "ayes" have it, and the amendment has been adopted.

Now we will go to Section 2.

CHIEF CLERK GILBREATH: "Section 2. TERMS OF OFFICE.

"Members of the legislative assembly shall be elected for terms of four years."

VICE PRESIDENT SAUGSTAD: Any discussion?

Section 3.

CHIEF CLERK GILBREATH: "Section 3. QUALIFICATIONS.

"Each person elected to the legislative assembly must be, on the day of his election, an elector in the district from which he is chosen."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, Section 4.

CHIEF CLERK GILBREATH: "Section 4. RESTRICTIONS ON HOLDING OFFICE.

"While serving in the legislative assembly, no member may hold any full-time elective state or political subdivision office nor any full-time appointive state office established by this constitution or designated by law. During the term for which he was elected, no legislator shall be appointed to any office which has been created, or for which the compensation has been increased, by the legislative assembly during that term."

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

The Committee on Legislative Functions would like to amend on line 21 in the title of Section 4 by deleting the words "ON HOLDING OFFICE", and I believe the amendment is at the desk.

VICE PRESIDENT SAUGSTAD: The Clerk will read the amendments on page 1, line 21.

CHIEF CLERK GILBREATH: Proposed amendments to Proposal 5-12.

On page 1, line 21, delete the words "ON HOLDING OFFICE".

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Litten.

Any further discussion? We're now on the main motion of Delegate Kelsch to remove "ON HOLDING OFFICE" in the title of Section 4.

All in favor signify by saying "aye;" opposed "no." The "ayes" have it, and the motion carried and we have now deleted it or we have now amended the title.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: I would move further amendment on the top of page 2, line 1.

VICE PRESIDENT SAUGSTAD: Delegate Sinner, is it at the desk?

CHIEF CLERK GILBREATH: No.

DELEGATE SINNER: No, it's not. Sorry. But that's one of the problems that Delegate Hoffner had forgotten about. And I think it's got to be corrected. Let me explain what the problem is.

There is a concern that in the language as it was drafted we might prohibit the Legislature from establishing an interim committee office, such as the chairmanship of an interim commission of the Legislature itself, by this language, which never was the intention of the committee, and that we would prohibit members

of the Legislature from serving on such committees or even from receiving increased compensation for mileage, something like that, that might go into effect. And the proposed amendment would be to add after the word "office" on line 1 the words "other than an office of the legislative branch". If you would like to have me get that drafted before I present it, that's fine. But I just haven't had time since I thought we were going to go back to the committee with this.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: It seems to me that this is a substantive change. How does the Chair rule?

VICE PRESIDENT SAUGSTAD: The Chair will rule that this is a substantive change, and that in order to adopt this change it would require a reconsideration.

DELEGATE HOFFNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: I don't believe that anyone would have a quarrel with this. But I would suggest that we reconsider our action by which we passed Section 4. Or, no, it wouldn't be Section 4. 1-38. The Committee Proposal No. 1-38.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE HENDRICKSON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Hendrickson.

I believe that this was on February 1st. So that this will require a two-thirds majority in order to reconsider. Is there any further discussion?

DELEGATE BAKER: Well, Mr. President, while there might not be much opposition, there is some. It seems to me that what's sauce for the goose is sauce for the gander. And the purpose of this the first time through, or however many times it went through before it was adopted, was to put the finger on citizens who hold other offices in the state and put some kind of a restriction in their sitting in the Legislature. So I think that same set of rules ought to apply to any other office, even though it may pertain to the Legislature, but which is not an integral part of the legislative process.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: At the risk of being evicted from my accommodations which I now share with the Chairman of our committee, I don't see a need to bring this back and make such a change because I can't understand how such an office in a legislative body would be designated by law as an office. And I think we have an imaginary problem on our hands.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Delegate Sinner.

DELEGATE SINNER: Mr. President:

Doesn't the Legislature set up its interim committees each session? And aren't these chairmen of those committees designated each session? And I — I think that there is a possibility that this is not a problem. But I don't want — I don't think it's the kind of chance that we should take, that this could be construed to be — to affect legislative offices that are within the legislative branch. And we certainly don't want to tie the legislative branch to that kind of a system where they have to create forever their interim committees. And I — I think it's a necessary change.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, the Legislative Council was established in 1947. I can't see where there is any problem. This only applies to offices created by the legislative assembly during that term.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, now we are on the motion of Delegate Hoffner that we reconsider our action taken on —

DELEGATE HOFFNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Further considering this, the legislative members, now with the flexible sessions, would be carry-over committees and would no longer be called legislative council committees. And since this was just brought to my attention today and we've been discussing this, I think the members of that committee then would be holdover members and would serve between sessions if there are annual sessions. And therefore I withdraw my motion.

VICE PRESIDENT SAUGSTAD: Is that satisfactory with the second?

DELEGATE HENDRICKSON: Yes.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner, with the consent of his second, now withdraws his motion to reconsider 1-38. The request is granted.

Next we shall have under consideration Section 5.

CHIEF CLERK GILBREATH: "Section 5. REAPPORTIONMENT.

"A legislative reapportionment commission, consisting of electors appointed by the district judges in a number and manner as shall be established by the district judges, shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The commission shall guarantee, as nearly as practicable, that every voter is equal to every other voter in the state in the casting of ballots for legislative candidates. One senator and at least two representatives shall be apportioned to each senatorial district and be elected at large or from subdistricts thereof. The commission may combine two senatorial districts and provide for the election of senators at large and representatives at large or from subdistricts thereof.

"The commission shall prescribe its own procedures. Upon agreement by a majority of its members, the commission shall file its reapportionment plan with the secretary of state, and it shall become effective sixty days after the date of filing; provided, the supreme court, in the exercise of original jurisdiction, may review any plan adopted by the commission. If the plan fails to meet state or federal constitutional requirements, the court shall direct the commission to revise the plan within a stated time.

"Commission members shall be appointed following adoption of this constitution and immediately following the 1980 general election and every ten years thereafter. No member of the legislative assembly shall be eligible during his term of office, for appointment to the commission. Commission members shall serve until each reapportionment plan becomes finally effective, and shall be compensated as provided by law. Vacancies shall be filled in the same manner as for original appointment."

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

The Committee on Legislative Functions would like to move the amendment on line 29, page 2, by adding a comma after the word "eligible" so that you'd be setting off the phrase "during his term of office" with commas. The desk has the amendment. I move the amendment.

VICE PRESIDENT SAUGSTAD: Is there a second to that amendment?

DELEGATE BENSON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Benson.

The motion of Delegate Kelsch is that on line 29, page 2, that a comma be inserted after the word "eligible".

Any discussion? Hearing none, all in favor signify by saying "aye;" those opposed "nay." The "ayes" have it. The motion carried, and the amendment is adopted.

Next we shall go to Section 6.

CHIEF CLERK GILBREATH: "Section 6. DISTRICTS.

"The legislative district shall be numbered consecutively and be divided into two classes, even-numbered districts constituting one class and odd-numbered dis-

tricts constituting the other class, so that one-half of the legislators, as nearly as practicable, may be elected biennially. When the legislative assembly is reapportioned, the legislators elected prior thereto and retaining their constituencies shall continue in office until the expiration of the terms for which they were elected; but the terms of legislators removed of their constituencies shall be deemed to have expired immediately."

VICE PRESIDENT SAUGSTAD: Any discussion?

Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

Again, the Committee on Legislative Functions would like to move an amendment as follows:

On page 3, line 1, delete the words "two classes". Then after the word "even" add the words "and odd" and insert a comma after the word "districts" and then delete the word "constituting". Then delete all of line 2. The Clerk has the amendment. And it will read as amended: "The legislative districts shall be numbered consecutively and divided into even and odd-numbered districts so that one-half of the legislators, as nearly as practicable," et cetera.

VICE PRESIDENT SAUGSTAD: I think because of the complexity of this amendment I shall ask this amendment be read from the desk; give everyone a chance to observe it in their books.

CHIEF CLERK GILBREATH: Proposed amendment to Proposal 5-12.

On page 3, line 1, delete the words "two classes" and after the word "even" and before the hyphen insert the words "and odd".

Also in line 1 insert a comma after the word "districts" and delete the word "constituting".

On page 3 delete all of line 2.

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: I assume that the comma in line 1 after the word "classes" is also removed; is that right?

VICE PRESIDENT SAUGSTAD: Can anyone answer Delegate Aubol's question?

CHIEF CLERK GILBREATH: Yes. Yes, that comes out.

DELEGATE KELSCH: The comma goes out after "two classes".

I might mention the reason for the committee's change. They felt that the word "classes" might denote something other than what we meant. We just simply wanted to divide the districts even and odd. This didn't mean anything.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. President:

A suggestion came to me after the committee worked on this that "odd and even" sounds better than "even and odd". I wondered if there would be any objection if they were turned around? I'll amend the committee's motion to go "odd and even" instead of "even and odd".

VICE PRESIDENT SAUGSTAD: Is there a second to Delegate Hendrickson's motion?

DELEGATE DOBSON: Second.

DELEGATE QUAM: Second.

VICE PRESIDENT SAUGSTAD: Delegate Quam.

Any further discussion. We are on then the motion of Delegate Hendrickson that we —

CHIEF CLERK GILBREATH: That we do what?

VICE PRESIDENT SAUGSTAD: I'm going to ask that the desk prepare — that gets to be a little tricky. And I would ask that the desk prepare —

CHIEF CLERK GILBREATH: Do you want to take — on line 1 do you want to strike the word "even" and insert in lieu thereof the word "odd"?

DELEGATE HENDRICKSON: In the motion for amendment we would strike the words "even and odd" and insert "odd and even".

CHIEF CLERK GILBREATH: In line 1 you want to strike the word "even" and insert the word "odd"?

DELEGATE HENDRICKSON: Yes, sir.

CHIEF CLERK GILBREATH: Line 2 you want to strike the word "odd" and insert in lieu thereof the word "even"?

DELEGATE HENDRICKSON: Yes, that's what it would amount to.

Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson.

DELEGATE HENDRICKSON: While they are working on this change, the argument that was brought to me was that in numbering districts such as this would be that you do number the odd districts first; therefore the argument was brought to me, which I've brought, that "odd" is better to come before "even".

DELEGATE McINTYRE: Mr. President:

VICE PRESIDENT SAUGSTAD: Delegate McIntyre.

DELEGATE McINTYRE: I wonder if the Chair will rule if that's a substantive change or not.

VICE PRESIDENT SAUGSTAD: The Chair will rule that this is not a substantive change.

Now we'll have the amendment to the amendment as offered by Delegate Hendrickson read from the desk.

CHIEF CLERK GILBREATH: The amendment to the amendment to Redraft Proposal 5-12 is as follows:

On page 3, line 1, delete the word "even-numbered", insert in lieu thereof the word "odd-numbered".

On page 3, line 2, delete the word "odd-numbered" and insert in lieu thereof the word "even-numbered".

DELEGATE HENDRICKSON: No.

VICE PRESIDENT SAUGSTAD: No.

CHIEF CLERK GILBREATH: What do you want?

DELEGATE KELSCH: Line 2 has been deleted. And the language as amended to the first amendment reads "be divided into two classes," and then they add the word "odd" before the hyphen. So all we'd be doing now is saying instead of "even and odd" we'll say "odd and even". So I think that if we want to amend the committee's amendment you'd have to strike the word — you'd have to strike the words "even and odd" and put "odd and even".

VICE PRESIDENT SAUGSTAD: Delegate Kelsch, I wonder if — I think we can afford to take a minute. If you will just come down to the desk and I think the committee amendment can be changed to take care of Hendrickson's proposed amendment very easily.

CHIEF CLERK GILBREATH: Oh, I see. Okay.

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Well, while they are doing this would it be in order to express a few words in opposition to all of it?

VICE PRESIDENT SAUGSTAD: I believe right at the moment this would be out of order, Delegate Cart.

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. Chairman:

I think you're having so much trouble there why can't they say after the word "into" add the word "odd"? Won't that do it?

VICE PRESIDENT SAUGSTAD: Well, we have a — I think this is being taken care of at the desk.

DELEGATE HENDRICKSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson.

DELEGATE HENDRICKSON: I hope while we're waiting everybody is sitting and saying over and over to themselves, "Odd and even, odd and even, even and odd, even and odd" so you will know how to vote.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

CHIEF CLERK GILBREATH: As I have it the amendment to the amendment is on page 3, line 1, before the word "even-numbered" insert the words "odd-numbered and".

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

There are a few odd things about this amendment that I believe the mover has not considered. The even-numbered or the odd-numbered senators from 1, 3 and so forth were elected for four-year terms the last time. The even-numbered districts are up for election this time. Now if you change those words — and of course they are not necessarily binding on this commission — but it would mean that those who were — that everybody would probably have to run after this apportionment, and that you'd cut those down in the odd-numbered districts, senators at least, that have only served two years of their four-year terms, whereas those that are coming up in the even-numbered districts, they could only be elected for two years and then two years hence they'd have to run again.

So not that this amendment makes this all happen, but it could indicate an intent to this commission that they would have the odd numbers coming up first for election for their four-year terms. So this little amendment could throw some confusion into what the commission does on who will be running this coming election.

DELEGATE HENDRICKSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson.

DELEGATE HENDRICKSON: In response to Delegate Longmire, this really isn't as ridiculous, I don't think, as he thinks. Because we do not intend for re-apportionment to go into effect this coming election. And I think this would be in keeping with what he said which districts would be ready for their election. Some of you that are more interested in politics can tell me. But I believe the committee or the ones that brought this suggestion to me actually took this into consideration. So it really isn't this ridiculous an amendment.

VICE PRESIDENT SAUGSTAD: Any further discussion? If not — Delegate Chase.

DELEGATE CHASE: Mr. President:

I hope the amendment to the amendment is defeated and the amendment is defeated and we can go back to the original language. It seems to me it's perfectly clear; "to be divided into two classes, even-numbered districts constituting one class and odd-numbered district constituting the other class".

VICE PRESIDENT SAUGSTAD: Any further discussion?

Delegate Berg, did you wish the floor?

Hearing none, we are now on the motion of Delegate Hendrickson to amend the proposed amendment offered by Delegate Kelsch. And Delegate Hendrickson's motion merely would change instead of saying "even-numbered" we'd say "odd-numbered" first and "even-numbered" second.

I'm now ready to put the motion. All in favor signify by saying "aye," opposed "no." I believe the "noes" prevailed unless a division is asked for.

Who asked for division? How many ask for division? All right. The board will be open, you may record your vote. If you vote "aye" you're voting to adopt Delegate Hendrickson's amendment to the amendment. The board will be opened, you may record your vote. Saugstad votes "aye".

Has everybody voted? Anybody wish to change their vote? All right. The vote will be — the Clerk will close the board and take the record.

There were 49 "noes," 38 "ayes." The motion lost.

We are now back to the main motion as offered by Delegate Kelsch. Is there any further discussion? All right. I'm now ready to put the motion. All in favor signify by saying "aye," opposed "no." I rule the "ayes" have it.

DELEGATE CART: Division.

VICE PRESIDENT SAUGSTAD: How many wish division? All right. The board will be opened. And you will be voting on — if you are voting “aye” you are voting to adopt Delegate Kelsch’s amendment, proposed amendment. The board will be opened, you may indicate your choice. Saugstad votes “aye”.

Has everyone voted? Anyone wish to change their vote? The board will be closed, and the Clerk will take the record.

The vote indicates 56 “ayes,” 42 “nays,” and therefore, the motion is carried and the amendment is adopted.

Now Delegate Cart has asked for the floor.

DELEGATE CART: Well, it seems like I’m voted down. But I just wanted to comment that there would probably be some odd members elected to the Legislature no matter what the designation is.

VICE PRESIDENT SAUGSTAD: Any further profound observations?

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Delegate Cart is right. There will be house members.

DELEGATE KNUDSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Knudson.

DELEGATE KNUDSON: I’d like to point out that the odd number’s in the senate, 49; the even number’s in the house, 98.

VICE PRESIDENT SAUGSTAD: Any further amendments?

If not, we will go on to Section 7.

CHIEF CLERK GILBREATH: **“Section 7. SESSIONS.**

“The terms of legislators shall begin on the first Tuesday after the third day of January following their election. The legislative assembly shall meet to organize on the same day and may meet in plenary session no more than eighty natural days during the biennium. The days need not be consecutive, and meetings for the purpose of impeachment or on call of the governor shall not count against the eighty-day limitation. The legislative assembly may authorize its committees to meet at any time during the biennium. Neither house may recess or adjourn for more than three days without consent of the other.”

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will next take Section 8.

CHIEF CLERK GILBREATH: **“Section 8. PROCEDURES.**

“The senate and the house of representatives shall each elect one of its members presiding officer at the beginning of each regular session.

“A majority of the members elected to each house shall constitute a quorum. A smaller number may adjourn from day to day and may compel attendance of absent members in a manner, and under a penalty, as may be provided by law.

“Each house is the judge of the qualifications of its members, but election contests shall be subject exclusively to judicial review as provided by law. If two or more candidates for the same office receive an equal and highest number of votes, the secretary of state shall choose one of them by lot.

“Each house shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, either house may expel a member.”

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we’ll go on to Section 9.

CHIEF CLERK GILBREATH: **“Section 9. ENACTMENT OF LAWS.**

“Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those present. No bill shall become a law except by a recorded vote of a majority of the members elected to each house.

"No law shall be enacted except by a bill passed by both houses, and no bill shall be so amended on its passage through either house as to change its general subject matter. No bill shall embrace more than one subject, which shall be expressed in its title; but a bill violating this provision shall be invalidated only to the extent the subject is not so expressed.

"Every bill shall be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members.

"No bill shall be amended, extended or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

"The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once on the journal.

"Every law enacted by the legislative assembly shall take effect on July first after its filing with the secretary of state or ninety days after its filing, whichever comes later; unless, by a separate vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the act. An emergency measure shall take the effect and be in force upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly shall take effect on a date specified in the act.

"The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided by this constitution no local or special laws shall be enacted, nor shall the legislative assembly indirectly enact special or local laws by the partial repeal of a general law, but laws repealing local or special laws may be enacted."

VICE PRESIDENT SAUGSTAD: Any discussion?

DELEGATE KELSCH: Mr. President:

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: The Committee on Legislative Functions would like to suggest an amendment on line 13. We would delete the word "bill" and insert in lieu thereof the word "law". This is on page 4, yes. We thought that we were referring to law, as a bill of the Legislature once enacted would be a law. And I think we meant "law" rather than "bill".

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE KELSCH: Mr. Chairman:

I have several amendments. Shall I read them all?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE KELSCH: Line 17 we would like to amend after the word "members" and before the period add the word "present". We wanted to make sure that the reference — one-fifth of the members present rather than elected members.

And then on line — page 5, line 1, we would move to delete the word "by" after the word "provided" — "otherwise provided by", delete that word and insert in lieu thereof the word "in".

And then after the word "constitution" we would like to insert a comma.

I move these amendments.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE SINNER: Second.

DELEGATE HARDMEYER: Second.

DELEGATE HILDEBRAND: Second.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Just a second.

Delegate Hardmeyer. Now, Delegate Baker, or Delegate Hildebrand actually seconded that.

Now Delegate Baker.

DELEGATE BAKER: I was wondering about the change there with regard

to the — to the number of members necessary to demand a reading, if that change would be a substantive change.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I might explain in the Style and Drafting Committee, in treating the question of votes by the Legislature, we could have used — we decided that if we wanted a percentage of the total elected representatives we would add the word “elected”. And we noticed up on line 6 we said “one-sixth of those present”. That would be per recorded vote. We wanted to be sure we were talking about the same thing. So we added “one-fifth of the members” present on line 17. So that by just saying the word “members” we were afraid it was not clear whether we were talking about the constitutional — one-fifth of those elected or one-fifth of those present. And the intent we felt of the committee was — it was clarifying intent rather than changing anything.

VICE PRESIDENT SAUGSTAD: Delegate Baker, did you ask for a decision from the Chair or were you just making this as an observation?

DELEGATE BAKER: I guess I was asking for a decision from the Chair, Mr. President.

VICE PRESIDENT SAUGSTAD: The Chair is actually in doubt whether this is a substantive change or not. The Chair would prefer that this committee, I think this is the Legislative Committee, would — would someone could — let's see now. We are actually on the motion of Delegate Kelsch to amend. And the question, of course, now is whether or not Delegate Kelsch's amendment is making a substantive change. I believe that Delegate Baker raises — is that on line 17 —

DELEGATE BAKER: I believe so, sir.

VICE PRESIDENT SAUGSTAD: — where he said “one-fifth of the members”? The Chair would rule that this is simply a clarification of the intent. However, if someone wants to move that this is a substantive change I would certainly be more than happy to put that motion to the floor and let the body decide. The Chair is ruling that this is not a substantive change, it's simply to clarify the meaning.

So now is there any further discussion on the proposed amendment as offered by Delegate Kelsch?

DELEGATE KWAKO: Question.

DELEGATE DOBSON: Question.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch?

All right. Then, if you vote “aye” you're voting to adopt the proposed amendment; if you're voting “no” you're against it. All in favor signify by saying “aye;” opposed “no.” The “ayes” have it, and the amendment is adopted.

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Pardon me. The Style and Drafting Committee in its considerations, down on line 24, had a question which was not really answered until today. And I discussed this with the Legislative Committee. And I submit that it's not a substantive change, but I have a further amendment and I'd like to have the desk read it.

VICE PRESIDENT SAUGSTAD: The amendment will be read from the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Style and Drafting Redraft Proposal 5-12.

On page 4, on line 24, after the word “assembly” insert the words “which does not specify a subsequent effective date”.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE SINNER: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Sinner.

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: The reason for this amendment is this: That under the way we have drafted this a law enacted by the Legislature could not specify an effective date other than the July 1st date, that is a later date than July 1st, other than having it passed by two-thirds vote. In other words, if we passed a measure stating that it should take effect January 1st, for example an income tax law or some tax law, it would require the Legislature to use the emergency procedure in order to get that new date in. This is not our intention. We want the Legislature to be in the position by a simple majority to put an effective date in the measure later than what would be July 1st. Therefore, the change we felt was necessary in order to untie their hands from having to vote a two-thirds vote and making it an emergency measure when it really wasn't an emergency measure. The other part of the bill that has to do with emergency measures is not under consideration at this time. So we felt this was necessary to clarify the position the Legislature would find itself in.

VICE PRESIDENT SAUGSTAD: Let's see, was there a second to that? Delegate Sinner seconded the motion.

Now is there any further discussion?

Delegate Decker.

DELEGATE DECKER: Mr. President:

I don't agree that that would have to be a later date. It looks like to me like you could put in April 1st, May 1st, and pass it by the Legislature by a simple majority which would get around the emergency provision the way it's worded now, if I read it right.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President:

I think the word "subsequent" we hope would clarify that. That if the Legislature specified a date "subsequent" to July 1st it would then be able to go into effect at that date. The problem — the reason this wasn't put in originally was that we thought the Legislature could do this anyway; but the Legislature could in a tax act, for example, that after January 1, 1974, such and such a tax will go into effect. Well, it was pointed out that in some states where the courts have had to rule on this, if the Constitution specifically said that every act goes into effect July 1st, that there was some confusion about whether or not the Legislature could actually do that. And that's why the language was never put in before. But since it has been pointed out that the courts have ruled in differing ways in this, we thought we should put it in to really spell out what our intention was.

DELEGATE KWAKO: Question.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Delegate Baker.

DELEGATE BAKER: Mr. President:

I wonder if the Clerk could read that part beginning on line 24 and going all the way down to the period in line 28, including this amendment. I'd like to know just how that sounds.

VICE PRESIDENT SAUGSTAD: Will the Clerk read this, please, beginning on line 24, "Every law enacted".

CHIEF CLERK GILBREATH: "Every law enacted by the legislative assembly which does not specify a subsequent effective date shall take effect on July first after its filing with the secretary of state or ninety days after its filing, whichever comes later; unless, by a separate vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the act."

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Might it be possible with this language to circumvent the intention of having the separate vote and the super majority for an emergency measure?

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: This amendment really has nothing to do with emergency measures whatever. All it does is let the Legislature set a date later than July 1st for the elective time to enact the law. A date subsequent to July 1st. That's all it does.

VICE PRESIDENT SAUGSTAD: Delegate Baker, do you wish to comment?

DELEGATE BAKER: Well, I still have a question. But if that's the way the legal minds view it, I can't quarrel with that.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I was wondering how this would affect the Legislature which could meet at any time? Supposing the law was passed July 2nd by the Legislature, would this time — be ninety days?

VICE PRESIDENT SAUGSTAD: Did you answer your question, Delegate Rundle?

DELEGATE RUNDLE: Well, there are some questions about this eighty-day session that I think would never be answered for several years.

VICE PRESIDENT SAUGSTAD: Thank you. Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

We've got two — we've actually got three effective dates possible; one is a subsequent date which the amendment just took care of, one would be July 1st which would be the normal date, but we have a further clause, that ninety days. And that's the guarantee if the bill is passed in May, let's say convene in May or June, to guarantee a full ninety days to refer it. It cannot become effective even though you go by July. It has to wait a full ninety days. Now if they passed a law in September of the year it would not go into effect until next July unless it was an emergency measure. So it wouldn't change the situation of emergencies. All we are doing is making it clear in this amendment that you could set off a far distant date beyond July 1st, beyond the ninety days.

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Could I address this question to Mr. Kelsch, please?

VICE PRESIDENT SAUGSTAD: Kelsch, will you yield? All right.

DELEGATE CART: Mr. — Delegate Kelsch, is it your interpretation that this ninety days is mandatory; that the law would have to wait — say if the bill was passed in the early part of May it would still have to wait ninety days before it could go into effect?

DELEGATE KELSCH: Unless it's an emergency — if it's not — the only way you could have it go faster would be an emergency measure. Every law is to wait ninety days. The reason we did that, in the Legislative Committee there was no problem before because the Legislature didn't meet in April, May and June.

DELEGATE CART: Right.

DELEGATE KELSCH: So in order to guarantee the right of the referral, not to jeopardize that right, we set a limit of at least ninety days unless it's an emergency measure.

VICE PRESIDENT SAUGSTAD: Any further discussion?

If not, we are now on the main motion of Delegate Unruh that the proposed amendment to Section 9 of 5-12 on line 24, page 4, be adopted.

If you are in favor of the amendment vote "aye;" if you are against the amendment vote "no."

All in favor signify by saying "aye;" opposed "no." The "ayes" have it, and the amendment has been adopted.

Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, now that that amendment has been adopted we no longer need the words in line 30, "and be in force". Therefore, I move to strike the words "and be in force" in line 30.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE SANSTEAD: Second.

VICE PRESIDENT SAUGSTAD: Someone I heard. Delegate Sanstead.

Delegate — saw someone get up here a moment ago. Delegate Lander.

DELEGATE LANDER: Could we have an explanation of that clause "effect"?

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Originally, Mr. President, we thought distinction could be drawn between "take effect" and "be in force". But now Delegate Unruh's motion has clarified that. So in line 24 we simply say "take effect", so in lines 29 and 30 all we have to do is "take effect".

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Could we have that amendment stated again, read?

VICE PRESIDENT SAUGSTAD: Yes. The proposed amendment as offered by Delegate Dobson will be read from the desk.

CHIEF CLERK GILBREATH: Proposed amendments to Redraft Proposal 5-12 are as follows:

On page 4, line 30, delete the words "and be in force".

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, I'm about to put the motion. The motion is whether or not you wish to adopt the amendment as offered by Delegate Dobson. All those in favor signify by saying "aye," opposed "no." The "ayes" have it, and the motion carries and the amendment is adopted.

Any further discussion on Article 9?

Hearing none, we'll move to Article 10.

CHIEF CLERK GILBREATH: **"Section 10. OPEN SESSIONS.**

"All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, shall be open and public."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will go on to Section 11.

CHIEF CLERK GILBREATH: **"Section 11. ARREST PRIVILEGE.**

"Members of the legislative assembly shall be privileged from arrest during their attendance at the sessions, and in going to or returning from the same, except in cases of felony or breach of the peace. For words used in any speech or debate in the legislative assembly, they shall not be questioned in any other place."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will go on to Section 12.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: I recall, and I've just checked, that originally this section said that members of the Legislature could not be arrested except in cases of treason, felony or breach of peace. Then we took "treason" out of the Constitution and so we took "treason" again out of this section. Now we put "treason" back in the Constitution; do we want to put "treason" back in the section? I ask Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I believe treason is a felony, so I think we've got it covered without the necessity to read it in. It carries imprisonment in the penitentiary as a punishment.

The committee does have some amendments — they are at the desk — on this section, Mr. President.

On line 9 before the word "ARREST" in the title insert the words "IMMUNITIES FROM ARREST" — "IMMUNITIES FROM".

VICE PRESIDENT SAUGSTAD: The proposed amendment will be read from the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-12. On page 5, line 9, after the first period insert the words "IMMUNITIES FROM". And also in line 9 delete the word "PRIVILEGE".

Line 10, delete the word "privileged" and insert in lieu thereof the word "immune."

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE STANTON: Second.

VICE PRESIDENT SAUGSTAD: Delegate Stanton seconds the motion.

Now Delegate Kelsch.

Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, I think that amendment is wrong. The committee staff representative is here, he thought the same thing. My understanding of the amendment and Delegate Kelsch, was that we were to strike the words "ARREST PRIVILEGE" and insert the word "IMMUNITIES" alone. And that in line 9 we would strike the word "privileged" and insert in lieu thereof the word "immune".

Would some other member of the committee confirm or deny that? I am not positive either. My cohorts here tell me I am right.

DELEGATE KELSCH; I think you're right, Delegate Sinner, and if we could — if I could amend my amendment. All you'd have to do to amend the amendment is strike the word — insert — strike the words — strike the word "from" from the proposed addition and then on the "privilege" add "arrest" before that. So "ARREST PRIVILEGE" is stricken. That will do it.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch, I wonder if you would not step down to the desk.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: If I may explain the reasons for the committee's feelings. It was because the term "privilege" was foreign to any uses that any of us were familiar with, our common usage of the term. And also because the title did not seem to include the language of the last sentence of the section which covers immunity from suit for speech or debate used in the legislative assembly. And that was the reason for the change.

VICE PRESIDENT SAUGSTAD: Delegate Rundle, have you asked for the floor?

DELEGATE RUNDLE: Mr. President:

While he was getting the amendment ready I was just going to ask if this was retroactive or if this would be an ex post facto law. Otherwise the state owes me twenty bucks for six years ago.

VICE PRESIDENT SAUGSTAD: Anyone wish to, in the committee, advise Delegate Rundle?

DELEGATE KELSCH: Mr. President:

The immunity goes to the arrest. It doesn't mean you don't have to pay a fine.

CHIEF CLERK GILBREATH: Want me to read it?

VICE PRESIDENT SAUGSTAD: The amendment is now prepared and will be read from the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-12.

Page 5, line 9, delete the words "ARREST PRIVILEGE" and insert in lieu thereof the word "IMMUNITIES".

Line 10, delete the word "privileged" and insert in lieu thereof the word "immune".

VICE PRESIDENT SAUGSTAD: I believe that — is there any further discussion? Hearing none, now we're on the motion of Delegate Kelsch to adopt

the amendments as read from the desk. If you're in favor you can vote "aye;" if you're opposed to the amendment you will vote "no." All those in favor signify by saying "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

Are there any further amendments to Section 11? Hearing none, we will now go to Section 12.

CHIEF CLERK GILBREATH: "Section 12. CONSTITUTIONAL AMENDMENTS, CONVENTIONS.

"Any constitutional amendment may be proposed by the legislative assembly and, if agreed upon by a recorded vote of three-fifths of the members elected to each house, it shall be submitted to the electors at the next general election. If a majority of votes cast thereon are affirmative, the amendment shall be effective thirty days after the election.

"The legislative assembly may by law submit to the electors the question: 'Shall a constitutional convention be called?' If the question has not been submitted once in any thirty-year period, the secretary of state shall place it on the ballot at the next general election. If a majority of votes cast thereon are affirmative, the legislative assembly shall provide for the election of delegates and the holding of the convention."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

Hearing none, we will move to Section 13.

CHIEF CLERK GILBREATH: "Section 13. AUDITOR GENERAL.

"The legislative assembly shall provide for the appointment of an auditor general. He shall audit the receipt, expenditure and use of public funds, as provided by law, and shall be responsible to the legislative assembly in the performance of those duties."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will go on to Section 14.

CHIEF CLERK GILBREATH: "Section 14. COMPENSATION.

"Each member of the legislative assembly shall receive a salary and expense allowances as provided by law, but no increase in the amounts thereof shall apply to the legislative assembly which enacts the increase."

VICE PRESIDENT SAUGSTAD: Any discussion?

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Redraft Proposal No. 5-12 be deemed properly reengrossed and placed on the calendar.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE DIEHL: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Diehl.

We're on the motion of Delegate Unruh that Proposal 5-12 be deemed properly re-engrossed as amended and be placed on the calendar for second passage on the eleventh order. All in favor signify by saying "aye;" opposed "no." The "ayes" have it. We now have before us Proposal 5-12 as amended.

Is there any further discussion? Hearing none, if you vote "aye" you vote to pass or adopt Proposal 5-12; if you vote "no" we are voting against the adoption. The key will be opened, you may record your vote.

Saugstad votes "aye".

Has everyone voted? Does anyone wish to change his vote? If not, the board will be closed and the Clerk will take the record.

The record discloses 88 "ayes," 4 "nays," six absent and not voting. Therefore, Proposal 5-12 has been adopted.

President Wenstrom will now take the Chair.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: May we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE DAWSON: There will be a meeting of the Alternate Proposal and Ballot Committee in the Pitcairn Room in the west balcony immediately on adjournment. We will be discussing such things as short ballot and one-house Legislature. If anyone would like to appear before the committee, you are welcome.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to announce a meeting of the Finance and Tax Committee immediately upon adjournment in the Blue Room. Coffee should be available. We apparently are in some trouble with the state debt limit section which we approved on Thursday. I would invite any member or any delegate who is interested to come down to the committee hearing or committee meeting, rather.

DELEGATE BYRNE: Mr. President.

PRESIDENT WENSTROM; The Chair will recognize Delegate Byrne.

DELEGATE BYRNE: The Committee on Coordination and Transition will be meeting immediately after adjournment in Rooms G-5 and 6 on the west side just below the President's office.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Public Information Committee meets immediately after this session in the Large Hearing Room.

PRESIDENT WENSTROM: Anything further?

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

I would like to have about a five-minute meeting of the Judiciary Committee in its usual place immediately after adjournment, and bring with you the proposal on political subdivisions, your copy of it.

PRESIDENT WENSTROM: We'll be on the ninth order of business — Introduction and Reference of Proposals.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-7, submitted by the Committee on Preamble, Bill of Rights and Suffrage.

"Be it resolved by the North Dakota Constitutional Convention that the question as to whether the proposed constitution shall contain a provision declaring persons eighteen years of age or older adults shall be submitted to the electorate as a separate issue on the Constitutional Convention Ballot."

PRESIDENT WENSTROM: Alternate Proposal No. 4-7 is referred to the Committee on Constitutional Ballot.

We'll be on the twelfth order of business — Motions and Resolutions.

CHIEF CLERK GILBREATH: Resolution No. G, introduced by Committee on Resolutions.

"A resolution expressing the gratitude of the Constitutional Convention to the chorus of the Bismarck Elks Lodge No. 1199 for performing at the opening session of the plenary session."

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended and that Resolution G be read in its entirety, not be printed as a proposal, not be referred to committee, and be placed on final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that Resolution — E, is it? E?

DELEGATE SCHEEL: G.

CHIEF CLERK GILBREATH: G.

PRESIDENT WENSTROM: — G, like in ginger, not be printed as a resolution, but that it be printed in the bill — in the Journal, that it not be referred to committee, that the Rules be suspended and it be placed on the calendar for first passage as read — final passage as read.

You will read the resolution.

CHIEF CLERK GILBREATH: Resolution G introduced by Committee on Resolutions.

"A resolution expressing the gratitude of the Constitutional Convention to the chorus of the Bismarck Elks Lodge No. 1199 for performing at the opening session of the plenary session.

"WHEREAS, the plenary session of the North Dakota Constitutional Convention convened at the State Capitol at Bismarck on January 3, 1972; and

"WHEREAS, the chorus of the Bismarck Elks Lodge No. 1199 has been designated as the Governor's Chorus for the year 1972; and

"WHEREAS, this chorus, under the direction of Mr. K. K. Kittler, sang several appropriate and moving selections during the course of the Constitutional Convention's opening ceremonies;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the Constitutional Convention express its sincere appreciation to the chorus of the Bismarck Elks Lodge No. 1199, and its director, Mr. K. K. Kittler, for its excellent performance during the Constitutional Convention's opening session on January 3, 1972.

"BE IT FURTHER RESOLVED, that the clerk of the Convention forward an enrolled copy of this resolution to the Bismarck Elks Lodge No. 1199."

PRESIDENT WENSTROM: The question before the Convention is on the adoption of Resolution G. I believe I need a second.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Is there any discussion? The question is on the adoption of the Resolution G. As many as are in favor of the motion to adopt will say "aye;" those opposed "no." The "ayes" have it, and the resolution is adopted.

CHIEF CLERK GILBREATH: Resolution No. H, introduced by Committee on Resolutions.

"A resolution expressing appreciation to the North Dakota National Guard and to Major General LaClair A. Melhouse for their assistance to the North Dakota Constitutional Convention in the opening ceremony of the plenary session on January 3, 1972."

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended, that Resolution H be read in its entirety, not to be printed as a proposal, nor referred to committee, and be placed on final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that Resolution H, the Rules be suspended, Resolution H be not printed as a proposal, and be printed in the Journal, that it not be referred to the committee but that it be placed on the calendar for final passage as read.

The Clerk will read the resolution.

CHIEF CLERK GILBREATH: Resolution No. H, introduced by Committee on Resolutions.

"A resolution expressing appreciation to the North Dakota National Guard and to Major General LaClair A. Melhouse for their assistance to the North Dakota Constitutional Convention in the opening ceremony of the plenary session on January 3, 1972.

"WHEREAS, the North Dakota Constitutional Convention opened its plenary session on January 3, 1972; and

"WHEREAS, the North Dakota National Guard and General Melhouse performed a commendable service in making arrangements and assisting in the formal opening ceremony of the North Dakota Constitutional Convention of 1972; and

"WHEREAS, this ceremony enabled the delegates to begin their Convention duties in a manner appropriate to the importance of their task;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the Convention express its appreciation to the North Dakota National Guard and Major General LaClair A. Melhouse for their assistance in helping to make the opening ceremony of the North Dakota Constitutional Convention of 1972 a memorable and historical event for Convention delegates and all the people of this state.

"BE IT FURTHER RESOLVED, that an enrolled copy be forwarded by the chief clerk of the Convention to the North Dakota National Guard and to Major General LaClair A. Melhouse."

PRESIDENT WENSTROM: You've heard the reading of the resolution. Do we have a second?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Solberg.

Any discussion? Hearing none, as many as are in favor of the adoption of the resolution will say "aye;" opposed "no." The "ayes" have it. The resolution is adopted.

CHIEF CLERK GILBREATH: Resolution No. I, introduced by Committee on Resolutions.

"A resolution expressing appreciation to the North Dakota Highway Department for the use of their facilities and for other assistance."

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President. I move that the Rules be suspended and that Resolution I be read in its entirety, not be printed as a proposal, nor referred to committee, and be placed on final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended, that Resolution I be read in its entirety, not be referred to committee, that it be printed in the Journal, that it be placed on the calendar for first passage as read by the Clerk.

CHIEF CLERK GILBREATH: Resolution No. I, introduced by Committee on Resolutions.

"A resolution expressing appreciation to the North Dakota Highway Department for the use of their facilities and for other assistance.

"WHEREAS, the North Dakota Constitutional Convention, while meeting in Bismarck during the course of its deliberations, has had many of its delegates who desired to meet during the evening and discuss provisions of the constitution; and

"WHEREAS, the North Dakota Highway Department has granted delegates full use of the highway building auditorium on numerous occasions for such meetings; and

"WHEREAS, the North Dakota Highway Department has been most helpful in other innumerable ways;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the North Dakota Highway Department be extended the most sincere appreciation of the North Dakota Constitutional Convention for its assistance and help to Convention delegates.

"BE IT FURTHER RESOLVED, that the clerk of the convention forward an enrolled copy of this resolution to the North Dakota Highway Commissioner."

PRESIDENT WENSTROM: You've heard the reading of the resolution. Do we have a second? Second by Delegate Litten.

Any further discussion? Hearing none, as many as are in favor of this adoption will say "aye;" opposed "no." The "ayes" have it, and the resolution is adopted.

CHIEF CLERK GILBREATH: Resolution J, introduced by Committee on Resolutions.

"A resolution expressing appreciation to Delegate Joseph Byrne for his efforts in securing federal funds for the use of the Convention."

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President:

I move that the Rules be suspended, the Resolution J be read in its entirety, not be printed as a proposal and not be referred to a committee, and placed on final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended, that Resolution J not be referred to committee, that it be printed in the Journal, that it be placed on the calendar for first passage as read by the Clerk.

CHIEF CLERK GILBREATH: Resolution No. J, introduced by Committee on Resolutions.

"A resolution expressing appreciation to Delegate Joseph Byrne for his efforts in securing federal funds for the use of the Convention.

"WHEREAS, the delegates to the 1972 Constitutional Convention are in the final days of their work in proposing a revision of the constitution of 1889; and

"WHEREAS, it will soon become necessary to inform the public of the revisions and changes which have been proposed; and

"WHEREAS, an educational program for public information is both necessary and costly; and

"WHEREAS, Delegate Joseph Byrne, during the past six months, has expended considerable time, effort and personal expense, successfully, to secure funds from the United States Department of Housing and Urban Development, for Convention expenses; and

"WHEREAS, this Convention has been informed by the Department of Housing and Urban Development that a sum of \$44,189 has been granted to it for research and technical costs, thereby releasing a similar amount of the Convention funds for other uses, among them public information purposes;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That this Convention express its gratitude to Delegate Byrne for his untiring efforts in successfully acquiring the sum of \$44,189, thereby releasing Convention funds for other uses, among them public informational purposes;

"BE IT FURTHER RESOLVED, that this Convention express its regrets that Delegate Byrne ceased his efforts when he did;

"BE IT FURTHER RESOLVED, that the clerk of the Convention be instructed to forward an enrolled copy of this resolution to Delegate Byrne."

PRESIDENT WENSTROM: You've heard the reading of the resolution.

Delegate Scheel.

DELEGATE SCHEEL: How about a big hand for Delegate Byrne?

(Applause)

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: The question is on the adoption of the resolution.

DELEGATE SAUGSTAD: I move that we all rise to indicate a "yes" vote; that we rise, stand.

PRESIDENT WENSTROM: The delegates will please rise.

DELEGATE BYRNE: Mr. President.

PRESIDENT WENSTROM: The resolution is adopted.

Delegate Byrne.

DELEGATE BYRNE: I don't think it's quite fair to take the credit on this because I had the help and the fine assistance of President Wenstrom and Dean Bard. The three of us received quite a priceless education on how to proceed in a bureaucracy, and we enjoyed it. And of course like everything else, the more you know, and you look back, why you would do some things differently, probably come out a little better. However, really, in substance, we did receive very fine cooperation from Housing and Urban Development officials. They were somewhat caught unawares because of the fact that this has been terse money, they didn't know where to get the money. It was through the help of our good friend Senator Young, and specifically his Administrative Aide Chris Sylvester, to help guide us through some of the tangles of bureaucratic life to come out with at least some success. And I'm glad that we were at least able to get some money, and I hope it does help us in our post-Convention work. Thank you very much.

PRESIDENT WENSTROM: May I express my gratitude to the Convention for doing this little token of appreciation for Delegate Byrne. I have to be honest in saying that had it not been for Joe's tenacity and his stick-to-it-ness that we would never have gotten that off the ground. It was because of him that we wrote to the department, at the time right after the first three days of the session, and we didn't — we didn't have an answer from them for several months. And anyone with lesser determination, it would have been a complete failure, and we wouldn't have gotten a nickel out of the thing. So I'm really happy the Convention did this for Joe.

Anything further at the desk?

CHIEF CLERK GILBREATH: Resolution No. K, introduced by Committee on Resolutions.

"A resolution expressing the gratitude of the Convention to the Grand Forks Red River High School Band for its performance at the opening ceremonies of the Constitutional Convention's plenary session."

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended, and that Resolution —

PRESIDENT WENSTROM. K.

DELEGATE SCHEEL: — K be read in its entirety, not printed as a proposal, not referred to committee, and be placed on final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that the Resolution K not be referred to committee, that it not be printed as a bill, that it be read in its entirety, that it be printed in the Journal, that it be placed on the calendar for first passage as read by the Clerk.

Have a second?

DELEGATE ROSENDAHL: Second.

PRESIDENT WENSTROM: Second by Delegate Rosendahl.

CHIEF CLERK GILBREATH: Resolution No. K, introduced by Committee on Resolutions.

"A resolution expressing the gratitude of the Convention to the Grand Forks Red River High School Band for its performance at the opening ceremonies of the Constitutional Convention's plenary session.

"WHEREAS, the Grand Forks Red River High School Band, under the direction of Mr. Kenneth M. Larsen, is the official 1972 Governor's Band; and

"WHEREAS, this band performed in an admirable fashion at the opening ceremonies of the North Dakota Constitutional Convention's plenary session at the State Capitol on January 3, 1972; and

"WHEREAS, the band's performance greatly added to the pomp and ceremony of the opening day's activities;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the Convention express its hearty and sincere appreciation to the Grand Forks Red River High School Band and its director, Mr. Kenneth M. Larsen, for its excellent performance at the opening of the North Dakota Constitutional Convention's plenary session on January 3, 1972.

"BE IT FURTHER RESOLVED, that an enrolled copy of this resolution be forwarded to the Grand Forks Red River High School."

PRESIDENT WENSTROM: You've heard the reading of the resolution. Any discussion? Hearing none, as many as are in favor of its adoption will say "aye;" those opposed "no." The "ayes" have it. The resolution is adopted.

Anything further at the desk?

CHIEF CLERK GILBREATH: Yeah, I've got some announcements.

Delegate Sondreal would like to announce that Senator Oscar Sorlie from District 20 is in the Convention chambers today.

PRESIDENT WENSTROM: Senator Sorlie here? Senator Sorlie?

DELEGATE LITTEN: I think he just left.

CHIEF CLERK GILBREATH: Delegate O'Toole would like to announce that the sixth grade at Cathedral School, Bismarck, North Dakota, and their teacher, Mrs. Gallup, are in the gallery today.

PRESIDENT WENSTROM: I'm afraid they have left us.

CHIEF CLERK GILBREATH: The Scribes & Schiveners would like to announce that their last social gathering will be tomorrow night at the Legion Club. And there are posters on the bulletin board telling the different hours of the scheduled events.

PRESIDENT WENSTROM: Anything further?

DELEGATE WARNER: Mr. President:

Senator Sorlie is now in the chambers.

PRESIDENT WENSTROM: Will Senator Sorlie approach the rail and be recognized by the Convention?

DELEGATE LITTEN: He left again.

PRESIDENT WENSTROM: Has he gone? Senator Sorlie served many, many years in this chamber, so I'm sure he's checking on us. (Applause)

The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: There will be a short meeting of the Calendar Committee tomorrow morning at eight-twenty.

I now move that the absent members be excused.

PRESIDENT WENSTROM: Delegate Saugstad moves that the absent delegates be excused. And it's seconded by Delegate Kwako.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the absent delegates are excused.

Delegate Saugstad.

DELEGATE SAUGSTAD: Is the desk clear? I now move that we adjourn until 8:30 A.M. February 10th.

PRESIDENT WENSTROM: Delegate Saugstad moves that we do now adjourn until 8:30 A.M. February 10th.

May I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. We will be adjourned until tomorrow morning.

(The Plenary Session adjourned at 4:44 P.M., Wednesday, February 9, 1972, until 8:30 A.M., Thursday, February 10, 1972.)

VOLUME XXVI

(February 10, 1972)

MORNING SESSION

(The twenty-sixth day of the Plenary Session commenced at 8:52 A.M., Thursday, February 10, 1972, as follows:

PRESIDENT WENSTROM: The Convention will please come to order.

Our Chaplain this morning is Pastor Thomas G. Sands, Bismarck Church of God.

REV. THOMAS G. SANDS: Let us pray.

Eternal God, this morning we thank Thee for the privilege of calling upon Your name. We recognize the awesome responsibility that lies before this body this morning, this assembled Convention. And, Oh God, we ask that Thy Holy Spirit and Thy blessing, Thy special wisdom and understanding that can only come from Thee would enlighten every heart this morning. May the business and matters that come before them today be discussed in such a manner that it may prove beneficial to every citizen of this great State for which they represent.

Father, we ask Thy blessing upon each individual, each member, each participant today. Let us, Oh God, recognize the hand of leading in all that is said and done. This we shall be careful to praise Thee for, for we know that Thou will hear and answer our prayer. In Jesus' name we humbly pray. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call.

The Clerk will open the key, you will indicate your presence. (Applause)

The key will be closed. Roll call indicated 98 present. That was worthy of applause.

We will be on the fourth order of business — Approval of the Journal.

DESK REPORTER KING: No. We did it yesterday.

CHIEF CLERK GILBREATH: There isn't any.

PRESIDENT WENSTROM: No Journal.

We will be on the fifth order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot to whom was referred Alternate Proposal No. 4-2 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Dawson, Chairman.

Delegate Dawson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on the Committee on Constitutional Ballot that Alternate Proposal No. 4-2 be indefinitely postponed.

Is there any discussion?

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I just might mention, so that they don't have to look this up in the book, — excuse me — this is the proposal in regards to lotteries and gift enterprises. And what it would do, it would be to reinstate the old language back into the Constitution.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President:

To amplify that rather sketchy explanation, Alternate Proposal 4-2 is the vehicle by which the people of North Dakota when they vote on this can make a choice as to whether they will be silent on the subject of lotteries, gift enterprise tickets, and presumably gambling in any other way, or whether they will retain the present language in the Constitution which is the foundation on which is built our body of laws that generally prohibit gambling — intends to at least.

Now I don't want to open up the same old argument here again, but I wonder if we have seriously considered the implications of this proposition. I'm thinking of the 15,000-odd tithing — tithing members of various denominations, Christian denominations in this State, who regard this subject very seriously, and who vote on this subject whenever the subject is brought up before them. They vote. I don't know whether it's a hundred percent or anything like that, but I'm sure it's a far, far higher percentage than is generally the case on any other subject, and who have been silent, I'll grant, up to now on this subject which may lead some of the delegates here to the thought they don't care any more. I assure you that this is not the case. These folks know very well what the situation is if you take this matter out of the Constitution, that the next step inevitably will be an approach and a very suave approach to the Legislature to modify the body of law that is there now so as to allow these innocent games of chance at the parochial high schools or the American Legion or some other group or organization who use this now in the form of fund raising so as to remove this double standard and remove this hypocrisy.

Now these folks are not the least bit frightened by those terms. We realize that we have many laws which are loosely enforced; specifically, the speed laws. How many of us are in violation of the speed laws on the highways? Quite a few, I'm sure. Yet we don't want to remove the speed laws. This is a handy tool if speeding gets out of hand. And this is the same attitude that I and the folks that I'm talking about, serious people on this question, want to have a strong law so that if this business gets out of hand it can be dealt with. And that's all there is to that. You can't embarrass this large block of votes by throwing those words that are supposed to embarrass them at them. It just won't work. Because they know that one thing leads to another, and in this second step that I started to describe before I got off the subject, the suave approach to the Legislature, to open up this field just a little bit to accommodate the innocent game of chance, that the promoters will be perfectly frank and admit that, "Oh, yes, this will allow the punchboards in the corner store. But, after all, the kids are going to spend those nickels and dimes anyway. And it does them no more harm to do it that way than it does to buy candy or something else that isn't good for them." And so there's a perfectly good chance that the Legislature might respond to that, particularly if the people have just recently approved a constitutional amendment of this kind. And then the next step beyond that is that, "Well, if a punchboard is all right in the corner store, why can't I have a slot machine in my Elks Club?" Well, that's a pretty easy step. And then of course it's just automatic from then on to get them in the filling stations and the grocery stores and the laundromats and everywhere else.

And so how do these folks feel, this 15,000-odd segment of our voting society? The way to deal with the situation is to hit the thing in the head right away, and that's what they'll do. And if you want to risk putting that kind of a — of a burden on the back of the main body of this Constitution, then by all means indefinitely postpone this. If you want to be a little bit prudent and give the main body a little better chance, then set this aside and do not adopt the Committee Report for indefinite postponement.

DELEGATE McELROY: Mr. Chairman.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: I'd like to share Mr. Baker's and others' position that this was not a unanimous vote of our Committee. I certainly agree that this is a real sleeper, and that in the days before the election it could become a very emotional issue. And unless you have some kind of a safety valve, I feel that we would be in real trouble in getting the Constitution passed. And I would certainly urge a red vote on this one.

DELEGATE WARNER: Mr. President.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: I must also rise with the same feelings that Mr. Baker has. I want to remind the delegates to this Convention that a former Attorney General of this State served time in Leavenworth for playing with the gambling boys. And I share the fears of Delegate Baker. The next move after they get

through with the suave amendments and laws as to the clubs and the good ladies playing bingo would be pari-mutuel betting, which has been repudiated by the voters of this State I know at least once and perhaps twice. I must warn you of the possibility of the Mafia, who move in like flies to the honey. I must remind you of the position that former Governor, now Federal Judge Kerner, finds himself in in Illinois. I think this is one of the real sleepers of this Convention. I urge you to vote against the recommendation of the Committee.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Excuse me.

Fellow Delegates:

I think that we're getting off the point. I think that — and I think we did in our Ballot Committee consider each and every one of these alternate proposals as potential vehicles to defeat the overall document. Now we have to put them in priorities.

This particular Committee dealt with 4-2 extensively. Over two days ago we moved to indefinitely postpone this measure. We reconsidered it, we held hearings; no one appeared. Those that advocate an alternate proposal on 4-2 didn't come forth with any other idea but what is in the present Constitution. Now, I think we're shirking our responsibility if we ignore the section on lotteries in our present Constitution and leave it as it is. I think that was the feeling of this delegation when we voted to repeal lotteries. I think we should stand pat with that decision. I do not think that 4-2 is at the top of the priority list on alternate measures. We have about eight to consider. We can't put eight on the ballot. So let's get things in perspective. I urge you to stand by the Committee's Report to indefinitely postpone 4-2.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President:

We are now going into an area that I think is very important for the adoption of this Constitution. Now I'm for having two set-asides in this area. But I agree that this proposal is not — will not do the job. There should be some restrictions in there so that this can be enforced if the people adopt it. I think it should be very strong.

Now we have two choices here; I think if we turn down this Committee Report, we're telling the Committee to come up with an alternative that will do what we want. But to accept the Committee Report for indefinite postponement is not the answer. I think we should send this back to the Committee and ask the Committee to — ask the Committee to come up with an alternate that will be enforceable. And we're saying — if we send this back, we're saying that we do want an alternate. And I think we have to make some of these decisions now. But to say that this is top priority, I don't think this is the decision we're making right now. I think we should reject this motion and indefinitely postpone this Committee Report and send it back to Committee and say that we want a proposal that will be enforceable.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

I think before a vote is taken on this we should announce what are the eight proposals so everybody understands them. If you want eight on the ballot, tell us you want eight on the ballot, side issues; you want four, I think the Committee has to know how many you want. I think, myself, that we should get some direction from this body so we know where we're going. There's no use us sitting up there in the dome, I call it, wasting our time, spinning our wheels, when we don't know what you want. I think it's time that you tell us what you want. Do you want three issues, four issues or if you want all eight on. It doesn't make me personally any difference which way you want it. But I think we have to get some kind of direction. And as we vote on this, I understand there's two more proposals coming on the floor this morning with the recommendation of the Com-

mittee for indefinite postponement, and the reason for bringing these on the floor this morning was to try to find out exactly what the feeling is. Like what was expressed here earlier, we played around with this for two or three days, hoping somebody would come up and give us some real definite points of what they wanted here. But so far we haven't gotten this. And this is what we're asking for this morning. I think that if we could get this kind of direction, the Ballot Committee could move forward. Otherwise, the Committee and the Chairman of the Committee are absolutely stymied.

PRESIDENT WENSTROM: Delegate Erickson.

DELEGATE ERICKSON: Mr. President, Fellow Delegates:

I'd like to point out, like Delegate Warner did mention here earlier, that we did vote on this twice; in 1964 the "no" vote had a margin of 34,000, and in 1968 they had a margin of 48,000. So I think the people have pretty well spoken on this issue, and I think it should be set aside. I therefore ask for a defeat of the indefinite postponement.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President.

I think that Delegate Hoffner has spoken at the heart of this thing and we should send this back to committee. We are dealing with something that's potentially extremely explosive; I think most of us will admit that.

Personally, should this be an alternate, I could very easily talk to my people and in all fairness say, Let's defeat this thing and leave it up to the Legislature." But I cannot fairly tell them, "We left you no choice. That is taken out." So I think this should be an alternate proposal or should be considered more seriously. And I ask that you do not accept the Committee's indefinite postponement.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Members:

We in the Committee have chewed this over just like we are starting to do here now. Just one point that doesn't seem to be brought out much, and that is we — we I think all agree that thousands upon thousands of people gamble. And is that the kind of example we like to leave to our young people? "Well, it's all right for me to gamble, but don't you gamble." I think we are missing one of the points here. We took a pretty brave and bold step in this session when we eliminated this part. And now we want to make it a side issue again. We, the Committee, I think, have wrestled with this problem very seriously. And I want to admit that I'm one of the ones that asked for indefinite postponement because we couldn't come up with anything — any answer.

The Senate in the last session wrestled with this problem. Senator Larson from Nelson County worked hard with many people and had a proposal that would modify, I suppose would be the word, tried to spell out this in some degree, but his efforts went to naught. There's lots of laws on the books about gambling. And I think this is a hot one, and it doesn't belong on the ballot.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Fellow Delegates:

As long as there's so many people against indefinitely postponing this, I want to rise to agree with Delegate Hoghaug. My information in talking with people would be a little different than yours because everyone has been proud of us for the fact that we would take something out of the Constitution that was so definitely statutory, and instead of being upset about it have felt that we were quite a body to do this. And definitely I certainly don't feel that the Legislature would permit legalized gambling in North Dakota. And I feel we should indefinitely postpone this.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I just wanted to add one more point to what Delegate Hoffner and Delegate Chase said here. I think they are right philosophically. You have two — our Committee has two problems when they look at these alternate proposals; we look at the philosophic matter of the particular thing, and I would say philosophically this is fairly high on our list so far as things that we

might consider for an alternate proposal, but then in finally passing we get down to the nitty-gritty of the wordage. And as was suggested in the Committee, "Well, maybe we should bar pari-mutuel gambling, but allow the others." You get into these various degrees, of course. And has been pointed out in other states the way they fought the entrenched illegal gambling was by allowing pari-mutuel gambling. So this is the thing the Committee's had to face. How do you word this thing to get the job done? We recognize that it's rather a hypocritical thing there now. And I think a good majority of the Committee felt that it was a legislative matter, and very few people had gotten very much heat on it, and this was where we should leave it.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President.

I didn't quite follow Delegate Chase's argument that if we don't put this on as a side issue that we are taking all the power away from the Legislature. I don't think we are saying that at all. I think the Legislature has full power even if we don't have anything in the Constitution on this thing.

I also don't think this analogy is fair that we sometimes speed on the highways, and that we don't want speed limits we have got. I have exceeded the speed limit once or twice on a highway and a patrolman has never failed to pick me up when he has caught me; although he has never arrested me for shaking dice in a bar.

PRESIDENT WENSTROM: Mr. Decker.

DELEGATE DECKER: Mr. President, Fellow Members:

I have two questions; one, did we have a moral question to the people where we have taken out a moral section in the Constitution to give them the chance to vote on that on the side issues? Should we keep most of our side issues which should be removed which are controversial, like this? The other thing is I only have six proposals in my book, and people are talking about eight and some others coming in. I don't think we should indefinitely postpone any of them until we get them all before us and then decide which ones are alternate proposals.

PRESIDENT WENSTROM: Any further discussion?

Delegate Peterson.

DELEGATE PETERSON: Well, just one comment. Here again we are putting responsibility on the Legislature. And I've always been told that you cannot legislate morality. And if that's the case, I think it's our responsibility and I surely would support seeing this go back to committee for reconsideration.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I would just like to remind the delegates here I think that when we voted to eliminate this provision from the Constitution earlier in this State we simply recognized the facts of life. West of the river is still one of the greatest gambling places in the State, and so is the rest of other areas. And we completely tied up our law enforcement agencies because you've got whole communities involved and the law enforcement people back away from it. Because we take in everywhere. You start pointing your finger at one, everybody else jumps. I think we have recognized the facts of life. I think the people recognize it. I don't think it's a controversial issue. Some people claim it is. I think it is well off the ballot. And then the Legislature will be in a position to demand enforcement of proper laws instead of such a blanket law that puts everything under a cloud.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I speak in favor of a "no" vote on indefinitely postponing this issue. I think we also need to face the facts of life. The facts are that we are pouring a heavy burden on the whole Constitution unless we give the people some way to go on this issue. The people out there aren't really talking about bingo; they are talking about organized gambling and the rest of it. They have spoken on it a couple of times, and I think we should listen.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President:

I'd like to second Delegate Decker's idea that as far as the mechanics of this thing, if we as delegates are to decide what we are going to do here we almost have to have all issues in front of us that are going to be alternate proposals. Because if we vote one down, the next one comes up, and then we look back there and six alternate proposals to go, is one better than the one we are talking about? Now we only have two of them on the ballot. I can't see why we can't direct that one up and indefinitely postpone this thing now to present the thing in the way that all of us make a final analysis as to what ought to be in there, what has the importance or warrant of being on the ballot.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I wonder if the Ballot Committee could consider doing just that. I feel quite strongly also that in order to — there are two factors you have to consider; the number of alternates and the number that we want on the ballot. And I might be willing to go one more on the ballot as an alternate if I felt it was important. And I think the rest of us — we have to have that information to make that decision, we need the eight alternates, we need all eight with the Committee's recommendation on priority and the number that they would like on there. We are looking at them all at once to make a collective decision. Otherwise we are going to rehash everything the Committee does each time.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President:

May I yield my time to Delegate McIntyre?

PRESIDENT WENSTROM: You may certainly.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Fellow Delegates:

Many of the Committee members shared the concern that Delegates Kelsch, Scheel and Decker have mentioned. But there's danger here in that if this Committee waits until we have prepared alternate proposals and drop them on this Convention in one lump sum, you're going to wait for awhile and it very well could be that we're going to drop this thing right in your laps on the day that we're running out of time. So there's a danger here. We considered this possibility in committee yesterday and found that this would be the best way to get some proposals out on the floor. So we take one — each one individually and decide whether or not this is an alternate proposal that should go on the ballot. Otherwise, we're going to be down to the twenty-ninth or thirtieth day and we'll drop this thing on the full Convention. Then I wonder how fairly we'll decide what our priorities are?

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President:

First of all, on a point of personal privilege, I think I owe an apology to a couple of delegates yesterday who asked for divisional questions for good and substantial reasons which were unknown to me at the time I made the statement.

I think that Delegate McIntyre's correct. It seems to me that we ought to judge these things on their merits rather than on the mechanical problem that we have; we ought to have six or we ought to have five or we ought to have seven on the ballot. If we — maybe we shouldn't have any. Maybe we should have two. I don't — I think it would be a mistake for us to get a hangup and say, well, we are going to have five. So we have two good ones and we throw on three dead ringers just so that we have five, or that we refuse to have eight just because eight is a bad number even though there might be eight very meritorious proposals to have as alternates. So I would hope that we judge these things on their merits primarily and let the procedural matters take a back seat.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention — Delegate Bassingthwaite.

DELEGATE BASSINGTHWAITE: Mr. President, Fellow Delegates:

I think we should resist this motion to indefinitely postpone this proposal. I think it's really important that we have this on the ballot for the people to make a decision.

I think what we are really doing is softening up this idea of gambling. I don't think we should start with that. I think that we should not open up the State to legalized gambling. And I think if we don't have it on the — give the people a choice this is what their thought will be, that this Convention has done just that.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: Mr. Chairman:

I've been listening to all of this and some of it is quite serious. We run into this problem; our problem is if we are going to propose an alternate proposal we feel that it has to be a real viable alternate; it is something that we can make a choice on. And I can't help but feel that we are being a little bit hypocritical on this gambling deal. Because it turns out to be that those who feel that we did right when we struck this provision out of the Constitution, that we were — by doing that we are going to begin to control gambling in North Dakota, while on the other hand those who would speak to retain this in the Constitution, it looks real good, but the facts of the matter are, I think, that our Constitution as it was allows gambling in North Dakota. It makes it extremely hard to control. And I know from personal experience that we have a State's Attorney — an Attorney General who went down the road the lady was speaking about because he was going to enforce the gambling laws in North Dakota as they were written. And I think we should indefinitely postpone this.

PRESIDENT WENSTROM: Further discussion?

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: Fellow Delegates:

The question has been raised at times as to what laws we should have, as to the number of side issues and so forth. As one not on the Committee and not very conversant with the matter, I would like someone on the Committee to brief me a little bit on this philosophy; what have other states done, how successful have they been in passing constitutions that don't have side issues, what's the effect of a great number of side issues? There are many questions that I as one on the sidelines have to have somehow answered I believe before I can make wise decisions.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Can I add to that question and ask one of the Committee members to tell us how many alternate proposals are in and what they are? And furthering Delegate Burbidge's question, what did Illinois have on its constitution in side issues? Principally Illinois.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Illinois had four side issues I believe on their ballot. And they were worded a little differently. Some of them had an "A" and "B" choice and some had a straight "Yes" and "No" choice.

As far as the alternate proposals, you have six of them in your book; 4-1 is for single house legislature, 4-2 is the one we're discussing now, 4-3 which is also at the desk for indefinite postponement refers to the long ballot and short ballot, 4-4 refers to the initiative and referendum, 4-5 refers to appointment of judges rather than election, 4-6 the change there is to two years for House members rather than the four years that was passed the other day. We have not received officially yet the eighteen year old proposal, but that passed on the floor here yesterday, so that will be 4-7. And we understand there's a right-to-work proposal that will probably be on the floor here today. So that would be the eight proposals that we have been informed will be coming before us anyway.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. President, Fellow Delegates:

I also am on this Committee. And, as you were told, we have eight proposals. And each one to certain individuals on the Committee and the outside is the most important one. So our Committee has wrestled this for days, and we have ended up exactly where we started. And this is one of the reasons that we thought that the delegates would give us a sense of direction by either telling us that these three are just as important as the others or that there are some that can be eliminated.

Originally we took a straw vote and we came out that there should not be more than five alternate proposals. As we progressed in our discussions, however, I think I'm safe in saying that we've sort of felt — although it wasn't officially expressed — that it should not be more than three.

Many of us have been out in the home territories, and otherwise, during the past week. And it has been brought to us that we should not cloud the issue of the main Constitution with a bunch of alternate proposals. And generally I think if you go home this week-end you will find that this is the pulse of the public. They are interested in what we as 98 delegates are doing up here. And they are not interested in taking every little hot potato and throwing it back to the people.

And although my sympathies on this one before the delegates now is that it is something that we are taking out and it properly should go to the public, nevertheless, I voted in favor of indefinite postponement merely for the reason I think there are other issues that are more important. And that if we are going to limit it, we have got to eliminate some of them.

Already I think our Committee has pretty well agreed that unicameral is going to be one of the proposals. Secondly, I think that most of them agree that the eighteen year old is one of the proposals. We have already, at least temporarily, given the staff the idea that we're going to accept the initiative and referendum as one of them. Now we've got three.

We've got five of them that we have to decide either they go on or they do not go on. And if we're going to take each one and go on and bring them in together and then decide priorities, we'll be here another thirty days. And this is why it was brought to you; to see what the discussion is, to have you vote on what — whether or not they are so important.

And I have tried to point out to you now that already we have three. So after this discussion, whatever it is, I'm going to ask the privilege of making a motion that we limit the number of proposals and then see where we get direction from the delegates at that time.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: It seems to me that the Committee ought to prepare a little straw vote listing the eight proposals, asking which priority we would assign them, numbering 1 through 8, and also how many maximum we think should be on the ballot; you might get a little more direction. I think you're going to get 98 different opinions here this morning.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hernet.

DELEGATE HERNETT: Mr. President:

I think one way you can solve this in a hurry, this one, that would be to reconsider our action whereby we repealed this section of the Constitution. And I would favor this, and this would solve the Committee's problems as far as this one is concerned.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the Committee Report of the Committee on Constitutional Ballot, that Alternate Proposal No. 4-2 be indefinitely postponed.

DELEGATE WARNER: Mr. President.

May we have a recorded vote on this one?

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: May we have a recorded vote on this division?

PRESIDENT WENSTROM: If ten delegates will rise and request a recorded vote you will receive a recorded vote. That is a sufficient number. You will have a recorded vote.

The question before the Convention is on the adoption of the Committee Report that Alternate Proposal No. 4-2 be indefinitely postponed. Now those that favor adopting the report will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Delegate Decker.

DELEGATE DECKER: Mr. President:

If we have a "no" vote it goes back to Committee; is that right?

PRESIDENT WENSTROM: That's what I understand.

Ready for the question? The Clerk will open the key. Every delegate voted? Any delegate wish to change his vote? The vote is closed. (Laughter)

Fellow Delegates, it does appear that there is one disadvantage in having full attendance. However, the Chair is going to rule that the motion be indefinitely postponed; lost.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I hope the Committee will feel that it now has clear instructions from the floor.

DELEGATE MILLER: Mr. President:

Call for division.

PRESIDENT WENSTROM: Delegate Hougen.

DELEGATE HOUGEN: Yes. Mr. President and Fellow Delegates:

Could I now make a motion? Could I move, Mr. President, that the Ballot Committee give us a sheet of paper with the eight different proposals on it and that we vote in order the proposals that we feel are most important and also put on the side how many we feel should be voted on by the voters? I think this would give the direction to the Committee that they want.

PRESIDENT WENSTROM: I think the motion is in order. Do we have a second to the motion?

DELEGATE UNRUH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Unruh.

It's been moved and seconded that the Committee on Ballot prepare a ballot for the purpose of polling the Convention on its wishes relative to the number of proposals and listing on this ballot the number of proposals they do now have in their possession and getting the consensus of opinion of the Convention.

Delegate Decker.

DELEGATE DECKER: Mr. President, Fellow Delegates:

I would like to amend that motion to add that one vote placed No. 1 would receive four points, 2 would receive three points, 3 would receive two points, and four would receive one point so that the people who vote on fourth choice will get some count on it. But it would also give you a consensus of what we feel would be the most important ones. Do you follow me?

PRESIDENT WENSTROM: I follow you.

There's a motion before the Convention to amend the motion as offered by Delegate Hougen —

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: — so that the individual proposals would have, those in No. 1 that you voted, 1 would receive four points, No. 2 would receive three and so forth. And do we have a second to the proposed amendment?

DELEGATE GIPP: Second.

PRESIDENT WENSTROM: Seconded by Delegate Gipp.

Now Delegate Cart.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: I think this whole matter ought to be postponed or withheld until we at least know how many proposals are going to be submitted. There's apparently two more and maybe three more, whatever there may be, that will still come in. We should know what is before the body.

PRESIDENT WENSTROM: Delegate Cart, I think in answer to your question, I would agree that possibly this should be. However, the sand in the hourglass is running out. And the Convention, I think, under its own volition is going to see to it that there aren't any more proposals to that Committee because of the fact that the Committee just can't get the work out. And I think that the delegates have had adequate time. I think we've all had adequate time to get alternate proposals to this particular committee. We realize the work they have, so I just feel that if they aren't there now I think the delegates are going to kill that right here at the desk when these proposals come in.

Someone asked for the floor.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Yes. I would like to speak against this particular amendment because of the fact of the number 4. I think that that makes a certain implication as to how many we should have, and this group has not yet determined that. If we are going to have — if it's your will to have our — the Ballot Committee have your preference on a straw vote, let's at least give everyone an opportunity, if he or she wants to do so, of voting on all eight in terms of the preference than have them waiting, have them apply to all eight rather than only half of them.

PRESIDENT WENSTROM: The question is on the amendment as offered by Delegate Decker.

Is there any further discussion? Hearing none, as many as are in favor of the motion to amend will say "aye," those opposed "no." The "noes" have it and the amendment lost. We are back on the balloting question for having in reality a straw vote, a straw poll, of the Convention on their wishes pertaining to alternate proposals. I think you're aware of the question.

As many as are in favor of its adoption will say "aye," those opposed "no." The "ayes" have it. We will have a poll.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I would like to ask a question. Does that mean that the other suggested postponements from our Ballot Committee will be held off temporarily in the face of this action?

PRESIDENT WENSTROM: Well, we have them here. This is strictly — if that's the wishes of the Convention, we will just keep them on the table.

Delegate Dawson?

DELEGATE DAWSON: Yes.

PRESIDENT WENSTROM: The question has come before the Convention on what we are to do now as a result of action on the poll, on the straw vote. The two Committee Proposals that we have at the desk for indefinite postponement, do you wish that we hold those until such time as this poll is taken?

DELEGATE DAWSON: Mr. President:

I would so move that we hold up on these until we have a straw vote.

PRESIDENT WENSTROM: Well, you don't need a motion. If you say that, we will just hold them here at the desk,

DELEGATE DAWSON: Very good.

PRESIDENT WENSTROM: Thank you, Delegate Dawson.

Does that answer your question, Delegate Lander?

DELEGATE LANDER: Yes. But I have one more question which I think is relevant, or one more comment. We've got eight proposals. Several of them are one simple issue proposals. There are three that are not that simple; the unicameral and the initiative and referendum. Our Committee has been able to meet with sponsors, and we are in a position to give you something on which you can express an intelligent opinion. 4-3 in relation to the executive, however, is in an awful mess. Because the 4-3 simply relates to one proposal that we passed. It substitutes the long ballot or the existing elected officers for the short ballot as approved by this Convention. It does not speak at all to the whole concept of executive reorganization. And actually all the work that that one committee has done for the last six months, it ignores this. We tried to talk about this in our Committee but we do not know actually what the sponsors of that alternate proposal really want to do. Are you saying that the whole idea of executive reorganization ought to be thrown out? It's implied by the fact that we're going to elect fourteen officers, eleven departments, whereas in some other place we've said there are only going to be fifteen in all. There's some question about the other one. And I think if we are going to have a straw vote, which you have now asked us to do, you cannot vote intelligently on 4-3 unless the sponsors and/or our Committee or somebody has something there that we know what we're talking about.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I just want to add one more point to this, lest we think we've solved all our problems with this motion. The Committee did this very thing. And this 4-2, which is before you, if my memory is correct, was philosophically No. 2 on our list. But once you establish this philosophic problem, then you get down to the wording. And the indefinite — so that this was high up on our list of alternates so far as the whole Committee vote was concerned, and yet when we got down to wordage we couldn't get the wordage out to provide what we felt was a viable choice. So this is the same problem we're going to face with some of the other things. I just didn't want you to think that once we cast the straw vote on this we've got all the problems solved.

PRESIDENT WENSTROM: Any further discussion? Hearing none — Delegate Hoffner.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Are you going to allow debate on each of these before you take a straw vote?

PRESIDENT WENSTROM: We'll be on the ninth order of business.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-8 submitted by the following delegates: Poulson, Lander, Thompson, Hougen, Dobson, Hill, Kelsch, Hendrickson, Roney, Omdahl, O'Toole, Sinner, Devine, Chase, Aubol, Engelter, Larsen, Urdahl, Warner and Quam:

"Be it resolved by the North Dakota Constitutional Convention that the question as to whether the proposed constitution shall contain a right-to-work provision be submitted to the electorate as a separate issue on the Constitutional Convention Ballot."

PRESIDENT WENSTROM: Alternate Proposal No. 4-8 is referred to the Committee on Constitutional Ballot.

We'll be on the twelfth order of business.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President.

Recognizing that the sand is going out of the hourglass, would the President feel it in order to instruct the staff to start preparing that straw ballot now so that we might have it by noon?

PRESIDENT WENSTROM: I think that would be in order.

DELEGATE DAWSON: Mr. President.

We'll get to the staff to see that that's taken care of.

PRESIDENT WENSTROM: Thank you.

We'll be on the twelfth order.

Delegate Saugstad.

DELEGATE SAUGSTAD: May we be temporarily on the eighth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order of business.

DELEGATE SAUGSTAD: Fellow Delegates:

Much has been said this morning about the sands running out of the hour-glass and the amount of time remaining for us to conclude our work at this Convention. If you will look at the calendar, you will notice that we are now in our twenty-sixth day, which means that we have four working days, four Plenary Session days, remaining. It also means — we also have, of course, two recess days remaining. We yesterday acted upon approximately 55 articles. There are 99 — I am informed by Delegate Unruh that there are 99 — 99 articles to be acted upon. It follows, however, that some of these articles remaining which we are acting upon as a redraft by the Style and Drafting Committee, there are one or two, or at least we know of a few instances where there may well be some debate. In fact, in one committee there is a proposal that was passed upon last week which will — I think it is quite necessary that that be reconsidered, worked over and brought back again. So, in other words, what I'm getting at is mechanically we have a considerable chore before us.

The hope is that we will be able to conclude — in fact, I think it's essential that we conclude the work, that we pass upon all of the work, that the Style and Drafting Committee now has before us. We must conclude this by tomorrow. Because the next step, of course, is for the — to have all of this properly engrossed. And that is going to require two or three days time. And of course that work cannot be completed until we have taken final or taken a second vote on the proposals as advanced by the Style and Drafting Committee.

Now the other thing that impinges on this is what happens in the Ballot Committee. And as you can see from the discussion that we have just had on the floor that we can occupy a great deal of our remaining four Plenary Session days on that alone. However, there is more to it than that. Even after these have been adopted they still must be worded properly so that they — so that it can be fitted in — in other words, so that it can be voted upon — and then fitted into the main document. And these also must be properly engrossed. And so we are working against some very real deadlines.

Now this is just a tentative — these are tentative suggestions and kind of guidelines and things for you to be thinking about. One is this: That to be practical about it, it looks as though it would be almost physically impossible for the Ballot Committee to consider any proposals brought in at a later date than tomorrow. That is February 11th. And unless there will be some very strong compelling reason to do so, that that should be the effective deadline for anyone bringing up any new ideas as far as alternate proposals.

The other thing is that our work then, if we conclude our work on Friday on taking care of the drafts that are before us from the Style and Drafting Committee, that we would probably then have a recess day on Saturday and probably return Monday morning, whatever date that is, I don't recall. But we would run again Monday morning, but we would have then at our disposal one recess day. So that if it's necessary we would then be able to — in other words, we would have four days at our disposal. We would have used up one of the recess days on Saturday, and then we would have one recess day remaining. And we would have three Plenary Session days remaining. And, if necessary, then we could use or that we would have a recess day that we could — if the mechanics of getting everything in order here presents problems, then we would have one recess day that could be used in that manner to allow some of the — like the Ballot Committee and/or the engrossing — the work of engrossing or something of that nature, to give them one additional day to catch up on the work. But again my point is that we have a very considerable amount of work to do. We have a very definite and a very limited time in which to conclude this job. Thank you.

PRESIDENT WENSTROM: Thank you, Delegate Saugstad.

Question? Twelfth order of business.

CHIEF CLERK GILBREATH: Resolution No. L introduced by Delegates Meidinger, Trenbeath, Poulson, Larsen, Lander, Litten, Engstrom, Griffin, Sullivan, Jestrab, Fritzell, Hernet, Knudson and Christensen:

"A resolution requesting that the area of taxation of the extractive industries be investigated by the investigative branch of the legislature."

PRESIDENT WENSTROM: What's the number on it?

CHIEF CLERK GILBREATH: L.

PRESIDENT WENSTROM: Resolution L is referred to the Committee on Resolutions.

We'll be on the eleventh order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-13 be introduced, such proposal being a redraft of Committee Proposals Numbered 1-25, 1-26, 1-27, 1-28, 1-91, 1-100 and 1-102.

Further that this Redraft Proposal not be referred to a committee, but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the Report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report as offered by the Committee on Style and Drafting.

DELEGATE CART: Second the motion.

PRESIDENT WENSTROM: It's been seconded by Delegate Cart.

The delegates that are in favor of adopting the motion — adopting the Report will say "aye;" those opposed "no." The "ayes" have it. Redraft Proposal No. 5-13 is before the Convention for consideration.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-13, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-25, 1-26, 1-27, 1-28, 1-91, 1-100 and 1-102:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the executive department, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE —
"EXECUTIVE DEPARTMENT**

"Section 1. EXECUTIVE OFFICIALS AND OFFICERS.

"The elected state officials shall be the governor, lieutenant governor, secretary of state, attorney general and three public service commissioners.

"The governor and lieutenant governor shall be elected on a joint ballot. Each vote cast for a candidate for governor shall be deemed cast also for the candidate for lieutenant governor nominated jointly with him.

"The chief executives of the principal departments, other than those elected or those chosen in a manner otherwise provided for in this constitution, shall be appointed by the governor and shall serve at his pleasure. They shall be confirmed or rejected by the senate upon a recorded vote of a majority of the members elected. Any nomination not confirmed or rejected by the senate within twenty session days after being received shall be deemed confirmed.

"The legislative assembly shall periodically review the principal executive departments and may by law change and prescribe the manner of selecting those chief executive officers appointed by the governor under the provisions of this article."

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: I believe there are some amendments at the desk on this section. Anyway, your Committee on Executive Functions feels that the Style and Drafting Committee did an excellent job with restyling and redrafting our proposals.

We do have a couple of amendments in this particular section. On line 23 the Committee's — our Committee has changed one word from "shall" to "may". Our Committee felt that the intent of this section was that it should be "may" instead of "shall". We changed this one word to conform with the rest of the section. On line 23. You have that at the desk, I believe. I move that we adopt the amendment to this section.

DELEGATE CART: Second.

PRESIDENT WENSTROM: It's been moved and it has been seconded that in line 23 after the word "assembly" we strike the word — delete the word "shall" and insert in lieu thereof the word "may".

Is there any discussion?

DELEGATE CHASE: Question.

DELEGATE BENSON: Question.

PRESIDENT WENSTROM: The question is on the adoption of the amendment as offered by the Chairman of the Committee on Executive Functions.

If there is no discussion, as many as are in favor of adopting the amendment will say "aye," those opposed "nay."

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I move that on page 1, line 6, after the word "ARTICLE" that we insert the Roman numeral "V".

And that on line 7 we delete the word "DEPARTMENT" and insert in lieu thereof the word "BRANCH".

PRESIDENT WENSTROM: Second to the amendment by Delegate Unruh?

DELEGATE CART: Second.

PRESIDENT WENSTROM: The amendments as offered by Delegate Unruh are on page 1, line 6, after the word "ARTICLE" insert the Roman numeral "V"; on page 1, line 7, after "DEPARTMENT" — delete "DEPARTMENT" and insert in lieu thereof the word "BRANCH".

Any questions on the proposed amendments?

DELEGATE LARSEN: Question.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendments as offered by Delegate Unruh.

Delegate Byrne.

DELEGATE BYRNE: Delegate Unruh, do you not also want to change it in line 2, the word "DEPARTMENT" to "BRANCH" or is that necessary?

CHIEF CLERK GILBREATH: That's not necessary. It is in the title, and that will drop it out.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendments as offered by Delegate Unruh. As many as are in favor of adopting the amendments will say "aye," those opposed "no." The "ayes" have it, and the amendments are adopted.

Any further discussion or questions on Section I, Article V as amended?

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: It isn't going to be necessary to make a motion on each one of these, is it?

PRESIDENT WENSTROM: No.

DELEGATE HERNETT: All right.

CHIEF CLERK GILBREATH: "Section 2. ELECTIONS AND TERMS OF EXECUTIVE OFFICIALS.

"The elected state officials shall be chosen by the electors at a time designated by the legislative assembly, and shall serve until their successors are duly qualified. Terms of office shall be four years, except that terms of the public service commissioners shall be six years, so arranged that one of them is elected every two years.

"If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office."

PRESIDENT WENSTROM: You've heard the reading of Section 2 of Article V. Any discussion? Are there any questions?

Hearing none, we will proceed to Section 3.

CHIEF CLERK GILBREATH: **"Section 3. QUALIFICATIONS.**

"To be eligible to hold an elective office established by this article, a person must be an elector of this state, at least twenty-one years old, and must have been a resident of this state for the two years preceding his election. The attorney general must be licensed to practice law in this state."

PRESIDENT WENSTROM: You've heard the reading of Section 3, Article V. Any questions? Any discussion?

Hearing none, we will move on to Section 4.

CHIEF CLERK GILBREATH: **"Section 4. COMPENSATION.**

"The compensation of elected officials shall be as provided by law, but shall not be diminished during the term for which they were elected."

PRESIDENT WENSTROM: You've heard the reading of Section 4 of Article V. Any questions? Any discussion?

Hearing none, we will move on to Section 5.

CHIEF CLERK GILBREATH: **"Section 5. PLACE OF HOLDING OFFICE.**

"Elected state officials and the chief executive officers of the principal departments shall hold office at the seat of government."

PRESIDENT WENSTROM: You've heard the reading of Section 5 of Article V. Hearing no discussion, no questions, we will move on and read Section 6.

CHIEF CLERK GILBREATH: **"Section 6. EXECUTIVE ORGANIZATION.**

"The legislative assembly shall allocate the executive power among not more than fifteen principal state departments, which shall be organized along broad functional lines. The executive power of each department shall be vested in one person unless otherwise provided by this constitution or by law. The legislative assembly shall prescribe the duties of the executive departments and provide for their periodic reorganization.

"(Suggestion: an exception be provided here for either one or both of the education boards)

"The governor may, for more effective administration, make changes in the allocation of functions, powers and duties among and within the executive departments, other than those headed by constitutionally elective officials. If any change affects existing law, it shall be set forth in an executive order and submitted to both houses of the legislative assembly on the same day. The legislative assembly shall have thirty session days to disapprove the order. If not disapproved by a majority of the members elected to either house, the order shall have the force of law when filed with the secretary of state or on a later date specified therein."

PRESIDENT WENSTROM: The question before the Convention is on Section 6.

Delegate Hernet.

DELEGATE HERNETT: Mr. President:

There are amendments at the desk which probably should be read from the desk.

CHIEF CLERK GILBREATH: Proposed amendments to Redraft Proposal 5-13:

On page 2, line 31, after the period insert the following: "In addition to those duties prescribed in this constitution"; and delete the word "the" and insert in lieu thereof the word "it";

On page 3, line 2, after the word "the" insert the word "statutory".

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: He must have some other amendment there.

DELEGATE LANDER: Those were the old ones.

DELEGATE HERNETT: There's a later one at the desk someplace, I think. Should be. For instance, on line — on page — the one I have in front of me, on page 2, line 31, after the period delete the remainder of the line.

CHIEF CLERK GILBREATH: We don't have that one.

DELEGATE UNRUH: It's coming.

DELEGATE KELSCH: Everybody has got one except you.

DELEGATE HERNETT: First amendment we had on that other section, that was all right. But this one has been changed.

CHIEF CLERK GILBREATH: All right. Is there a difference of proposed amendments with the delegates?

On page 2, line 31, after the period delete the remainder of the line.

On page 2, delete all of lines 32 and 33 and insert in lieu thereof the following:

"The legislative assembly shall prescribe the duties of and periodically reorganize the executive department, provided any reorganization or change in duties shall not affect the organization and powers granted to the boards of education in this constitution."

On page 3, line 2, after "the" insert "statutory".

On page 3, line 4, after the period delete the words "If any" and insert in lieu thereof the word "Any", and after the word "change" delete the word "affects".

On page 3, line 5, delete the words "existing law, it".

PRESIDENT WENSTROM: Now the question among the delegates is do you have the right amendment as read from the desk? I know the one that I have is not that way. I just wanted to know how many of the delegates have the wrong one.

Delegate Hernet.

DELEGATE HERNETT: Well, the first amendment you had was the result of a subcommittee of the Executive Functions and the Education Committee meeting. Those amendments were proposed to the Style and Drafting Committee. And they took a second look at it and decided that that didn't look just right or didn't do the job. What the problem is here is the question that the Education Committee has had about our proposal here about the departments in the executive reorganization. And as a result now we have this compromise. And I thought those amendments were all up at the desk. They should have been. But, anyway, the two committees met jointly yesterday, both the Committee on Executive Functions and Education Committee, and we came up with the amendments as you have heard them read from the desk this morning.

Now maybe some member of the Education Committee would like to explain a little more as to what we are doing here. I hope this solves this problem.

PRESIDENT WENSTROM: Delegate Hernet, I believe that these amendments, especially this amendment, goes far beyond the intent of the work that we are under right here at the present time, that of considering matters from Style and Drafting. I think you have to admit that you're changing much more than that. So I think at this time we're going to have to rule this out of order and act on it as a separate order.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: You are going to have to reconsider what you have done.

Delegate Unruh.

DELEGATE UNRUH: Mr. President:

The suggested language that Delegate Hernet has submitted was the Style and Drafting change that we suggested to them and that they have adopted. We

feel it was necessary to give clarity to the measure. I don't think it's a substantive change in that respect.

PRESIDENT WENSTROM: Then, Delegate Unruh, if you would just restate this now so that we're clear on it. The amendments that are being offered here are really then amendments that have been arrived at by the Committee on Style and Drafting; is that correct?

DELEGATE UNRUH: That's correct.

PRESIDENT WENSTROM: On that premise, why we will accept them. But if it's coming from some committee report or such, why I think we'd have to rule them out.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I think that one of the questions, Mr. Chairman, that was raised by the staff in the Style and Drafting Committee was responsible for this change.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: This is one of the real tough questions we had down there. The difficulties seemed to come over conflicting opinion on whether the provisions creating the Board of Higher Education and the Board of Education, whether they were included in the executive department or were merely administrative departments. And I happen to be one of those that contended all the time that they were not included in the executive group. And I do not think this is a substantial change, it's merely an attempt to specify or clearly point out that they are not within this group of executive officers that are taking the place of a number of other officers. But the two boards concerning education are separate and apart from that group.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: The problem some of the delegates don't understand was the problem between the executive article and the article on education. In the executive article we declared in this section that there should be fifteen principal state departments which would be organized or brought forth. And then the question was whether or not the — pardon me. In addition to this power we give the executive — the Legislature the power to reorganize appointive heads, to at least consider that. And we give the governor the power to change duties through executive order. And the question came up, does this apply to the Board of Higher Education and to the Board of Public Education? And this amendment, if you've got it on your desk, gives the Legislature the power to prescribe the duties and periodically reorganize the executive department. There is a limiting clause providing that the reorganization or change in duties shall not affect the organizational powers granted the Boards of Education under this Constitution.

So what we're saying, I think, is, as I would interpret it, we're bringing the two Boards of Education in as one — as two of the fifteen executive departments, but we're saying very specifically that the Legislature cannot — the Legislature can prescribe additional duties. And this power is granted under the education article as well. They cannot change the method of selection of the heads of the two Boards of Education. We're also saying that though — as far as the duties of those two boards, that though the Legislature can expand the duties as is also granted in the education article, the governor can also expand the duties, but he cannot — neither the Legislature nor the governor can subtract the duties that are granted in the education article. So the two Departments of Education will continue to have the duties that are prescribed in that article, more duties to be added to them performed, but nothing subtracted. In other words, they cannot be reorganized or duties subtracted, powers taken away from them. So we're fixing them in a special position, yet still viewing them as two of the fifteen executive departments. That would be my interpretation of this amendment. The attempt was to resolve the conflict of these two articles.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I move that we set Section 6 aside until we get the amendment on the desk of the delegates so we can really see what's going on here. We have gone through that procedure yesterday; I think we took out one section of an article we were talking about. I would like to see that handled — Section number 6 handled the same way.

PRESIDENT WENSTROM: Delegate Butler, do you so move?

DELEGATE BUTLER: I so move.

PRESIDENT WENSTROM: Delegate Butler moves, and Delegate Christensen seconds, the motion that we set this particular amendment and this section aside until such time as it is available on the desk of each of the Convention delegates.

DELEGATE HERNETT: Mr. President:

Aren't they already on everybody's desk?

DELEGATE RUNDLE: No.

DELEGATE MEIDINGER: Mr. President:

In answer to you, I think that each copy was given to a member of the Executive Functions Committee and the Education Committee yesterday but they were not distributed to the body.

DELEGATE HERNETT: I thought they were on everybody's desk this morning.

PRESIDENT WENSTROM: The question then is on the motion as offered by Delegate Butler, that we suspend further consideration of this particular section until such time as the amendments are available to each of the delegates.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the motion carried. And we will suspend further consideration of this particular section.

Why don't we take a break for coffee; it is a quarter after ten. They are in the process of being run off at the present time.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President:

May we be on the twelfth order for a moment?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order.

DELEGATE MEIDINGER: I would like to call a very short meeting of the Education Committee in G-1.

PRESIDENT WENSTROM: We will be — we have some announcements at the desk.

The Convention will be in order.

We'll be on the eighth order of business.

CHIEF CLERK GILBREATH: Delegate Hoffner has the twelfth grade of Minnewaukan School at Minnewaukan, North Dakota, and their teacher, James Sanders, in the gallery.

The twelfth grade of the Elgin School of Elgin, North Dakota, and their teacher, Keith Laite, and thirty students, are in the gallery.

Delegates Jestrab, Saugstad and Hubrig have Mr. Mathis and the students of Minot State College in the class of parliamentary procedure in the gallery with us today.

PRESIDENT WENSTROM: Will the visiting students and other guests please rise and be recognized by the Delegates of the Convention? (Applause)

Anything further under the eighth order?

Delegate Hill.

DELEGATE HILL: On this sheet that has just been handed out on which we are to vote our preferences for side issues, I presume that we are supposed to list our preferences with numbers of 1 through 8. Now the highest number indicates the highest priority, so 8 would be the one we most want. But if we only want four issues I presume we could go 8, 7, 6, 5 and leave all the rest

blank so we don't give extra effort to an area we don't want as a side issue. Would that be correct? Do we have to vote a number for an issue we don't want as a side issue, is my question?

PRESIDENT WENSTROM: Vance, I think that possibly you should ask Delegate Dawson and then maybe we could have an announcement on it. I just — you've got me confused.

DELEGATE HILL: I would like to also have him explain to me if the highest number is 8 or if the highest number is 1, also.

DELEGATE STANTON: 1.

PRESIDENT WENSTROM: I would believe that No. 1 would be the highest. I so rule that the number 1 is going to be the priority, the one with the highest priority.

DELEGATE HILL: So if we really don't like something we should give it an 8; is that correct?

PRESIDENT WENSTROM: That's right.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: Right on your sheet it gives you the instructions and the point system. It says the highest number indicates the highest priority and the lowest number indicates the lowest priority. So if you want unicameral, Delegate Hill, as your highest priority you would give it 8 points. That's the highest priority.

PRESIDENT WENSTROM: Well, that might be. But that's the motion that failed on the Convention floor. Wasn't that the motion as offered by Delegate Decker?

DELEGATE DECKER: 4, 3, 2, 1.

PRESIDENT WENSTROM: Oh, I see.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I think, Mr. President, that your interpretation of how we got here is right. The effort is to assign the same kind of a system as Delegate Decker suggested, except to go all the way to 8. And that's fine with me if everybody understands that. But the way it's on here now, I'll agree that there's a good possibility of some confusion.

PRESIDENT WENSTROM: I think that whoever took the priority list to the office and had it prepared is the one that better explain what they did. I don't have a copy.

DELEGATE DAWSON: Well, I think it's clear on the ballot here. It says the highest number indicates the highest priority and the lowest number indicates the lowest priority.

DELEGATE HILL: What is the highest number?

DELEGATE DAWSON: 8. 8 is the highest number. There are eight proposals on here.

DELEGATE HILL: That was what my original idea was. If you only wanted four alternates, then we could vote 8, 7, 6, 5, leave the rest blank. That would be the best way, in my opinion, of showing the true opinion of my thought. I don't want the people voting 1 if they think 1 is the highest number. And obviously from around here I can see there is some confusion.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I would agree that if there are four or five issues that you do not want to vote on, that you just leave those blank and you start with your eighth number at the top. And, incidentally, if you want to vote on these we would appreciate it — the Committee will have a luncheon meeting up in the committee room during the noon hour today. And if we have this information before us and the staff has time to calculate it, we'll be able to do some work on it during the noon hour.

PRESIDENT WENSTROM: Delegate Dawson, now just so that we aren't as confused as the Chairman is on what you wish, now if you wish the unicameral to be the number one priority, then you would check that one —

CHIEF CLERK GILBREATH: 8.

PRESIDENT WENSTROM: Is that what you would do?

DELEGATE DAWSON: You would put an 8 in the line opposite unicameral.

PRESIDENT WENSTROM: That would be the top priority?

DELEGATE DAWSON: That is the top priority. So when the staff totals it up the proposal that has the highest number will be the proposal that has the highest priority.

PRESIDENT WENSTROM: I see. Well, I understand what you want. Now I hope the delegates do.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: If you follow the suggestion of Delegate Hill you might foul up the tabulating system. If we are going to add the total number of points and you don't give — you only list four, you don't give any point values to those four, boy, you are really voting against them because you are not giving them any points. So maybe you want to do it that way, that's fine with me. Just so we know what we're doing here.

PRESIDENT WENSTROM: The question — Delegate Kessel.

DELEGATE KESSEL: Definitely we should follow this pattern: That all eight of them be marked, and if you don't like one you put that No. 1. So that it only gets one point. So that we do have something to go on. But all eight of them should be marked.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President:

I certainly agree with that. While the maneuver suggested by Delegate Hill appeals to me, it would have a tendency of destroying the operation of the weighting system. So I will move that any ballot which has not been numbered 8 through 1 be invalidated.

PRESIDENT WENSTROM: The Chair is going to rule the motion out of order and rule that that's a question for the Committee on Ballot — Constitutional Ballot, to decide. So I think we understand how we want to vote on these.

And with that, we are going to declare a ten-minute coffee break. Let's be back on time.

(The Session recessed from 10:20 A.M. until 10:40 A.M., the same day.)

PRESIDENT WENSTROM: The question — we're short of delegates. Will the delegates of the Convention please come to order.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: May we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order of business.

DELEGATE DAWSON: The Ballot Committee would appreciate if you'd mark the ballots that are on your desk so the pages can pick them up and the staff can tabulate them so we'll have them ready for our luncheon meeting.

PRESIDENT WENSTROM: The question? The question before the Convention is on the amendments as offered by Delegate Hernet to Section 6 of Article V.

Will the Clerk re-read the proposed amendments?

CHIEF CLERK GILBREATH: On page 2, line 31, after the period delete the remainder of the line.

On page 2, delete all of lines 32 and 33 and insert in lieu thereof the following:

"The legislative assembly shall prescribe the duties of and periodically reorganize the executive departments, provided any reorganization or change in

duties shall not affect the organization and powers granted to the boards of education in this constitution."

On page 3, line 2, after the word "the" insert the word "statutory".

On page 3, line 4, after the period delete "If any" and insert in lieu thereof "Any" and after the word "change" delete the word "affects".

On page 3, line 5, delete the words "existing law, it".

And if you will mark in your copies of the amendment it will read:

"The legislative assembly shall prescribe the duties of and periodically reorganize the executive departments,". Place a comma in there. That is not on your amendment.

PRESIDENT WENSTROM: Any further discussion? Further discussion? Are there any questions?

The question is on the adoption of the amendment as offered by Delegate Hernet. Hearing no further discussion — Delegate Aubol.

DELEGATE AUBOL: Mr. President:

I haven't got the original engrossed copy. But how does this provision on reorganizing the executive departments differ from what the committee had originally recommended? Now it says they have to periodically be reorganized. Did the original committee report say that?

DELEGATE HERNETT: Yes. But, in fact, Delegate Aubol, you will find it — you have it on your desk here on the green sheet. It is Redraft Proposal No. 5-13. That is as the Style and Drafting Committee amended it.

Then if you will look in your bill book or your proposal book it will be in the Committee Proposal 1-102. Actually, what this amendment is that is under discussion here this morning is that as a result of the concern the Education Committee had for the State Board of Higher Education. And that's about all that this is doing, is clarifying the language.

PRESIDENT WENSTROM: And it is my understanding that this amendment has been offered by the Committee on Style and Drafting.

Delegate Hernet.

DELEGATE HERNETT: That is right. And it has been approved by both committees; Executive Functions Committee and the Education Committee. And we all feel that there is no substantive change here. Just clarifying the language.

PRESIDENT WENSTROM: Any further discussion?

Delegate Aubol.

DELEGATE AUBOL: My only question had to do with what change there is in the language. And I think in 102 it said that the legislative assembly upon periodic review may by law change and prescribe the manner of selecting officials.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: The reference should be to Committee Proposal 1-100, not 1-102. What we are talking about is Section 1(a) of 1-100.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption to the amendment as offered by Delegate Hernet. Hearing no further questions, no further discussion, as many as are in favor of adopting the amendment will say "aye," those opposed "no." The "ayes" have it, and the amendment is adopted.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I have a question now as to what happens to the language following "suggestion" there on line 34. Would engrossing take that out automatically or should there be a motion about that?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: It is my feeling that we don't need to amend that out. We will use that to put new language in. They'll use that space.

PRESIDENT WENSTROM: Further amendments to Section 6? Further discussion on Section 6?

Hearing none, we will move on to Section 7.

CHIEF CLERK GILBREATH: **"Section 7. STATE PLANNING COUNCIL.**

"The chief executives of the principal state departments shall constitute the state planning council. The governor shall be chairman of the council and the lieutenant governor shall be vice chairman. The council shall prepare a comprehensive state plan based on the comprehensive plan for each department."

PRESIDENT WENSTROM: You've heard the reading of Section 6.

CHIEF CLERK GILBREATH: 7.

PRESIDENT WENSTROM: Is there any discussion? Hearing none —

CHIEF CLERK GILBREATH: Section 7.

PRESIDENT WENSTROM: Hearing none, we will move on to Section 8.

CHIEF CLERK GILBREATH: **"Section 8. POWERS AND DUTIES OF THE GOVERNOR.**

"The governor is the chief executive of the state. He shall have the responsibility to see that the state's business is well administered, and that its laws are faithfully executed.

"He shall present the comprehensive state plan, and his own recommendations, to the legislative assembly at the beginning of each session and at any other time he chooses.

"He may call special sessions of the legislative assembly.

"He may require information in writing from all executive officers concerning the performance of their respective duties.

"He shall prescribe the duties of the lieutenant governor.

"He is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and he may mobilize them to execute the laws and to maintain order.

"He may grant reprieves, commutations and pardons. He may delegate this power in a manner provided by law.

"He may supervise business with the United States and other states."

PRESIDENT WENSTROM: You've heard the reading of Section 7 — Section 8 — I'm sorry — Section 8, Powers and Duties of the Governor. Any questions? Any discussion?

Hearing none, we will move on to Section 9.

CHIEF CLERK GILBREATH: **"Section 9. GOVERNOR — VETO POWER.**

"Every bill passed by the legislative assembly shall be presented to the governor for his signature. If the governor signs the bill it shall become law.

"The governor may veto a bill passed by the legislative assembly. He may veto or reduce items in an appropriation bill. Portions of the bill not vetoed or reduced shall become law.

"The governor shall return for reconsideration any vetoed item or bill with a statement of his objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it shall immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill, shall become law. An item reduced in amount shall follow the same procedure as a vetoed item or bill, except that it shall be restored to its original amount if passed by a majority of the members elected to each house.

"While the legislative assembly is in session, a bill shall become law if the governor neither signs nor vetoes it within five days, Sundays excepted, after its delivery to him. If the legislative assembly is not in session, a bill shall become law if the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him."

PRESIDENT WENSTROM: You've heard the reading of Section 9. Are there any questions?

Delegate Hernet.

DELEGATE HERNETT: Mr. President:

There are some amendments, Committee amendments, at the desk.

CHIEF CLERK GILBREATH: Proposed amendments to Redraft Proposal 5-13:

On page 4, line 9, after the word "bill" insert a comma.

On page 4, line 15, delete the second comma.

On page 4, line 18, after the period insert the following: "If a reduced item is not so restored, it shall become law in the reduced amount."

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Mr. President:

The feeling of our committee was that this language is necessary to clarify what might happen in regard to a reduced item. It was felt that probably if we didn't have this language in here the question was how would it become law. All this does, we feel, is to take care of this one point.

PRESIDENT WENSTROM: May we have a second to the proposed amendment?

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nothing. Any discussion?

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: I'm reading and trying to understand what it says there, the last two words on line 15, going on to lines 16 and 17. I wish someone from the Committee could inform me there. We speak about a majority. And usually a veto of that takes a super majority. I'm confused on the language there.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Someone — Delegate Baker.

DELEGATE BAKER: It means what it says. It places the reduced item into a different class than the vetoed bill or the line veto, as we know it now, the theory being that it should only take a majority to restore an item to its original amount when the governor reduces it, but only when he reduces it; if it's a straight out veto it should require the two-thirds. And this was debated at the time I think we had that section before us before.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention — Delegate Longmire.

DELEGATE LONGMIRE: Could we have the amendment read again? I seem to have got it down here wrong. I can't understand my own writing.

DELEGATE HERNETT: Mr. President:

I might comment again it's on everybody's desk. I think this is the second time it has been handed out.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-13:

On page 4 —

DELEGATE LONGMIRE: Mr. President:

I only wanted the last amendment on page 4, line 18, read, if we could.

CHIEF CLERK GILBREATH: On page 4, line 18, after the period insert the following: "If a reduced item is not restored, it shall become law in the reduced amount."

PRESIDENT WENSTROM: Any further questions? Further discussion?

The question before the Convention is on the adoption of the amendments as offered by Delegate Hernet. Those in favor of adopting the amendments will say "aye;" those opposed say "no." The "ayes" have it, and the amendments are adopted.

Further amendments to Section 9?

Hearing none, we will move on to Section 10.

CHIEF CLERK GILBREATH: "Section 10. VACANCIES.

"The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office which is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes he shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate shall again be nominated for that office at the same session, nor shall he be appointed to that office during a recess or adjournment of the senate."

PRESIDENT WENSTROM: Any discussion on Section 10? Are there any questions?

Hearing none, we will move on to Section 11.

CHIEF CLERK GILBREATH: "Section 11. GUBERNATORIAL SUCCESSION.

"In the event of a vacancy, the order of succession to the office of governor shall be the elected lieutenant governor and thereafter as provided by law,

"If the governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the powers and duties of the governor shall devolve upon the officer next in line of succession for the remainder of the term, or until the governor is acquitted or his disability removed.

"If the governor-elect dies, resigns, or fails to qualify, the lieutenant governor-elect shall succeed to the office of governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect shall serve as acting governor, and he shall succeed to the office of governor if the governor-elect does not assume his office within six months after the beginning of the term.

"The legislative assembly shall by law specify by whom and by what procedures the ability of the governor, or anyone acting as governor, to serve or to resume office may be questioned and determined. The supreme court shall have original, exclusive and final jurisdiction to determine absence and disability of the governor or governor-elect, and to determine the existence of a vacancy in the office of governor and all questions concerning succession to the office or to its powers and duties."

PRESIDENT WENSTROM: You've heard the reading of Section 11.

Delegate Hernet.

DELEGATE HERNETT: Mr. President:

There is one minor amendment at the desk there.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-13:

On page 5, line 8, after the word — after the first word "the" delete the word "officer" and insert in lieu thereof the word "official".

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment; that on page 5 in line 8 after the word "the" delete the word "officer" and insert in lieu thereof the word "official".

Any discussion?

DELEGATE BINEK: Second.

PRESIDENT WENSTROM: Seconded by Delegate Binek.

No further discussion?

As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

Any further discussion or further amendments to Section 11?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Redraft Proposal No. 5-13 be deemed properly re-engrossed and placed on the calendar.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Before you accept that motion, will Delegate Unruh or someone who is on one of these committees take a look at — on page 4, line 21, it says: "If the legislative assembly is not in session, a bill shall become law if the governor neither signs nor vetoes it within fifteen days." The question that's in my mind is what happens if he reduces it after that; he neither then vetoes it — he then reduces it. Will he then reduce it and sign it?

DELEGATE UNRUH: I don't get the question.

DELEGATE SINNER: Well, the question is up above you specify three things he can do; he can either sign it or reduce it or veto it. Then down below here you don't include the reducing possibility. My question is, can the governor reduce after the legislature goes home? And, if he does, does he also sign it? If he signs it when he reduces it, then he's all right. But the way it reads it seems to me that the bill becomes law the way it was passed even if he reduces it.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I don't think I am qualified to answer. I think the Chairman of the Legislative Committee should answer that. Or the Executive Committee, excuse me.

DELEGATE HERNETT: Well, I feel that this amendment that we passed today explains this, Delegate Sinner. If a reduced item is not so restored, it shall become law in a reduced amount. That was the feeling of the Committee when he added this amendment. Maybe some other member of the Committee has a different idea as to the reason for this. But that was my opinion.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HERNETT: I might point out that there is a similar legislative statute in other states. And we felt this was something that was needed in North Dakota.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I believe Delegate Sinner is right. Because the language says: "If a reduced item is not so restored . . .", the "so" referring back to the process of going to the Legislature to get a majority vote, I think if we took out the word "so" it could cover both instances.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention — Delegate Unruh.

DELEGATE UNRUH: Mr. President.

I think in view of that discussion, it seems to me that we should remove the word "so" and it will cover both conditions. I therefore move a floor amendment that in the amendment we strike the word "so" after the word "not".

PRESIDENT WENSTROM: Did the Clerk follow the proposed amendment?

CHIEF CLERK GILBREATH: In the amendment offered on page 4, line 18, after the period insert the following: "If a reduced item is not restored it shall become law in the reduced amount." By deleting the word "so".

DELEGATE CART: Second.

PRESIDENT WENSTROM: Do you have the amendment? The question before the Convention is on the adoption of the amendment as offered by Delegate Unruh to delete the word "so".

DELEGATE CART: Second the motion.

PRESIDENT WENSTROM: It's been seconded by Delegate Cart.

Any further discussion? Are you ready for the question? As many as are in favor of adopting the amendment will say "aye;" opposed "no." The "ayes" have it, and the amendment is adopted.

Again, we are on the motion as offered by Delegate Unruh that the Redraft Proposal — Style and Drafting Redraft Proposal No. 5-13 is before the Convention for first passage. We voted on this, we will be voting on Sections 1, 2, 3, 4, 5, 6,

7, 8, 9, 10 and 11, all dealing with the Executive Department of Article V. Those in favor of its adoption, of its passage, will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will indicate your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 90 "aye" votes, 4 "nay" votes and four delegates absent and not voting. The Redraft Proposal No. 5-13 has passed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-3 be introduced, such proposal being a redraft of Committee Proposal No. 1-11.

Further, that this Redraft Proposal not be referred to a committee but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves the Report be adopted.

VICE PRESIDENT SAUGSTAD: We're on the motion of Delegate Unruh that the Report of the procedural committee be adopted. Any discussion? Hearing none, all in favor of the motion signify by saying "aye;" opposed "no." The "ayes" have it. The motion carries.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-3, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposal No. 1-11:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the judicial department, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE —
"JUDICIAL DEPARTMENT**

"Section 1. JUDICIAL POWER.

"The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court and other courts as may be provided by law."

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I now move that on page 1, line 6, after the word "ARTICLE" we insert the Roman numeral "VI".

That on line 1 — page 1, line 7, we strike the word "DEPARTMENT" and insert the word "BRANCH".

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE CHASE: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Chase.

I'm now on the motion of Delegate Unruh to insert Roman numeral VI after "ARTICLE"; in line strike "DEPARTMENT" and insert the word "BRANCH".

All in favor signify by saying "aye;" opposed "no." The "ayes" have it. Motion carried. Amendment is adopted.

Now we have Section 2.

CHIEF CLERK GILBREATH: "Section 2. SUPREME COURT JURISDICTION.

"The supreme court shall be the highest court of the state. It shall have appellate jurisdiction and the authority to issue, hear, determine and enforce such writs as are necessary to the proper exercise of its jurisdiction. The supreme court shall consist of five justices, one of whom shall be designated chief justice as provided by law. The supreme court shall make rules for the governing of, and prescribe procedures for, all courts. The chief justice shall exercise general superintending control over all courts."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we'll move on to Section 3.

CHIEF CLERK GILBREATH: **"Section 3. UNCONSTITUTIONALITY.**

"No legislative enactment of the state shall be declared unconstitutional unless at least four of the supreme court justices so decide."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will go to Section 4.

CHIEF CLERK GILBREATH: **"Section 4. SUPREME COURT DECISIONS.**

"When a judgment or decree is reversed, modified or confirmed by the supreme court, the reasons shall be concisely stated in writing, signed by the justices concurring, filed in the office of the clerk of the supreme court and preserved with a record of the case. Any justice dissenting may give the reason for his dissent in writing over his signature."

VICE PRESIDENT SAUGSTAD: Any — Delegate Longmire.

DELEGATE LONGMIRE: There is a minor amendment at the desk on Section 4. I ask that it be read.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-3:

On page 2, line 1, delete the word "decree" and insert in lieu thereof the word "order".

DELEGATE LONGMIRE: Second that motion, somebody.

DELEGATE O'TOOLE: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate O'Toole.

DELEGATE LONGMIRE: Mr. President:

As indicated there, that's a minor amendment. Instead of the word "decree" we're putting in "order". We felt that's probably more up to modern-day practice. The courts are issuing two things usually; a judgment or an order. And I guess "decree" came down from the king. And we thought it was time to relinquish their loyalty to the king. And so now it will be that we are referring to judgments or orders, the way the modern practice refers to it.

VICE PRESIDENT SAUGSTAD: We're on — any further discussion? We're on the motion of Delegate Longmire to accept the proposed amendment changing "decree" the word "decree" and substituting the word "order" in line 1, page 2 of Proposal 5-3.

I'll now put the question. All those in favor signify by saying "aye," opposed "nay." The "ayes" have it. The motion carried, and the amendment is adopted.

Next we have Section 5.

CHIEF CLERK GILBREATH: **"Section 5. APPEALS.**

"Appeals shall be allowed from decisions of lower courts to the supreme court under such procedures as may be provided by law or by rule of court."

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

A little amendment taking out one word in this section that's at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-3:

On page 2, line 9, delete the word "such".

DELEGATE McELROY: Second.

DELEGATE MEIDINGER: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Meidinger.

DELEGATE LONGMIRE: Mr. President:

I thought the Style and Drafting Committee did a good job in taking out a lot of "suchs" and we thought that we should show them that we didn't take them all out; that we observed their work very carefully, and so we took out one. And that's all this amendment is.

VICE PRESIDENT WENSTROM: Is there any further discussion?

If not, we are on the motion of Delegate Longmire that the word "such" be removed in line 9 of Section 5 under Proposal 5-3.

I'll now put the question. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carried, and the amendment is adopted.

Next we will have Section 6 read.

CHIEF CLERK GILBREATH: "Section 6. ELECTION AND TERMS OF JUSTICES.

"The justices of the supreme court shall be chosen by the electors of the state for ten-year terms, so arranged that one justice is elected every two years. They shall hold office until their successors are duly qualified and shall receive compensation as provided by law."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

Hearing none, we'll go to Section 7.

CHIEF CLERK GILBREATH: "Section 7. DISTRICT COURT JURISDICTION.

"The district court shall have original jurisdiction of all justiciable causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the supreme court. The district court shall have authority to issue such writs as are necessary to the proper exercise of its jurisdiction."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will go to Section 8.

CHIEF CLERK GILBREATH: "Section 8. ELECTION AND TERMS OF DISTRICT COURT JUDGES.

"The state shall be divided into judicial districts by order of the supreme court. In each district one or more judges shall be chosen by the electors of the district to be served. The term of office shall be six years. They shall hold office until their successors are duly qualified and shall receive compensation as provided by law."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

Hearing none, we will so move to Section 9.

CHIEF CLERK GILBREATH: "Section 9. QUALIFICATIONS.

"Supreme court justices and district court judges shall be citizens of the United States and residents of this state, shall be admitted to the bar in this state, and shall possess any additional qualifications prescribed by law. Judges of other courts shall be selected for such terms and shall have such qualifications as may be prescribed by law."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

Hearing none, we shall move to Section 10.

CHIEF CLERK GILBREATH: "Section 10. RESTRICTIONS.

"No supreme court justice or district court judge shall engage in the practice of law or hold any public office, elective or appointive, not judicial in nature."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we go to Section 11.

CHIEF CLERK GILBREATH: "Section 11. DISQUALIFICATIONS.

"When any justice or judge is interested in any way in a pending cause or is unable to sit in court because he is physically or mentally incapacitated, the supreme court shall assign a judge, or retired justice or judge, to hear the cause."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall go to Section 12.

CHIEF CLERK GILBREATH: "Section 12. REMOVAL.

"The legislative assembly shall establish by law a procedure for removal of justices and judges for misconduct in office or inability to perform the duties of office, whether willful or because of physical or mental disability or incompetency. Except for impeachment proceedings, the supreme court shall have original, exclusive and final jurisdiction in judicial removal proceedings. A supreme court

justice being proceeded against shall be disqualified from acting in the proceedings, and a district court judge selected by the remaining justices shall act in his stead."

VICE PRESIDENT SAUGSTAD: Any discussion?

HEARING none, we shall move to Section 13.

CHIEF CLERK GILBREATH: "Section 13. RETIREMENT.

"The legislative assembly may provide by law for the retirement of supreme court justices, district court judges and judges of other courts."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall move to Section 14.

CHIEF CLERK GILBREATH: "Section 14. VACANCIES.

"A judicial nominating committee shall be established by law. Any vacancy in the office of supreme court justice or district court judge shall be filled by appointment by the governor from a list of candidates nominated by the committee, unless the governor calls a special election to fill the vacancy. An appointment shall continue until the next general election, when the office shall be filled by election for the remainder of the term."

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: The Committee has a slight amendment to offer. It's at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-3: On page 3, line 31, after the word "vacancy" insert the following words: "for the remainder of the term".

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Litten.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

We felt what this does, it says that if the governor should call a special election if elected, that he ought to serve the remainder of the term rather than just until the next election. Because no one wants to run for an office if he's only going to be in office for one month. So we felt that this was something that should clarify that. Somebody might consider that a little substantive, but our Committee considered it just clarifying language and therefore proper to offer this amendment.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

Hearing none, we are on the main motion of Delegate Longmire that Section 14, line 31, be further amended by adding the language "for the remainder of the term".

I'll now put the question. All in favor signify by saying "aye;" opposed "no." The "ayes" have it. The motion carried, and the amendment is adopted.

Now we have Section 15.

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: That went so fast. How does that amendment now tie in with that following sentence; when would it be for the remainder of the term and when would it be on the next election?

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: There are two ways that you fill a vacancy under this procedure; one is by appointment of the governor from three people under this nominating commission, the other one is by special election, if he chooses to go that route. If you fill the vacancy by special election, that person will be elected to the remainder of the term of the judge for which he is — who he is replacing. If the governor appoints one from this commission, he will only serve until the next general election.

DELEGATE LANDER: Thank you.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

If not, we will next have under consideration Section 15, which will be read.

CHIEF CLERK GILBREATH: "Section 15. CONFIRMATION.

"If no candidate other than the incumbent supreme court justice or district court judge has been nominated for that office, the ballot at the general election shall contain the question: 'Shall (name of justice or judge) be retained in the office of (supreme court justice or district court judge)?' Unless a majority of votes cast on the question are affirmative, the office shall be deemed vacant at the end of the term and shall be filled as otherwise provided in this article."

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: The Committee has an earthshaking amendment at the desk.

VICE PRESIDENT SAUGSTAD: It will be read.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposed 5-3: On page 4, line 6, delete the word "otherwise".

VICE PRESIDENT SAUGSTAD: Is there — Delegate Longmire, do you move the adoption of this amendment?

DELEGATE LONGMIRE: I assume that was on the amendment, Mr. President, and I will move it again.

VICE PRESIDENT SAUGSTAD: And is there a second?

DELEGATE RONEY: Second.

VICE PRESIDENT SAUGSTAD: Delegate Roney seconds.

Is there any discussion?

DELEGATE CART: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Mr. President:

I know we can't do anything about wiping this out here, but I want to call the attention of the Convention to this simple fact; that we're setting out left-handed machinery for recalling a judge here without petitions.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: We thought that was a very strong point in this article.

VICE PRESIDENT SAUGSTAD: We are then — Delegate Fritzell.

DELEGATE FRITZELL: Mr. President:

I'm just going back to Section 1. And maybe I'm probably confused and shouldn't even question this. But it says, "A supreme court, a district court;" now do you use the term "a district court" to cover all the district courts?

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

In reply to the delegate's question, the Committee kicked that around down there because there are several district court judges, of course, and several districts fixed in the State now. So we felt that we were referring to an entity rather than divisions of the district court or judges of the district court. And for that reason we felt that the singular would be the way to refer to it and meaning, of course, that it would cover all judicial districts as well as all district judges.

VICE PRESIDENT SAUGSTAD: Delegates, we have — we have a motion before us and we have been speaking to things other than the motion before us. So now, unless there is further discussion of the motion of Delegate Longmire to amend on page 4, line 6, to strike the word "otherwise", the last word in that sentence or that line — the last word in that line, I will now put the motion.

All in favor signify by saying "aye," opposed "no." The "ayes" have it. The motion carried, and the amendment is adopted.

Now is there any further discussion on Section 15?

DELEGATE BURKE: Mr. President.

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Burke. I will call Delegate Burke first.

DELEGATE BURKE: Mr. President:

May I direct a question to Delegate Longmire?

VICE PRESIDENT SAUGSTAD: Delegate Longmire, will you yield?

DELEGATE LONGMIRE: Yes.

DELEGATE BURKE: This is in regard to Section 15, Delegate Longmire. I was wondering on the meaning. Does that contemplate the legislative assembly may provide for a mandatory age retirement as well as retirement benefits?

DELEGATE LONGMIRE: Yes.

VICE PRESIDENT SAUGSTAD: Now Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I now move that Style and Drafting Redraft Proposal No. 5-3 be deemed properly re-engrossed and placed on the calendar.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE JESTRAB: Second.

VICE PRESIDENT SAUGSTAD: Delegate Jestrab seconds.

Any further discussion?

Hearing none, we are on the motion of Delegate Unruh that Style and Drafting Redraft Proposal No. 5-3 be deemed properly re-engrossed and be placed on the calendar on the — I believe it is on eleventh order?

CHIEF CLERK GILBREATH: Yes.

VICE PRESIDENT SAUGSTAD: — on the eleventh order.

I will now put the question. All in favor signify by saying "aye," opposed "nay." The "ayes" have it. Motion carries.

And now we have before us Proposal No. 5-3 for final or for second passage. Is there any further discussion?

DELEGATE LITTEN: Question.

DELEGATE KWAKO: Question.

VICE PRESIDENT SAUGSTAD: Hearing none, the board will be open and you may record your vote. Saugstad votes "aye".

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The record discloses on Redraft Proposal 5-3 93 "ayes," no "nays," five absent and not voting. Therefore, Proposal No. 5-3 has been adopted.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-7 be introduced, such proposal being a redraft of Committee Proposals numbered 1-12 and 1-101.

Further that this redraft proposal not be referred to a committee but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

VICE PRESIDENT SAUGSTAD: Is there a —

DELEGATE LONGMIRE: Second the motion.

VICE PRESIDENT SAUGSTAD: We are now on the motion of Delegate Unruh that Style and Drafting Proposal No. 5-7 be introduced and be placed before us for consideration. All in favor signify by saying "aye," opposed "nay." The "ayes" have it, and now we have before us Proposal 5-7.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-7, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-12 and 1-101:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to political subdivisions, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE —
"POLITICAL SUBDIVISIONS**

"Section 1. PURPOSE.

"The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum duplication of functions."

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I now move that in line 6 on page 1 the Roman numeral "VII" be inserted.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE TUDOR: Second.

VICE PRESIDENT SAUGSTAD: Second by Dr. Tudor — Delegate Tudor.

We are on the motion of Delegate Unruh to insert the Roman numeral "VII" after the title "ARTICLE" in line 6 on Proposal 5-7.

I will now put the question. All in favor signify by saying "aye;" opposed "no." The "ayes" have it. The motion carried, and the amendment is adopted.

We shall now — any further discussion?

Hearing none, we shall go to Section 2.

CHIEF CLERK GILBREATH: **"Section 2. POLITICAL SUBDIVISIONS.**

"The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall go to Section 3.

CHIEF CLERK GILBREATH: **"Section 3. COUNTIES.**

"The several counties of the State of North Dakota as they now exist are hereby declared to be counties of the State of North Dakota."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall go to Section 4.

CHIEF CLERK GILBREATH: **"Section 4. COUNTY SEATS.**

"The legislative assembly shall provide by law for relocating county seats within counties, but it shall have no power to remove the county seat of any county."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall move to Section 5.

CHIEF CLERK GILBREATH: **"Section 5. BOUNDARIES.**

"Methods and standards by which all or any portion of a county or counties may be annexed, merged, consolidated, reclassified or dissolved shall be as provided by law. No portion of any county or counties shall be annexed, merged, consolidated or dissolved unless a majority of each affected county voting on the question so approve."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall move to Section 6.

CHIEF CLERK GILBREATH: **"Section 6. HOME RULE.**

"The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a

majority of those voting thereon. In granting home rule powers to cities, the legislative assembly shall not be restricted by city debt limitations contained in this constitution."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we shall move to Section 7.

CHIEF CLERK GILBREATH: "Section 7. OPTIONAL FORMS.

"The legislative assembly shall also provide by law for optional forms of government for counties, but no optional form of government shall become operative in any county until submitted to the electors thereof at a special or general election, and approved by a majority of those voting thereon.

"Until one of the optional forms of county government is adopted by any county, the fiscal affairs of the county shall be transacted by a board of county commissioners as provided by law."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

Hearing none, we shall move to Section 8.

CHIEF CLERK GILBREATH: "Section 8. COUNTY SERVICES.

"Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services and any other governmental services or functions as may be provided by law.

"All elective county offices or any combinations thereof as they now exist shall continue to be elective county offices with four-year terms; however, any such county office or offices may be eliminated either by adoption of a home rule charter, or at a countywide referendum by a majority of the electors voting on the question.

"A referendum on elimination of county offices shall be provided for by law, and shall be mandatory in each county at the first statewide election held not less than two years after the effective date of this constitution and at least every ten years thereafter.

"Whenever an office is eliminated, the county governing body may provide for any service rendered by that office."

VICE PRESIDENT SAUGSTAD: Is there any discussion?

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Another big amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-7.

On page 3, line 3, delete the word "body" and insert in lieu thereof the word "board".

DELEGATE McELROY: Second.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE McELROY: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate McElroy.

Delegate Longmire.

DELEGATE LONGMIRE: The only reason, Mr. President, for putting that in is uniformity. We refer to it in a later section as a "board," so we felt we should refer to it in this section as a "board".

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

Hearing none, we are on the motion of Delegate Longmire that on page 3, line 3, delete the word "body" and insert the word "board" on Proposal 5-7, Section 8.

I will now put the question. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it, and the motion carried and the amendment is adopted.

Next we shall have Section 9 read.

CHIEF CLERK GILBREATH: "Section 9. REFERENDUM.

"Questions on the form of government to be adopted by any county or on the elimination of county offices may be placed upon a referendum ballot either by a two-thirds vote of the members of the county governing board or by petition of

electors of the county equal in number to fifteen percent of the votes cast in the county for the office of governor at the preceding general election, or as otherwise provided by law."

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

We — the committee has an amendment here to offer on this. You may vote it down. But we felt there should be something in the record as to the intent of this particular section. We ask that it be read.

VICE PRESIDENT SAUGSTAD: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-7.

On page 3, line 10, after the word "equal" insert the following words: "or greater."

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: We understood that the Style and Drafting Committee has used similar wording in several other sections that they did in this amendment by leaving out the word "greater". In other words, they are saying that the number of signatures will be "equal". Now we thought if you wanted to look at that technically fifteen percent and one would not be "equal to" literally speaking. I think the intent of the Style and Drafting was to say that it was "equal" if it was "equal to" in fact, "or greater". We offered this so that we would have something in the record to show the intent of the Style and Drafting Committee. We were told that they considered "equal" in their language to mean "equal to" or "greater". So if that is the intent of the Style and Drafting, then chances are we could vote down this amendment. But if it isn't, then we ought to know and put it in.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: One moment, please.

For the record, I would like to have a second to Delegate Longmire's motion. Delegate McElroy seconded Delegate Longmire's proposed amendment.

Now Delegate Baker.

DELEGATE BAKER: Mr. President:

The way I read this along with Section 9 of 1-12, it seems to me that unless we make some kind of an amendment at this time, then the Style and Drafting Committee has changed the substance of the — of the proposal as it passed when it was in proposal form. The way that reads in 1-2 on line 16, page 3 of the pink one, "equal to at least fifteen percent of the total number", which is approximately the same as the present language in the Constitution and the section that corresponds here. And it has been interpreted by the Legislature to leave some leeway so that requirements for these petitions have been at one time or another as high as forty percent. Now that has nothing to do with this particular thing. But when we were arguing it at the time this was one of the points that was being argued. And the majority of this Convention, as I remember, voted for the language "equal to at least fifteen percent". And I think if we were going to be proper about it, that's the way it ought to be, without exact language in this redraft.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

As far as I know this is the only amendment proposed by a substantive committee which the Style and Drafting Committee objects to. And I agree with Delegate Longmire it is good to spread the intent upon the record here.

Now in the Redraft Proposal on initiative and referendum and recall you will notice that we used the language of "equal in number". And that is sufficient. We do not mean that you have to turn in the precise number which would be equal in number to fifteen percent. If we meant that we would say "equal in number, but not greater than". Let's say that to get fifteen percent you need 12,000 signatures, but you turn in 15,000. Well, it's no problem there because within the fifteen thousand you do have a number equal in number to the requisite number which would be 12,000, if that's clear.

Now in the present Constitution it says "ten thousand electors at large may propose any measure by initiative petition". It doesn't say "at least ten thousand electors," it doesn't say "ten thousand or more electors," or anything like that. And we've never had any problem. And that is why we're urging a rejection of this particular amendment, because the intent is clear. And to put this amendment in would be to put an inconsistency in the Constitution.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: I would like to request a ruling by the Chair on this point. Would any change in that language from that passed by this body when it was before us in Committee Proposal 1-12 be a substantive change or not?

VICE PRESIDENT SAUGSTAD: The request, as I understand it, from Delegate Baker is would the Chair rule on whether the language that appears before us now in Section 9 is a substantive change from the language as was approved by this body in Section and Proposal 1-12. The Chair — this is something that would require, I think — I have not had an opportunity to study and read Section — yes, Committee Proposal No. 1-12. Momentarily I would be unable to give a decision on that.

DELEGATE BAKER: Take a good look at it.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: I will try to give the thinking of the committee on it.

The committee did not think it was a substantive change; we thought it was merely a style and drafting change. However, we did think that it ought to be clarified; at least the intent of the Style and Drafting Committee should be clarified.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I hope I'm not accused of nitpicking. But the majority of the committee said it wasn't a substantive change. Some members thought it was, including me. And I would point out that it is used in statutes in quite a few places. If you get a — if you're running for a county office or certain offices you will have "not less than two percent nor more than five percent" on your petition. You have one over the five percent, the county auditor will throw it out or is entitled to. If he's a good fellow he will just strike off some names, of course. But this has been used. And I think the language — I agree that it should be as it was before with the words "at least". But this would do the same thing, and I think the amendment should be approved. In my book "equal" means "equal".

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

As I understand Delegate Baker's comments, if we said "equal or greater" or "at least equal in number" you're suggesting that the Legislature could increase the number. Is that, Delegate Baker, what you're saying?

DELEGATE BAKER: Under almost identical wording in the present Constitution the Legislature has chosen to set the necessary — pardon me. Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: — the Legislature has chosen to set the requirements for these petitions at various levels above fifteen percent; at fifteen percent and above that up to forty percent.

DELEGATE KELSCH: Well, Mr. President, if we were going to interpret it that way then you're talking about a style change. As I read it, we were simply trying to fix fifteen percent and not grant the Legislature the power to raise that to sixty percent. I think wasn't that the intention of the Judicial Committee? The only question is whether we were going to say "equal" can file more petitions or not. Now Style and Drafting feels that if that was the intention of the Judicial Committee that the Constitution establishes the number of signers that you have

to have and not leave it up to the Legislature to make it ninety percent if they want to. I am used to the words "at least". I think the Style and Drafting is right, the word "equal" means, as Delegate Dobson explained, "at least". That's the way we use it in other parts of the Constitution. We are trying to be consistent.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

The intent of the Judicial Committee was that if you got fifteen percent or greater that you would qualify in this referendum to get this matter on before the people. We did not feel that it would empower the Legislature to require any number above fifteen percent. We felt that it limited the power of the Legislature to require anything above that, that they could not do it. We did think, however, it should be clarified either by saying "at least" or "greater", whichever language you want to use. Because, as indicated by a delegate who previously spoke, there are statutes now in regard to these different referendum questions that says "at least" or words similar to that.

Now in some of these county positions, the county auditor in the past would not accept more than a certain percentage. They didn't want to clutter up their files by having somebody file a thousand or a hundred more than they were required to by law; they would accept a few more. And because of precedent and because of that in the past, the committee thought we ought to at least have one or two things that the intent be clear as to what was meant by the Style and Drafting language or that we put in these words to pin it down. We felt that we should not restrict the maximum number, we were setting the minimum number that was required to get it on.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

That's the interpretation of the Judiciary Committee. I think that then we should vote down adding the words "or greater" because we are specifically directing — we are setting the limit "equal to fifteen percent". And I think that can include more than fifteen percent. But we are saying if we go the other way and say at least we are implying, as Delegate Baker says, we are giving the Legislature the power to raise that. I think any words other than "equal" we raise ambiguity in whether or not the Legislature has the power to raise the percent beyond fifteen.

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Well, Mr. President, I'll speak only for one, myself, as one member of the Style and Drafting. But it's my interpretation of these provisions all the way through that the Constitution was fixing a minimum number but it did not prohibit filing, say, sixteen percent if that was the requirement or one or two percent more, something like that, or in the case of initiative and referendum where it is fixed figures like ten thousand or fifteen thousand you could go up to sixteen thousand and not be in any difficulty — jeopardy about your petition. You had just met the constitutional requirements with an elaborate amount.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President.

I yield to Delegate Rundle.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

If there's any argument that this gives the right to the Legislature to increase it, then I'm going to reverse my position. Because it does say at the end of the sentence in line 12 "or as otherwise provided by law". And if Delegate Kelsch's position is correct, that this would give the Legislature the right to change it to a higher figure, then I think we should leave the Style and Drafting version alone.

DELEGATE HENDRICKSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson.

DELEGATE HENDRICKSON: This was one of the sections that I worked on in the subcommittee of Style and Drafting. And we purposely didn't put a

word in there because we felt from style, from reading the sentence, by adding, such as has been suggested, the words "or greater" that it would give the Legislature the right to increase that number from fifteen percent to, as somebody suggested, up to sixty percent. And we felt that the intent was to keep the percentage at fifteen percent. So I really would resist the motion very greatly unless I misinterpreted what the committee meant. But from what Delegate Longmire said, I think we have caught the intent of the committee by deleting those two words.

VICE PRESIDENT SAUGSTAD: The Chair would like to make this announcement: That in reference to the question as posed originally by Delegate Baker as to whether or not the Chair would rule that this has been a substantive change, after having read the Section 9 in Committee Proposal 1-12, it is the tentative opinion of the Chair that the Style and Drafting Committee did not make a substantive change in the meaning of this section.

Delegate Baker, did you wish the floor?

DELEGATE HILDEBRAND: Question.

DELEGATE KWAKO: Question.

VICE PRESIDENT SAUGSTAD: We are now on the motion of Delegate Longmire that Section 9 be further amended by adding the words "or greater" after the word "equal" in line 10, Section 9, of Proposal 5-7.

I will now put the question. All in favor signify by saying "aye;" opposed "nay." The "nays" have it. The motion lost. The amendment is not adopted.

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Now I believe Delegate Lander had asked for the floor first.

DELEGATE LANDER: Mr. President:

I have a question now of somebody on Style and Drafting and/or the committee since this whole issue has been raised which I was so stupid I missed it completely up until it was raised. But on line 12 it says, "or as otherwise provided by law" which I think is the same way it was before. But did the Style and Drafting Committee have any question about what we meant when that was passed; and, if so, is that really clear in everybody's mind? What is "otherwise provided by law"; the questions or the petitions or the two-thirds vote or the fifteen percent or what?

VICE PRESIDENT SAUGSTAD: Does anyone wish to answer the question raised by Delegate Lander?

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: My opinion was, and this is my own, is that it would apply to the entire arrangement as to how county government could be handled in this case. The number — the questions, all these matters, I think would be the thing that we would be subjecting to law. I don't think that the Legislature can go any less than fifteen percent, but they might say that one percent additional would be all right. I can see them doing that possibly in view of the questions you've raised here. But I think it has a very wide application applying to referendum.

VICE PRESIDENT SAUGSTAD: I believe, Delegate Rundle, I believe you have the — I'll recognize Delegate Rundle first and then O'Toole.

DELEGATE RUNDLE: Mr. President:

I brought the very same question up in committee. I didn't think the words "or as otherwise provided by law" should be in there. I was overruled, but I am glad to hear the argument to find out what it does mean.

VICE PRESIDENT SAUGSTAD: All right. Now Delegate O'Toole.

DELEGATE O'TOOLE: It looks to me like that whole section is not needed if you're going to provide it by law. Looks like it's just kind of redundancy.

VICE PRESIDENT SAUGSTAD: Delegate Aubol and then Engelter.

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Section 9 refers to — refers back to Section 6. Talks about home rule, refers back to Section 7 which talks about optional forms of government, it refers back to Section 8 which talks about the structure of a county government as we now know it.

Now in Section 8 we have specifically provided that the Legislature will set up referendums and elections two years after this Constitution is adopted and every ten years thereafter. But in Section 6 and Section 7 we do not specify how a question of home rule will be put on the ballot, or Section 7 we do not specify how a question of optional forms will be put on the ballot. And so by adding that sentence at the end of Section 9 we are saying that the Legislature can provide by law for the question of home rule being put on the ballot or for the question of optional forms to be put on the ballot. We did not feel, I don't think, that "as otherwise provided by law" had anything to do with the Legislature's power to increase the number of petition signatures required. Am I correct, Chairman Longmire?

VICE PRESIDENT SAUGSTAD: I believe Delegate Engelter and then Delegate Pearce.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

I think what Clare has stated is in essence correct. My feeling with regard to the committee action was that there would be two ways referendum or the county commissioners could place something on the ballot or the people could petition. And there are many other ways for getting things on the ballot. And this is the manner of placing questions on the ballot, is what the Legislature would be dealing with here. If they felt a different method would be used, they could provide a different method. But what we wanted to do in this section is at least guarantee these two ways to placing questions on the ballot.

VICE PRESIDENT SAUGSTAD: Delegate Pearce.

DELEGATE PEARCE: Mr. President:

I offer a free legal opinion. Free legal opinions are reputedly worth zero. As I see it, these two first — the word "or" in line 12 makes it a complete alternative. And whatever the Legislature did would not destroy the efficiency of lines 6 through 11. If instead of the words "or as" you said "unless", then the Legislature could eliminate the first paragraph as we have it. So my opinion, therefore, is that as presently phrased you have not in any way jeopardized the provisions provided in the paragraph up to that point even if, as Delegate Engelter says, the Legislature gives you some other alternative, you still have this one.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Hearing none, we will move on to Section 10.

CHIEF CLERK GILBREATH: **"Section 10. SERVICE AGREEMENTS.**

"Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may transfer to the county in which it is located any of its powers or functions unless prohibited by law or home rule charter, and may in like manner revoke the transfer."

VICE PRESIDENT SAUGSTAD: Any discussion?

Hearing none, we will move on to Section 11.

CHIEF CLERK GILBREATH: **"Section 11. MUTUAL SERVICES.**

"State agencies or political subdivisions may enter into mutually beneficial service arrangements with Indian tribes."

VICE PRESIDENT SAUGSTAD: Any discussion?

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: I want to move an amendment, and then I'll try to explain all of the ramifications why this led up to it and why a copy is not at the desk.

This is a very simple amendment. And after the word "tribes" on line 24, the Style and Drafting Proposal, insert the words "without infringement on the sovereignty of the tribes".

If it gets a second on that, I'll explain why we thought it wasn't a substantive change.

DELEGATE RONEY: Second.

VICE PRESIDENT SAUGSTAD: It was seconded by Delegate Roney.

DELEGATE LONGMIRE: Okay. Now, Mr. President, when we put this section in this article to begin with, we — it was the intent of our committee to recognize in some way the rights of state agencies and local subdivisions of government to continue to make agreements with the Indian tribes on things that were mutually beneficial to both. We certainly had no intention of infringing in any way on the sovereignty of the tribes or of the State of North Dakota. However, some of the Indian leaders of the various tribes contacted us only a day or two ago and were quite concerned because they felt that the way this section read now that there might be some confusion or some interpretation later that this was infringing in some way on the sovereignty of the Indian tribes. Definitely nothing could have been further from the opinion of the committee than that. But we felt that in order to satisfy them — and they were completely satisfied by this minor amendment — we should offer this amendment to the Convention floor here. We don't think it's substantive because it merely explains further the intent, what we had already said in the sentence in the short section. And for that reason we are offering this amendment at this time.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

It certainly wouldn't be my intention to prolong conversation on this matter, but it just seems to me in lieu — in the light of other rulings that have been made that this is a substantive matter. It certainly extends the meaning of the section in my opinion. I would take — I would believe that Delegate Longmire's motion is out of order. To add this we should reconsider the section and offer it as an amendment then.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: The committee had expected to follow that procedure if the majority of the folks here felt it was substantive. But we as a committee didn't feel it was. And we thought we'd try it this way first, and if you vote us down we'll come in the back door and reconsider it.

DELEGATE HARTL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hartl.

DELEGATE HARTL: This individual, this one member of the committee, is confused either way whether it is substantive, procedural, and I'm generally confused about the entire addition. And at this point I would ask for a ruling if it is a substantive change.

VICE PRESIDENT SAUGSTAD: The Chair does feel that this is a substantive change. And it would be the ruling of the Chair that you would ask for either a reconsideration or upon a motion to the body just ask on motion to the body if they wanted to consider this as a style and drafting change and not a substantive change.

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: As Delegate Longmire pointed out, this — this just recently come to our committee. And I think it was after our session last evening up here that we first talked about that. About half of our committee was there. As Delegate Hartl pointed out, there was some question on whether or not there was a substantive change. Now when the vote was taken in the committee there were no votes against it; but a number of us were confused about whether or not this would be a substantive change. And I don't think our committee is quite unanimous on the question.

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: I also wasn't present at the committee meeting on this. I would say that it is definitely substantive. If it isn't, then we should go on and say "without infringing upon the sovereignty of the State of North Dakota and its political subdivisions". You see that can add a completely new meaning to the whole section.

VICE PRESIDENT SAUGSTAD: Delegate Paulson, then Delegate Longmire.

DELEGATE PAULSON: Mr. Chairman:

I would like to ask Delegate Longmire a question.

If the Indian tribe is sovereign, is there any way that this Constitution or an agreement can infringe on that sovereignty?

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: In reply to that, our committee felt there was no way that we could. Because that was a federal matter that had been given to the Indians. However, the Indians, or at least some of their leaders, in particular from the Turtle Mountain Reservation, felt that this could later on sometime cause laws to be passed by a Legislature which would infringe and this might whittle away a little of their rights under it. We didn't agree with them. However, we felt that this amendment was harmless, and it did satisfy them. They commented, "To get this back in this way, it's a good document. We can support it one hundred percent." We thought that it was a harmless amendment and we would put it in.

Now in regard to Delegate Kessel's comments, we considered whether or not we should say "infringe upon the sovereignty of the State of North Dakota and its political subdivisions". We felt that there was no question anywhere by anybody that there was any infringement here on the sovereignty of the state. That's set out in this document here from the preamble all the way through to what the final section will be. And we thought that there was nobody requesting that, and there was no need to add anything about North Dakota or its agencies because they had their sovereignty by this document time and time again.

DELEGATE LANDER: Mr. President.

DELEGATE LONGMIRE: Now, Mr. President, if there is serious consideration as to whether or not this is a substantive change, then certainly I would not want to go around your ruling. If that is your ruling, then the committee would be glad to withdraw this motion with the consent of our second, and then sometime soon we'll be moving for reconsideration. We do think — excuse me — we do think that this is worrying some of the Indian people and that we ought to do something about it, particularly where it won't hurt the intent of the original section, that it is a little thing that we can do here to clear that up and give them peace of mind as to what we were trying to do in this section.

As indicated earlier, we felt that we were recognizing more the sovereignty of the Indian tribes by putting in this section in the first place. But they don't think that, evidently. So those are the reasons.

VICE PRESIDENT SAUGSTAD: Delegate Longmire, the Chair would like to point out that there is another avenue open; that you simply ask to have the Rules suspended and then we could adopt at this point a substantive change. But you would have to move that the Rules be suspended; and that, I believe, is this instance would require a two-thirds vote.

DELEGATE LONGMIRE: Fine.

Mr. President: With the consent of my second, I withdraw the previous motion.

VICE PRESIDENT SAUGSTAD: Delegate Longmire has asked permission to withdraw his previous motion. And the second has consented.

DELEGATE LONGMIRE: Mr. President:

I move at this time that the Rules be suspended and that this proposal be amended as indicated.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE NICHOLAS: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Nicholas.

Now Delegate Longmire has asked that the Rules be suspended so that we might adopt a substantive amendment. Now because this requires a two-thirds vote, I shall have the Clerk open the board so that you may register your vote. Saugstad says "aye".

Has everyone voted? Does anyone wish to change his vote? If not, the board will be closed. We will take the record.

How does Dawson vote?

DELEGATE DAWSON: "Aye."

VICE PRESIDENT SAUGSTAD: Dawson votes "aye".

CHIEF CLERK GILBREATH: Would you flip his key?

VICE PRESIDENT SAUGSTAD: The motion prevails, 82 "ayes". So the motion to suspend the Rules has been adopted.

Now, Delegate Longmire, did you include in your motion the adoption of this amendment, or do you want to move now for the adoption of the amendment?

DELEGATE LONGMIRE: I included it in there. I don't think the secretary got it all, but it was in my motion that way.

CHIEF CLERK GILBREATH: We got it.

VICE PRESIDENT SAUGSTAD: Included in Delegate Longmire's motion is that on page 3, line 24, following the word "tribes" insert the following: "without infringement on the sovereignty of the tribes". And that is on the Redraft Proposal 5-7, Section 11.

Now Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

In order that there be no technical question on this, I move for the adoption of this amendment as indicated.

VICE PRESIDENT SAUGSTAD: Yes. I believe this would be a separate motion. And we are now on the motion of Delegate Longmire, I believe this is seconded by Delegate Nicholas, that this body adopt the proposed amendment.

Is there any further discussion? We are now on the main question of the adoption of this proposed amendment. All in favor signify by saying "aye;" opposed "no." The Chair rules the "ayes" have it. And the amendment is adopted. And the new language then will be inserted in Section 11.

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I didn't hear if you put a comma in place of the period. If he didn't, I'm going to have to move it. Put a comma in the place of the period at the end of line 24.

CHIEF CLERK GILBREATH: We never took the period out.

DELEGATE LONGMIRE: No.

CHIEF CLERK GILBREATH: He just moved, said: "Indian tribes without infringement on the sovereignty of the tribes."

DELEGATE UNRUH: Period.

CHIEF CLERK GILBREATH: Then the period.

VICE PRESIDENT SAUGSTAD: Next, if there is no further discussion, we will next have under consideration Section 12.

CHIEF CLERK GILBREATH: **Section 12. UTILITY FRANCHISES.**

"The power of the governing body of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly."

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: We have just a little minor amendment on that; certainly nothing substantive.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-7.

On page 3, line 26, delete the word "body" and insert in lieu thereof "board".

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Delegate Litten.

Any further discussion?

DELEGATE PETERSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Peterson.

DELEGATE PETERSON: No, I don't want to speak on the amendment.

VICE PRESIDENT SAUGSTAD: All right. Delegate Baker.

DELEGATE BAKER: Mr. President:

There are some governing bodies of cities which are not called "boards".

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

The committee agrees wholeheartedly with Delegate Baker. However, in these sections throughout we have been referring to it now as "board" rather than "body", and we thought that as a matter of uniformity, why, we should continue to use that language.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

We are on the motion of Delegate Longmire to further amend in Section 12, line 26, to delete the word "body" and insert the word "board", I believe. Yes.

Hearing no further discussion, I will now put the question. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it, and the motion carried, and the amendment is adopted.

Now Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

As the delegates will note, this section was not originally in our article. The Style and Drafting Committee put it in there. We felt it was a good decision. And in grouping these sections this probably was the place where it would fit in better than in other sections. However, our committee has not given the close study to this that the Education and Public Lands Committee has given. We approved this for style and drafting only. We feel that it would be up to the Drafting Committee to give us some light on whether or not there are substantive changes in this section as it came from the committee in the first place. And so we yield to that committee for that purpose.

VICE PRESIDENT SAUGSTAD: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President:

The Committee on Education took a vote and moved that the Style and Drafting Committee did not substantially change the meaning of what we had done previously. There was a difference of opinion, and I could illustrate it something like this: The politician who was running for office said on a certain issue he was asked how he felt about it and he said, "Well, I will tell you, about half of my friends are for it and half are against it. And, doggone it, I'm for my friends."

VICE PRESIDENT SAUGSTAD: Delegate Peterson.

DELEGATE PETERSON: Mr. President:

I don't — I wasn't at the committee meeting, but it was my understanding that when Style and Drafting do something they just merely change a few commas and probably a word or two. And in my opinion this section, Section 12, is considerably changed. I think they've made a substantial change from 101. And when you look at 101 and you look at Section 12 and you look at 139 in the old Constitution and then you also realize that at one time on the floor we deleted it completely, I'm becoming increasingly confused. And I definitely feel that it has certainly been changed. I would like to ask the Style and Drafting what their explanation is.

VICE PRESIDENT SAUGSTAD: Anyone from the Style and Drafting Committee who will answer Delegate Peterson's question?

DELEGATE UNRUH: Delegate Peterson, Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: We felt that in reading the language as is in your pink sheet, 101, it was confusing to read. You start off by saying, "No law shall be passed" and then at the tail end of it you say, "without asking the consent of the governing board". And the committee felt that this was in a way asking that the city apply to the Legislature before they passed a law. And this was our feeling; that it was a confusing way of writing what we really felt was the statement that we came out with in Section 12 on your green sheet where we put it positively giving the city a right to franchise within city limits. Really that's what the whole measure speaks to. I think it is stated clearly, and I don't think we've monkeyed with the aspect of it that the city does have the right. But we did feel that the language as originally came through the body was confusing. That's why we did it. It was no attempt at all to make a substantive change.

VICE PRESIDENT SAUGSTAD: Any further discussion?

Delegate Cart.

DELEGATE CART: Mr. President:

I want to reiterate what Delegate Unruh has stated. When you go back to old Section 139 in the original Constitution, that did spell out certain utilities that were then in existence in 1889. Now the committee, before it comes to Style and Drafting, had eliminated that language and had broadened it to cover all the public utilities and probably any that will be developed. And we just rearranged that wording and kept the responsibility for issuing a franchise at the local level where it has always been.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: I think there has been the revolutionary change in the concept here that it's not very readily discernible. But when you read the new Section 12, "The power of the governing body of a city to franchise . . . shall not be abridged . . ." —

DELEGATE PETERSON: Right.

DELEGATE OMDAHL: — it suggests the concept of inherent power in the political subdivisions which is accepted in the courts of only a couple of states. The political subdivisions are creatures of the State. And, of course, cities are less creatures than the counties and the townships, but nevertheless they are creatures and they derive their powers from the Constitution or the legislative assembly. And so we sort of have the cart backwards here. And I think that the original language in 101 is much more direct, and it doesn't suggest to the courts that there is such a thing as inherent power in the political subdivision. Because it says, "No law shall be passed by the legislative assembly". Suggesting — suggesting that it is the legislative assembly that's being restricted here. And I would think that the original language would be much better to preserve. And I don't really see where it is very confusing, because the Legislature would pass a general law and the law would be effective only when the city would give its consent whenever it wanted to utilize the law. And so it isn't a matter of the city saying, "Yes, Legislature, you can do this." The Legislature just passes a general law and cities that want to use it must comply in a certain fashion. I think that there's been a major substantive change, and I would hate to have the Constitution suggest to the courts that there is such a thing as inherent power in the political subdivisions.

And it pains me, after my lecture of yesterday, to suggest that we spend eleven dollars to vote on this separately, but I do think that we should vote on this separately, Section 12, that because of the substantive change. And I think that we should keep in mind that we are not voting for or against the concept, we are only voting to reject the report of the Committee on Style and Drafting on that one section and replacing it then with the old language that they changed. I would ask that the Section 12 be separated.

VICE PRESIDENT SAUGSTAD: That request shall be granted, that Section 12 will be voted on separately.

Delegate Wallin.

DELEGATE WALLIN: Mr. President:

I did check with the Attorney General's office on this. And Mr. Paul Sand's opinion was that there wasn't any substantive change in this. He did say that the way this is written now, that the legislative assembly would never be able to change this or abridge the right of the city.

DELEGATE SANSTEAD: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President.

After the committee had noted the new language, and at the suggestion of Delegate Devine, who you will recall worked very hard on this section, the original section, I did contact the REC people who had originally been very unhappy with Article 17. And they indicated — I talked to a couple of their — I suppose you'd say managerial and legal experts, but they suggested they did not feel this was any change, either; it was just as obnoxious as the old language.

VICE PRESIDENT SAUGSTAD: Delegate Wallin.

DELEGATE WALLIN: Mr. President:

Mr. Sand did check this against the recent court decision, **MDU v. REA**, in Crosby. This decision came out December 17th. And he said that this reading here will not in any way be changed by that question.

DELEGATE DEVINE: Question.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

DELEGATE LONGMIRE: No question on this — no discussion. However, on the matter of procedure I would suggest that we vote on the Sections 1 through 11 of this and handle it in the customary manner, and then we could come to Section 12 and vote on that. As I understand it, that question has been separated.

VICE PRESIDENT SAUGSTAD: We're waiting for a motion from Delegate Unruh.

DELEGATE UNRUH: Mr. Chairman:

I now move that Sections 1 through 11 of Style and Drafting Redraft Proposal No. 5-7 be deemed properly re-engrossed and placed on the eleventh order.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE STANTON: Second.

VICE PRESIDENT SAUGSTAD: Second by Delegate Stanton.

We are on the motion of Delegate Unruh that Section 1 through Section 11 be deemed properly reengrossed and they be placed on the eleventh order for second passage.

Delegate Unruh, the desk force suggests that you include Section 12 in having it deemed properly reengrossed.

DELEGATE UNRUH: Thank you. I thought you had severed it. But I think it would be better to include 1 through 12. Thank you.

VICE PRESIDENT SAUGSTAD: That's approved by your second.

Delegate Burke, did you wish the floor before we vote on this motion?

DELEGATE BURKE: Mr. President:

I would like to, if I may, go back to Section 9. Because I don't believe the intent has yet been brought up on this floor. And I believe that it may be of concern to those who wish to preserve the form of government in the county or the offices. This is of vital concern; not particularly to me, but it is to a lot of people. And if you wish to limit the methods, then perhaps "or as otherwise provided by law" could be changed to "or as otherwise provided in this article", which would definitely limit the means by which this could be done. Because as it is now we'll have to go home and explain that this is wide open, that the Legislature may do and propose practically anything on the form of government or the elimination of county offices.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, the committee agreed wholeheartedly with the observations that were made by Delegate Pearce in their discussion of it. We're talking here strictly about one thing: The referendum; how

to get these questions of whether or not a county shall do this or that or eliminate some of its officers or some of its services or home rule to the people. And we agree with Delegate Pearce that we have provided two ways they can get it on for a vote; the Legislature could provide a third way or a fourth way if they want to, the way this is set up. What we are wanting to do, what our intent was, was to make it easy for counties to change their services, to change their territory, or to annex others or to eliminate certain offices and so forth. We don't think that this "as provided by law" has anything to do with the number of signatures required if we go that route. And we put an easy way there where the people could go that route. And we think they can always go that route even though this "or as provided by law" is included. We feel that if the Legislature puts in a third route and say that they can get it on the ballot this way, fine. That's up to them. But the people will still have this route that they have to get fifteen percent signers and put it on the ballot. I don't think we need to do anything in regard to this wording myself because we — we don't want to limit the way the people can get this on for a vote.

DELEGATE LITTEN: Question.

DELEGATE OMDAHL: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: I've decided I'd rather save eleven dollars and I withdraw my request for a division.

VICE PRESIDENT SAUGSTAD: Does that meet with your — no, that was just a personal request. Then at the request of Delegate Omdahl — Omdahl has withdrawn his request that Section 11 be voted on separately.

DELEGATE ROSENDAHL: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Rosendahl.

DELEGATE ROSENDAHL: Does that mean that we are going to be voting on the whole document then as one?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE ROSENDAHL: Then I would like to ask a request that we vote on it separately. Because I definitely can go along with all of that proposal, but that last one, I cannot vote for that one. Because that is just discriminatory, and I can't go along with it.

VICE PRESIDENT SAUGSTAD: That request then will be granted, that Section 12 will be voted on separately.

We are on the motion of Delegate Unruh.

Now Delegate Lander. Delegate Lander.

DELEGATE LANDER: Mr. President:

I was going to wait, but just in case I don't get it out fast enough afterwards, I will do it now.

Very reluctantly, because of the cost, I would like to request a division on Section 11 for the reason that those of us who did not approve of the substantive change will otherwise have had no opportunity in this Convention to have a recorded vote on our thought on that particular substance which was reintroduced this morning.

VICE PRESIDENT SAUGSTAD: At the request of Delegate Lander, Section 11 will be voted on separately.

Now we're back on the motion of Delegate Unruh that Proposal 5-7 be deemed properly re-engrossed and be placed on the eleventh order for second passage.

All — I'll put the motion. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it.

And now we have before us Proposal 5-7. And we will be — the first time we vote we will vote on Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

Is there any discussion? Hearing none, the board will be opened, you may record your vote. Saugstad votes "aye".

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The record discloses 94 "ayes," 1 "nay," three absent and not voting. And, therefore, Proposal 5-7, Sections 1 through 10, inclusive, has been adopted.

Next we shall have under consideration Section 11 of Proposal 5-7.

DELEGATE LITTEN: Question.

DELEGATE KWAKO: Question.

VICE PRESIDENT SAUGSTAD: Hearing no discussion, the board will be opened and you may record your vote. Saugstad votes "aye".

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed. The Clerk will take the record. The record discloses 75 "ayes," 19 "nays," four absent and not voting. Therefore, Section 11 of Proposal 5-7 has been adopted.

Next we shall have under consideration Section 12 of Proposal 5-7.

Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. Chairman:

May I ask a question? If this is voted down as proposed by Style and Drafting, it comes back to Style and Drafting, doesn't it? And then do we get another chance to try to make it less obnoxious? I know one of the delegates mentioned it is equally as obnoxious as when it started; do we get another chance at it to see if we can fix it up?

VICE PRESIDENT SAUGSTAD: The consensus of opinion is that should this be voted down, this is Section 12, that the — the original — then we would be back on the original form of Section 12, I think, which is 1-101. You see, we have adopted, we have passed, Section — Committee Proposal 1-101.

Any further discussion? The key will be opened and you will record your vote. Saugstad votes "aye".

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed, and the Clerk will take the record. The record discloses 60 "ayes," 35 "nays," three absent and not voting. Therefore, Section 12 of Proposal 5-7 has been adopted.

Are there any announcements?

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: I would like to remind the members of the Finance and Tax Committee of the meeting immediately following recess. We're all supposed to grab something to eat and bring it with us.

DELEGATE BYRNE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Byrne.

DELEGATE BYRNE: I will remind the Committee on Coordination and Transition we have a luncheon meeting in Room G-5 and G-6 immediately after recess.

VICE PRESIDENT SAUGSTAD: Delegate Dawson.

DELEGATE DAWSON: Ballot committee will be meeting in the west balcony during recess.

VICE PRESIDENT SAUGSTAD: There is an announcement from the desk.

CHIEF CLERK GILBREATH: Would you please turn in your vote on alternate proposals either to the pages or up at the desk so we can get them all in up to the committee?

Delegate Warner would like to announce that he has three members of the Richland County Board of County Commissioners; John Lingen, John Hintz and Arthur Johnson in the gallery today.

VICE PRESIDENT SAUGSTAD: Any further announcements?

We will now stand recessed until 1:30.

(The Session recessed at 12:32 P.M. until 1.30 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:40 P.M., Thursday, February 10, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

We will be on the seventh order of business — Reports of Select Committees.
Reports of the Committee on Style and Drafting.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-4 be introduced, such proposal being a redraft of Committee Proposal No. 1-15.

Further, that this Redraft Proposal not be referred to a committee but be placed on eleventh order for second reading and passage and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the committee report, Committee on Style and Drafting. As many as are in favor of adopting the report will say "aye;" those opposed "no." The "ayes" have it, and the report is adopted.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-4, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposal No. 1-15:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to education, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE —
EDUCATION**

"Section 1. PUBLIC EDUCATION.

"The legislative assembly shall provide for a uniform system of free public education.

"The legislative assembly shall take other steps necessary to prevent illiteracy and to provide for special education and vocational education.

"Schools and institutions so established shall be free from sectarian control. No money raised for support of public schools of the state shall be appropriated to or used for support of any sectarian school."

PRESIDENT WENSTROM: You've heard the reading of Section 1.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'd like to move that on page 1, line 6, after the word "ARTICLE" insert the Roman numeral "VIII". That's "VIII".

DELEGATE LANDER: Thank you.

PRESIDENT WENSTROM: Delegate Unruh moves that in line 6, page 1, after the word "ARTICLE" we insert the Roman numeral "VIII".

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President, I thank Delegate Unruh for telling me how to figure this out. But it struck me as kind of funny we're taking out all the Latin words and here we are using Roman numerals.

PRESIDENT WENSTROM: Do we have an amendment — a second to Delegate Unruh's motion?

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Meidinger.

Are there any further questions? Any discussion? Hearing none, as many as are in favor of the motion to adopt the amendment will say "aye;" opposed "no." The "ayes" have it, and the Roman numeral "VIII" is added after the "ARTICLE" in line 6.

Any further discussion on Section 1, Article VIII? Hearing none, we will move on to Section 2.

CHIEF CLERK GILBREATH: "Section 2. **BOARD OF PUBLIC EDUCATION.**

"The state board of public education shall supervise a uniform system of elementary and secondary public education and perform other duties as provided by law.

"The board shall consist of nine members, with staggered seven-year terms, appointed by the governor and confirmed by the senate in a manner provided by law.

"The board shall appoint an executive officer whose term and duties shall be prescribed by the board."

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I believe there's an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-4. On page 1, line 20, after the word "education" delete "and" and insert in lieu thereof the following: "The board shall".

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I would move the amendment. And if I could have a second, I'll explain why.

DELEGATE LARSEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Larsen.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: This is a committee recommendation of Style and Drafting. The purpose of the amendment is to distinguish the difference between which duties of the board are constitutional and which duties are prescribed by law.

PRESIDENT WENSTROM: Any further discussion.

The question before the Convention is on the adoption of the amendment as offered by Delegate Devine.

DELEGATE LANDER: Question.

PRESIDENT WENSTROM: Any further discussion? Hearing none, those in favor of adopting the amendment will say "aye," those opposed "no." The "ayes" have it, and the amendment is adopted.

Any further discussion relative to Section 2 of Article VIII?

Hearing none, we will proceed and read Section 3.

CHIEF CLERK GILBREATH: "Section 3. **BOARD OF HIGHER EDUCATION.**

"The state board of higher education shall have full power, responsibility and authority to supervise, operate and control state institutions of higher learning and shall perform other duties as provided by law.

"The legislative assembly may authorize tuition, fees and service charges to assist in financing state institutions of higher learning.

"The board shall consist of nine members, with staggered seven-year terms, appointed by the governor and confirmed by the senate in a manner provided by law.

"The board shall control the expenditure of all funds belonging to and appropriated to state institutions of higher learning and shall present a single unified budget request to the legislative assembly. Appropriations for all the institutions and for the board shall be contained in one legislative measure. The legislative assembly shall not reduce appropriations by the amount of any gift.

"The budgets and appropriation measures for the agricultural experiment stations and their substations and the cooperative extension divisions may be separate from those of state educational institutions.

"The board shall have the power to delegate to its employees details of administration of the institutions under its control.

"The board shall appoint an executive officer, whose term and duties shall be prescribed by the board."

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President:

There's an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-4.

On page 2, line 5, after the word "learning" delete the word "and" and insert in lieu thereof the following: ". The board".

On page 2, line 20, delete the word "budgets" and the word "measures" and insert in lieu thereof the word "budget" and the word "measure".

On page 2, line 22, delete the word "those" and insert in lieu thereof the word "that" and between the word "of" and the word "state" insert the word "the".

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President:

I would move the amendments.

PRESIDENT WENSTROM: Delegate Devine, just one minute.

May I have a second to the proposed amendment?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Litten.

Now you may proceed.

DELEGATE DEVINE: Mr. President:

Again, these are committee recommendations that are essentially style and drafting. The first amendment is the one — similar to the one we just adopted and distinguishes between the duties, constitutional duties, of the board and those that may be prescribed by law. Delegate Knudson will explain the others.

PRESIDENT WENSTROM: Further discussion?

Delegate Knudson.

DELEGATE KNUDSON: Mr. President:

Changing the plurals in that paragraph beginning on line 20, changing plurals to singular, and on line 22 changing "those" to "that" and adding the word "the" are to make it — make it coordinate with the previous paragraph where it is specified that the budget for the institutions of higher learning shall be a single appropriation measure. The budget and appropriation measure for the agricultural experimental stations and the substations is now a single appropriation measure. We checked on that. We found that the singular was correct. We need to change the word "those" to "that" to match with the previous paragraph.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendments as offered by Delegate Devine.

If there is no further discussion, as many as are in favor of adopting the amendments will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted.

Any further discussion relative to Section 3?

Hearing none, the Clerk will read Section 4.

CHIEF CLERK GILBREATH: **"Section 4. OPEN MEETINGS.**

"All meetings of the board of public education and the board of higher education shall be open and public unless a person whose rights are being considered requests that the meeting be closed."

PRESIDENT WENSTROM: You've heard the reading of Section 4. Is there any discussion?

Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I now move that Style and Drafting Redraft Proposal No. 5-4 be deemed properly re-engrossed and placed on the eleventh order for passage.

PRESIDENT WENSTROM: Delegate Unruh moves that Redraft Proposal No. 5-4 be deemed properly re-engrossed, —

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: — that it be placed on the calendar on the eleventh order for first passage.

Do I have a second over here?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

The question is on the motion of Delegate Unruh that Redraft Proposal No. 5-4 be deemed properly re-engrossed, that it be placed on the eleventh order for first passage.

Those in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and Article VIII as amended is now before the Convention for first passage.

Is there any discussion? Hearing none, the question before the Convention is on the first passage of Redraft Proposal No. 5-4, and which is now Article VIII, and it has Sections 1, 2, 3 and 4. The question is on the adoption. Those in favor of its passage will vote "aye," and those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed. Roll call discloses 94 "ayes," there were no "nays," four delegates absent and not voting. Redraft No. 5-4 has been passed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-5 be introduced, such proposal being a redraft of Committee Proposals Numbered 1-18 and 1-115.

Further that this redraft proposal not be referred to a committee but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the committee report of the Committee on Style and Drafting pertaining to Committee Proposals No. 1-18 and 1-115, presently Redraft Proposal No. 5-5. Those in favor of adopting the report will say "aye;" those opposed "no." The "ayes" have it. The report is adopted.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-5, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-18 and 1-115:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to trust lands, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE —
TRUST LANDS**

"Section 1. LAND GRANTS.

"The public institutions which received lands by the enabling act of Congress approved on February 22, 1889, shall retain such lands subject to the provisions on trust lands contained in this constitution."

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I now move that on page 1, line 6, after the word "ARTICLE" you insert Roman numeral "IX".

PRESIDENT WENSTROM: Delegate Unruh moves that in line 6 following the word "ARTICLE" that we insert the Roman numeral "IX".

Do I have a second?

PRESIDENT WENSTROM: Seconded by Delegate Cart.

Any discussion? Hearing none, the question. As many as are in favor of the amendment will say "aye," those opposed "no." The "ayes" have it, and it is now amended to read "ARTICLE IX".

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President:

Your Committee on Education, Resources and Public Lands proposes rather extensive amendments — strictly style and drafting amendments — but rather extensive amendments to 5-5. And the amendment for Section 1 is at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-5.

On page 1, delete all of lines 8 through 12.

DELEGATE KNUDSON: Mr. President:

I move that amendment. If I have a second, I will explain.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lander.

DELEGATE KNUDSON: Mr. President and Delegates:

You will notice on your green sheet the marginal number 1-18. When your Style and Drafting Committee looked at Proposal 1-18, which was passed by this body on the 12th of January, which is the ancient history period of this Convention, when we looked at this proposal the first thing we noticed was that Section 2, which was proposed as a floor amendment by Delegate Pearce locating the seat of the government at Bismarck in Burleigh County, we noticed that this could well be transferred to what is now Section 4 of Style and Drafting Proposal 5-15. After we had suggested that, we looked at the other section and realized that it fitted very well with the trust lands section which is now before us. The Style and Drafting Committee felt that it should not destroy the identity of any section which was sent to it, so they put this article together in the manner in which it is before us in the green sheet.

When the Committee on Education, Resources and Public Lands inspected the work of the Style and Drafting Committee, they suggested that this language which is now Section 1 could just as well fit into what is now Section 3 on the green sheets. And you will notice that the next amendment in the long legal-sized handout on your desk, the next amendment on page 2 will insert the language of Section 1 into what is now Section 3 so that it will not be lost. The intent of the Convention in passing 1-18 will be preserved.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the amendment as offered and explained by Delegate Knudson. Those in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

Delegate Aubol.

DELEGATE AUBOL: Mr. President.

I do not believe we have the long yellow or long legal sheet that you talk about.

DELEGATE KNUDSON: You have it in your hands.

DELEGATE AUBOL: This is 5-5.

DELEGATE KNUDSON: 5-5.

DELEGATE AUBOL: Mine is 5-4.

DELEGATE KNUDSON: They were handed out together yesterday.

PRESIDENT WENSTROM: Delegate Aubol, do you find yourself?

CHIEF CLERK GILBREATH: They were handed out together. He should have it.

PRESIDENT WENSTROM: Would one of the pages secure a copy of 5-5 for Delegate Aubol?

DELEGATE AUBOL: Mr. President:

I believe there is more than myself in this section.

PRESIDENT WENSTROM: Are there additional delegates that do not have the copy? Seems that there are a number of them.

CHIEF CLERK GILBREATH: 5-4 — all the green ones are in the front of your bill books if you would like to look in the front of your bill books. 5-1 through 5-14 are in the front of your bill books.

DELEGATE LANDER: He means this white one.

CHIEF CLERK GILBREATH: The white one.

PRESIDENT WENSTROM: The amendments.

CHIEF CLERK GILBREATH: Oh, the amendments. How many did not get the amendments to 5-5?

PRESIDENT WENSTROM: Five, six, seven.

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President:

The suggested amendments are also on a short ordinary-sized sheet of paper which was passed out here in a group enclosed in a paper clip yesterday. But the way the entire proposal would look when it's amended, the way we'd like to have it amended, is only on this long sheet stapled together.

PRESIDENT WENSTROM: Do all the delegates now have the proposed amendment? I believe they do have.

Any further discussion? We will move on to Section 2.

CHIEF CLERK GILBREATH: **"Section 2. PUBLIC SCHOOL TRUST.**

"All lands granted by the United States for the support of elementary and secondary public schools of the state, and the proceeds from the sale of those lands, the proceeds of property that falls to the state by escheat and all other property acquired for the schools, except gifts and donations otherwise appropriated or qualified, shall be and remain a perpetual trust fund for the maintenance of the elementary and secondary public schools of the state.

"The principal of this fund shall be retained and devoted to the trust purpose. The interest and income of this fund shall be used and applied each year for the benefit of the elementary and secondary public schools, apportioned as provided by law."

PRESIDENT WENSTROM: You've heard the reading of Section 2. Is there any discussion?

Delegate Knudson.

DELEGATE KNUDSON: Mr. President:

There are no suggested changes in the style in this section unless we should move at this time to change the numeral of "2" to "1".

CHIEF CLERK GILBREATH: That was all in the first motion.

PRESIDENT WENSTROM: Hearing no further discussion, we will move on to Section 3. The Clerk will read the section.

CHIEF CLERK GILBREATH: **"Section 3. INSTITUTIONAL TRUSTS.**

"All lands granted by the United States for the support of educational or other public institutions of the state, and the proceeds from the sale of those lands, shall be and remain a perpetual trust fund for the maintenance of each institution, and may be commingled with similar funds for the same institution only, in a manner provided by law. If any institution ceases to operate, its trust fund shall be apportioned among the other existing educational or public institutions within the provisions of the enabling act.

"The principal of these funds shall be retained and devoted to the trust purpose. The interest and income of each institutional trust fund held by the state shall be appropriated by the legislative assembly to the exclusive use of the institution to which the fund was allocated."

PRESIDENT WENSTROM: You've heard the reading of Section 3.

Delegate Knudson.

DELEGATE KNUDSON: Mr. President:

There is a long style and drafting amendment to this section.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-5.

On page 2, line 7, after the period, delete the remainder of the line, and insert in lieu thereof the following: "The public institutions which received lands by the enabling act of Congress approved on February 22, 1889, shall retain such lands, but the trust fund of any institution which the state ceases to operate shall be apportioned among other existing educational or public institutions within the provisions of the enabling act."

On page 2, delete all of lines 8 through 19.

And renumber the lines and sections accordingly.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President.

Before I explain this amendment, I have a note from the eagle-eyed chairman of the Style and Drafting Committee that we should insert also a comma on line 7 on our green sheets after the word "only". And I think this would clarify the intent of the — of the Convention on the commingling of these funds. Can I include that in the amendment I have suggested? I'll move this amendment. I don't believe that.

PRESIDENT WENSTROM: Delegate Knudson moves that the section be amended as read. Do we have a second?

DELEGATE LARSEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Larsen.

DELEGATE KNUDSON: Mr. President.

Here we are including the language which is the present Section 1 on the green sheets. By so doing, we are not changing the intent at all. I believe we are smoothing up the language of our draft Constitution. I was absent from Style and Drafting most of Monday because I had to go home and get a few cattle on the market so that I could pay the use tax I must pay for using my farm last year, and I missed the discussion. If I had been present Monday, maybe this could have been done without taking this extra time of the Convention. But I think it is a worthwhile amendment. I think it will improve our whole document. And I hope that the Convention will approve.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I have one question perhaps of Delegate Knudson.

On line 1, 2, 3, of the white copy of the amendment, shouldn't there be a comma after the word "lands"; "shall redeem such lands, but the trust funds"?

DELEGATE KNUDSON: Mr. President:

That was not part of my amendment.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President:

That is not part of my amendment, but I think it's a good suggestion. And if I still may, I'll add it to my proposed amendment.

PRESIDENT WENSTROM: Where is the amendment, Delegate Knudson? Where is the suggestion?

DELEGATE KNUDSON: I don't know what the line number would be, but it would be on the — it's following the word "lands" on the third line of this proposed amendment. Insert a comma between the word "lands" and the word "but". I think that is a good suggestion and is right in the pattern of the Style and Drafting Committee to set off these clauses of this type with a comma before the conjunction.

CHIEF CLERK GILBREATH: It would read ", shall retain such lands, but the trust"?

DELEGATE KNUDSON: Yes.

PRESIDENT WENSTROM: Delegate Larsen yield to the amendment?

DELEGATE LARSEN: Yes.

PRESIDENT WENSTROM: Any further discussion on the amendment as offered by Delegate Knudson?

The question then is on the adoption of the amendment. Those in favor of adopting the amendment will say "aye," those opposed "no." The "ayes" have it, and the amendment is adopted.

CHIEF CLERK GILBREATH: **"Section 4. SALE OR LEASE.**

"The legislative assembly shall provide for the sale or lease at public auction of all properties held by the state in the school or other institutional trust funds, except that lands needed for public use may be sold at public sale for their fair market value. No interest in trust lands may be created by adverse possession or by occupation in the nature of adverse possession. In the sale of trust lands, the minerals, including but not limited to oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ore and colloidal or other clays, shall be reserved and excepted to the state. Leases may be executed by the state for the extraction and sale of such materials in the manner and upon conditions which the legislative assembly may provide. The proceeds of all sales and mineral leases shall be credited to the trust fund from which the property was removed for sale purposes. Any trust lands may be exchanged for lands of the United States, or of the State of North Dakota or its political subdivisions, as provided by law."

PRESIDENT WENSTROM: You've heard the reading of Section 4.

Delegate Pearce.

DELEGATE PEARCE: Mr. President:

I would like to have one thing clear. In the second phrase of the first sentence, after providing that "The legislative assembly shall provide for the sale or lease at public auction of all properties", it says "except that lands needed for public use may be sold at public sale". Now if that means sold to anyone, then you're selling the stuff that you need to keep for public use, as I read the sentence. Now it's conceivable, I suppose, that what was meant was that it would be sold to some other public agency. But that would hardly be a public sale, I wouldn't think.

And then my question is I realize it's already in our present Constitution in Section 155. After you read all of the things that are to be included among minerals, including road material and clay and chemical substances, I wonder if the committee had determined, after we had reserved all the water to the state sometime ago, what there would be left that the purchaser got.

PRESIDENT WENSTROM: Any further discussion?

Delegate Knudson.

DELEGATE KNUDSON: Mr. President:

This section is the same as the Convention passed a few weeks ago. And this was not questioned at that time. This "public sale" phrase came in for a good deal of discussion in our committee at the time we were considering Proposal 1-115. And we were told at that time by the two gentlemen from the Attorney General's office who are the attorneys for the State Lands Department that in this case "public sale" means that the intent to sell is published and the fact of sale is published in a newspaper of general circulation in the area of the land. That intent is only to sell to another public agency, of course, as has been done under our present Constitution with two or three lines of specific public uses listed in our present Constitution. We at that time sorted that all up into simply "public use" and "fair market value" was not questioned at this time or earlier, either. This "fair market value", of course, is supposed to be sold by — it is supposed to be set by appraisers for both of the public agencies. The idea of having it a "public sale" is that the general public should have some knowledge of what is going on between the various bureaus of our state government or between our state government and various subdivisions as to what is happening with their trust fund land.

PRESIDENT WENSTROM: Any further discussion?

Then we will read — no further discussion on Section 4, we will proceed to read Section 5.

CHIEF CLERK GILBREATH: **"Section 5. PROTECTION.**

“The legislative assembly shall provide for the investment, safekeeping, transfer and disbursement of these trust funds.”

PRESIDENT WENSTROM: You've heard the reading of Section 5. Is there any discussion? Any discussion on Section 5?

The question then before the Convention is on the first passage.

Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I move that Proposal 5-5 be deemed properly re-engrossed and placed on the eleventh order.

PRESIDENT WENSTROM: Delegate Unruh moves that Article IX, Redraft Proposal No. 5-5, be deemed properly re-engrossed to be placed on the eleventh order for passage as amended.

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Jestrab.

The question now is on the adoption of the motion to place this on the calendar for first passage. As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: As a result of the adoption of that amendment and the amendments — or the adoption of this motion and the amendments we are now as it is in the white pages; right? 5-5? So this is now our new finished copy of 5-5?

PRESIDENT WENSTROM: That is the way I understand it.

Is that right, Delegate Knudson?

DELEGATE KNUDSON: Yes, sir, that's right.

PRESIDENT WENSTROM. Delegate Knudson says that is correct.

The question then before the Convention is on the passage of Article IX, Style and Drafting's Redraft Proposal No. 5-5, consisting of Sections 1, 2 — 1, 2, 3, 4 and 5. Those in favor of passage of the article will vote “aye;” those opposed will vote “nay.” The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The key is closed.

Roll call discloses 96 “ayes,” there were no “nays,” two delegates absent and not voting. Redraft No. 5-5 has passed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-2 be introduced, such proposal being a redraft of Committee Proposals Numbered 1-23, 1-74, 1-77, 1-87, 1-96, 1-97 and 1-116.

Further that this redraft proposal not be referred to a committee, but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the committee report from the Committee on Style and Drafting relative to Proposal — Redraft Proposal No. 5-2. Is there any discussion?

The question is on the adoption of the report. As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. Redraft Proposal No. 5-2 is now before the Convention.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-2 introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposals Numbered 1-23, 1-74, 1-77, 1-87, 1-96, 1-97 and 1-116:

“Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to finance and public debt, be created.

“SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE —
"FINANCE AND PUBLIC DEBT

"Section 1. RAISING OF REVENUES.

"The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year. By a two-thirds vote of the members elected to each house, the legislative assembly may provide for an annual property tax based on value, for state purposes, for no longer than two years unless reenacted."

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that on page 1, line 6, after the word "ARTICLE" the Roman numeral "X" be inserted.

PRESIDENT WENSTROM: Delegate Unruh moves that on line 6, page 1, after the word "ARTICLE" the Roman numeral "X" be inserted.

Do we have a second?

DELEGATE ERICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Erickson.

No discussion? As many as are in favor of the motion to adopt the amendment will say "aye," opposed "no." The "ayes" have it, and the amendment is adopted.

Section 1.

CHIEF CLERK GILBREATH: Want to go to Section 2?

PRESIDENT WENSTROM: Any further discussion or any discussion on Section 1?

Hearing none, read Section 2.

CHIEF CLERK GILBREATH: **"Section 2. NO SURRENDER OF TAX POWER.**

"Except as provided in this constitution, the power of taxation shall never be surrendered or suspended by any grant or contract to which the state, any political subdivision or any public agency is a party."

PRESIDENT WENSTROM: You've heard the reading of Section 2. Is there any discussion? Are there any questions?

Hearing none, we will proceed and read Section 3.

CHIEF CLERK GILBREATH: **"Section 3. LEGAL BASIS FOR TAXES.**

"No tax shall be levied except in pursuance of law. Every law imposing a tax shall state distinctly the object of the tax, to which only it shall be applied. Notwithstanding any provision of this constitution, taxes imposed on income or measured by income may be defined, measured and imposed by reference to the provisions of the laws of the United States as they may be or may become effective at any time, and the state laws may prescribe exceptions or modifications to any such provisions."

PRESIDENT WENSTROM: You've heard the reading of Section 3. Are there any questions? Is there any discussion?

Hearing none, the Clerk will read Section 4.

CHIEF CLERK GILBREATH: **"Section 4. PROPERTY ASSESSMENT.**

"All taxable property, except as provided in this section, shall be taxed or assessed in the taxing district in which it is situated as provided by law. While used for its intended purposes and unless otherwise provided by law, the property of railroads and public and private utilities, except property of highway common carriers, shall be taxed or assessed by a state board of equalization or its successor."

PRESIDENT WENSTROM: You've heard the reading of Section 4. Are there any questions? Any discussion?

Hearing none, the Clerk will read Section 5.

CHIEF CLERK GILBREATH: **"Section 5. TAX UNIFORMITY AND EXEMPTIONS.**

"Taxes shall be uniform upon the same class of property, including franchises,

within the territorial limits of the authority levying the tax. The legislative assembly may by law define and exempt any or all classes of property. Property used exclusively for school, religious, cemetery, charitable or other public purposes shall be exempt from taxation. All taxes and exemptions in force when this constitution is adopted shall remain in force until otherwise provided by law."

PRESIDENT WENSTROM: You've heard the reading of Section 5. Any question? Any discussion?

Hearing none, we will proceed and the Clerk will read Section 6.

CHIEF CLERK GILBREATH: "Section 6. HIGHWAY FUND.

"Revenue derived from excise and license taxation on gasoline, fuel and other energy sources, used to propel vehicles on public highways, and revenue derived from vehicle registration and license taxes imposed for the use of public highways, shall be used solely for payment of obligations incurred for construction, reconstruction, repair, operation and maintenance of public highways; the legislative assembly may, however, provide for the deduction of funds from these revenues for enforcement of highway safety, driver education and tourist promotion, and for administrative and collection costs."

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: You've heard the reading of Section 6.

Delegate Haugen.

DELEGATE HAUGEN: There is an amendment at the desk to Section 6.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-2. On page 2, line 26, after the semicolon insert the word "except".

On page 2, line 27, after the word "assembly" delete "may, however," and insert in lieu thereof the word "shall".

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I move the adoption of the amendment.

PRESIDENT WENSTROM: Delegate Haugen moves the adoption of the amendment. Do we have a second?

DELEGATE GEELAN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Geelan.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: It was the intention of the committee, and I believe of the Convention, that the provision for deduction of funds from the highway user's tax with driver's education and tourist promotion, as well as administrative and collection costs, should come from the highway fund. And the words — the word "may" that the committee or that the Style and Drafting Committee inserted made that a matter of choice by the Legislature. The committee recommends the adoption of the amendment.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Haugen.

Delegate Butler.

DELEGATE BUTLER: Mr. President:

I think the word change to make it "shall" makes it mandatory to make this deduction; the word "shall" is a substantive change to this section. I object to it.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: The language — I believe you are true that it is a substantive change. But the substantive change was made by the wording of the Style and Drafting Committee. We are trying to correct that change. The language of the original section as passed says "should" — "should" — which is a past tense, but still a mandatory word.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: This is not really a substantive change. It would be if we were passing a law here in regards to what an executive officer would have to do. But a constitution does not create a ministerial responsibility for the Legislature because there is no way to enforce it. So the word "shall" and "may" doesn't mean the same thing in a constitutional convention that it does in a legislative assembly. And it's only a choice of words.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the adoption of the amendments as offered by Delegate Haugen.

Those in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it.

Are there further amendments or suggestions?

Hearing none, the Clerk will proceed.

CHIEF CLERK GILBREATH: "Section 7. STATE MONEYS.

"Except as otherwise provided by this constitution or by law, all state moneys from whatever source derived shall be paid over monthly into the state treasury by the public official, employee, agent, director, manager, board, bureau or institution of the state receiving the same, and deposited to the credit of the state, and shall be paid out and disbursed only as provided by law."

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: There is an amendment at the desk for this section.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-2. On page 2, line 34, after the second word "the" delete "public official, employee," and insert in lieu thereof "persons responsible for the moneys".

DESK REPORTER KING: Person.

CHIEF CLERK GILBREATH: "Person responsible for the moneys".

And delete all of line 35.

On page 3, line 1, delete the words "receiving the same," and after the first word "and" insert "shall be".

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I move the adoption of the amendments.

PRESIDENT WENSTROM: Delegate Haugen moves the adoption of the amendment. May I have a second?

DELEGATE BINEK: Second.

PRESIDENT WENSTROM: Seconded by Delegate Binek.

Any discussion?

DELEGATE HAUGEN: Mr. President:

I don't know whether Delegate Baker is going to argue this is a substantive amendment or not. It really isn't. In the original section we listed a lot of officials and directors and so forth should be responsible for depositing state money. And in this type of a thing there's always a danger that you forget something or some other office is created. So the committee decided that the wise thing to do was simply to say "person responsible for the moneys" shall make the deposit.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President:

I don't find this in my pile here anywhere the way it is now. And the purpose of my rising was to request that the language be read by somebody the way it would be after the amendment.

PRESIDENT WENSTROM: Can you do that, Roy?

CHIEF CLERK GILBREATH: What?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: If Delegate Baker has this mimeographed sheet that listed several amendments, this is the middle — this would be paragraphs 2 and 3.

DELEGATE BAKER: Mr. President:

I think this is another case of this section being missed, it looks to me like.

PRESIDENT WENSTROM: What is the question, Delegate Baker?

DELEGATE BAKER: Apparently the amendments have been distributed to part of the assembly but not in this section, if I get the idea.

DELEGATE HAUGEN: Mr. President:

I'm sorry if this was not on the desks. And apparently it's not on some desks unless it's been mislaid or shuffled. These are not — these are not major amendments. And I think if the Clerk will read them, that the members will understand them.

CHIEF CLERK GILBREATH: Who does not have the amendments on their desk, please? They weren't put out then.

DELEGATE DECKER: Just read them.

CHIEF CLERK GILBREATH: "Section 7. STATE MONEYS.

"Except as otherwise provided by this constitution or by law, all state moneys from whatever source derived shall be paid over monthly into the state treasury by the person responsible for the moneys, and shall be deposited to the credit of the state, and shall be paid out and disbursed only as provided by law."

PRESIDENT WENSTROM: You've heard the reading of the amendment by the reading of the section as amended. Are there any questions? Any discussion?

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Maybe it will clarify it for the delegates. In the original proposal it read, "The treasurer". And since we are not sure about the status or if there will continue to be a treasurer, I think it's necessary for the finance committee to put in this language, "the person responsible for the moneys". But it isn't any change in substance — in the material.

PRESIDENT WENSTROM: Further discussion?

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendments as offered by Delegate Haugen.

Those in favor of adopting the amendments will say "aye;" those opposed "no." The "ayes" have it. The amendments are adopted.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I believe that a great many of the members of the Convention are aware of the fact that Section 8 is not satisfactory. It was amended rather hastily on Thursday. The committee feels very strongly that it must be replaced by a new section. That section has been placed on each desk, I hope, because it's on my desk. Yes. Thank you, Bill. And at this time, Mr. President, I would move that the Rules be suspended for the purpose of submitting the committee amendment to Section 8.

PRESIDENT WENSTROM: You are offering a substantive amendment?

DELEGATE HAUGEN: Yes. This is a substantive amendment, Mr. Chairman — Mr. President.

I may say this, that this procedure of suspending the Rules at this time, we believe, simplifies the process. This is — it has not been two full Convention days since this was originally passed and we could reconsider action by a majority vote. But for the purpose of simplifying the record, we would like to make a motion to suspend the Rules.

PRESIDENT WENSTROM: It's been moved by Delegate Haugen and —

DELEGATE BINEK: Second.

PRESIDENT WENSTROM: — seconded by Delegate Binek that we do suspend the Rules in order that we may consider a substantive amendment to Section 8.

Delegate Haugen, Section 8, is it Section 8?

DELEGATE HAUGEN: The amendment in Section 8? Yes.

PRESIDENT WENSTROM: To — to Section 8 of Article X.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: It was my understanding that the amendment was to be prepared in relation to our green sheet 5-2, but as prepared it relates to the engrossed proposal, Proposal 1-74. But what it does, it would strike out all of Section 8 on page 3 and replace it with the language that is on the amendment on your desk.

PRESIDENT WENSTROM: The question then before the Convention is on the adoption of suspending the Rules in order that we might make a substantive amendment —

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: — to what was formerly known as Committee Proposal No. 1-74.

Delegate Paulson.

DELEGATE PAULSON: Under this procedure would the substantive amendment proposed by the committee be open to further amendment from the floor?

PRESIDENT WENSTROM: I would rule that it would be.

The question then is on the suspension of the Rules in order that we might make a substantive amendment to Section 8.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

May I ask the chairman of the committee, would this exclude all dormitory and revenue bonds, and would it really have an effect of doubling the debt limit as we have now?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: May I say to Delegate Rundle and to all of the Convention members that if my motion to suspend the Rules is approved the amendment would then be read from the desk and we would have a very, I think, complete explanation of it by a member of our committee.

PRESIDENT WENSTROM: The question, then, before the Convention is on the suspension of the Rules to provide a substantive amendment to Section 8. As many as are in favor of the motion to suspend the Rules will say "aye;" those opposed "no." The "ayes" have it.

Now we will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-2.

Delete lines 4 through 19 inclusive and insert on page 3 — page 3, delete lines 4 through 19 inclusive and insert in lieu thereof the following:

"The state may issue debt obligations and guarantee the payment of such obligations and interest thereon. These debt obligations shall be payable from a source other than a statewide property tax based on value, but the full faith and credit and taxing powers of the state may be pledged for the payment of these obligations if the primary source of revenue is not sufficient for that purpose.

"Each issue and guarantee of the debt obligations for which the full faith and credit and taxing powers of the state are pledged, shall require approval by sixty percent vote of the members elected to each house of the legislative assembly.

"Except as otherwise provided in this constitution any tax levied or other provision made to retire a debt obligation shall be irrevocable until the debt is paid."

PRESIDENT WENSTROM: You've heard the reading of the proposed amendment.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

I would ask the Chief Clerk if on one, two, three — if on the fifth line from

the bottom toward the end of the line the word "vote" does not appear after the word "percent"?

CHIEF CLERK GILBREATH: "shall require approval by sixty percent vote"?

DELEGATE HAUGEN: Yes.

PRESIDENT WENSTROM: Is there any discussion?

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: As the delegates are aware, this is the 1-74 which was the last proposal passed on first reading. This proposal, as Chairman Haugen said, was amended that day and presented to the body because there had been some changes requested, some amendments made to it. It altered significantly the basic proposal which I think maybe the committee had approved as far back as November, which proposal had been okayed by bonding attorneys and had run the gamut of legal considerations.

This is a rather technical language here. And this is one reason the committee was not satisfied with the final proposal that was approved on the floor. Since this proposal was passed, several of the top officers, the Bank of North Dakota, the key staff and some members of the committee, have talked literally for several hours with the bonding attorney, Mr. Whitney, on this particular section. And the majority feel that the draft here is superior to that which is shown on the green sheet and superior to the old Constitution.

We have used the words "debt obligation" in this new amendment rather than "bond"; and we've used only the one designation. We don't use "general obligation bonds" or we don't use "revenue bonds". And we indicate here, which has always been the philosophy of this committee, that these are not primarily payable from property taxes.

Now one of the problems with the old section was that it prohibited a state-wide property tax any way be involved in a bonding issue. And under those considerations the bonding attorney was concerned that the state obligations probably could not receive the high rating which they deserved. So this was changed here to carry out the intent, but not to straight-jacket the state at this point.

Now it's true that in this first paragraph here that there is no limitation on the bonds. It was also true in the first paragraph on the green sheet; there was a limitation on general obligation bonds, but there was no limitation on revenue bonds. And we felt this was an inconsistency. And we also — bonding counsel also felt that there were many problems the way that first paragraph passed the Convention.

Now speaking to this matter of limitation which was discussed on the floor at considerable length the other day, the bonding counsel advises us that really in terms of law the only valid reason for a debt limitation is when that debt is paid off by real property taxes. And so if you eliminate the source of that obligation, then it is not necessary to have these straight debt limitations. We feel that the sixty percent vote required in the second paragraph here is a limitation on this matter. And the third paragraph, which is wordage very similar to the old Constitution, requires that each issue there shall be a tax levied or provision made to retire each debt obligation. And this shall be irrevocable. So, therefore, at the time the Legislature passes on each issue they must find and dedicate the money at the time of that issue to its payment. And we feel that this is also a limitation on this matter for the people that are concerned that there isn't a specific limit placed on this.

Now the Legislature has no limit on what it can tax or appropriate for current expenditures, and certainly if they do issue bonds they are going to have to be considering this along with other proposals. And any of you who have been familiar with the Legislature in recent years know that they have a very difficult time coming up with a tax package which will answer all the expenses of the state. And so they will have to address themselves to this bond issue in the same way. In other words, they can't just issue bonds indiscriminately because they have to pledge revenues to that bond at the time they issue the bond. And

each issue must be approved. This is not blanket authority to the Legislature or to anybody else to issue bonds; each issue must be approved.

Now, the second paragraph there, we made a slight change. If the full faith of the state is pledged it takes a sixty percent vote. If the full faith is not pledged, such as a revenue bond would be, or such as was talked about the other day, the dormitory revenues, this would only take a fifty percent vote. Now some of the higher education people and so on were concerned that we were in the old section — in the old section that we were requiring a sixty percent of the vote for the Legislature even for non-general obligation bonds. This amended section here is consistent with the philosophy of the committee. We want to give the Legislature all the necessary flexibility, but we don't want to increasingly burden real estate taxes.

When the committee staff and myself had completed the rough draft over the phone to Mr. Whitney and he was asked about it, he said, "Beautiful." And Commissioner Raschke was in attendance and he said he liked the new draft better than the old. Thorndahl was in attendance, Delegate Roney was in attendance; they both agreed they would concur with the present draft.

This is a committee proposal and it is endorsed heartily by all but two members of the Finance and Tax Committee. And we recommend it to you as being a workable document, whereas the one previously had a lot of great legal problems. I'll be happy to answer any questions that any delegates might have.

PRESIDENT WENSTROM: Are there any questions?

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

Could I ask Delegate Leeberg — Lerberg a question?

If I remember right, the other day when we discussed this 1-74 I believe that there was supposed to be a letter here from — to verify telephone calls. Has such an instrument been delivered to any one of the committee?

DELEGATE LERBERG: You mean a letter from the bonding attorney specifically approving this and so on?

DELEGATE HUBRIG: Yes.

DELEGATE LERBERG: I don't think there has been. And he expressed himself over the phone very definitely that the section as we had passed it here, we would have some grave problems with it. And so this new language was just drafted this morning and has been approved by the committee during the noon recess. So obviously we have no written instrument approving it word by word.

Now I presume if the Convention would like, we could probably maybe have such an instrument perhaps by the time the Convention adjourns next week. But we don't have it today.

DELEGATE HUBRIG: Thank you. I wasn't trying to cast any doubt on what the conversation on the telephone was, but being it was raised last week. And if anyone gets the idea I was trying to cast any doubt on the telephone conversations, I was not.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Well, I have a lot of faith in the committee and I know they've done a lot of work on this. But, nevertheless, it is a very technical subject and I would like to, rather than standing on the floor and trying to get the lowdown on exactly all the implications and ramifications of this, I'd like to discuss it with some committee members. I just wonder if we couldn't set this aside and put it further down the calendar so that we could discuss this during the recess and then come back here and answer any questions that we have at that time.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I can understand that it might be difficult for some of the members to understand the full implications of this section. The committee itself has done a lot of work on this, probably, I think, more work than on

any other section we've dealt with. And we have had advice from many sources. Delegate Lerberg mentioned many of them. We've had advice from the Tax Department and from the Attorney General's office on this matter. The committee is convinced the majority — the large majority of the committee is convinced that there is an acceptable section; that it does provide some protection and yet allows the Legislature to do what it wishes to do. But there is — actually, I got up here to say or explain why we would like to have it considered this afternoon, which is the fact that Delegate Lerberg, who is our authority and chief spokesman on this, and myself, absolutely have to go home for a meeting of our telephone company tomorrow morning and we would surely appreciate having it out of the way this afternoon before we go. I'm sure that Delegate Lerberg can answer any questions — I'm sure that he can answer almost any questions that any delegate would have.

PRESIDENT WENSTROM: Delegates Haugen and Scheel, in order to give some of the delegates an opportunity to discuss this and possibly firm up their opinions and have questions answered, either on a man-to-man or person-to-person basis, if you would like I could declare a ten-minute recess for that purpose.

DELEGATE CHASE: So move.

DELEGATE HAUGEN: Also could have a coffee recess.

PRESIDENT WENSTROM: Delegate Hoghaug, do you have a question?

DELEGATE HOGHAUG: Mr. President.

While they are talking this over, I have a point that I don't think has been covered thoroughly enough. We speak about the revenue bonds as not being as important as the general obligation bonds; but I think that is a fallacy. Because I don't think people in North Dakota want the revenue bond of some institution of higher learning to go into default. It could be a black eye on the State of North Dakota. So I think that we have to give more consideration to that. They can be issued as revenue bonds, but I think if the Legislature knew the impact of giving this, that we should tie this down a little bit better.

I also have the thought in mind of possibly a two-thirds majority should be required. But I think the indirect liability of the Bank of the State of North Dakota on issuing a revenue bond is more serious than just the way it's been presented.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. President and Delegates and members of the Finance Committee:

Twice the other day we voted to put a debt limit on the state. We have lived for eighty-two years with a debt limit. And I haven't yet had a good reason why we should have so much concern about writing a good constitutional amendment to protect the bond salesmen rather than to protect the state taxpayers. Why do we have to go to an unlimited bonding authority to the Legislature? Where we're covering just operating expenses, that's an easy way out when they don't want to raise the tax; so sell a bunch of bonds and pay off your deficit. And this is the explanation that I haven't got.

We talk about the two-thirds or the sixty percent being a good guarantee against unwise bonding. But if they can't get a tax passed or if it's referred, the bonding deal is the way out. And we have lived with virtually a two-million-dollar debt limit on this State and it's rarely used. And when we have been on a cash basis for, well, ever since Langer. We've borrowed money for the Highway Department on a rather firm and quick payoff basis. But I think that we're — we voted the thing in twice and now we come back and there is no limit. I can't understand why we keep getting this change of direction.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

I have noticed that there are three technical amendments which would be necessary to conform this amendment with Style and Drafting Committee style policy. Should these be offered on the floor or will this go to the Style and Drafting Committee for that purpose?

PRESIDENT WENSTROM: Well, Delegate Dobson, I would hope that those

amendments could be made on the floor and that this would be a completed section when we get through with it.

Delegate Fritzell.

DELEGATE FRITZELL: Mr. President.

DELEGATE HAUGEN: May I answer Delegate Dobson? Could I answer Delegate Dobson?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE HAUGEN: Yes. Well, the Chairman of the Style and Drafting Committee is also a member of our Finance and Tax Committee. And probably I should have had him answer this himself. But he went over this rather thoroughly and we did make some changes in it to meet objections that he raised. And I think that Delegate Unruh feels that this would meet the standards of the Style and Drafting Committee.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, Fellow Delegates:

I want to answer Delegate Hoghaug's concern. Because I came back from Grand Forks and had the University officials all upset to the extent where they had called President Clifford in Washington, D. C., about our original draft. And we thought we were helping them, but actually from their standpoint we were hindering them. And I came back to Mr. — Delegate Haugen, the Chairman of the Finance Committee, and told them why they objected. And I see in the new draft they have pretty much taken care of this, where they have felt that they would never get a dormitory revenue bond passed if it took a sixty percent vote of the Legislature each time they wanted an issue passed. But here we have the idea that new — every intent of the full obligation of the state, but yet it wouldn't be necessary for them to go to the legislative assembly to get their bond passed.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

I would almost echo Delegate Paulson's words. We have a debt limit. We established one the other day. Now we are doing away with it. Now I might also suggest if it was real — if it had been real hard to get bond issues in the past we wouldn't be overbuilt in some of our schools now where dormitories are partially empty; and one school completely unused, disbanded. I think that we should have a debt limit. And I don't think there should be a way of getting around the obligation by calling it a different kind of a revenue bond. Furthermore, I think two-thirds would be far better than sixty percent. Thank you.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lerberg.

DELEGATE LERBERG: I just want to address myself to — is this working?

PRESIDENT WENSTROM: Yes.

DELEGATE LERBERG: — Delegate Paulson's suggestion here. The committee has spent a great deal of time on this and we don't think there is anything magic about a debt limit. And for those who think there is something magic about the debt limit, all you have to do is look at the federal debt limit.

Now we think the same thing is true at the state level. Now we've issued about thirty-nine million dollars worth of dormitory bonds. The reason those were issued as revenue bonds was because of the restriction in our Constitution. And this was a way found to get around those. The people of our state and the students of our state have paid materially higher dormitory costs because of the fact that we've had this debt limit in the state.

I subscribe to you that if progress is going to be made, whether it be in state or federal or individual, debt limits, which are an artificial thing, are nothing but a sedative. They don't offer any real protection at all.

Now we have faced the fact that the federal government has a debt limit. Surely it's legislative and can be changed. It's not constitutional. Now even though the federal government does have a debt limit, I've got the yesterday morning's bond sheet on my desk here which indicates that in only five federal

agencies something like 35 billion dollars worth of bonds have been issued, totally outside the debt limit, and in most cases at interest rates from half to three-quarters percent above what the federal government can issue. And the federal government itself is now in discussion on this very matter because they are paying billions of dollars a year more in interest than they would have to if they would call a spade a spade and recognize reality. And this is what we're trying to do with this Constitution.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hernet.

DELEGATE HERNETT: Mr. President:

I just have one question. In answer to Delegate Paulson, too, I would suggest that during the recess that you check and see what the debt limit is in North Dakota. There is none that I know of.

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: I think I'd like to answer Mr. Paulson by saying that we did pass a debt limit the other day of twenty-five percent of the biennial general fund. But then we had — in addition we may have all these other debts. And when the committee started looking at this we decided that we really didn't have a good debt limit in this thing. In fact, we had no debt limit whatsoever under the proposal which was passed as 1-74. We came out of that without the debt limit on the "in addition" clause which we had in the very same paragraph that would allow us to have all types of revenue bonds of any kind without a debt limit.

PRESIDENT WENSTROM: Before we proceed further and call for a vote on this, the Chair is going to declare a fifteen-minute recess in order to let the delegates further discuss this section. Please be back in fifteen minutes.

(The Session recessed at 3:02 P.M. until 3:20 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. Will the Convention please come to order?

The question before the Convention is on the adoption of the amendment as offered by Delegate Haugen.

DELEGATE LONGMIRE: Question.

DELEGATE LITFEN: Question.

PRESIDENT WENSTROM: Is there any further discussion?

Delegate Kessel.

DELEGATE KESSEL: Will Delegate Lerberg yield to a question?

PRESIDENT WENSTROM: Delegate Lerberg yield to a question?

DELEGATE KESSEL: Delegate Lerberg, you stated that now it should be the way it would be or should be because you now have taken away the source of statewide property tax based on value. But do you not put it right back in in the last sentence or last few words in that same paragraph; if the primary source of revenue is not sufficient for that purpose then you can go back to the property tax, statewide property tax, can you not?

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Delegate Kessel, that's one of these questions that you can answer yes and no. In the first place, if you don't have that last clause in there you would prohibit, in effect, the State of North Dakota from issuing any general obligation bonds. Because of paragraph 3 — and this has been traditional; of course it's been in our Constitution and we're not changing that — when the Legislature makes a bond issue, for instance the most — the ones we've had most talk about recently have been the veterans bonus bonds. They had to come up with where the revenue was coming from to pay that bond issue off in its entirety. And this is what they'll have to do under this section in the future.

Now the only — this is kind of one of those real emergency situations, such as we discussed when we took up that section on the four-mill levy, that we were discouraging the property taxes and it would only be in a dire emergency that

that would ever be resorted to. But if you preclude it, then the state pays a lot more money for any bonds they need to issue.

DELEGATE KESSEL: But if they spend all of the money they have from other sources, and that's gone, they can go to the property tax? It's that simple, isn't it?

DELEGATE LERBERG: Yes, this is possible.

DELEGATE KESSEL: Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: I'd like to speak to this matter of debt limit. There are really three or four deterrents to a legislator going wild on spending. The first deterrent is the sixty percent vote, or we may call it three-fifths if we decide to go stylistic style; second deterrent is the veto power of the governor; the third deterrent is the referral; the fourth deterrent is the fact that a bonding house won't buy your bonds unless you have the ability to pay them back. And that's your really big one.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I would also like to add a couple things about the language here. This language was basically worked out by staff, approved by a bonding attorney — not a bond house but a bonding attorney whose job it is to give an opinion as to whether a bond issue has followed the legal and the constitutional limits that are set out — and so this man is not interested in whether the bond is sold or anything else, he's just interested in whether it's legal.

Now the State of Illinois has not necessarily similar provisions, but they have provided for bonding in their constitution by a sixty percent vote of the legislature as well.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I discussed this — I discussed this — I know they have done a lot of work — and sat there last night listening for awhile. And I'm certainly not trying to appeal this. One of the big things that can be said in behalf of this is that this is what's needed for industrial development in the state. And I don't think there's anybody sitting here who isn't for industrial development as long as it's done intelligently. But I still look at this debt limit. You don't have to have a debt limit that's ten million or twenty-five million dollars or something, but I still think the difference between paying for something today and paying for something later on is just general expenses, not a commission for any particular project. It's the difference between tell it like it is, man, and tell it real softly so the next time I won't hear it in the Legislature if I want to come back here. And I do feel that there definitely ought to be a debt limit.

Now I say there are all kinds of ways to circumvent this. When it is properly drawn there can't be all kinds of ways to circumvent this. The only reason there could be a way to circumvent this would be laws, that kind of loophole. I really believe that it will make for more responsible legislation. We've got all these so-called controls in here; four of them that Delegate Unruh listed. But also if we set a debt limit, what should it be? Forty percent of the general revenues from the last biennium? The same legislature can go out and introduce a new constitutional amendment if they want to raise it. There is that door open also. I don't believe that even though there are a lot of responsible people on here that we can compare business done on the state level by people coming in and out of government. You are in government for a few years and they are gone to a business where a person's in it and he's in it all his life. He's going to be there to pay off the debt as well as obligate the company for it. I really think that the committee ought to come up with some kind of a debt limit.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I have an amendment in this regard at the desk. If you would please read it.

PRESIDENT WENSTROM: Delegate Rundle, now you are offering an amendment to the amendment?

DELEGATE RUNDLE: Yes.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to Redraft Proposal 5-2.

Following the second sentence in the first paragraph of the amendment add the following: "The outstanding indebtedness shall not exceed an amount equal to forty percent of the state general fund revenue raised in the preceding biennium."

PRESIDENT WENSTROM: You've heard the reading of the proposed amendment to the amendment.

Do we have a second?

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Maxwell.

Now for discussion.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I believe the other day we said this would make a limit of about, am I right, eighty million? About eighty million would be the debt limit. I think this is plenty high. But I think the people want a debt limit in there. I know I do. And I haven't too much concern with what certain experts say about it. I think the people in this case are the ones that should be considered. And I would urge you to adopt the amendment to the amendment.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Just to illustrate this just a little further, basically if you're talking about a hundred and eighty million dollar general fund for a certain biennium and it comes to the last few days of the Legislature and you need fifteen or we'll say twenty million dollars more, to make the picture more easily portrayed, you can expend that by just committing yourself for a million dollars for the next year for principal payment and a million dollars the next year for interest payments. So basically you've got twenty million dollars worth of services or materials, whatever they be, for two million dollars. Then the next biennium you come in and do it again and you have bought another twenty million for another two million dollars. So you've taxed the people for four million dollars and you've spent forty million dollars. And this is fine as long as it's done completely responsibly. But the pressures, if we had done — if we were in this body assembled right here now, we — our Plenary Session days had expired two days ago, we know what it would have been like last Friday and Saturday and Monday and Tuesday. And basically that's the kind of a situation that lends itself to not considering just exactly how much money you're spending and what you're doing with it.

Treasury Secretary Humphrey said, "It's terribly hard to spend a billion dollars and get your money's worth." And it's terribly hard to spend very many million dollars and get your money's worth. And it's just as easy to throw away a few dollars here and a few dollars there when you are throwing away two million at a crack or paying for it two million dollars at a time and spending twenty million dollars at a time.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Lerberg.

DELEGATE LERBERG: I think we are getting some things confused here. In the first place now, this particular way to handle it is not necessarily the only way it can be handled. So the bond attorneys are dictating this language, they are just saying that if we use the language that we had in the present green sheet No. 8 there would be a great deal of question whether the state could ever sell any general obligation bonds. This is what they're saying. You could put a limitation on it, but it's not as simple as putting in a phrase that has been suggested. You're going to have to attach two or three more paragraphs of language to explain this situation in order to get the job done. This is what the committee's trying to get away from.

Now in comparing North Dakota to the federal government, of course, is an unfortunate situation in terms of debt. Because the federal government when they issue bonds does not have to specifically appropriate taxes for the payment of those bonds, and you do under our Constitution and under the old section of the Constitution. So while it's true it's possible at the end of a session they might decide this was an easy way out, but they've still got to come up with those taxes. And if you've listened to discussions when they had the veterans bonus thing, they spent days and days trying to figure out where to come up with that tax package to pay that bond issue off. And so it's not a real simple thing to do this. And I think we need to keep these things in mind. Actually, if we're going to — for instance, the amendment that's been offered here, this would probably blanket all state debt. And what the total of that is I just don't have any idea, and I don't think anybody else does. And certainly the bonding attorneys don't have any ideas. So if they were to look at a constitutional provision like this, they probably could not guarantee anybody buying this bond where they sat. And the result would be I think you would be better to write an absolute prohibition for the state to bond in the Constitution than to accept the amendment that's been offered.

PRESIDENT WENSTROM: Any further discussion?

Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President, Fellow Delegates:

I can't understand why this committee has not written into their amendment the intent of this Convention in speaking to the debt limit. If this amendment to the amendment does not do what it's intended to do, it's unfortunate. The committee has had time and the direction of this Convention to include in their new amendment what we intended; a debt limit. Now they are quite consistent in their thinking, that's true. It's unfortunate that they haven't heeded the consistent thinking of the delegates to this Convention that we want a debt limit in this section. I would certainly approve of this amendment. I'm going to vote for this amendment. If it doesn't carry, I have no alternative but to vote against the amendment.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: Mr. President, Fellow Delegates:

I think that we're really trying to say to you here by voting in a debt limit that it's going to take about four pages to adequately describe what we mean by a "debt limit". And then the subsequent purchasers of North Dakota bonds are not going to understand it, bonding attorneys are not going to understand it, and we are going to defeat, as Gary Lerberg says — I should call him Leeburg — but Gary Lerberg said that we will just be at a point where we just cannot describe any part of this; we might as well leave it out.

Now let me just say this to you: That each individual in here may have a limitation imposed upon your borrowing capacity, but that's because some fat old banker someplace probably sets it, you don't. When we're talking about an individual or the State of North Dakota's capacity to borrow money by the issuance of bonds, we must take into consideration contingent liabilities. We've left out of this new proposal — I say "we" because I think the new proposal is a good one — we've left out of that such things as a contingent liability of a hundred seventy-five million dollars that we have to pledge with the deposits of the Bank of North Dakota. If you want to include this in here, then twenty percent or forty percent of some figure isn't going to mean a thing.

What we're worried about is raising money. And when we're talking about debt limitation the state can only incur so much debt. But you can only sell so much in the way of bonds. And after awhile you're Double A rating is going to be an A or a B rating and you aren't going to sell those bonds.

Now you've already heard them say that it's been brought up in here that when the Legislature approves the expenditure of any kind of funds — and this goes back to your revenue bond or whether it's a debenture of any kind or a general obligation bond — they are going to also have to find a way for that bond to be issued to be paid for. Now just to say that, well, we're going to wait for it to get into default and then we are going to spread a general ad valorem tax

against all the land of the State of North Dakota to pay for it, who is going to buy that bond? No one's going to buy it. And this is what we're really getting into, I think, all of the safety features that are built into this. I don't think you have to worry anything about whether there is or is not a debt limit. And I can agree with the statement that was made earlier that really under the old section or the old Constitution there really wasn't much of a debt limit. I don't think there was any. There's room for argument, but I just don't think we had any. I don't think that this amendment to the amendment to try to put some figure on here for a debt limit will do us any good, and I urge you to vote against the amendment to the amendment and to approve the committee's work.

PRESIDENT WENSTROM: The Chair will recognize Delegate Dobson.

DELEGATE DOBSON: Mr. President:

It seems to me there is some misunderstanding here about the purpose for which bonds are issued. General obligation bonds are issued for such things as capital projects, veterans bonuses and similar special purposes. Bonds are not issued to raise general fund revenue. If the legislative assembly ever attempted to sell bonds to raise general fund revenues I don't think anybody would buy them. If they did, the interest rates would be exorbitant.

Further, we can't compare federal debt to state debt; they are two entirely different things. The federal debt is, in effect, owed by the American people to the American people; it's paid by tax funds to investors. On the other hand, state bond is sold to outside state parties, such as the investor who bought the bond. Therefore, I don't believe the debt limit amendment is necessary.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I would like to resist the motion for a debt limit. It seems to me that we sometimes lose our perspective in this body and we assume that this is the last gathering of wise people and we keep thinking that the next legislative assembly is going to really be a bunch coming out of the trees. And I still expect that guys like George Longmire and George Unruh and Buckshot Hoffner, if he's lucky, and a few others that we have in this body are going to be back. And let us be vain enough to say equally reasonable men. And so I don't think that the next legislative assembly or those in the future are going to be much different than this body. And they would act with the same degree of prudence and wisdom and intelligence, if you're very vain, as this body might act. And so I don't think we ought to say that, "Boy, we've really got to be suspicious of that new crowd that's going to come in and use this power." I think they are going to be very prudent and conservative people that are going to utilize the bonding capacity of the state. I think that the committee proposal is a good one just as it stands. And I would certainly hope that the amendment to further confuse the issue as proposed, putting a debt limit on, would be defeated.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

I concur completely with Delegate Omdahl in his remarks. I came to the Convention firmly committed to the principle of a debt limit. And I have probably had more experience in helping municipalities on bonds, selling bonds, than the usual delegate. But as I saw the complexities of this issue of debt limit, and as Delegate Roney has mentioned, this amendment as proposed by Delegate Rundle won't do the job. In order to do the job properly and clean it up we would have to have at least another page of definitions. To my mind a debt limit is strictly affixed. At present the State of North Dakota in effect has no debt limit today, even though we say we have one in the Constitution. Because the moment institutional revenue bonds don't derive the revenue necessary to pay off the bonds we come to the Legislature and the Legislature by a majority vote backs up the bonds; not at the initial issue but on the delinquency. So in effect you're getting around the debt limit now. And it's affixed — and I would strongly ask the defeat of the amendment.

PRESIDENT WENSTROM: The question before the delegates is on the adoption of the amendment as offered by Delegate Rundle.

Any further discussion? Those in favor of adopting the amendment will vote "aye," those opposed will vote "nay." The question is on the adoption of the

amendment to the amendment as offered by Delegate Rundle. As many as are in favor of the motion will say "aye;" those opposed "no." The "noes" have it, and the amendment lost.

We are now back on the amendment as offered by Delegate Haugen.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I have listened and I have learned nothing. The defenders of this thing start setting the federal government as an example we should follow, and I think we have blown our top. Really we aren't specifying what we can issue general obligation bonds for. And they can be issued to cover a deficit under the wording of this amendment that has been proposed by the Finance Committee. And as soon as we start issuing bonds to cover the deficit we're going to go the way of the federal government.

Now I recognize that we should have bonds and they should be guaranteed by the state for these dormitories. Let's belt it out, let's not make it a blanket deal. We've got a ten-million-dollar debt limit now for the State Bank of North Dakota and the State Mill and Elevator. They are accomplishing an industrial purpose. This is what you say you want bonds for, but it's a wide open deal. And I don't think we should have a wide open deal in this Constitution. I would suggest that if we're going to issue bonds to put on a new building on the Capitol Building or for other Capitol purposes, then we should spell out what general obligation bonds can be used for, including bonus bonds. Or we should go back to the old way and every time we have a bond issue coming up, put it to the people and get their approval and then the Legislature doesn't have the problem of how to get popular acceptance of the bond issue and the tax that goes with it. I think that this wide open deal is not the proper way to approach the state's debt.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KESSEL; Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I believe I have an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to Redraft Proposal 5-2.

In the second paragraph of the amendment, after the words "approval by" delete the word "sixty" and insert in lieu thereof "sixty-six and two-thirds".

DELEGATE KESSEL: After listening to Delegate Omdahl exploiting the intelligence and the resistance of the legislators, I find I would not make a good legislator. I am now convinced that the only way this body can possibly have any protection is to forget the way of the debt limit and go the other way to make it just a little bit more difficult for the legislators to be put in the corner in the last minute by lobbyists and what-have-you to issue a bond limitation. And so I hope that this body will now go along with the sixty-six and two-thirds of the legislators rather than sixty percent. There can be no argument now that the bond attorneys in Minneapolis and all of the institutions cannot get what they want, but it makes it just a wee bit more difficult. Thank you.

PRESIDENT WENSTROM: May I have a second to Delegate Kessel's amendment?

DELEGATE BASSINGTHWAITE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Bassingthwaite.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: In response to Delegate Kessel, there is another way of doing this and that's to accept the language that is now in our green sheet, Section 8, under State Limits, and defeating both the amendment to the amendment now and the amendment. And I want to recall — have you recall in our roll call vote on Thursday, February 3rd, that there were 89 "yes" votes and 2 "no" votes on this particular measure on Thursday. And the real issue, if you will recall, was whether or not to have a debt limit in this section or not. So please

keep in mind that vote. I still think we're voting on the same thing. You can vote down the amendment to the amendment and the amendment, and we go right back to what we had last Thursday.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

Excuse me. I was a little amused by the reference to the 89 to — what was it — 2 vote. Which was not on the amendment, it was on the passage — on the passage of the proposal. And I have proposed many of the suggested proposals at this Convention and also the amendments to some of them. Although if my amendment were defeated, I voted in the end for the section because I wanted the Constitution to contain that section. The vote on the amendment 50 "yes", 46 "no." And that was on the forty-million-dollar amendment, which I'm sure the Convention is convinced now has no realism whatsoever.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Kessel; the amendment to the amendment.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I think I should speak to that a minute. This committee didn't think it was inconsistent asking this sixty percent here. As I've said before, it is in the Illinois constitution. And one of the other measures we brought in we did ask a sixty-six and two-thirds vote; that was on a matter of a statewide property tax. And we felt that that was — that it could only be put on in a truly emergency situation. We don't feel that the state's ability to bond should be tied to an emergency situation. And this is what you will be doing if you vote for the sixty-six. Because it will be almost an impossibility to get this kind of a vote. We think sixty percent is adequate safeguard, and on an operating basis we think that that's a more realistic figure than sixty-six. We talked about all figures before agreeing on this.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Mr. President:

I don't view that proposed amendment to the amendment exactly that way. It seems to me that if you can sell an issue which is based only on revenue derived from a part of the resources of the state and does not carry with it full faith and credit, that then all you need is fifty percent to do it. Isn't that correct? The sixty percent as it stands now or the sixty-six and two-thirds percent as proposed in the amendment to the amendment would apply only to issues which pledge the full faith and credit, everything you could lay your hands on to tax. And I think that Delegate Kessel may have a solution.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Mr. President, Members of the Convention:

Being a bit of a conservative, I kind of like the idea that a two-thirds vote on this proposition would be all right in the Constitution. I think any project that merits the financial backing of the State of North Dakota can get the two-thirds vote in the House and Senate without any trouble. If it is a project that is questionable as far as the merit of backing it with our resources, it will lose. And I favor the two-thirds vote.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Part of the problem is, though, Delegate Butler, that in some of the cases the state is not only going to be saddled with the debt, but a higher interest rate simply because they can't get the two-thirds vote. And I don't think that makes sense. For example, in a revenue building, say a dormitory — and I should mention that there have been some dormitories built unwisely — but if anyone can predict the vagary of student movement they can come to

the Board of Higher Education and tell us what they are going to be. But supposing the Legislature does vote to build a dormitory but can't get the two-thirds vote. Well, not only are they eventually going to have to see that that debt is paid off, but they have to also see that the additional percent of interest is paid. And I can't see that that's a consistent position because they are never going to default on them as far as I can see.

PRESIDENT WENSTROM: Any further discussion? Question? The question before the Convention is on the adoption of the amendment to the amendment as offered by Delegate Kessel. An amendment to the amendment. The purpose is to strike "sixty" and insert in lieu thereof "sixty-six and two-thirds" percent. You have heard the motion; those in favor will say "aye;" —

DELEGATE AAS: Mr. President.

PRESIDENT WENSTROM: Delegate Aas.

DELEGATE AAS: Mr. President:

I would resist that motion because if you look at what's happened now, we have roughly thirty-nine million dollars of bonds for schools. Our students are paying, according to the expert testimony which we had, an additional half a million dollars a year of additional interest because we don't want to give a full faith and credit. Now all we are doing is adding an additional amount of burden to those people because we don't give the full faith and credit. How are they going to pass it by fifty percent if they can't pass it by the required super majority? And it seems to me we are just burdening ourselves and our families and our dependents with additional costs without facing the fact that if we do need to have the bond issues anyway and we are going to have them, therefore, we're going to pay for them.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment to the amendment as offered by Delegate Kessel. I think the Convention is aware of the question.

Those in favor will vote "aye;" those opposed will vote "nay." Those in favor of adopting the amendment will say "aye;" those opposed will say "nay." The "nays" have it, and the amendment lost.

DELEGATE KESSEL: Division.

PRESIDENT WENSTROM: Division has been requested. That's a sufficient number. Again, the question. Those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay." The Clerk will open the key. You will indicate your choice.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates 23 "ayes," 74 "nays," one delegate absent and not voting. The amendment to the amendment failed.

We're back on the amendment as offered by Delegate Haugen.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: It may look like a double standard here to vote against something like that and then be against the amendment being proposed now, but the reason I think is pretty clear. What Delegate Aas said is absolutely true. If we can get a lower rate on these revenue bonds for dormitories by pledging general obligations — by pledging full faith and credit, that's the way it should be done. But that isn't going to alter the feeling about a debt limit. And I think this is so complicated a thing to make an amendment right here on the floor is just — just isn't good financial procedure. It's the kind of a thing a committee has to do. And it's difficult to do, yes. But still it's the kind of a thing if we want a debt limit it has to be done by the Finance and Tax Committee so that they can at least come back here with something that the loose ends have been worked out. Because even though we are here at the end of a session it is just exactly the same conditions prevailing now which are not going to make these kind of restrictive measures we are talking about here worth a hoot if you get

a different kind of people, eight, ten, twelve years from now running the Legislature.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I think that we have had a pretty good discussion on this. And the committee doesn't necessarily consider every word of their language sacred or anything like that. But we do feel that we've checked this out with the people that know what they are doing on this. And if these delegates who are opposed to this amendment or this amended section can come up with some language which would be more preferable to the Convention, certainly the last two days they are able to reconsider this matter. But when our staff members talked to the bond counsel on this section, Section 8, as in the green sheet, he referred them to a study of the Legislative Research Committee that we would have to plug in that kind of language. And that was four printed pages. And so this is why we came up with this new language.

PRESIDENT WENSTROM: Any further discussion?

Delegate Decker.

DELEGATE DECKER: Mr. President, Fellow Delegates:

I think the proposal as a whole is real good. But I still have one worry on the fifty percent proposal for the revenue bonds which I feel that the state would have to pay as we did in Ellendale and in other cases like that. I feel that we are just as obligated to keep our credit. And I would like to test on the feeling on that if there is anybody else that's worried about it. I would like to make an amendment in the second paragraph after the word "issue" on the first line; that we strike the words down to and including the word "pledged" on the third line. Which would make sixty percent be required for all the bond issues.

CHIEF CLERK GILBREATH: Try that again.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Rundle. The amendment was moved by Delegate Decker.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: We have difficulty in getting the necessary passage many times of these revenue bonds to build these dormitories that are needed by these schools of higher education which have already been cleared and checked very carefully by the Board of Administration. First of all, the administration of these institutions and then the Board of Higher Education itself. And if you put a sixty percent requirement on there for the necessity of issuing these bonds you might as well forget any financing of revenue-producing agencies for these dormitories. You'll never get it back. Because my experience with the years that I've been down here is that the Legislature on this sort of thing is much more conservative even than this body is when it comes to issuing bonds of this kind. And I — I think that to put an amendment on like this we might as well forget it completely. I hope this amendment does not pass.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President:

The object of offering the amendment was two-fold; one was if they are approved they will get the lower interest rate which would be a saving, like Delegate Sinner mentioned the other day; the other is that instead of having a debt limit we will have a debt limit by the Legislature of sixty percent. And I feel that we will have to pay a revenue bond the same as a general obligation bond to keep the credit of the state good, the same as you have to pay a note or a mortgage to keep your credit good.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President:

I rise in support of the amendment. It goes right back to what I started with. I think if we ever default on a revenue bond the state's going to pay it anyway.

We can't stand a black eye. And I think Delegate Decker's amendment has merit, and I hope you support it.

PRESIDENT WENSTROM: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to Redraft Proposal 5-2.

In the second paragraph of the amendment, after the words "Each issue" delete the following: "and guarantee of the debt obligations for which the full faith and credit and taxing powers of the state are pledged,".

PRESIDENT WENSTROM: You've heard the reading of the amendment. The question is on the adoption of the proposed amendment to the amendment as offered by Delegate Haugen.

Any further discussion? Hearing none, those in favor will vote "aye;" those opposed will vote "nay." Those in favor of adopting the amendment will say "aye;" those opposed will say "nay." The "nays" have it. The amendment lost.

DELEGATE STANTON: Question.

PRESIDENT WENSTROM: We are back on the question of the adoption of the amendment as offered by Delegate Haugen.

DELEGATE STANTON: Question.

PRESIDENT WENSTROM: Any further discussion? Hearing none —

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

Is the Chairman of the Style and Drafting Committee going to offer his technical amendment?

DELEGATE UNRUH: He did.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: After consulting with the Chairman of the Style and Drafting Committee, we have some technical amendments which will conform the style herein with the committee's style policy. They are as follows:

On line 1 of the second paragraph insert a comma after "obligations".

On line 3, second paragraph, delete "sixty percent" and insert in lieu thereof "a three-fifths".

And on line 1 of the third paragraph insert a comma after "constitution".

DELEGATE UNRUH: Second.

PRESIDENT WENSTROM: The technical amendments have been offered by Delegate Dobson and seconded by Delegate Unruh. The Clerk will read the proposed amendments.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to Redraft Proposal 5-2.

In the second paragraph of the amendment, after the word "obligations" insert a comma.

And after the words "approval by" delete the words "sixty percent" and insert in lieu thereof "a three-fifths".

In the third paragraph after the word "constitution" insert a comma.

PRESIDENT WENSTROM: You've heard a reading of the proposed amendment to the amendment. Any discussion?

Hearing none, as many as are in favor of adopting the amendments will say "aye;" those opposed "no." The "ayes" have it, and the amendments are adopted.

We are again on the amendment as offered by Delegate Haugen —

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: — and amended. Those in favor of adopting the amendment will say "aye;" those opposed will say "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed "nay." The "ayes" have it. The amendment is adopted.

Are there further amendments?

Next for consideration — we will continue with Section 9.

CHIEF CLERK GILBREATH: "Section 9. POLITICAL SUBDIVISION DEBT.

"Any political subdivision may incur indebtedness not to exceed eight percent of the assessed value of the taxable property therein. By a sixty percent vote of the electors, the debt limit may be increased an additional seven percent of the assessed value. The debt limits in this section shall not apply to debt incurred by the issuance of revenue bonds, or bonds financed from sources other than property taxes. For purposes of this section 'assessed value' shall be determined by methods or factors established by law.

"Any political subdivision incurring indebtedness shall, at or before the time the debt is incurred, provide for an annual tax sufficient to pay the principal and interest thereon, and all laws or ordinances providing for the payment of the principal or interest of any debt shall be irrevocable until the debt is paid."

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: You've heard the reading of Section 9.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

I would like to move that the Rules be suspended for the purposes of making a substantive amendment to Section 9.

PRESIDENT WENSTROM: Delegate Haugen moves that the Rules be suspended for the purpose of making a substantive amendment to Section 9. Do we have a second?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Aubol.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: This amendment is an amendment that Mr. Whitney, the bonding attorney, thought would be necessary. And if the Rules are suspended Delegate Lerberg will explain the purposes of the amendment.

PRESIDENT WENSTROM: The question before the Convention is on the motion to suspend the Rules for the purpose of making an amendment, a substantive amendment, to Section 9. Those in favor of adopting the motion will say "aye," those opposed "no." The "ayes" have it.

Delegate Lerberg.

DELEGATE LERBERG: Mr. President:

The amendment refers to —

DELEGATE HAUGEN: Excuse me, Gary, perhaps if we will have the amendment read from the desk.

PRESIDENT WENSTROM: Will the Clerk read the amendment?

DELEGATE HAUGEN: I believe it should be there. I think that each member should have this.

CHIEF CLERK GILBREATH: I believe —

DELEGATE HAUGEN: Yes. Mr. Chief Clerk — Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Again we have the situation where — where the amendment is written to apply to the pink sheet or the engrossed proposal in our proposal books. It would call for the deletion of lines 25 and 26 in the green — on page 3 of the green sheet and line 27 including the word "taxes" and the period on line 27.

CHIEF CLERK GILBREATH: Proposed amendment to Section 9, Redraft Proposal 5-2.

Delete lines 25 and 26.

On line 27 delete the words "other than property taxes." and insert in lieu thereof the following:

"The debt limits in this section shall not apply to obligations primarily payable from sources other than property taxes whether or not the full faith and credit and taxing power of the issuer is also pledged for the payment of the obligation and interest thereon."

PRESIDENT WENSTROM: You've heard the reading of the proposed amendment. Is there any discussion?

Delegate Lerberg.

DELEGATE LERBERG: I think actually this might have been offered under Style and Drafting because we don't really think we're changing anything by this section. And we're not changing anything that the present Constitution provides. We referred to it in our old language, but apparently it was not quite precise enough. The principal thing that I think of now — this might refer to it — but there are other things I'm sure that I don't recall, and perhaps other things in the future, but as of now revenue bonds and special assessment bonds of local taxing districts do not come under their debt limit. And that's the reason for this new sentence, to make it precise. Covers both of those and any other type of bond which was not directly dependent on real estate taxes for primary financing. This is consistent with the amendment we have just made on the previous section and would apply to the political subdivisions. And it's not a change from the intent that the committee had in the old section or the actual practice under our present Constitution.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McELROY: Question.

PRESIDENT WENSTROM: Question?

Delegate Kessel.

DELEGATE KESSEL: I have no argument pro or con. But I wonder if it would be proper to make Mr. Whitney an honorary member of this group?

PRESIDENT WENSTROM: Further discussion? Further comment? The question before the Convention is on the adoption of the amendment of Section 9 as offered by Delegate Haugen. Hearing no further discussion, those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed say "no." The "ayes" have it. The amendment is adopted.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: One more small amendment; not anything to do with substance.

In line 32 after the word "principal" delete the word "or" and insert in lieu thereof the word "and".

This makes it conform with the language in the rest of the section.

PRESIDENT WENSTROM: On the green sheet, Delegate Haugen offers a further amendment that in line 32, after the word "principal" that we strike the word "or" and insert in lieu thereof the word "and".

Do we have a second to the motion? Seconded by Delegate Binek.

Any further discussion? Hearing none, the question is on the adoption of the amendment. I think you're aware of the proposed amendment. Those in favor will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." The "ayes" have it and the amendment is adopted.

We will proceed with Section 10.

CHIEF CLERK GILBREATH; **"Section 10. PUBLIC BUSINESS.**

"As provided by law the state or any of its political subdivisions, or any combination thereof, may undertake any business or enterprise, but only for the purpose of providing public services. Unless otherwise provided by law, any form of business or enterprise in operation when this constitution is adopted may be continued. Neither the state nor any political subdivision shall otherwise loan or give its credit to or in aid of any individual, association or corporation except as otherwise authorized in this constitution, and except for reasonable support of

the indigent and for payment of adjusted compensation for veterans of the armed services as may be provided by law; nor shall the state or any of its political subdivisions subscribe to or become the owner of capital stock in any private association or corporation."

PRESIDENT WENSTROM: You've heard the reading of Section 10. Is there any discussion? Any questions? Any discussion on Section 10?

I believe that concludes the reading of — Delegate Unruh — Delegate Aas.

DELEGATE AAS: Mr. President:

As a point of information, I suppose that the Style and Drafting Committee would also like to change the "sixty" percent on line 23 to a "three-fifths" as they have in the previous section.

Mr. President, I ask that of the Style and Drafting Committee.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Is Delegate Aas referring to line 23 on page 3?

DELEGATE AAS: Right.

CHIEF CLERK GILBREATH: Yes.

DELEGATE DOBSON: No. Because that is a "sixty percent" vote of the electors and the stylists used a percentage on the vote of the people.

PRESIDENT WENSTROM: Are there any further questions?

The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President:

I now move that Style and Drafting Redraft Proposal No. 5-2 be deemed properly re-engrossed and placed on the calendar.

PRESIDENT WENSTROM: Delegate Unruh moves that Style and Drafting Redraft Proposal No. 5-2 be deemed properly re-engrossed and be placed on eleventh order for passage.

DELEGATE McELROY: Second.

PRESIDENT WENSTROM: Do I have a second?

DELEGATE McELROY: Second.

PRESIDENT WENSTROM: By Delegate McElroy.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I ask that Sections 1 and 8 be voted on separately.

PRESIDENT WENSTROM: Delegate Rundle has requested that Sections 1, 8 — 1 and 8 be voted on separately.

CHIEF CLERK GILBREATH: Each one separately?

PRESIDENT WENSTROM: Delegate Rundle? Do you wish a separate vote on Section 1 and Section 8? You do not wish them to be voted on together?

DELEGATE RUNDLE: That's right.

PRESIDENT WENSTROM: Thank you.

DELEGATE RUNDLE: Maybe I should just ask now that Section 1 be temporarily divided.

PRESIDENT WENSTROM: Either way is fine.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: If you want to continue making your list, I request that a separate vote be taken on Section 10. I have the eleven dollars here in case you need it.

PRESIDENT WENSTROM: The question before the Convention is on the first passage — the question before the Convention is on Section 1. It is requested that it be voted on separately. And those in favor of adopting Section 1 will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Delegate Engelter votes "aye."

PRESIDENT WENSTROM: Delegate Engelter votes "aye."

Roll call discloses 89 "ayes," 6 "nays," three delegates absent and not voting. Section 1 of Redraft Proposal No. 5-2 has passed.

Next for consideration will be Section 8, Section 8 of Article X. Style and Drafting Redraft Proposal No. 5-2, Article X and Section 8. Those in favor of its adoption will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 78 "ayes," 18 "nays," two delegates absent and not voting. Redraft Section 8 — Section 8 of Redraft No. 5-2 has passed.

Next for consideration will be Section 10 of Redraft No. 5-2. Section 10 is next for consideration of the Convention. Those in favor of adopting or the passage of Section 10 will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The question before the Convention is on the passage of Sections 2, 3, 4, and 5.

CHIEF CLERK GILBREATH: That was Section 10.

PRESIDENT WENSTROM: We just passed it.

DESK REPORTER KING: No, that was Section 8.

CHIEF CLERK GILBREATH: No, that was Section 8.

PRESIDENT WENSTROM: Oh, I'm sorry. I thought I announced the vote. There were 98 — 93 — 93 "ayes," —

CHIEF CLERK GILBREATH: 83.

PRESIDENT WENSTROM: I'm still wrong. There were 83 "nays," — "ayes," and 15 "nays" with all delegates present. So Redraft No. 5-2, Section 10, has passed.

We now have for consideration Sections 2, 3, 4, 5, 6, 7 and 9 for passage. All sections of Style and Drafting Redraft Proposal No. 5-2 and Article X. Those in favor of adopting these sections will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 94 "ayes," there were 4 "nays," all delegates present and voting. Sections 2, 3, 4, 5, 6, 7 and 9 of Redraft No. 5-2 have passed.

We will be on the eighth order of business — Announcements. We will be on the eighth order of business — Announcements.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, there will be a meeting of the Public Information Committee in the Large Hearing Room immediately after this session.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: There will be a meeting of the Ballot Committee in the west balcony immediately after this session adjourns today.

PRESIDENT WENSTROM: Any further announcements from the floor?

Delegate Engelter.

DELEGATE ENGELTER: Mr. President:

May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we will be on the twelfth order.

DELEGATE ENGELTER: At this time I would ask the Convention reconsider its action on which Committee Proposal 1-4 was passed for the purposes of amending 5-9 of the second proposal. If I have a second, I'll explain.

PRESIDENT WENSTROM: Would you give us the number again, Delegate Engelter?

DELEGATE ENGELTER: Proposal 1-44, Section 5 thereof.

PRESIDENT WENSTROM: Delegate Engelter moves that the Convention reconsider its action by which Committee Proposal No. 1-44 was passed for the purpose of amending. Do we have a second to his motion to reconsider?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Delegate Fallgatter.

DELEGATE ENGELTER: Since we passed this proposal on last Thursday, and I think at this time it takes only a majority vote, and I think we did a lot of work on Thursday, lot of important work, and I think the way the section now stands there are a lot of loopholes in it. And I think there's other people in the Convention feel that this type of setting up the districts will not work. I do have a proposal that I would propose, and it's being prepared now. And I thought it would be — and I'm sure it will be out here before the end of the day. Delegate Dobson, who prepared the amendment on —

PRESIDENT WENSTROM: Delegate Engelter, might I suggest that your problem is to get it reconsidered? After you get it reconsidered and get it before the Convention, then you will have no problem. Your problem is to get the motion passed to reconsider.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Were you through with the floor, Delegate Engelter?

DELEGATE ENGELTER: I was hoping just to make a short explanation.

PRESIDENT WENSTROM: Well, you proceed.

DELEGATE ENGELTER: I think under the proposal that we did adopt it provides loopholes with regard to the reapportionment part of the districts that will be set up. And I think it's real important that every individual in North Dakota be represented in the Legislature and every legislative session. There are other delegates that have expressed the feeling that they are not really satisfied with this provision. And this is the reason I moved for reconsideration at this time.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President:

Am I correct in that only Section 5 would be reconsidered?

CHIEF CLERK GILBREATH: That's the way he is making it.

PRESIDENT WENSTROM: That is the way the motion reads.

DELEGATE HOFFNER: I support the motion for reconsideration. And I think that if the chamber here reconsiders that, the motion then would be to lay it over one day, I would assume.

PRESIDENT WENSTROM: The question before the Convention is on Delegate Engelter's motion to reconsider the Committee Proposal No. 1-44.

Delegate Nicholas.

DELEGATE NICHOLAS: Yes, Mr. President, before I'd consider voting for reconsideration I would like to know what the amendment pertains to. If Delegate Engelter will explain.

DELEGATE ENGELTER: The amendment that I would propose — and I think there is going to be a couple different ideas with regard to amendments. I have talked to some individuals that wanted to delete the last sentence, I think,

of that. The amendment that I would propose would be that all Senators would be elected in one biennium and all House of Representatives would be elected in the next biennium. And that when the Legislature would reapportion the new districts would not take effect until those that were elected to their districts, their term had expired.

I think further discussion when we reconsider it would go into explaining that the problem with regard to reapportionment would be solved with regard to true representation.

PRESIDENT WENSTROM: Further discussion?

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

Would Delegate Engelter yield to a question?

DELEGATE ENGELTER: Yes, I will.

DELEGATE AUBOL: As I understand your amendment, this would allow each legislative district to elect a portion of their Representatives and Senators each biennium so that — as it stands now even numbered districts hold an election only in presidential years, but your amendment would change that to allow all districts to have an election each year?

DELEGATE ENGELTER: This is true. There would be a biennium election built into our Constitution. And the way I would suggest would be that in the year that state officials are elected all Senators would be elected during that time. In the biennium when county officials would be elected all Representatives would be elected.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I don't know if Delegate Engelter, if his amendment will carry if he ever gets a chance to present it or not. He is primarily addressing himself to the first sentence. The second sentence also needs correction. It's unworkable now, we discovered after having it pass. Primarily because it provides for nobody to define who retains and who loses a constituency. It's also defective because the people who would be removed from their constituencies would have their term expire immediately. That was not the intent. They should at least serve until the next legislative session starts, whether it is two or three months or whatever. So I support the motion to reconsider because right now the section is terribly defective, and I think we can correct it tomorrow.

PRESIDENT WENSTROM: Any further discussion on the motion to reconsider the action whereby the Convention passed Committee Proposal No. 1-44?

The motion to reconsider; those in favor will vote "aye;" those opposed will vote "nay." This is going to have to be roll call on account of its passing the Convention, and it takes fifty votes to reconsider. So the Clerk will open the key and you will indicate your choice.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call indicated 83 votes for reconsideration and 13 opposed, with two delegates absent.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President:

I now move that further action of 1-44, Section 5, be laid over one Convention day.

PRESIDENT WENSTROM: Delegate Hoffner moves that further consideration of Proposal No. 1-44 be laid over one legislative day. Do I have a second?

DELEGATE HOGHAUG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hoghaug.

Delegate Haugen.

DELEGATE HAUGEN: Mr. President.

I would appreciate very much being able to be in on the discussion. I'm not

going to be able to be here tomorrow, nor is Delegate Lerberg. Will there be any objection to holding it until Monday? Would you want to change your motion?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I would change my motion to have further action delayed until two Convention days. I think that would be Monday.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: I'm wondering how this would fit into the timetable that was outlined earlier today, I think by Delegate Saugstad, which, if I recall it, had as one of its salient points finishing the eleventh order tomorrow.

DELEGATE SAUGSTAD: We may run into some mechanical difficulty holding this over until Monday. I feel that we should try to dispose of this tomorrow.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I changed my motion. And I move that further action be delayed until tomorrow morning.

PRESIDENT WENSTROM: Delegate Hoffner moves that we defer further consideration of Committee Proposal No. 1-44 until tomorrow morning. Do we have a second?

DELEGATE PAULSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Paulson. As many as are in favor of the motion will say "aye;" those opposed "nay." The "ayes" have it, and further consideration of Committee Proposal No. 1-44 will be given in the morning.

Anything further under the eighth order?

The Chair would like to make an announcement.

CHIEF CLERK GILBREATH: I have two.

PRESIDENT WENSTROM: You have two there?

CHIEF CLERK GILBREATH: Delegate Binek has his daughters and grandchildren visiting him here at the Convention; Mrs. Bill Giese and daughter Kathy and sons Mike and Patrick; Mrs. Don Bussier, daughter Sara and son David; and the grandchildren are pupils at the Jefferson School in Dickinson, North Dakota.

PRESIDENT WENSTROM: Will they stand and be recognized?

(Applause)

We have another announcement at the desk.

CHIEF CLERK GILBREATH: The Scribes and Scriveners party tonight, we have been asked to announce the menu on the food which will be available at ten P.M. They are going to have barbecued ribs, barbecued beef, meatballs, German potato salad, special cole slaw and assorted salads and relishes.

PRESIDENT WENSTROM: The Chair still would like to make an announcement. This is relative to a committee appointment. I think you will recall that some days ago we authorized the expenditure of some funds to be used for the North Dakota State Extension Council. And this is a coordinating committee between our Committee on Public Information and that group I just mentioned. And to that committee I would like to name Delegates Paulson, Diehl and Omdahl.

The desk is clear, I believe.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: If there are no further announcements, then I will move that we adjourn until nine A.M., February 11th.

PRESIDENT WENSTROM: Delegate Saugstad moves — Delegate — did you have a question, Delegate Hubrig?

DELEGATE HUBRIG: Mr. Chairman:

I may be out of order, I don't know, I hope not. But since — probably I should ask for a personal privilege. Probably be better.

PRESIDENT WENSTROM: State your privilege.

DELEGATE HUBRIG: There is a proposal circulated today to put the right-to-work on the ballot. And I have a proposal that I would like to have the people consider signing. And I would like to just announce that part of it. That would be a choice of laborers choice versus the farmers proposal. And I have just presented — I have just got it prepared and handed to me now. If the people would stop and look at it before they leave, I'd appreciate it.

PRESIDENT WENSTROM: The question before the Convention is on the motion to adjourn as offered by Delegate Saugstad. Do I have a second? Seconded by Delegate Nething.

As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it. We will be adjourned until tomorrow morning at nine o'clock.

(The Plenary Session adjourned at 4:43 P.M., Thursday, February 10, 1972, until 9:00 A.M., Friday, February 11, 1972.)

VOLUME XXVII

(February 11, 1972)

MORNING SESSION

(The twenty-seventh day of the Plenary Session commenced at 9:17 A.M., Friday, February 11, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

Our Chaplain for this morning is Father Donald Hill, with St. Mary's Catholic Church of Bismarck.

REVEREND DONALD HILL: Let us pray.

O Lord, listen to us as we are gathered here together and as we ask for Your guidance and Your assistance. We at this Constitutional Convention represent Your people. Help us to serve Your people as we set forth their thoughts and desires in this revision of our Constitution. May we be mindful of our duty and obligation to use the talents you have given us, along with Your Spirit to guide our deliberations in the fulfillment of Your will. We ask this through Christ, Our Lord. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call.

The Clerk will open the key and you will record your presence.

Has every delegate recorded his presence? We will close the key.

Roll call discloses 96 delegates present, 2 absent. A quorum is declared.

We'll be on the fourth order of business — Revision of the Journal — approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 9th day of February, 1972, and recommends that the same be corrected as follows:

On page 419, in line 45, following the word "votes," insert "and there are no nay votes," and following "aye" delete ", the number".

On page 419, in line 46, delete the words "voting nay".

On page 421, in line 37, delete "final" and insert in lieu thereof "first".

On page 427, delete lines 37 through 61, inclusive.

On page 428, delete lines 2 through 8, inclusive.

And when so corrected, recommends that the same be approved.

Delegate Simonson, Chairman.

Delegate Simonson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Revision and Correction of the Journal. Any discussion? Any questions?

Hearing none, as many as are in favor of adopting the report will say "aye;" those opposed "no." The "ayes" have it. The Report of the Committee is adopted.

We'll be on the tenth order of business. First for consideration of the Convention is Committee Proposal No. 1-44.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: I have an amendment at the desk that I'd like to have read.

CHIEF CLERK GILBREATH: Proposed amendment to engrossed Committee Proposal No. 1-44:

Delete Section 5 of the Proposal and insert in lieu thereof the following new Section 5:

"Section 5. DISTRICTS.

"Beginning in the year 1974, all members of the house of representatives shall be elected and beginning in the year 1976, all members of the senate shall be elected; thereafter all members of the senate and house of representatives shall be elected every four years as prescribed by law.

"No member shall be elected to the senate during the term for which he was

elected to the house of representatives and no member shall be elected to the house of representatives during the term for which he was elected to the senate.

"When the legislative assembly is reapportioned, the new legislative districts shall become effective upon the expiration of the terms of those legislators holding office."

And renumber the lines and sections accordingly — lines and pages accordingly.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: I move that the amendments be adopted.

PRESIDENT WENSTROM: Delegate Engelter moves the adoption of the amendment as read. Do we have a second?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Do we have any discussion?

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President and Fellow Delegates:

I think I discussed yesterday briefly with regard to the confusion with regard to the present section. In my proposal — proposed amendment, I attempted to do five things. The first — or four things. First, guarantee biennial elections in every district in North Dakota. Second, guarantee that equal representation in each house is maintained at all times. Third, guarantee that election of representation and fulfillment of that responsibility through the election of a Senator or Representative; that your election will guarantee that full service for a full four-year term will be obtained; and, fourth, which I think is the main objection to the section that we do have, is guarantee a good solution to the problem of reapportionment.

The first sentence or the first paragraph sets out that one house — the House of Representatives — is all elected at one time, and that would be in the year 1974. The reason for choosing 1974 as the starting point is that the Representatives would be elected at the same time that county officers are elected. It also provides that Senators shall — all Senators shall be elected at one time, and their election is held at the same time state offices are filled.

Now, when I look at representation in a bicameral system, I feel that when the voters go to the polls that under my suggestion here, if you're voting for a Senator in one biennium and you're voting for two Representatives in another biennium, the people are expressing equal authority at each election; that being that a Senator, because there are half as many, carries as much weight and strength in that house as two Representatives in the other house.

The second paragraph or second sentence restricts one that has been elected to either house from, during mid-term, running for the other house, and I think this is important — a right to guarantee to the people and the electorate. If I go to the polls and elect somebody to represent me for four years, he has an obligation and a duty to do so, and I think this was one of the objections to our system that we have now, where Representatives are elected every two years and a Senator just every four years; that a Representative would, after his term had expired, would then seek office for a Senate seat; and I think under our present system he does have that opportunity; but, at the same time, he has fulfilled his office that he was elected for, and I think this concept should be continued in our present Constitution.

The last sentence in the paragraph refers to reapportionment, and I think the real problem with reapportionment in anything that we do decide to do is with regard to staggering terms in a house or both houses. The reason I say that a problem is created when you stagger the terms is that when the reapportionment takes place, some districts theoretically are going to become larger in area and some are going to become smaller. Now, the people that belong to the district that became smaller and that are attached onto the district that becomes larger, these people are the people that are going to be affected by reapportionment.

Now, under my plan, where you have a whole house being elected at one term, you're considering the representation from the whole State in one house being re-districted at one time, and that there will be no discrepancy in actual representation.

Now, to further explain how this reapportionment would take place, let me use

an example. Reapportionment usually takes place when there has been a decennial census, and in 1980 the census will be taken. This is an arbitrary figure or time to determine whether or not the one-man-one-vote principle applies, and that's when we have an indication — when we know what the population is in the different areas. The first house that would be up in that year would be the House of Representatives for election. Their terms would expire in 1982. The whole house would be elected at that time under the new districts. At that time the Senators would still have two years remaining of their terms, so they would continue to serve out their terms and they would be elected under the new districts in the year 1984. I know the main objection that I have heard with regard to this is with regard to a whole house being changed in one election. With regard to that, I think under our present system you could say right now that the House of Representatives changes at every election. There is some argument — another argument that's against this. When you're considering politics and political parties and change of representation in a house, I think it's just as important to have every election strongly opposed by both parties, and I think, having a whole house switch, will make this possible and make it a stronger political and local interest in our government.

I think past history has shown that we have had a major turnover in either house in the past, and I don't expect in the future there will be a major turnover to not provide continuity in the legislative process. If such does happen, I think then it is the will of the people that we do need a change in one of the houses.

The second argument against having one house being elected at one time is that when one house is elected, the other house would have been sitting in the Legislature for two years and would have had two years' experience in that house; and there, again, we provide a check and balance — some experience for at least a two-year period.

Another argument against changing of one house: I think under our present Constitution where legislators are elected for a two-year term or a four-year term, they come into office and they've had in the past to jump into the Legislature for sixty quick days before they generally have a lot of time. We've changed this in the legislative process. We've provided for an 80-day limitation on legislative days over a two-year period, and they don't have to be consecutive. So, again, we have improved. And I think, under the improvement, my solution or my suggestion is a good suggestion — to provide some safeguards in the Constitution for electing Senators and Representatives.

I think this section, the way we have adopted it in 1-44, without my amendment, deals directly with the reapportionment commission that we have set up, restricting their powers or giving them some direction as to what they can do. Under the present section as we have passed it, I don't think it has set anything. It's set up with the idea that the districts should be numbered, even-odd, even-odd; but does that mean that when reapportionment becomes effective you're going to have new districts and they're going to have the authority to change the numbering system? I think every county — or every district that is — every individual district has four — at least four adjoining districts, and the numbering system could be changed at will. By putting my amendment in, I think we're going to guarantee the things that I have stated and leave the commission do its job of setting districts, without the political football of trying to move numbering system, switching districts around, increasing some, decreasing some, and so forth, and I think that's the important part of having good reapportionment.

Thank you.

DELEGATE WARNER: Mr. President.

PRESIDENT WENSTROM: Delegate Warner.

DELEGATE WARNER: Would Delegate Engelter yield to a question?

PRESIDENT WENSTROM: Would Delegate Engelter yield to a question?

DELEGATE ENGELTER: Yes, sir.

DELEGATE WARNER: This is a field I have not studied, sir, but I have a question.

If you have a Senator whose term expires in 1974, wouldn't you have a vacancy in the Senate until 1976 when Senators are elected?

DELEGATE ENGELTER: I think that at that time they would have to be elected for a two-year period. I think under any system that we set up here, we're

going to have problems switching into the system; but once we switch into the system, the system will continue and prevent problems of reapportionment and short elections in the future.

DELEGATE WARNER: Have you provided for such a two-year interim term?

DELEGATE ENGELTER: No, I haven't; but I think, if it states in our Constitution that all Senators would be elected, and a Senator might be elected in 1974, he would know that all would be elected in 1976.

DELEGATE TRENBEATH: Mr. President.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. President and Delegates:

I'd like to make note of this fact: There's no question that the Senate will be most vulnerable in the case of electing them all in one year, simply because of the numbers. And we have seen it happen in the past when there's been great turnover, especially on presidential election years, because there's always an influence on how the president goes in the way the State Legislature goes, and this has happened in the past, and I would say that if this thing came into existence, most certainly we should switch the Representatives to the presidential election year and the Senate to the interim years, because you cannot — we've got to have some viability in these houses or some continuity, and the House of Representatives — 98 members are not near so vulnerable on presidential-election-year turnover as the Senate would be.

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

The House has been quite vulnerable in the past, too, as far as that goes.

In reply to Delegate Trenbeath, my seat mate here was in the House — was in the majority in '65. In '67, he was not only a minority, but about 17 of them or 18, I guess; so they turn over pretty fast. But I have an objection here — that "No member shall be elected to the senate during the term for which he was elected to the house . . ." and so on. I think this is grossly unfair to the Senate when here's a Senator that might want to run for the House of Representatives, in which they have a lot more leeway and fun and they're not so stuffy, and he couldn't do this.

(Laughter)

Of course it would work the other way, too, if a Representative wanted to run for the Senate, and this sometimes happens. But I don't believe that this is a good provision with this one provision in it.

DELEGATE DOBSON: Mr. President.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Members:

I think Delegate Engelter has come up with a pretty good solution, but I have one problem or one question — either to him or to the transition group. The beginning dates bother me. I don't think our Constitution will be in effect or have any bearing in '74; so we can't lay any rules down here. I'm wondering if the transition — somebody from the Transition Committee, or someone else, could solve that. I think the starting date should be sometime later. I don't have the answer, but I don't think it would work this way.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, first of all in response to Delegate Hoghaug, we could put any effective date on any section we want in the schedule. Now I think Delegate Engelter's amendment has some meritorious features, but I'm afraid I can't support it for the reasons stated by Delegate Trenbeath and Rundle: One, if a House member wants to run for the Senate at mid-term, or vice versa, I think he should have that option. Second, by putting the entire Senate up in a presidential year, you're going to subject it to violent turnover.

I simply want to notify the Convention, Mr. President, that if this amendment fails, a further amendment will be offered to attempt to correct the defects in this section.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, in addition to the other problems that have been raised here on this amendment, the main objection that I have or did

have to the old proposals or the first proposal that came in was the fact that you, under that, and still under this, you would — you could have a situation in reapportionment where a Senator or a House member would be living in one district and representing the constituents of his district or old district at the same time, and now, since we're going to the four-year term for all, you could have a situation where the Senator and — both — House members would be living outside the district for a period of as much as two years and serving those people of another district. It would seem to me, with these committees that will be meeting in the interim, no doubt, and with the changes that the Legislature will be making, you could have different times of the session in which that district really had no representation either in the House or the Senate, and certainly no representation on the interim committees. It seems to me these are details that ought to be left to this commission as to when these effective dates will be, and not tie their hands completely by all of these restrictions in the Constitution.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: May I answer Delegate Longmire's question?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE ENGELTER: In reference to non-representation, I think you have to look at one house being separate from the other, and if you change the whole house or one of the whole houses at one time, you are changing the voting power of all the people in the whole State. All the people in the whole State will be voting for new Representatives or new Senators under new districts, and they'll be representing those people in the old districts until their term expires. The Senators, or the other house, will still be representing those people, and I think this is important. The problem, as I look at reapportionment, is with regard to staggering the houses. You stagger and elect half of one house with half of the other. Over ten years, we're going to have the problem of electing some representatives for a period of four years, and then that four-year term is going to be cut short because everything's been reapportioned, and if it's been reapportioned, you aren't granting to the people some stability in the elective process of electing Representatives.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President. Fellow Delegates:

I find myself in the former, again, as I think I've been one of those that argued that a new member needs time in which to become adjusted to the legislative process in order that he can more effectively deal with the older member who has much more experience and time on him. On the other hand, I look at this proposal and I'm a little bit frightened because I think the end result of this is — and the one, maybe, great advantage of this is that they can all be inexperienced together, and I am not at all certain that I would want, on the other hand, too, and I would ask, even though I think at this time it's a question of what the Dobson amendment might be, but I wonder if the availability of taking care of the problem that Delegate Engelter so well points out — that a person caught in the end, between the section on reapportionment — that whether, in effect, the Dobson amendment is going to handle that. It has to be a question for us who vote either for or against this amendment. So at this time, although I know he's writing an amendment, so, in all likelihood — do you catch that question?

(Delegate Dobson nodded.)

DELEGATE SANSTEAD: Mr. President: Would Delegate Dobson yield to a question?

PRESIDENT WENSTROM: Would Delegate Dobson yield to a question?

DELEGATE DOBSON: Yes. As I understand what your question would be: Section 5 has two distinct parts. The first part deals with the numbering of districts. The second sentence deals with the matter of the legislators retaining or losing their seats after reapportionment. My amendment would simply delete the second sentence because of the numerous problems contained therein. If we're going to keep the second sentence, we're going to have to go and write a lot of statutes for detail in the Constitution and definitions, and so forth, and we can't perceive in 1980 or 1990 all

of the situations that might develop. So, by deleting the second sentence, we would allow the reapportionment commission in the future to deal with this problem as they see fit, and perhaps the Legislature to legislate in this one area. By leaving only the first sentence, our intent would still be clear that one-half, or as nearly thereto as may be practicable, of the legislators will be elected every two years.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, as has become clearer and clearer in this debate, the need to provide a system for retaining half of both houses at the time of reapportionment becomes clearer, I think and I hope that in — if this amendment of Delegate Engelter fails, that we can put in an amendment to, as Delegate Dobson suggests, eliminate that second sentence; but, also, in eliminating it provide that the Legislature establish a system where half of each house may be retained or as nearly as possible, because I think that feature in the proposal of the Committee is vitally important, as has been pointed out several times on the floor here, that the whole concept of four-year terms — and I was part of a sweep in the Senate when many good people were defeated, not because of partisan politics on the local level, but because of a national election — and at that time Delegate Hernett and I debated the question of a no-party ballot because we both saw that some extremely good legislators from both parties had been beaten in different times, not because of their own successes or failures, but because of a factor that had nothing to do with the local scene, and that's why I think it's — the retention of half of both houses at the time of reapportionment is extremely important, if we can accomplish it, and I think it should somehow be made clear in the Constitution that that's our wish, and if the amendment that Delegate Dobson is preparing can include a sentence to suggest that the Legislature provide that, I think it will help a lot.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Further discussion? Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I see some merit in Delegate Engelter's amendment, but, you know, the other day we voted to set up a commission and we're trusting this commission to divide the State into districts, to reapportion. Now I think, with Delegate Dobson's amendment, we'd be giving this commission some room to move. Now we struggled with this problem in the committee for quite some time and I wonder if we can come up with a system and lock it into the Constitution that will work. Now, if this Commission — and it will have a lot of time and it can consult with the Legislature and it can come up with a system, and if it doesn't work in the first 10-year period, they can try something else. I, for one — I think that we ought to give the commission the room to move.

Now, at one time I was in favor of putting a lot of alternatives in, giving the commission some alternatives, but apparently that's not going to work; so I think you should defeat the amendment and adopt the other amendment and give the reapportionment commission the room to do what we're talking about — what we'd like to have.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE ENGSTROM: Mr. President.

PRESIDENT WENSTROM: Delegate Engstrom.

DELEGATE ENGSTROM: Mr. President, may I yield to Delegate Engelter?

PRESIDENT WENSTROM: Delegate Engelter — he yields. Delegate Engelter.

DELEGATE ENGELTER: I think the whole problem with regard to reapportionment in our reapportionment commission is what is the objection — the objective of that commission? I think that commission should set the districts; that's all — and it is a matter of determining districts on the basis of population, so that the way we elect our people, it will be under one-man-one-vote principle, and we're bound by it by the Constitution of the United States. I think, if we extend the authority of the commission to say that one Senator is going to not — not going to have to run and the other one is going to have to, you're playing politics with regard to it. I don't think that's the proper purpose of setting up a reapportionment commission.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I'd like to ask — I wonder if Representative — Delegate Engelter would yield to a question.

PRESIDENT WENSTROM: Does Delegate Engelter yield to a question?

DELEGATE ENGELTER: Yes, sir.

DELEGATE SAUGSTAD: I'm in sympathy with and support your idea or principle of having each district every two years voting on either a Representative or a Senator. That part, I think, is excellent. I do, however, question this provision where you say that no member shall be elected to the Senate during the term for which he was elected to the House of Representatives, and then vice versa. Now, under that — under a strict interpretation of that, would that mean that if one were a Representative, that he would have to be out for a four-year period before he could run; that if he wanted to run for the Senate — do you understand what I mean? — he's been elected to the House of Representatives, he was serving his four-year term, his term has expired and now it's time to run for reelection. Technically, he's still a member of the House of Representatives. Could he file and run for the Senate under those circumstances?

DELEGATE ENGELTER: I think you're — in analyzing this provision and the reason I put it in, was there was some objection raised on the floor the other day. Not necessarily to convey the important thoughts on this in my amendment, but if a Representative would serve out his four-year term, he would have to wait two years before he could run for the Senate. It would be a two-year lapse of time, and I think the important reason I put this provision is, and I think it's real important to consider, that the people, when you're talking about representative government, the people elect somebody to do a job. Why should he at his whims not do that job and complete his responsibilities?

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, I'd like to to address this question to Delegate Engelter.

Will you please tell me what section of the United States Constitution guarantees the legislative district of a state?

DELEGATE ENGELTER: I don't think there's one that does; but with regard to the one-man-one-vote principle, it guarantees equal representation based on population.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Well, Mr. President, this same question has been batted around since 1842. It's been up to the Supreme Court on a number of occasions and the court always held that it had no jurisdiction in this field. Well, then in 1963 or '64, four members reversed themselves and joined with two new appointees and took over jurisdiction. At that time Justice Harlan accused them of amending the Constitution. Now, we don't know how long the Federal Court will keep jurisdiction in this particular question. So, to try to base a constitutional provision of North Dakota on something that's problematical as that would be, I think is futile.

PRESIDENT WENSTROM: The Chair will recognize Delegate Solberg.

DELEGATE SOLBERG: Mr. President. Just a comment here.

Does the fact that we have studied this a great deal in our Committee — our Committee — our Committee did not always come up with unanimous agreement on any of these things — but I think one of the things that we have to recognize is that the legislative body philosophically and technically is the originating body of all things for the State and, as a result, it must have initiative, it must have imagination, and it must have creativeness. We have now extended the terms of offices to four years. We have allowed them to meet at will. They can organize themselves for the best purpose that they may seek to resolve. They may have committees that can meet at any time, and as I look at it into the future, I think we should not judge — I'm not judging this amendment one way or the other, Mr. President, but looking at it from the standpoint of the effectiveness of the legislative body in doing the job that needs to be done, because now we have given them great responsibilities. We have asked them now to organize themselves in such a way that the job can be done. They aren't getting resolutions from a body to study during the interim. They are going to continue as committees to study these things and, as a result then, we need continuity in the body, we need experience in the body, we need to recognize the fact that half of them, perhaps should be returned so that they, in turn, can help to educate and train and to assimilate the thinking and the ideas of the body that goes together each two years. I think this is the most important philosophy that we need at this time.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention — the question before the Convention is on the adoption of the amendment as offered by Delegate Engelter. Do you wish it read?

Then we will proceed to vote.

Those in favor of the adoption of the amendment will say "aye;" and those opposed will say "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay."

The "noes" have it. The amendment failed.

Committee Proposal No. 1-44 is before the Convention.

Delegate Dobson.

DELEGATE DOBSON: Mr. President, I move my amendment.

PRESIDENT WENSTROM: Is the amendment at the desk?

The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-44:

In line 18, delete "When the".

Delete lines 19 through 23, inclusive.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sanstead.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: It is with some reluctance that I move this amendment, because I have nursed this provision long through Committee and on the floor over a period of several months; but I have no pride of parenthood because this provision was fathered in Nebraska, and now that it has come before this body and its defects have been exposed, I think we better do away with it. We thought we arrived at a solution the other day, but subsequent developments showed we did not. One of the defects in the second sentence in Section 5 is this matter of retaining your constituency or being removed therefrom. Who is going to define this — the legislative reapportionment commission? The Supreme Court? The District Court? The Legislature? We don't know. We don't say. Let's take a practical example here of what could happen.

Right now a Senator Doherty represents the Thirteenth District, which is Eddy and Foster Counties, and he lives in Eddy. A Senator Schultz represents the Fourteenth District, which is Wells and Sheridan Counties, and he lives in Wells County. Well, let's suppose, in a reapportionment, that Foster is split off from Eddy and Sheridan is split off from Wells and Wells and Eddy are joined to form a new district. So you have Schultz and Doherty in the same district. Well, which one is going to be removed of his constituency? They both lost about half of their old constituency. So, if we're going to put something like this in the Constitution, we're going to have to put in a good deal of additional statutory material on definitions and things of that nature.

Another problem here is in the last line — "but the terms of legislators removed of their constituencies shall be deemed to have expired immediately." I don't think you could amend that, because if a commission files a reapportionment plan in 1973, the legislators who are removed of their constituencies at least ought to be able to serve out their two-year period. So this amendment would strike the second sentence, and what we would have left is the first sentence, providing for the division of the state into odd and even-numbered districts, so that one-half of the legislators, or as nearly as practicable, may be elected biennially. That is sufficient for a Constitution, I believe. Our intent is clear that one-half of each house will stand every two years, and I don't think you have to add anything additional, because in this particular area the Legislature would be empowered to legislate, as I see it. Under Section 9 of the legislative article, we have this provision: "The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution." So this is something — and if the Legislature didn't act, presumably

the legislative reapportionment commission could make the decisions. These decisions are going to have to be made from time to time after the periodic reapportionments. We can't foresee all the possible circumstances that may arise. So I think the best thing to do and the safest thing to do and the wisest thing to do would simply be to delete the second sentence of Section 5.

PRESIDENT WENSTROM: Any further discussion? Delegate Hernet.

DELEGATE HERNETT: Mr. President, I objected to this section in the original 1-44 about a week ago, or whenever it came on the floor. I could support Delegate Dobson's thinking on this one much better if he would delete all of Section 5. I don't see the necessity for it, actually.

He said, when discussing Delegate Engelter's proposal, that we can't foresee the future, and I agree with him. I don't think we should tie the Legislature's hands or this commission's hands for the next 20, 30, 40, 50 years. I could see a time coming when in North Dakota probably these districts, if we are going to follow the one-man-one-vote concept, where they're going to be combining districts, where you're going to have all kinds of peculiar situations, which we can't foresee today. I just don't believe that this should be in the Constitution and I don't really see what useful purpose it's going to serve by saying that you shall have even-numbered districts — or that you shall have numbered districts constituting one class and an odd number of districts constituting the other class. I think this is something basic that anybody will know without having to have this spelled out in a constitution, and I can see us certainly getting into trouble with this sometime in the future. I would much rather leave it up to the Convention — or to the commission than to the Legislature.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. President. Fellow Delegates:

Last week I rose in opposition to this section when we were discussing Section 1-85, and I can support the Dobson amendment, and I will. And I call your attention to the sections in the repealing clause, 27, 30 and 33, in response to Delegate Hernet's comment that we need not classify the districts. I think there is reason to classify the districts. That reason, probably most apropos, was stated in the case of *State v. Meyer*, wherein the governing principle was indicated to be that the condition of the State Senate is such so that there shall be two classes of Senators, so that at all times one-half of its members, as nearly as practicable, shall be experienced men. I think that comment in itself speaks for the reason as to why we should leave lines 14 through 18 as the section of the Constitution and leave the commission which we have spoken about determine the balance of our problem, and for that reason I would support the motion to delete the balance of Section 5.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Dobson. Any further discussion?

Hearing none, those in favor of its adoption will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed "nay."

The "ayes" have it. The amendment is adopted.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I have an amendment at the desk which I'd like to try and see if it will help solve this. If it doesn't the delegates will vote it down.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-44:

In line 18, following the word "biennially." insert the following: "The commission shall provide that as many as possible of the legislators whose term does not expire at the time of reapportionment shall complete their terms."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment?

DELEGATE CHASE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Chase.

Do we have any discussion?

DELEGATE SINNER: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I think I'd like to hear Delegate Dobson. He's studied this a lot more than I have.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: We could put this in, but I don't know if it's really necessary. I think our intent is clear just by leaving the first sentence, so that one-half of the legislators, as nearly as practicable, may be elected biennially.

PRESIDENT WENSTROM: Further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Sinner.

Do you wish the amendment to be read — the proposed amendment to be read? Delegate Sinner.

DELEGATE SINNER: I'd like — I think we should have something in here on this, because if we don't, we're not going to, it seems to me, make it clear that at the time of reapportionment we still want this retention of incumbents as far as possible to be a fact. It is true that the language of the — that we now have does say that want people elected every two years, but it does not address the question of reapportionment, and I think this question will be advanced.

PRESIDENT WENSTROM: Any further discussion? Delegate Paulson.

DELEGATE PAULSON: Mr. President and Delegates:

I would agree with Delegate Sinner, except we are confronted with an impossibility. The redistricting commission — and I don't think whether it's the one that will be provided for or the Legislature itself — has the authority under either the bicameral system or the unicameral system to change the number of districts and the number of Senators and Representatives. It can reduce the 49 and 98, in the case of bicameral or unicameral, and if we assume it changes the number, the whole system goes off kilter and you have to start out electing a whole new House and Senate, and you can't keep anybody in because they favor it. The commission has got the broad authority to change the numbers of the districts, and everything. I don't think it will happen, but it has. And so you can't write into the thing restrictions that would be impossible to follow.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Sinner.

Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay."

The "noes" have it and the amendment lost.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: In regard to Delegate Hernet's comments, it is true we wouldn't need this section at all if we didn't want to put it in; but by not specifying a district numbering system, why then we're leaving the option up to the legislative reapportionment commission. They could number by seats, they could do like Delegate Engelter suggested — they could have the whole Senate up one year, the whole House up the next year; they could even have both houses all up in one year. So the reason for retaining the first sentence would be to at least give some guidance.

I have a motion to re-engross, unless someone wants to further amend.

PRESIDENT WENSTROM: Does Delegate Aubol have a question?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I was hoping, before re-engrossing would be decided, that — Delegate Hernet, I agree that the first sentence is unnecessary. I personally feel we shouldn't have that first sentence. All that first sentence would have to say

is something to the effect that the reapportionment commission shall see to it that about half of each house is elected every two years, rather than putting the districts on the spot. Now you are locking the system into our districts, where, in our District Four, we have to elect all of our people at the same time, and you are putting District Three in the same spot. All of District Three has to be elected at the same time. I think that one general statement to the re-apportionment commission with reference to half-and-half elections is all we need.

So, Mr. President, I would hope that the motion to re-engross does not prevail at this time and that we can have some time, perhaps, to work on this question.

PRESIDENT WENSTROM: Any further discussion?

Delegate Hougen.

DELEGATE HOUGEN: Yes, Mr. President and Fellow Delegates:

I hope the amendment for re-engrossing will be made, because all this sentence says now is that the districts aren't going to be numbered, and they are numbered now and they're numbered even and odd, and it says that we hope the commission will try to elect, as much as possible, half of the different houses each year, and I don't think there's anything more we can say on this.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, if you look in the closing part of the sentence, the first paragraph — "so that one-half of the legislators, as nearly as practicable, may be elected biennially." This does not say that the districts — the entire districts be elected. I think, with that sentence, that the Senators should be elected in one biennium and the House members should be elected in the other biennium. I think this proposal is sort of late. I think this proposal is in good shape, and I do hope that the Convention passes this, and I think we have quite a bit of work left on many other things.

PRESIDENT WENSTROM: Delegate Kelsch, did you wish the floor?

(Delegate Kelsch shook his head.)

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, the only way we're going to get a feeling of the Convention on what they want to do with the first sentence is to make this motion. So I move that the Rules be suspended and that Committee Proposal 1-44 be deemed properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Dobson moves that the Rules be suspended, that Delegate Proposal 1-44 be placed on the calendar for first passage.

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Solberg.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it and Committee Proposal No. 1-44 is before the Convention for passage.

Is there any discussion?

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Could we have approximately a ten-minute recess to go over this before we vote on the re-engrossed measure?

PRESIDENT WENSTROM: The Chair will grant a ten-minute recess.

(The Session recessed at 10:13 A.M. until 10:20 A.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. The Convention will be in order.

The question before the Convention, Committee Proposal No. 1-44. The Rules have been suspended and the Proposal is before the Convention for passage as amended.

Is there any further discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President, I would ask the delegates at this time to defeat the motion to re-engross at this time. I have an amendment at the desk being typed on this.

PRESIDENT WENSTROM: Delegate Hartl, I'll have to inform you that the motion to deem it re-engrossed has been passed; however, the proposal is still before the Convention and it is subject to amendment, if you have further amendments to offer.

DELEGATE HARTL: Mr. President, I would then move the amendment which I had at the desk again.

PRESIDENT WENSTROM: Delegate Hartl wishes to further amend. The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendments to Committee Proposal 1-44:

Delete lines 15 through 18, inclusive, and insert in lieu thereof the following:

"The legislative assembly shall establish a system, which, as nearly as practicable, one-half of each house shall be elected biennially."

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do I have a second?

DELEGATE HERNETT: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hernet. Is there any discussion?

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: As the amendment was read, I believe there possibly is a short grammatical mistake and, also, line 14 should also be deleted.

CHIEF CLERK GILBREATH: Delete lines 14 through 18 inclusive.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: In offering this amendment, discussion during the recess indicated that, again, we have a lawyers' problem with reference to the material which we have left in. We have odd and even-numbered districts. We are attempting to establish a fair, representative system which allows us to have half of our legislators elected each biennium. Putting such a system as odd and even-numbered districts into the Constitution can develop a problem in the future. It's for this reason that the amendment was offered. The amendment as drafted would indicate that the Legislative Assembly shall establish a system which, as nearly as practicable, shall allow that one-half of the legislators be elected in each biennium. It provides for the flexibility which we are looking for and which we need for proper representation of our legislators and our constituents for the State of North Dakota, and I would ask the delegates to support it.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Hartl.

Delegate Aas.

DELEGATE AAS: Mr. President, I wonder if you would have the Clerk read the amendment one more time.

PRESIDENT WENSTROM: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-44:

Delete lines 14 through 18, inclusive, and insert in lieu thereof the following:

"Section 5. The legislative assembly shall establish a system which, as nearly as practicable, one-half of each house shall be elected biennially."

PRESIDENT WENSTROM: Is there any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President, I'm not much of a grammarian, but I think there's something missing out of that amendment someplace. I don't think it's a complete sentence, is it?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: If this amendment carries and the bill is passed, I'm going to move to have it referred just briefly to the Style and Drafting Committee, and we'll take care of the grammar. I think I'm going to support the amendment. It's probably best to let the Legislature set this thing up.

PRESIDENT WENSTROM: Delegate Dobson, just a question from the Chair.

You stated that you would ask that this be referred to the Committee on Style and Drafting. Just a question. I think that, if this — this should be put in form now, if you have further amendments, so that it does not have to go to the Committee on Style and Drafting. The members of the Committee on Style and Drafting watch this as it goes along, because, after all, we have mentioned a number of times that the sand in the hourglass is running very low.

Delegate Dobson, if you have further amendments, if you think it should be further amended, then it would be good to make them.

DELEGATE DOBSON: That is true, Mr. President — the sands are running out of our hourglass. My thought was the Style and Drafting Committee could fix this at noon and be back here at one o'clock for reincorporation into the legislative article. If the President desires, I will move the amendments here, but it's a little easier to take care of it down in the Committee.

PRESIDENT WENSTROM: Your request will be granted.

The question before the Convention, then, is on the adoption of the amendment as offered by Delegate Hartl. Is there any further discussion?

Hearing none, those in favor of adopting the amendment will say "aye;" those opposed will say "nay."

As many as are in favor of adopting the amendment say "aye;" those opposed say "nay."

The "ayes" have it. The amendment was adopted.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: If there are no further amendments, I will again move that Section 5 as amended of Committee Proposal 1-44 be deemed properly re-encrossed under suspension of the Rules, and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Dobson moves that the Rules be suspended, that Section 5 of Article II of Committee Proposal 1-44 be deemed properly re-encrossed and be placed on the calendar for further amendment. Do we have a second to the motion?

DELEGATE HOFFNER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hoffner.

The question is on the adoption — that the Rules be suspended. As many as are in favor of the motion say "aye;" those opposed "no." The "ayes" have it. Committee Proposal No. 1-44 is again before the Convention as amended — for final — or for passage — first passage.

Those in favor of adopting the amendment — or the passage as amended, will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted?

DELEGATE SINNER: Mr. President, Sinner votes "aye."

PRESIDENT WENSTROM: Delegate Sinner votes "aye." Does any delegate wish to change his vote? The vote is closed.

Delegate Miller.

DELEGATE MILLER: "Aye."

CHIEF CLERK GILBREATH: Would you push Delegate Miller's button "aye," please?

DELEGATE BENSON: Delegate Benson votes "aye."

CHIEF CLERK GILBREATH: Benson votes "aye."

PRESIDENT WENSTROM: The vote is closed. The roll call discloses 87 "ayes," 8 "nays," three delegates absent and not voting. Committee Proposal No. 1-44 has passed.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I now move that Committee Proposal 1-44 be referred briefly to the Style and Drafting Committee.

PRESIDENT WENSTROM: Delegate Dobson, it will automatically go to that committee.

Next for consideration before the Convention — Delegate Hartl.

DELEGATE HARTL: Mr. President: For the benefit of the delegates who supported this, Mrs. Hendrickson, who drafted the amendment, has found the missing word. I think the word, if you insert it prior to the word “one-half”, is the word “elects”, and that will take care of it.

PRESIDENT WENSTROM: The question before the Convention at this time is Committee Proposal No. 1-119. We are still on the tenth order. Committee Proposal No. 1-119 is before the Convention.

DELEGATE HILL: Mr. President.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I have an amendment at the desk which I would move at this time. That is the sheet that has one section on it, rather than two.

PRESIDENT WENSTROM: Delegate Hill offers an amendment to Committee Proposal No. 1-119. The Clerk will read the amendment.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: May we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE DAWSON: Mr. President, Fellow Delegates, guests in the hall:

We have a very distinguished couple visiting us here in the Chamber this morning — Congressman Mark Andrews and his wife, Mary. I'd like to present them to you, Mr. President.

PRESIDENT WENSTROM: Delegate Dawson, the Chair will name a committee to escort the Congressman and his wife to the Assembly, and I would like at this time to name Delegate Rude and Delegate Nicholas to escort Mark and Mary Andrews to the Assembly.

MR. CECIL CRANDELL (Sergeant-at-Arms): Mr. President.

PRESIDENT WENSTROM: Sergeant-at-Arms.

MR. CRANDELL: Your Sergeant-at-Arms requests the courtesy of the floor to The Honorable Mark Andrews and his wife. Mark is the United States Congressman from eastern North Dakota.

PRESIDENT WENSTROM: We will concede to enter the Assembly.

(Standing applause)

Fellow Delegates, it is a great pleasure for me this morning to have the opportunity to present to this Convention our Congressman from the East District or the First District, whichever you prefer, of North Dakota, The Honorable Mark Andrews.

(Applause)

CONGRESSMAN MARK ANDREWS: Thank you, Mr. Chairman. It is a privilege, indeed, to be here in this historic convention. Now those of us who have the rare privilege of serving in the Congress as Representatives of the people, and those, of course — some of you here in this Constitutional Convention — who have had the privilege of serving in the State Legislature, realize what a great thrill it is to be representing the people. But no one really serves in a more significant capacity than those of you here today rewriting that most basic document — the Constitution of our State. It is significantly true, because this is only the second Constitutional Convention we've had, and significant, too, because you represent some legislators, some newspaper reporters, who generally are on the other side of the aisle taking pot-shots at what goes on in these legislative halls; but mainly the people from all walks of life of North Dakota, structuring a new document so we can go forward into the second hundred years with a firmness of conviction and a guideline to show us the way.

Last night I was in Hebron and one of your Constitutional Convention delegates spoke of the progress you're making, and I think one of the significant things he pointed out was that he was a history teacher himself, and yet it was difficult to struggle through the old document that we had. This new document that you've got about ready to present to the people, I understand, is short, compact, reads well, and is something that will serve to stimulate an interest and a participation in gov-

ernment, because the people from North Dakota will become much better acquainted with this new Constitution than they've ever been able to be with the old one. So, as one North Dakotan to those of you who are doing so much to guide the future of our State, I say thank you. You're doing a wonderful job and North Dakota in the years ahead will benefit because of your labors here in this hall.

It is a privilege for Mary and me to be with you for these few short moments, and knowing how a quasi-legislative body functions, the greatest speech you can make is the shortest one at a time like this, particularly on a Friday morning. Thanks for the privilege of joining you. (Standing applause)

PRESIDENT WENSTROM: We'll be back — we will be back on the tenth order of business.

The question before the Convention is Committee Proposal No. 1-119.

CHIEF CLERK GILBREATH: Proposed amendments to Committee Proposal No. 1-119:

Delete all of lines 1 through 8, inclusive, on the engrossed proposal and insert in lieu thereof the following:

That Section 7 of the Constitution of the State of North Dakota be repealed; and that a new section to the constitution of the State of North Dakota be created; both of which pertain to jury trial.

"SECTION 1. REPEAL.) Section 7 of the constitution of the state of North Dakota is hereby repealed.

"SECTION 2.) A new section to the constitution of the state of North Dakota is hereby created to read as follows:

"The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime wherein the maximum possible period of confinement exceeds one year has the right to trial by a jury of twelve. However, in all other cases, the legislative assembly may regulate the size of the jury."

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do we have a second?

DELEGATE THOMPSON: Second.

PRESIDENT WENSTROM: Second by Delegate Thompson.
Delegate Hill.

DELEGATE HILL: Mr. President and Fellow Delegates:

If you will look at your Committee Proposal 1-119 as originally introduced by the Committee on Preamble and Bill of Rights, you will see that this amendment is quite close to that proposal, and all it does, in effect, is delete the language that the Legislature may regulate the number required for a verdict. And I would like to add just a little background at this point, if I might.

Over the last 100 years, the most inflexible thing about our criminal justice system has been the business about trial by jury, and, historically, that constitutional right by trial by jury has always included that it shall be a jury of twelve and that the verdict must be unanimous; but recent decisions of the United States Supreme Court, within the last three or four years, have changed all that. In 1970, Justice White, writing in the **Williams** case, stated that what the traditional approach had long considered the essence of the jury trial was really historical accident or myth, and we're right now at the point where we're seeing great changes in our jury system, and I'd like to tell you what other states are doing.

Most states have provisions for the use of less than unanimous verdicts and juries of less than twelve in civil cases. Five states provide for juries of less than twelve in felony cases; eight states for six-man juries in misdemeanor cases; five states provide for nonjury trials in certain misdemeanor charges, and in at least three states there are some provisions for less than unanimous verdicts in felony cases.

Well, it is apparent from the action of the Convention so far that we're not going to allow that much latitude in our Legislature; but the last Legislature in its discretion did create a Committee on Judiciary to consider the problems of the judiciary over the interim, and I'm working with that Committee, and I'd like to mention some of the members on that Committee: Senator Don Holand is Chairman. There are three other Senators and three members of the House of Representatives. The other members who are not legislators include two Supreme Court Judges — Judge

Teigen and Judge Harvey Knudson — three District Court Judges — Judge Heen, Judge Jansonius and Judge Maxwell — two judges of the County Courts of Increased Jurisdiction — Judge McCullagh and Judge Glaser — and several private practicing attorneys, and they include Mr. Kirby, Mr. Peterson, and our distinguished colleagues, Mr. Thompson and Mr. Nething, and each of the meetings of the Committee on Judiciary are stocked with a large number of people who are interested in the welfare of the judicial system in North Dakota. They have agreed that the flexibility of the jury system is vital. In fact, out of nine subjects they considered, they considered the number — reducing the number of jurors called to hear civil or criminal cases to be the second most important item of the nine they had to consider. And at their December meeting, it was moved by Judge Heen, seconded by Senator Barth, and unanimously carried, that the Committee inform the proper officials of the Constitutional Convention that the Committee favors retention of the jury system, but desires that the Convention provide for legislative control over the size of trial juries and the number of jurors necessary for decisions.

Now, I think these people adequately are informed on the subject and they have spoken to the matter before us, and this is somewhat, I'm sure, why the Committee on Preamble and Bill of Rights acted as they did. But we heard yesterday from Delegate Omdahl that the Legislature may be just as smart as this body here, since they have two houses, as it appears they will — they may be twice as smart (laughter), and I would like to earnestly see that this Convention leave some discretion in this matter to the Legislature. The Legislature doesn't have to change any of our laws presently on the books; they might not well do so; but, President Nixon and Chief Justice Burger have all urged that we streamline our criminal justice system. For us to sit here in this Convention and say, "No, we will not be budged, regardless of the problem," is to really stick our head in the sand. And I realize some people might want a forty-man jury with a unanimous verdict, but I really think that we can leave this matter up to the Legislature and they will adequately protect the public interest, and that's what this problem of criminal justice is all about — protecting the public interest — and I would urge adoption of this amendment.

This amendment, mind you, is not even what I would like to see, but it is the best compromise that we could arrive at between the number of people that are interested in allowing some flexibility in the Legislature.

Thank you.

PRESIDENT WENSTROM: Any further discussion? Delegate Pearce.

DELEGATE PEARCE: Mr. President. My birthday falls under the sign of Libra, and according to the Morning Pioneer's horoscope, this is one of those days when you seem to aggravate everyone and everyone tends to aggravate you, in turn.
(Laughter)

There's one more little piece of symbolism that I would like to call your attention to. When Proposal 1-119 came up the first time, which was going to, in my opinion, tamper with the jury system, you may recall the voting machine broke down. I am as convinced as I ever was that we should not tamper with the jury system. The final proposed amendment which has been proposed by my Honorable Colleague, Delegate Hill — you may notice in his speech he talks about "criminal justice." We have more at stake here than criminal matters. This little amendment doesn't even mention civil cases, as our present constitutional provision does. They are apparently out in limbo someplace. This treats a person accused of a crime wherein the maximum possible period of confinement exceeds one year as having a right to a jury of twelve, but less than a year, 364 days, he can have less than the traditional twelve. I don't suppose — I hope there is no one in this chamber who has been incarcerated in a jail for a year. If you would really try to put yourself in that place. Along comes the sheriff or the marshal, takes you by the arm and deposits you in one of our more luxurious quarters that are maintained by the counties in this State, and puts you in a cell and says, "Brother, this is your home for one year." I think none of us have the appreciation of what it means to be in prison, because, unfortunately, we don't have that experience until it happens. That's not an insignificant intrusion upon a man's own life. The only arguments that I have heard in favor of less than twelve jurors is to speed things up for people in jail quicker, apparently, or to save some money. Now, in many, many cases, in civil cases and some criminal cases — not so many, but some — are tried to the court on the agreement of the parties and

the counsel concerned. Many civil cases which would ordinarily be jury cases are tried to a court. Under our present rules, you are not entitled to a jury unless you ask for one in the complaint. I'm not going to take your time and aggravate you any more than necessary, since I have already spoken several times on this matter.

We have just heard Congressman Andrews refer again, and I know we all do realize, that we're working on basic things. To me, there is nothing more basic than this right of trial for settlement of actions, both criminal and civil, by a reasonable number of a man's peers, and twelve in this — when you consider the matters that are involved and the issues, I don't think twelve is so many people. If there is such great virtue in fewer numbers to save time and expense, we should have met here with about 25 of us, instead of 98. I think we've benefited from having 98, and I think we ought to continue to benefit by having 12.

PRESIDENT WENSTROM: The Chair will recognize Delegate Thompson.

DELEGATE THOMPSON: First, I'd like to say that, as Delegate Hill indicated, this is quite a compromise. I don't think it is possible for us to satisfy all of the attorneys in the chamber, because when you're a plaintiff's attorney or a defense attorney, you want different things.

Now, we have, and I think rightly so, retained a jury of twelve in felony cases, and I agree with Mr. Pearce that that should be done. We are going to trust, or I hope trust, the Legislature, and I think that they might be twice as smart if they have two houses, that they might provide for an adequate jury in all cases other than felonies.

Now, this doesn't mean that they're going to say two or three. As of now, the courts have indicated that six would be acceptable as the amount of jurors, and I doubt that they will ever consider less than that. But they will — or they could possibly consider less than that, but there would be a lot of — a lot of case law would have to develop on it before they could do that.

I'm sure that you remember that there was a question raised the other day about someone in a misdemeanor case not having a jury when we were talking about this putting "or" in the old language. Well, it is true that he wouldn't have a jury when he was being tried in a court not of record, but he does have the right of appeal, and at that time he receives what we call the trial de novo, and he would have the right to a jury trial, and at that point very probably a jury of twelve, unless the Legislature sees fit to reduce the number.

You will notice, also, that we don't have "less than unanimous" in here, and I think that that is a necessity, and that was where I agreed to compromise as to the rest of it. So I could see that part of it as it now stands. I urge your consideration of this amendment. I think it is all right, and I think it's workable.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, and particularly Delegate Pearce:

I might point out that today is another big day for North Dakota and for this particular issue, because arriving in the City of Mandan today will be 200 high school debaters from twenty high schools in the State of North Dakota who, significantly enough, will be debating the proposition, "Resolved: That the jury system ought to be significantly changed," and this group of 200 alert, and now almost expertise, certainly knowledgeable youngsters from North Dakota, have been talking about six-man juries since last September. They have been talking about auto litigation cases jamming and slamming the courts to a fullness where you wait three years and where justice delayed is justice denied. They talk about ways to implement through court actions in the area of civil suits, particularly in accident cases, such as no fault insurance. They've been talking about juvenile trials and the lack of them in a lot of places in this country. They've been talking about cross-sectional juries. As I sat and listened to these students, I realized what a fine bunch of high school students we have in this State, who are aware of the very kind of issues that we are, significantly enough, debating on the very day that they arrive in Mandan and are debating on this championship topic, and I felt that might be significant and perhaps argumentative on the amendment.

PRESIDENT WENSTROM: Further discussion?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President and Fellow Delegates:

I would like to support this amendment. I am also a member of the Preamble, Bill of Rights and Suffrage Committee and also the subcommittee with Delegate Thompson and Delegate Bender. We went through a lot of testimony in our subcommittee and our committee on this, and this comes about as close as we feel we can get to what we feel would be a good section. I think I heard the Legislature referred to, and I'm not sure that that was out in limbo or not, but I think the Legislature can take care of it, and I believe that's where limbo is, according to one of the delegate's descriptions, and I think we can trust them to not reduce the sizes of the juries in cases where it shouldn't be.

PRESIDENT WENSTROM: Any further discussion? Delegate Hubrig.

DELEGATE HUBRIG: I said this the other day, Mr. Chairman:

I don't see it in the Proposal here, where the jury could be less than unanimous. I feel, regardless of the size, a jury shall be unanimous, and it is not in this Proposal, and I, therefore, would ask for the defeat of the Proposal, unless they put the word "unanimous" in there.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention — Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. Chairman and Delegates:

I've been in conversation with my judge and the county commissioners back home, and I speak primarily for one of the smaller counties. Now I know that there is a lot of worry among the delegates here about placing money ahead of justice for our citizens, but I do believe that this amendment is probably a reasonable compromise in this respect. A twelve-man jury in a lot of these smaller cases can be very, very expensive. It is necessary preliminarily to call about 50 jurors and the expense today runs from \$1,000 to \$1,250, and our county in particular in the last — this past year and in the coming year, is confronted with an enormous amount of cases before it, and if it was possible at all that we can reduce the jury numbers in these lesser cases, than I most certainly have got to support this, because I am sure that the citizen is not going to be denied his right to get a full — a case that is fully earned and fully protected by the jury system. And so I am going to support the amendment in this regard.

PRESIDENT WENSTROM: The Chair will recognize Delegate Sinner.

DELEGATE SINNER: No comment.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President: The way this is written, I have to rise and suggest that the words have to be changed.

Now, I'll just give you my thinking on it, Delegate Hill, because apparently you have asked this.

Here you have a crime wherein the penalty exceeds or the confinement exceeds one year. I would submit that we should say "for which the sentencing prescribes". In other words, the crime doesn't prescribe the penalty, does it? They'd have to be convicted and sentenced, first, and I hope, if this passes, it will be referred to Style and Drafting to clear up that problem.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: I might answer that, Mr. President.

The language says "A person accused of a crime wherein the maximum possible period of confinement exceeds one year." This is proper, as far as I can see. It is where the maximum possible sentence exceeds one year — not the sentence actually given, but the possible sentence, and if the statute says the crime of burglary has a maximum penalty of five years incarceration, then he's entitled to a jury of twelve. But I don't believe there's any problem there that I'm aware of, Delegate Unruh.

I would like to comment regarding Delegate Hubrig's point, and our language insofar as unanimous verdicts is the same as the proposal currently adopted — the same as the proposal — or Section 76 in our current Constitution. There is no language in there regarding unanimous verdict. The Supreme Court of North Dakota has determined, when it decided on that issue, that it means unanimous verdict.

PRESIDENT WENSTROM: Delegate Thompson — will a delegate yield time to Delegate Thompson? Delegate Nothing yields.

DELEGATE THOMPSON: I just wanted to add to what Vance just said in response to Mr. Unruh's question. The right takes place before the sentencing, so I think what we have here is probably all right.

And then I wanted to also say that the unanimous verdict that Mr. Hubrig mentioned is, I think, provided for in here.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Hill.

Is there any further discussion? Hearing none, those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." The "ayes" have it and the amendment is adopted.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: May we have a division vote on that question?

PRESIDENT WENSTROM: A division has been requested. A division will be granted.

Again, those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your choice.

Has every delegate voted? Does any delegate wish to change his vote?

The vote is closed.

The tally indicates 74 "ayes," 20 "nays," four delegates absent and not voting. So the amendment has been adopted.

Any further discussion? Any further amendments to Committee Proposal No. 1-119, which is still before the Convention?

Delegate Hill.

DELEGATE HILL: At this point, if there's no further amendments, I move that we suspend the Rules and deem the Proposal properly re-engrossed and placed on the calendar for first passage.

PRESIDENT WENSTROM: Delegate Hill moves that the Rules be suspended, that Committee Proposal No. 1-119 be deemed properly re-engrossed and be placed on the calendar for passage.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Litten.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Committee Proposal No 1-119 is again before the Convention for passage as amended.

No further discussion? Hearing none, those in favor will vote "aye." Those opposed to its passage will vote "no."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 78 "ayes," 17 "nays," three delegates absent and not voting. Committee Proposal No. 1-119 has passed.

DELEGATE LITTEN: Mr. President.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Mr. President, may we be on the twelfth order for just a moment?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order of business.

DELEGATE LITTEN: I would like to move that the remarks made this morning by Congressman Andrews be printed in the Journal.

PRESIDENT WENSTROM: It's been moved that the remarks as made by Congressman Andrews be printed in the Journal.

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: The motion has been seconded by Delegate Nething. Any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the remarks of the Congressman will be printed in the Journal.

Delegate Unruh.

DELEGATE UNRUH: Mr. President, I now move that Re-engrossed Proposal No. 1-119 be referred to the Committee on Style and Drafting briefly for a slight polishing job.

PRESIDENT WENSTROM: Delegate Unruh, I believe we do that automatically. The Chair will recognize Delegate Rude.

DELEGATE RUDE: Mr. President, I look over to the side of our Assembly and we have a distinguished guest in our presence — West District Congressman, The Honorable Arthur Link. May he be escorted to the rostrum, President Wenstrom?

PRESIDENT WENSTROM: Thank you, Delegate Rude.

The Chair will name a committee made up of Delegate Christensen and Delegate Hildebrand to escort The Honorable Arthur Link to the rostrum.

MR. CECIL CRANDELL (Sergeant-at-Arms): Mr. President.

PRESIDENT WENSTROM: Sergeant-at-Arms.

MR. CRANDELL: Your Sergeant-at-Arms requests the courtesy of the floor to The Honorable Arthur Link, West District Congressman from North Dakota.

PRESIDENT WENSTROM: Will you present the West District Congressman on the floor? (Standing applause)

Fellow Delegates, it becomes a great privilege for me this morning to present a neighbor to this Convention — The Honorable Arthur Link, from the West — or from what is commonly termed the Second District. Art, I'm sure, feels right at home here this morning. He has served in this Chamber. I believe he started in 1947 and he served until 1967. He served as a Representative, he served as both majority and minority floor leaders, and he served as Speaker of the House.

So, with those brief remarks, again, Fellow Delegates, I'd like to present my neighbor, Art Link. (Applause)

CONGRESSMAN ARTHUR LINK: Thank you, President Wenstrom.

It is a real temptation to say, "Fellow Members" because I feel so much a part of so many of you, and to my home district delegates, Cecilia Rude and Ralph Christensen, and to all the rest of you good friends and neighbors of North Dakota.

It is truly good to be back, and Washington weather has nothing on North Dakota today. It's simply beautiful. I, of course, should like very much to visit with you about many things, and there are many things that we would like to share together. I am not unmindful of the time limitations that you people have, and to express my gratitude for you giving those of us who come from the Congress the opportunity to say hello, I shall use but a few minutes of your valuable time.

Before I left the hotel this morning, I attempted to put into capsule form what I think is the responsibility from here on in. Each of you individually, and all of you as a group, have devoted time and energy beyond the normal call of duty, and at this point I would share with you that perhaps the general public will little know or realize how much extra time all of you have really put into this Convention. This truly is commendable. Soon the fruits of your labors will be judged by the people of the State. I hope that we, the people, will now rise to our responsibility to fully study and acquaint ourselves with the work of this Convention, to the end that we make fair and proper judgment. If this is done, then we can all be reassured that the democratic process of representative government is still the guiding light of the world and that government of the people, for the people and by the people shall not perish from the earth.

Mr. President and Delegates to this historic Convention, I deeply appreciate your hospitality and the opportunity that you have accorded me to come and greet you

and share these few thoughts. All of us in the State of North Dakota share an equal responsibility, and I trust and hope that we, the people of the State, measure up to that responsibility. I believe we will.

Thank you very much for your kind attention.

(Standing applause)

PRESIDENT WENSTROM: May I, on behalf of the Convention, Congressman Link, express to you our thanks and appreciation for being with us this morning. We know that you, too, have a busy schedule.

Delegate Rude.

DELEGATE RUDE: Mr. President, may I move that the remarks of Congressman Link be placed in the Journal?

PRESIDENT WENSTROM: It's been moved by Delegate Rude that the remarks of The Honorable Congressman Link be placed in the Journal. The motion has been seconded by Delegate O'Toole.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The remarks will be printed in the Journal.

We will be on the eleventh order of business. For consideration, Redraft Proposal No. 5-14.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-14 be introduced, such proposal being a redraft of Committee Proposal No. 1-13.

Further, that this redraft proposal not be referred to a committee, but be placed on the eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Style and Drafting; that the Rules be suspended and that Redraft Proposal No. 5-14 be placed on the eleventh order of business for consideration. As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it. Committee Proposal No. 5-14 is before the Convention.

CHIEF CLERK GILBREATH: Committee Proposal No. 5-14, introduced by Committee on Style and Drafting, which proposal is a redraft of Committee Proposal No. 1-13:

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the State of North Dakota which pertains to the compact with the United States be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

**"ARTICLE XIII
"COMPACT WITH UNITED STATES**

"Section 1. Religious sentiment.

"Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship."

PRESIDENT WENSTROM: You have heard the reading of Section 1 of Article XIII, Redraft No. 5-14. Is there any discussion? Delegate Unruh.

DELEGATE UNRUH: Mr. President, I move that, on page 1, line 6, after the word "ARTICLE", delete the Roman numeral "XIII" and insert in lieu thereof the Roman numeral "XII."

PRESIDENT WENSTROM: Delegate Unruh moves that one line 6, after the word "ARTICLE", on page 1, that we strike the Roman numeral "XIII" and insert in lieu thereof the Roman numeral "XII".

Do we have a second?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fallgatter. Delegate Unruh.

DELEGATE UNRUH: I have a further amendment.

On page 1, line 13, delete the words "Enabling Act" and insert in lieu thereof "enabling act" in lower case, eliminating the capital letters.

PRESIDENT WENSTROM: That is in Section 2?

DELEGATE UNRUH: Yes, it is.

PRESIDENT WENSTROM: The further amendment then would be, on line 13, delete the words "Enabling Act" and insert in lieu thereof the words "enabling act" but not capitalized. It's deleting the capitalization. Are the delegates aware of the proposed amendments?

The question is on the adoption of the amendment as offered by Delegate Unruh.

As many as are in favor of adopting the amendments will say "aye;" those opposed "no." The "ayes" have it and the amendments are adopted.

Any further comments or amendments offered on Section 1?

CHIEF CLERK GILBREATH: "Section 2. Compact.

"All other provisions of the Enabling Act of Congress approved on February 22, 1889, 25 United States Statutes at Large 676, Chapter 180, and Section 203 of Article XVI of the North Dakota constitution of 1889 as amended are hereby continued in full force and effect as though fully herein recited and shall continue to be irrevocable without the consent of the United States and the people of this state."

PRESIDENT WENSTROM: You have heard the reading of Section 2 of Article XII. Are there any questions? Any comments? Hearing none, we will move to Section 3.

CHIEF CLERK GILBREATH: "Section 3. Military Reservations.

"Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the President of the United States; provided, civil and criminal legal process of this state shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States and over crimes not committed within the limits of such reservations. The legislative assembly may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by act of Congress."

PRESIDENT WENSTROM: You have heard the reading of Section 3. Are there any questions? Any comments? Hearing none — Mr. Clerk, do you have any further sections? I don't have a second page.

CHIEF CLERK GILBREATH: There's a Section 4.

PRESIDENT WENSTROM: We will proceed then with Section 4.

CHIEF CLERK GILBREATH: "Section 4. Land Grants.

"Section 205 of Article XVI of the North Dakota Constitution of 1889, relating to land grants, is hereby continued in full force and effect as though fully herein recited."

PRESIDENT WENSTROM: You have heard the reading of Section 4. Are there any questions?

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President. No questions on Section 4. However, just a brief comment.

This proposal was in our Committee. We agreed with the minor style and drafting amendments that the Style and Drafting Committee made. We have no amendments to offer ourselves, because this is technical language which was worked out in cooperation with the Attorney General, and we felt we couldn't monkey with it any further. We do not feel that the Style and Drafting have made any substantive changes in the proposal from the time we passed it on the first passage.

PRESIDENT WENSTROM: Any further discussion? Any questions on Section 4 of Article XII? Hearing none — Delegate Unruh.

DELEGATE UNRUH: Mr. President, I might say, by way of comment, you will notice the Style and Drafting didn't monkey with another word there, and we felt we should continue the ancient language, but I want you to know we looked at it and it bothered us.

At this point, Mr. President, I move that Redraft 5-14 be considered properly re-engrossed and placed on the calendar for passage.

PRESIDENT WENSTROM: Delegate Unruh moves that Redraft No. 5-14 be considered properly re-engrossed, that it be placed on the eleventh order for passage as amended, and this motion has been seconded by Delegate Jestrab.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Article XII, consisting of Sections 1, 2, 3 and 4 again before the Convention for passage.

Any further discussion? Delegate Burke.

DELEGATE BURKE: Mr. President and Fellow Delegates:

I would like to direct a question to Delegate Omdahl.

PRESIDENT WENSTROM: To Delegate Omdahl? Does Delegate Omdahl yield?

DELEGATE OMDAHL: Yes.

PRESIDENT WENSTROM: Delegate Omdahl yields.

DELEGATE BURKE: Mr. President. I notice in Section 4 we're creating an article by reference, and I'm just wondering as to the propriety and efficacy of creating a constitution by reference to some other document.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: In my opinion, this is the most horrid article we have in the whole Constitution. We do this, also, in Section 2. We do things in this article which we prohibit in another section the Legislature from doing in regard to legislation, and so here we go about our way in the Constitution doing it, and — well, what can you do about it? You know we already had our hassle about it. I'm going to vote for it because it's only on style and drafting, and go home and nobody's going to ask us about it anyway, because they won't know what it means either.

(Laughter)

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The same bothered me, but I am simply going to correct it, because when we come to the repealer of the entire Constitution, we'll repeal everything, except Section 205 of Article XVI, and the other material, and so it would continue in full force and effect.

PRESIDENT WENSTROM: Delegate Longmire, any comment?

DELEGATE LONGMIRE: Mr. President: These comments should have been made about a week or two ago, and for that reason now, since we're on style and drafting, I have nothing further to say.

PRESIDENT WENSTROM: The question then before the Convention is on the passage of Article XII of Committee Proposal No. 5-14, and on the Section 1, 2, 3 and 4.

Those in favor of passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call discloses 93 "ayes," 1 "nay," four delegates absent and not voting. Redraft No. 5-14 has passed.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: By way of explaining my vote on this measure, I'd just like, so that you won't get worried and think that we were doing something here that we shouldn't have done or that we should have done another way, Article XVI is the compact with the United States of America, and we felt that we couldn't repeal the compact with the United States, even if we wanted to, and that's why, in this particular section, we felt it had to remain intact. You could call it anything you want to, but it is the compact with the United States, and our Committee felt "Let's not try to secede from the Union."

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: However, Mr. President, I notice Committee Proposal

No. 1-13 did repeal the compact. Sections 203, 204 and 205 were repealed under Section 1 of Committee Proposal 1-13.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: We repealed them as far as numbering is concerned, but as to material, we did not repeal them, because we recognized the provisions of them and they're right back in the proposal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposal No. 5-15 be introduced, such proposal being a redraft of Committee Proposals Numbered 1-10, 1-14, 1-16, 1-18, 1-19, 1-20, 1-30, 1-32, 1-33, 1-34, 1-120, and Delegate Proposal No. 2-26.

Further, that this Redraft Proposal not be referred to a committee, but be placed on the eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the Committee Report as offered by the Committee on Style and Drafting. As many as are in favor of adopting the motion — the Committee Report will say "aye;" those opposed "no." The "ayes" have it and Committee Report 5-15 is before the Convention for consideration.

CHIEF CLERK GILBREATH: Style and Drafting Redraft Proposal No. 5-15, introduced by Committee on Style and Drafting, which Proposal is a redraft of Committee Proposals Numbered 1-10, 1-14, 1-16, 1-18, 1-19, 1-20, 1-30, 1-32, 1-33, 1-34, 1-120, and Delegate Proposal No. 2-26.

"Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to general provisions, be created.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XI "GENERAL PROVISIONS

"Section 1. NAME.

"The name of this state is 'North Dakota.'"

PRESIDENT WENSTROM: You have heard the reading of Section 1.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I have a small amendment at the desk.

PRESIDENT WENSTROM: Delegate Dobson offered an amendment to Section 1.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal No. 5-15:

On page 1, delete lines 8 and 9, and renumber the sections and lines accordingly.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE LONGMIRE: I'll second it, Mr. President, for the purpose of making a request.

PRESIDENT WENSTROM: Delegate Longmire seconds the proposed amendment. Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I do not have a copy of this Proposal. If someone would furnish me that, I'd appreciate it.

PRESIDENT WENSTROM: Delegate Longmire, are you making reference to the entire — to the entire —

DELEGATE LONGMIRE: Yes. I have it now, Mr. President.

PRESIDENT WENSTROM: Thank you.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: This was to delete the section dealing with name — "The name of this state is 'North Dakota.'"

Before anyone jumps up and contends this is a substantive amendment, I want to say this is a stylistic amendment. It will eliminate the unnecessary stylistic language. You will recall that when Committee Proposal 1-14 came across the floor, I raised the question as to the necessity of including such a declaration in a constitution. The reply I received at that time indicated to me that it is not necessary. So, in the Style and Drafting Committee, I suggested that this be deleted, but the Committee members, being somewhat circumspect and discreet, decided it would be better to try this on the floor. I think one of the staff members checked the constitutions of other states to see if they included a similar declaration. He spot-checked about twelve or thirteen states, including states with both new and old constitutions, and none had such a provision as this. Those include the new Alaska Constitution and the new Illinois Constitution.

Now, perhaps in 1889 that Convention felt some compulsion to put such a declaration in the Constitution, just so that everybody was sure that the north half of the territory was going to be named "North Dakota." But, sitting way back here in Article XI, it is kind of a strange-looking section. It looks sort of like an afterthought. Most states handle this matter simply by putting the name of the state in the Preamble, as we have done, and if there's any doubt, they go to Section 2, where we have the State of North Dakota boundaries described. By the time you get back to Article XI, reading through the Constitution, I don't think there's going to be any doubt in anybody's mind that the name of the State is indeed "North Dakota." Therefore, this language is not only repetitious and unnecessary; it is extraneous, duplicatory and surplusage. In other words, we don't need it.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I rise in opposition to this amendment. We do feel that this, first of all, is a substantive change. We discussed this in detail when the Proposal came on the floor from our Committee. We felt that there should be no doubt as to what this — the name of this State should be, and not leave it up to some promotion agency, as was proposed sometime ago, to change our state to the name of "Dakota," and we feel that the words "North Dakota" are significant; it's historical, it should remain in here, and just because some of the other states made an oversight and did not include it, that we want it to be in our Constitution, that we are in the Great State of North Dakota, and that this is North Dakota. For that reason, our Committee left it in, to begin with, but we think it is a substantive change to take it out at this time, and we oppose it.

PRESIDENT WENSTROM: The Chair will rule that this is a substantive change.

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I believe what I'm going to suggest, however, is a Style and Drafting change, because I believe they have the authority to put things in the Constitution in the proper location. It would seem to me that, if we're going to name the State of North Dakota, you shouldn't wait until eleven or twelve articles to do it. The other day we handled Redraft Proposal 5-9. It would occur to me that this provision might more readily be in Section 1 of Article I.

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President: Well, because of the way the weather is, if we're going to monkey with the name, I would suggest "Banana Belt."

(Laughter)

PRESIDENT WENSTROM: Any further discussion on Section 1? Hearing none, we'll move to Section 2.

CHIEF CLERK GILBREATH: "Section 2. BOUNDARY.

"The state of North Dakota shall consist of all the territory included within the following boundary: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence southward up the main channel of the Red River of the North and the Bois de Sioux River to a point where the Bois de Sioux River intersects the seventh standard parallel north (approximately forty-five degrees fifty-six minutes north latitude); thence westward along said parallel to a point where it intersects twenty-seven degree of longitude west of Washington, D. C. (approximately one hundred four degrees three minutes west longitude); thence northward on said longitude to a

point where it intersects the forty-ninth degree of north latitude; thence eastward along said latitude to the place of beginning. The boundary on the ground is more exactly defined by astronomical measurements at points on the boundary and surveys between boundary markers."

"Section 3. GREAT SEAL."

PRESIDENT WENSTROM: The question — are there any questions pertaining to Section 2?

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I'd like to ask a member of the Style and Drafting Committee if they had any particular reason in line 12, I believe it would be — The word "Commencing", I notice, is capitalized and I was wondering, as long as they lowered some of these others to a lower case, I'm wondering why they did not have this put in a lower case.

PRESIDENT WENSTROM: Will a member of Style and Drafting answer Delegate Saugstad's question?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I think we missed that. I really prefer to leave it with a capital "C" myself. You're following a full colon. Unless anybody objects, I think we'll leave it as it is.

PRESIDENT WENSTROM: Further comment? Hearing none, we will proceed to read Section 3.

CHIEF CLERK GILBREATH: "Section 3. GREAT SEAL."

"The following described seal is declared to be the Great Seal of the State of North Dakota: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left, a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half-circle of forty-two stars, surrounded by the motto 'Liberty and Union Now and Forever, One and Inseparable'; the words 'Great Seal' at the top; the words 'State of North Dakota' at the bottom; 'October 1st' on the left and '1889' on the right. The seal shall be two and one-half inches in diameter."

PRESIDENT WENSTROM: You have heard the reading of Section 3. Any question? Any discussion? Hearing none, we'll proceed to Section 4.

CHIEF CLERK GILBREATH: "Section 4. STATE CAPITAL."

"The seat of government of the State of North Dakota shall be at the city of Bismarck in the county of Burleigh."

PRESIDENT WENSTROM: The question — proceed with Section 5.

CHIEF CLERK GILBREATH: "Section 5. ENVIRONMENT."

"The public policy of the state and the duty of each person is to conserve, develop and utilize natural resources and public lands in order to provide a pleasant and healthful environment for the benefit of present and future generations. The legislative assembly shall provide by law for the implementation and enforcement of this policy.

"Each person has the right to a healthful environment and may enforce this right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as the legislative assembly may provide by law."

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Because I search for all provisions for which I can vote "yes," and having carefully examined the budget and found that it will not break us, I request that Section 5 and Section 6 each be voted upon separately.

PRESIDENT WENSTROM: Your request will be granted.

Any further comment on Section 5 — or any comment on Section 5? Do you have any questions?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Well, Section 5 — most of this came from the Committee upon which I served, and Section 5 and 6 are sure strangers and they had no consideration in that Committee. I wasn't prepared for this coming. Does the chairman have anything to say?

DELEGATE LONGMIRE: Mr. President.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: As soon as we have adopted this measure, I'm going to move that Proposal No. 5-6 and 5-11 be indefinitely postponed, because they're incorporated in Article XV — pardon me — Article XII.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President. I don't believe that our Committee has any —

PRESIDENT WENSTROM: Delegate Meidinger, I don't believe your mike is working.

DELEGATE MEIDINGER: How about this?

Mr. President —

PRESIDENT WENSTROM: That's better.

DELEGATE MEIDINGER: I don't believe that our Committee has any objection to what Style and Drafting has done to Section 5.

PRESIDENT WENSTROM: Any further discussion? Any further comment? We'll move on to Section 6.

CHIEF CLERK GILBREATH: **Section 6. OMBUDSMAN.**

"The legislative assembly shall provide by law for an independent governmental agency to receive complaints against state agencies, officials and officers from aggrieved persons, to investigate and, in cases of justified complaints, to offer recommendations for remedy."

PRESIDENT WENSTROM: You have heard the reading of Section 6. Are there any questions? Any comments? Hearing none, the Clerk will read Section 7.

CHIEF CLERK GILBREATH: **Section 7. CORPORATIONS.**

"The legislative assembly shall provide by general laws for the organization of all corporations. No charter of incorporation shall be granted, modified or amended by special law, except in the case of municipal corporations or other corporations under the control of the state."

PRESIDENT WENSTROM: You have heard the reading of Section 7. Any comments? Any questions? Hearing none, would you read Section 8?

CHIEF CLERK GILBREATH: **Section 8. WATERS.**

"All surface and subsurface water shall forever remain the property of the people and be subject to appropriation for beneficial uses as provided by law."

PRESIDENT WENSTROM: You have heard the reading of Section 8. Any questions or discussion?

Hearing none, we will proceed to Section 9.

CHIEF CLERK GILBREATH: **Section 9. OATH.**

"All elected officials, before they assume the duties of their respective offices, shall take and subscribe the following oath or affirmation: 'I do solemnly (swear) (affirm) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of office of _____ according to the best of my ability, (so help me God) (under pains and penalties of perjury).' No other oath or declaration shall be required as a qualification for any office or public trust."

PRESIDENT WENSTROM: You have heard the reading of Section 9. Any question?

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Just a comment. The Legislative Functions Committee reviewed Sections 9, 10 and 11, and these were proposals that we have in our Committee, and we agree with the style changes in all three of those sections.

DELEGATE DOBSON: Mr. President .

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: It just occurred to me that a more appropriate title for that section would be "OATH OR AFFIRMATION," since the section addresses itself to both; so I would move to insert the words "OR AFFIRMATION" after the word "OATH."

PRESIDENT WENSTROM: Delegate Dobson moves to amend Section 9; after "OATH" to insert the words "OR AFFIRMATION".

Do we have a second? Seconded by Delegate Hendrickson.

Any discussion? Hearing none, as many as are in favor of adopting the amendment will say "aye;" those opposed "no."

The "ayes" have it and the amendment is adopted.

CHIEF CLERK GILBREATH: That was "OR AFFIRMATION" — right?

PRESIDENT WENSTROM: "OR AFFIRMATION". Any further discussion? Hearing none, we will proceed. The Clerk will read Section 10.

CHIEF CLERK GILBREATH: **"Section 10. CODE OF ETHICS.**

"A code of ethics for all nonjudicial state officials, officers, legislators and state employees, prohibiting conflict between public duty and private interests, shall be prescribed by law."

PRESIDENT WENSTROM: You have heard the reading of Section 10. Are there any questions? Any discussion?

Hearing none, the Clerk will read Section 11.

CHIEF CLERK GILBREATH: **"Section 11. IMPEACHMENT.**

"All judicial officials elected to represent more than one political subdivision and all elected state officials shall be subject to impeachment for crimes, corrupt conduct, malfeasance, or for continuing willful failure to perform the duties of office. The house of representatives shall have the sole power of impeachment by vote of a majority of the elected representatives. The senate shall have the sole power of trial for impeachment cases. A two-thirds vote of the elected senators shall be required for conviction.

"No official shall exercise the duties of his office after he has been impeached and before his acquittal. No person shall be tried on impeachment before he has been served with a copy of the charge, at least twenty days previous to the day set for trial. No person shall be liable to impeachment twice for the same offense."

PRESIDENT WENSTROM: You have heard the reading of the Section 11. Are there questions? Any discussion? Hearing none, we will proceed and the Clerk will read Section 12.

CHIEF CLERK GILBREATH: **"Section 12. REMOVAL FROM OFFICE.**

"All elected officials and appointed officers of the state and its political subdivisions, other than judicial officials, shall be subject to removal from office, as provided by law, for crimes, corrupt conduct, malfeasance or because of chronic and continuing inability to perform the duties of office.

"The supreme court shall have original, exclusive and final jurisdiction of proceedings for removal of elected state officials and chief executive officers as provided by law."

PRESIDENT WENSTROM: You have heard the reading of Section 12. Any questions? Any discussion?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Listening to the reading of the impeachment section and now this section, I am struck by the fact that on line 28 of page 3, one of the grounds for impeachment is "continuing willful failure to perform the duties of office," but in the removal section, we say "chronic and continuing inability to perform," but we say nothing about "willful failure to perform," and I'm wondering if the Committee on Style and Drafting can give any consideration to using the same language in both sections. I realize that "continued willful failure" is an entirely different situation than "inability to perform," but the question in my mind is whether the Convention would also like to insert the same language in the impeachment section about refusal. I take it I am not in a position to offer any amendment for substance.

PRESIDENT WENSTROM: Delegate Hill.

DELEGATE HILL: Mr. President. If my recollection serves me correctly, Mr. President, I believe the difference is that there is supposed to be a stigma attached to impeachment whereby you didn't want to impeach a person who was merely suffering from a stroke; but there was to be a method of removal from office whereby the fellow was simply unable to perform the duties of his office for an extended period of time, and I believe that's why the delegates have the difference in these two sections.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Delegate Peters has consented to yield to me. I realize the situation. All I'm pointing out is that in this removal section, we have not provided any method of removing somebody, other than impeachment through willfully refusing to do anything.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think Delegate Pearce is right. I think, by leaving it out, we may have denied the Legislature the right to use this remedy for that cause, also. I don't think that was our intention. I think an amendment might — unless somebody contends it is a substantive change, but I don't think it would be — an amendment might be able to cure that.

PRESIDENT WENSTROM: Well, does the Delegate feel that the substantive change is of such nature that you would like to offer to suspend the Rules and to insert this in the Proposal?

DELEGATE PEARCE: Mr. President, I'll take the stigma of prolonging things and move that we reconsider action by which —

PRESIDENT WENSTROM: Delegate Pearce, I believe all you need to do is to suspend the Rules. You see, we're operating on a rule whereby we are only taking care of amendments from Style and Drafting. However, if you suspend that rule, then I believe that your motion would be in order.

DELEGATE PEARCE: Very well, Mr. President. Thank you. I do move that we suspend the Rules in order that an amendment may be offered.

PRESIDENT WENSTROM: Delegate Pearce moves that we suspend the Rules in order that an amendment may be offered to Section 12. Do we have a second?

Seconded by Delegate Stanton.

Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" those opposed "no."

The "ayes" have it. The Rules are suspended. Delegate Pearce.

DELEGATE PEARCE: Mr. President: I move that in line 9 of Section 12, after the word "inability" we insert the words "or willful failure".

PRESIDENT WENSTROM: In line 9 —

DELEGATE PEARCE: In line 9 of Section 12, after the word "inability" insert the words "or willful failure". I don't think there's any renumbering of the lines necessary.

PRESIDENT WENSTROM: Now do we have a second?

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kelsch. Delegate Saugstad.

DELEGATE SAUGSTAD: Would this be an appropriate time to ask for a recess for an hour? This amendment that — I see — I think there's going to be a little further additional amendment necessary to correct the language there. I think there's going to be a light amendment — additional amendment necessary to strike "or" in line 8. I would suggest — I would move — or ask that since it is nearly twelve o'clock, that we do recess so that this amendment can be properly drawn, and then come back and finish this up after we come back, unless the Chair would prefer to go ahead.

PRESIDENT WENSTROM: Delegate Saugstad, I would like to finish this, be-

cause this would — with the completion of this, this material that is now under consideration, then we could recess for a portion of this afternoon and give some of the committees that have work to do an opportunity to work.

I think you will note that on our calendar, that this is the final item that we would have, and I do know that there are committees here that have work to do. If we could finish this, I would declare the Convention in recess for five minutes; but if you think that there's — if we need that much time. But I would really like to complete this, at the same time not crowd it, but let's, if we possibly can, stay here and complete this part.

DELEGATE SAUGSTAD: Well, I certainly have no objection. I just thought that it might take a little time to get this amendment properly drawn.

PRESIDENT WENSTROM: While they are preparing this, I would like to comment that this does complete our calendar as of now — as of this morning — and you will recall that during the discussions this morning, the Committee on Style and Drafting is going to have to hold a session, and I'm sure that Delegate Byrne's Committee on Transition and Coordination is going to want to meet, and Delegate Dawson's committee will want to meet; and so I know there are committees that have work to do.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'd like to amend Delegate Pearce's motion, and then I think we can finish this up.

On line 8, after the word "malfeasance" and after the comma, insert "willful failure". So it will read "corrupt conduct, malfeasance, willful failure, or because of chronic" and so forth. Put the amendment up to line 8, instead of line 9.

PRESIDENT WENSTROM: Delegate Unruh, would you — would you read starting with line 5 — read that now the way you think it should be? And then, if Delegate Pearce and Delegate Saugstad would follow along with that —

DELEGATE UNRUH: "All elected officials and appointed officers of the state and its political subdivisions, other than judicial officials, shall be subject to removal from office, as provided by law, for crimes, corrupt conduct, malfeasance, willful failure, or because of chronic and continuing inability to perform the duties of office."

PRESIDENT WENSTROM: In other words, you are simply inserting the same words in line 8, after "malfeasance"?

DELEGATE UNRUH: Yes.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: I don't think that amendment makes any sense at all, and I don't think Delegate Saugstad's objection to the word "or" in line 8 is valid, because you're talking about performing the duties of office, and that's one thought and one reason a person can be removed. So neither one, I don't think — either Delegate Unruh's or Delegate Saugstad's — objections are valid at all. I think what Delegate Pearce proposes is exactly right.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I concur with Delegate Aubol's comments on this. I think that the amendment as proposed by Delegate Pearce is absolutely proper, because it all modifies "perform the duties of office."

PRESIDENT WENSTROM: Well, Fellow Delegates, just so we stay on an even keel now, I'm going to ask the Clerk to read the section with the amendment as offered by Delegate Pearce in its proper place. So will the Clerk read the amendment — read the section?

CHIEF CLERK GILBREATH: You want Delegate Pearce's?

PRESIDENT WENSTROM: I want Delegate Pearce's; yes, sir.

CHIEF CLERK GILBREATH: "REMOVAL FROM OFFICE."

"All elected officials and appointed officers of the state and its political subdivisions, other than judicial officials, shall be subject to removal from office, as provided by law, for crimes, corrupt conduct, malfeasance, or because of chronic and continuing inability or willful failure to perform the duties of office."

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: After looking at that, I decided I'm going to withdraw my motion and bow to Delegate Pearce's words.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: I am going to rise to oppose the amendment of Delegate Pearce as it appears on line 9. At this time I oppose it primarily for the reason that I question which politician is going to determine who is guilty of "willful failure" to perform the duties of the politician's office.

We discussed this in the judicial articles as we were going through our assigned portions of the Constitution, and I believe, if the delegates would check those articles, we have not, to my knowledge, included "willful failure" simply because, in our lengthy discussions, it was determined, as I have indicated, the words "willful failure" on the political scene or a person in public office in the conduct of his duties, is subject to interpretation, even though the duties of the office are prescribed by law. If I don't like the way a particular individual is conducting the duties of that office, I don't believe that there is any reason that I could not bring suit on the basis of his "willful failure" to perform them and successfully allege in my complaint, at least, that he was guilty of those and subject the official, I believe, to undue harassment. I think what we are getting at in this particular article is removal as originally indicated, and I believe we should leave it on that basis and not put up a political nightmare.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Pearce, and as the Clerk read the section with the amendment in there.

Those in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it. The amendment is adopted.

DELEGATE HARTL: May I call for a division?

PRESIDENT WENSTROM: You may call for a division. Will five delegates rise? That is a sufficient number.

Again, the question is on the adoption of the amendment as offered by Delegate Pearce. Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will record your preference.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The tally indicates 60 "ayes," 31 "nays," with seven delegates absent. So the amendment has been adopted.

Any further amendments or further discussion on — or questions on Section 12? Hearing none, we will move to Section 13.

CHIEF CLERK GILBREATH: **Section 13. MILITARY FORCES.**

"The legislative assembly shall provide by law for establishment of the state's military forces."

PRESIDENT WENSTROM: You have heard the reading of Section 13. Are there any questions? Hearing none, that completes the reading of Article XI.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that Redraft Proposal 5-15 be deemed properly re-engrossed and placed on the calendar for passage.

PRESIDENT WENSTROM: Delegate Unruh moves that Redraft Proposal No. 5-15 be deemed properly re-engrossed, that it be placed on the calendar for passage. May I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. Redraft Proposal No. 5-15 is before the Convention for passage.

Fellow Delegates, you will recall that we have a separate vote — a separate vote has been requested on Section 5 and on Section 6.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I request that Section 8 also be voted on separately.

PRESIDENT WENSTROM: Your request will be granted.

Any further questions on special sections? Hearing none, the question before the Convention will be on the passage of Section 5 — Section 5 of Article XI of Redraft Proposal No. 5-15. Those in favor of its passage will vote “aye;” those opposed will vote “no.”

The Clerk will open the key. You will indicate your vote. Has every delegate voted? Any delegate wish to change his vote?

The vote is closed.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Even though this is just a Style and Drafting change, I would ask that my vote be changed — we were voting on Section 5 alone — from “aye” to “nay.”

PRESIDENT WENSTROM: You wish to change your vote?

DELEGATE HARTL: That's correct, if it is on Section 5, only.

PRESIDENT WENSTROM: Your request is granted.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Delegate Cart wishes to make the same request.

PRESIDENT WENSTROM: You wish to change from “aye” —

DELEGATE CART: From “aye” to “no.”

PRESIDENT WENSTROM: Your request is granted.

DELEGATE NETHING: Delegate Nothing does, too.

PRESIDENT WENSTROM: I think, Fellow Delegates, we better just open the key and you vote over.

DELEGATE FRITZELL: Mr. President.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: May I say something on a personal privilege, I suppose?

PRESIDENT WENSTROM: State your privilege.

DELEGATE FRITZELL: I understand several people have come to me and said they've had experienced political members of this Convention put pressure on them to change their vote and — now they are putting — as I feel, voting on substantive material, rather than style and drafting, on this section, and I trust and hope that people will bear this in mind.

PRESIDENT WENSTROM: Thank you, Delegate Fritzell.

The question before the Convention is on the passage of Section 5. Delegate Stanton.

DELEGATE STANTON: Will we're on the subject, I'd just like to say something, too. This is still being called in the newspaper “second passage,” and I call everybody and tell them. “Sorry, I'm just voting on style and drafting” — so I think we're all sort of hung up here.

PRESIDENT WENSTROM: The question, of course, is on the adoption of the Style and Drafting amendments.

The question before the Convention is on the passage of Section 5. Those in favor will vote “aye” and those opposed will vote “nay.” The Clerk will open the key and you will record your vote.

Has every delegate voted? Delegate Hill? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 65 “ayes,” 28 “nays,” five delegates absent and not voting. Redraft No. 5-15 — Section 5 of Redraft No. 5-15 has passed.

Next for consideration —

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: May I explain my vote?

PRESIDENT WENSTROM: You may explain your vote.

DELEGATE PEARCE: I do so because I don't want anyone to think that I am against the first paragraph of this section. My "no" vote is because of the second paragraph, which in my opinion, will produce a completely chaotic situation and will substantially interfere with the proper public regulation of a healthful environment.

DELEGATE HENRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: I fail to see why taking out the words "each person" and taking out the word "and" would give anyone cause to vote against this style change, which is what we're voting against. I fail to see that.

PRESIDENT WENSTROM: The question before the Convention is on the passage of Section 6 — Section 6 of Redraft Proposal No. 5-15, Article XI.

Those in favor of adopting will vote "aye;" those opposed will vote "nay." The Clerk will open the key. You will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? Delegate Hougen, have you voted? Delegate Jim Hougen, have you voted?

DELEGATE HOUGEN: I have.

DELEGATE PEARCE: Mr. President, may I ask which section we are voting on?

PRESIDENT WENSTROM: We are voting on Section 6. Any delegate wish to change his vote? The vote is closed.

The roll call discloses 79 "ayes," 14 "nays," five delegates absent and not voting. Section 6 of Redraft Proposal No. 5-15 has passed.

Next for consideration is Section 8 — Section 8 of Redraft Proposal No. 5-15 in Article XI. Any further discussion?

Hearing none, those in favor will vote "aye;" those opposed will "nay."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

DELEGATE SINNER: Sinner votes "aye."

CHIEF CLERK GILBREATH: Sinner votes "aye."

PRESIDENT WENSTROM: The vote is closed.

The roll call discloses 86 "ayes," 8 "nays," four delegates absent and not voting. Section 8 of Article XI of Redraft 5-15 has passed.

Now for consideration of the Convention are Sections 1, 2, 3, 4, 5, 7 —

CHIEF CLERK GILBREATH: No, 7 — not 5. We did 5.

PRESIDENT WENSTROM: We did 5, 7, 9, 10, 11, 12 and 13.

Any further discussion? Hearing none, the question is on the first passage. Those in favor will vote "aye;" those opposed will vote "no."

The Clerk will open the key. You will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 93 "ayes," 1 "nay," four delegates absent and not voting. Sections 1, 2, 3, 4, 7, 9, 10, 11, 12 and 13 of Article XI of Redraft Proposal 5-15 have passed.

We'll continue on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Committee Redraft Proposals Numbered 5-6 and 5-11 be introduced.

Further, that these Redraft Proposals not be referred to a committee and be indefinitely postponed due to incorporation into Style and Drafting Committee Redraft Proposal No. 5-15.

Delegate Unruh, Chairman.

Delegate Unruh moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report that Committee Redraft Proposals No. 5-6 and 5-11 be indefinitely postponed.

Do we have any discussion? Hearing none, as many as are in favor of the motion will say "aye;," opposed "no." The "ayes" have it, and we have those indefinitely postponed.

We'll be on the ninth order of business — Introduction and Referral of Proposals.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-9, submitted by Delegates Hubrig, Hougen, Haugen, Rosendahl, Bassingthwaite, Larsen, Aubol, Urdahl, Sanstead, Omdahl, Warner, Ketchum, Hoffner, Gipp, Maxwell, Lamb Hoghaug, Schmit, Sondreal, Daniels, O'Toole, Brakke, Poulson, Rude, Nicholas, Hildebrand, Fielder and Vogel:

"Be it resolved by the North Dakota Constitutional Convention that the following section be introduced for submission to the electorate as a separate issue on the Constitutional Convention Ballot, and if approved by the electorate shall become a part of the proposed constitution, replacing Section 25 of Article I of that document relating to nondiscrimination in employment."

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Before you make the referral of this one, I should like to raise the question of the propriety of the introduction of this Alternate Proposal under our Rule 18.2, and I suppose I should make that point under personal privilege, since I understand that the point of order does not allow general discussion. Is that correct?

PRESIDENT WENSTROM: Well, Delegate Baker, the question, of course, before the Convention is going to be on the adoption of the report or a request that this proposal be introduced, and unless we have something in the Rule that says it cannot be, and I don't recall in the deadline of introduction of alternate proposals, why I'd have to rule that it is in order to introduce this proposal.

DELEGATE BAKER: Then on the personal privilege, Mr. President —

PRESIDENT WENSTROM: You may state your privilege.

DELEGATE BAKER: My point is that the opening sentence of Rule 18.2 states that an alternate proposal covering the same subject for incorporation in the final constitutional draft, and so on, outlining how it may be introduced. It appears to me that the rules regarding the introduction of new proposals apply if there is change in the subject matter, and while I do not have a copy of the proposed alternate before me, I'm relying on the accuracy of the **Fargo Forum** report of this morning on the subject matter, which is "To attain or accumulate a value as a result of labor shall be a property right" — the introduction, in my opinion, of a brand new subject matter before this Convention, and I should like to have your consideration of that point when you make your ruling as to whether this may be properly introduced.

PRESIDENT WENSTROM: Well, Delegate Baker, I do not have a copy of the Proposal before me, and in the event that I did have — I do have now — he went onto my scales quick (laughter) — I'm going to rule that we can accept the Proposal, that we can — we will have the time to have it come back, and the Convention at that time can dispose of it or they can adopt it. So I believe, up to this time, that we have not prevented the introduction of any resolution or any proposal from any delegate or any committee, and I hate to deviate from that so very late in the Convention.

Do you have further comment, Delegate Baker?

DELEGATE BAKER: Mr. President: Then I should like to take a friendly appeal from the ruling of the Chair.

PRESIDENT WENSTROM: We have an appeal from the ruling of the Chair that, apparently, you do not wish that the Convention adopt —

DELEGATE BAKER: — "accept."

PRESIDENT WENSTROM: — this proposal, and the Chair has ruled that we will accept the Proposal.

Now those in favor of the ruling of the Chair — I think I'll reverse this. Those in favor of not adopting will vote "aye," and those opposed will vote "no." I'm

giving you the "aye" vote. What does the Rule say? Simply — the Rule states simply, "Shall the ruling of the Chair stand?" So that is what we'll be voting on. Shall the ruling of the Chair stand? And the ruling of the Chair is that we will accept the Proposal.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I hope most of the other delegates are more aware of what's going on. I'm not really sure, and I wonder if it wouldn't be an appropriate time to recess, before we call for this vote.

PRESIDENT WENSTROM: Well, it would be, Delegate Devine, except for one thing: I am sure that the Committee on Alternate Proposals would like to have this, if they're going to consider it, and if they're not going to consider it, why then, of course, church is out. So I'm going to rule right now. I have ruled in favor of it.

Now, the appeal has been taken. So the question before the Convention is: Shall the rule of the Chair stand? And if you will vote "aye," the rule will stand. If you vote "no," the Chair is upset.

We will open the key and you will indicate your preference.

Does any delegate wish to change? You will close the key.

The tally indicates 76 "ayes," 16 "nays," and seven delegates absent. So the ruling of the Chair stands, and this — we will accept this alternate proposal. We will refer it to the Committee on Constitutional Ballot.

We will be on the eighth order of business — Announcements.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I'd like to announce a quick meeting of the Executive Functions in the Gold Room right after we recess.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President, what is the schedule for this afternoon, so I can announce our committee meeting?

PRESIDENT WENSTROM: As of now, we have completed our calendar; so that, really, there is nothing on the agenda here, but I do think that at a certain time this afternoon we should come back — say three o'clock just for the sake of a time.

DELEGATE DAWSON: Mr. President, the Ballot Committee will meet at 1:30 in the west balcony.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, I wish to announce a very brief meeting of the Finance and Taxation Committee before we go to lunch, at the usual place.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: The Committee on Coordination and Transition will meet at two o'clock in Rooms G-5 and G-6. I believe, if we can all be — as many of us as can be will be present there, I'm quite sure we can get a great majority of work done this afternoon, so we will not have to come on back tomorrow. We had originally planned on meeting at 1:30. One of the delegates has an important meeting and will not be able to return until two o'clock; so we will meet at two o'clock this afternoon in G-5 and G-6.

PRESIDENT WENSTROM: Anything further? Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, could I inquire as to what the plans are after three o'clock? I know that many of us expect, if we're not going to be doing business tomorrow, to go home, and I don't know that the President can answer my question right now, but is it your plan to stay in session only briefly at three o'clock or do you plan to go on for a certain time.

PRESIDENT WENSTROM: Delegate Longmire, that depends entirely on what we have. I have no way of knowing what might come in. We might have some reports from the Committee on Constitutional Ballot, or something like that, that could go into a considerable amount of time. But what we actually have at the desk — and I think this is what you'd like to know, Delegate Longmire — is about 15-20 minutes of work.

DELEGATE LONGMIRE: Well, thank you, Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, I think a number of us are thinking about the same thing, and I'm wondering whether it wouldn't be possible to go into session at two o'clock, and then you might have a reasonable attendance.

PRESIDENT WENSTROM: That is fine. My only purpose in saying "3:00" was so that these committees could work, and if they had anything to bring before the Convention, that we would be able to digest it. I'm going to recommend — Delegate Unruh.

DELEGATE UNRUH: Mr. President, the Style and Drafting Committee is going to meet during the noon hour and have their lunch down there to consider these two proposals that are still pending on the tenth order. We can be done with our work by 1:30 or 2:00 o'clock.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: With that in mind, our Committee will meet at one o'clock — a half-an-hour from now — instead of at 1:30. Our Committee does not feel we will have any proposals to bring on the floor today, but we hope to have all of them ready for Monday morning, so they can all come out at one time.

PRESIDENT WENSTROM: Then may we come back at two o'clock? Then, if that is agreeable, then we can take care of these small — apparently small things that we have to do, and we would be — we would adjourn until a time certain. So why don't we come back at two o'clock.

We'll recess until two o'clock.

CHIEF CLERK GILBREATH: Colored photos of the opening day are here. You can pick them up in President Wenstrom's secretary's office.

(The Session recessed at 12:28 P.M. until 2:00 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 2:18 P.M., Friday, February 11, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order.

We'll be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: Delegates Fallgatter and Ketchum have 37 students from the eleventh grade of Hazelton School and their teacher, Mrs. Carol Irion, in the gallery.

Delegate Berg has 20 students from the eleventh and twelfth grades of Mercer High School and their teacher, Clint Lowe, and chaperones Reverend Silvey and Leroy Neilsen, in the gallery.

Delegate Tudor has 30 students from the sixth grade of Cathedral School of Bismarck and their teacher, Sister Mary Katherine in the gallery.

Delegate Tudor has 29 students from the sixth grade of Cathedral School of Bismarck and their teacher, Mrs. Dombek, in the gallery.

Delegate Jestrab has 34 students from the sixth grade of Saxvik school, Bismarck, and their teacher, Mrs. Ramberg, in the gallery.

Delegate Cart has the County Commissioners of Burke County — Willard Grubb, Joe Bush and Russell Klein in the gallery.

PRESIDENT WENSTROM: Will the visitors — the students and other visitors — please rise and be recognized by the Convention? (Applause)

While we're on the eighth order of business, Fellow Delegates, I have an announcement to make.

I think most of you are aware that the Governor and Mrs. Guy are planning a reception for the delegates and their spouses at a time between two and four o'clock on Sunday afternoon. Now it has become known that a number of the delegates have failed to receive their invitations, and you are all invited. There's a slip-up somewhere in the communication system, and the Governor and Mrs. Guy have requested that you be informed that the delegates and their spouses are all invited to attend this reception and, again, the time is Sunday afternoon between two and four o'clock at the Governor's residence.

We'll be on the twelfth order of business.

CHIEF CLERK GILBREATH: Resolution No. M, introduced by Committee on Resolutions:

"A resolution expressing the appreciation of the Constitutional Convention to the Honorable William L. Guy, Governor of the State of North Dakota, for his generous support of the cause of constitutional revision."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended and that Resolution M be read in its entirety, not referred to as a proposal, not be referred to a committee, be printed in the Journal, and be placed for final action.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended, that Resolution M be read in its entirety, that it not be referred to a committee, but that it be printed in the Journal and be placed on the calendar for final passage. Do I have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Cart. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the Clerk will read the resolution.

CHIEF CLERK GILBREATH: "Resolution No. M, introduced by Committee on Resolutions.

"A resolution expressing the appreciation of the Constitutional Convention to the Honorable William L. Guy, Governor of the State of North Dakota for his generous support of the cause of constitutional revision.

"WHEREAS, the North Dakota Constitutional Convention is undertaking the task of preparing a revision of the North Dakota Constitution of 1889; and

"WHEREAS, the Honorable William L. Guy, Governor of the State of North Dakota, a great advocate of constitutional governmental reform, has expressed an optimistic view towards the work of the Convention and has expressed his faith that the work and efforts will benefit the people of North Dakota for many years, if adopted; and

"WHEREAS, Governor Guy has offered considerable information to the committees in order to aid their deliberations, and in so doing, has maintained the highest degree of objectivity and neutrality in his suggestions and efforts to improve the constitution and state government;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the Convention go on record expressing its deep and sincere appreciation to The Honorable William L. Guy, Governor of the State of North Dakota, for his support and assistance to the cause of constitutional revision and to this Convention;

"BE IT FURTHER RESOLVED, that the clerk of the Convention be instructed to forward an enrolled copy of this resolution to the Honorable William L. Guy, Governor of the State of North Dakota."

PRESIDENT WENSTROM: The question before the Convention is on the adoption of Resolution M. Is there any further discussion?

Hearing none, as many as are in favor of its adoption will say "aye;" those opposed "no." The "ayes" have it. The resolution is adopted.

We will be on the fifth order of business — Reports of Standing Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Procedural Committee on Resolutions, to whom was referred Resolution L, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Scheel, Chairman.

Delegate Scheel moved that the report be adopted.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger, the Chair has been requested to dispense with the further consideration of this at this time. I'm sorry I neglected to tell the Clerk. The Chair is in error. I have been requested to — that this Resolution will not be considered at this time, and I did grant that privilege. So I'm going to ask that we disregard further consideration of this particular resolution at this time.

Fellow Delegates, we're going to have to wait a few minutes until the reports of the wishes of the Committee on Style and Drafting be typed and can be placed before the Convention. So the Convention will be at ease.

(The Convention was at ease from 2:26 P.M. until 2:48 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order.

We'll continue on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-44, has had the same under consideration and recommends that the same be amended as follows:

Delete lines 14, 15 and 16 and insert in lieu thereof the following:

"Section 5. The legislative assembly shall establish by law a procedure whereby one-half of the members of each house, as nearly as practicable, are elected biennially."

And renumber the lines accordingly.

And when so amended, recommends that the same be placed on the eleventh order as Section 6 of Redraft Proposal No. 5-12.

Delegate Unruh, Chairman.

Delegate Unruh moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Committee Proposal No. 1-44.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Perhaps, before we act on that, we should have a motion to reconsider our vote by which we passed 5-12, so we can get this thing in proper perspective. May I put that motion at this time?

PRESIDENT WENSTROM: You may. Do you have the number of the committee —

DELEGATE UNRUH: Yes. 5-12.

PRESIDENT WENSTROM: 5-12.

DELEGATE UNRUH: I'd like to move the Convention reconsider its action by which Redraft Proposal 5-12 was passed.

PRESIDENT WENSTROM: Delegate Unruh moved that the Convention reconsider its action whereby Re-draft Proposal 5-12 was passed.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: And the motion was seconded by Delegate Lander.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Now, is there any discussion on the question? Delegate Unruh.

DELEGATE UNRUH: Mr. President: The purpose of this motion is to extract 1-44 from 5-12 so we could consider it properly.

PRESIDENT WENSTROM: Now, since this is a proposal that has been passed, we will require 50 votes to reconsider.

So we will open the key and you will indicate your vote. It takes 50 to reconsider.

The Clerk will open the key.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The vote was 87, with 11 delegates absent and not voting. So the motion to reconsider has been passed.

Now, Delegate Unruh, we can now give consideration to the amendment for the adoption of the Committee Report to amend Committee Proposal No. 5-12.

Those in favor of adopting the report will say "aye;" those opposed "no." The "ayes" have it, and we will now be on the eleventh order of business for further consideration of Committee Proposal No. 5-12.

Delegate Unruh.

DELEGATE UNRUH: Mr. President: I believe — do you wish the amendment

read again, or do you have copies? All right, Mr. Clerk, would you read the amendment once more, please?

CHIEF CLERK GILBREATH: Proposed amendment to Proposal No. 1-44:
Delete lines 14, 15 and 16 and insert in lieu thereof the following:

"Section 5. The legislative assembly shall establish by law a procedure whereby one-half of the members of each house, as nearly as practicable, are elected biennially."

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: The Committee on Style and Drafting, in reworking the floor amendment today, felt that this cleaned up the language just a little bit and made no substantive change whatever in the meaning of the amendment, and we urge your do pass.

Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President, we would like, further, to amend the title of Section 6 to read: "Legislative Elections," instead of "Districts." "Legislative Elections." That would be on line 34 of the green committee report.

PRESIDENT WENSTROM: And what page, Delegate Unruh?

DELEGATE UNRUH: On page 2.

PRESIDENT WENSTROM: Page 2 —

DELEGATE UNRUH: Line 34, wherein the word "DISTRICTS" is used, we will strike that and put in "LEGISLATIVE ELECTIONS".

PRESIDENT WENSTROM: Delegate Unruh wishes to further amend in line 34 on page 2, after the word "Section 6," strike the word "DISTRICTS" and insert in lieu thereof "LEGISLATIVE ELECTIONS."

CHIEF CLERK GILBREATH: Are we working on 1-44?

DELEGATE UNRUH: Mr. President, it just occurred to me that we better get the article back into 5-12 before we make that change. I'll withdraw that motion.

PRESIDENT WENSTROM: Well, Delegate Unruh, for a point of clarification, for not only the Chair, but, I fear, for some of the delegates that are trying to follow this: We are operating — we are working on the pink sheet; is that right, Delegate Unruh?

DELEGATE UNRUH: Mr. President, we're amending the pink sheet, but that doesn't have the title on it. You see, we put the titles on green, so when we're through with the amendments that the Clerk has read, we'll put this back into 5-12 and then we'll amend it.

PRESIDENT WENSTROM: But for the purpose of the amendments, wouldn't they be on the pink sheet?

DELEGATE UNRUH: Yes. We have repealed all the rest of that article.

PRESIDENT WENSTROM: The question before the Convention is the adoption of the amendment as offered by Delegate Unruh.

The clerk will re-read the amendment.

CHIEF CLERK GILBREATH: Delete lines 14, 15 and 16 and insert in lieu thereof the following:

"The legislative assembly shall establish by law a procedure whereby one-half of the members of each house, as nearing as practicable, are elected biennially."

PRESIDENT WENSTROM: The question is on the adoption of the amendments. Those in favor of adopting the amendments will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendments will say "aye;" those opposed "no."

The "ayes" have it and the amendment is adopted.

Well, the way the Chair interprets the amendment, what we just did now becomes Section 6 of 5-12. That's the balance of the motion.

DELEGATE UNRUH: Mr. President are you ready to change the title on that section?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE UNRUH: I now move that the title, in line 34, be changed from "DISTRICTS" to "LEGISLATIVE ELECTIONS."

PRESIDENT WENSTROM: Delegate Unruh moves that, in line 34 of Section 6 — now we're talking about Redraft Proposal No. 5-12 — that on line 34, page 2, Section 6, "DISTRICTS", we strike the word "DISTRICTS" and insert in lieu thereof "LEGISLATIVE ELECTIONS".

Any further questions? Do we have a second to the motion?

DELEGATE SIMONSON: Second.

PRESIDENT WENSTROM: Delegate Simonson seconds the motion.

Any further discussion? Hearing none, as many as are in favor of the amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I would move that we reconsider our action yesterday in which we amended this Proposal on page 4, line 24. If I get a second, I'll explain why.

PRESIDENT WENSTROM: On page 4, line —

DELEGATE KELSCH: Line 24.

PRESIDENT WENSTROM: Line 24. Delegate Kelsch has moved that the Convention reconsider its action whereby it passed again —

DELEGATE KELSCH: By which we amended this Proposal on line 24 of page 4. I'd like to have us reconsider that amendment, Mr. President.

PRESIDENT WENSTROM: You move to reconsider the action whereby the Convention adopted the amendment on line 24 of page 4 of 5-12, and the motion was seconded by Delegate Geelan.

Delegate Kelsch.

DELEGATE KELSCH: Mr. President and Fellow Delegates.

We amended yesterday, after the word "assembly," we added the words, which does not specify when it is to go into effect — the effective date. The intention of the amendment was to permit the Legislature to set an effective date as they feel that would be sometime after July. Now, the problem arises in this clause, being where it is, that there's some confusion or unclarity as to the intent, as to whether it really does that. We don't want to allow a bill to come into effect that has a subsequent date, subsequent to its enactment date, because that might be before July 1st, and we don't want this to cause violence to the emergency measure requirements. So, if the Convention delegates would allow this reconsideration, what I would be doing would be moving that we move those similar words down on line 26, after the word "later," and I think, if we put it down there, it very clearly shows what we intend to do.

PRESIDENT WENSTROM: The question is on the motion that we reconsider the action whereby this Proposal on line 24, page 4, was amended. Again, the motion to reconsider will take 50 delegate votes. So the Clerk will open the key. You will indicate your vote. Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates there were 87 votes to reconsider. There was one "no" vote, and ten delegates absent. So the motion to reconsider has been passed.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: We have, I suppose, now before us Delegate Unruh's amendment of yesterday, which is the one we have not reconsidered, and I understand he is willing to withdraw that amendment in favor of this amendment.

DELEGATE UNRUH: Are you asking me a question?

DELEGATE KELSCH: Mr. President.

DELEGATE UNRUH: Mr. President.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I've been sitting here listening to this. We voted to reconsider an amendment, but we've already considered an amendment; so you have to reconsider the document and then begin to talk about amending the document.

DELEGATE KELSCH: Mr. President: As I understand, we have already voted to reconsider 5-12, earlier.

PRESIDENT WENSTROM: Yes, we had.

DELEGATE PAULSON: Okay.

DELEGATE KELSCH: Might I inquire of Delegate Unruh, Mr. President, if he's willing to withdraw his amendment of yesterday, which is now pending on reconsideration?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Yes, I do, Delegate Kelsch.

PRESIDENT WENSTROM: Just a point of clarification here: Why do you withdraw? Why don't you amend?

DELEGATE KELSCH: Well, Mr. Chairman, that's all right. I would be glad to do that, if I can amend the amendment.

PRESIDENT WENSTROM: The Proposal is reporting just as it was yesterday before you passed it. We have reconsidered our action and the Proposal is now before the Convention just the way you passed it. So, if you offer an amendment to strike out whatever we did — whatever we did yesterday —

DELEGATE KELSCH: Mr. President: Then I would move to amend Delegate Unruh's amendment by striking all of his amendment and inserting in lieu — Mr. President, isn't the question now before us of Delegate Unruh's amendment?

PRESIDENT WENSTROM: The question before the Convention at the moment is this Proposal just the way we passed it yesterday.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, I think I understand what they're driving at, but I would like to raise a question now as to why the language which he's requesting was inserted. The amendment inserted by Mr. Unruh said that the law enacted, which does not specify a subsequent date — a subsequent effective date, shall take effect on July 1st or ninety days after its filing. Actually, if a law is passed and it becomes effective on, let us say, August 1st, but it specifies that the operation of the law becomes effective September 1st, I can't see why the extra language is needed, because it becomes effective August 1st and says it will take effect September 1st, and that law governs. It's completely extraneous wording — is the way I see it. But I wasn't going to argue about it the other day. But if somebody wants to bring it up now, I will.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: As I understand it, I would move to reconsider our action on amending this section. The Convention has done that; so the matter immediately before us now would be Delegate Unruh's amendment of yesterday. Now you'd either have to get into — withdraw that or amend out his language, which I want to do; but I thought the simple way would be to withdraw it and we have the amendment before us as the delegates see it, and then I'll move my language into a different spot.

PRESIDENT WENSTROM: Okay. I think we're going at this backwards. Delegate Unruh.

DELEGATE UNRUH: Mr. President, I now move that the language that I inserted yesterday by amendment be withdrawn.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: I don't know where I'm going to find who the second was yesterday, unless it's in the Journal.

DELEGATE SINNER: Why don't you — Delegate Unruh, why don't you move

that your amendment be withdrawn? Why don't you move that it be withdrawn, and then we can get a second to that, and then we'll have a new ballgame?

DELEGATE UNRUH: Mr. President, I move that the language be withdrawn.

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Sinner.

The question before the Convention then is on Delegate Unruh's motion to withdraw the amendment he made as of yesterday to this particular section.

Those in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the amendment has been withdrawn.

Now, Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I move that on line 26 of page 4, after the word "later" and before the semicolon, add the words "or on a subsequent date if specified in the law."

DELEGATE SINNER: Second the motion.

PRESIDENT WENSTROM: It's been seconded by Delegate Sinner. Now do we have any discussion?

DELEGATE KELSCH: Mr. President: The reason for this change is that we feel that, clearly, by moving these words down below, we clearly indicate that every law enacted shall take effect on July 1st or ninety days after its filing, whichever is later, and then — or on a subsequent date, if stated in the law. It's so we are allowing laws to take effect sometime later on in the year, and I think this is the proper place for that clause to do it, and it's what we were intending to do yesterday.

PRESIDENT WENSTROM: The question before the Convention — Delegate Rundle.

DELEGATE RUNDLE: Mr. President, would Delegate Kelsch yield to a question?

PRESIDENT WENSTROM: Would Delegate Kelsch yield?

DELEGATE KELSCH: Yes.

DELEGATE RUNDLE: Mr. President: When are the law books going to be printed? Now we have been meeting in certain months. Now the Legislature can meet at any time. When are you going to have a deadline that the printing is going to be done? This is going to change, and when will the books be out?

DELEGATE KELSCH: Mr. President, the way the Committee sees it, it will continue the way it has. Every law will be effective July 1st, except those few that might have been passed in May, June or July — or pardon me, April, May and June. They will become effective — they have 90 days that would have to run on those, but they could still all be printed and they would come out every July, just like we are doing it now — each year. Now, the only laws that you would have any problem with would be if you met, say, in October and passed an emergency measure. Now, the bill passed in October, it would not become law until next July, and then it would be printed up in the book on the following July; but if the Legislature passed an emergency measure, that would come into effect immediately. But you note we're requiring a separate two-thirds vote to do that. I don't think there will be too many cases of you doing that, understanding that it wouldn't be printed until the following July. But if they felt it was important enough to garner a two-thirds vote, it would become effective, say, in October.

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: Mr. President, so that this doesn't have to go back to Style and Drafting again — does the amendment include a comma after the word "later"?

PRESIDENT WENSTROM: Can the Clerk answer the question?

CHIEF CLERK GILBREATH: After the word "later" and before the semicolon, add the words "or on a subsequent date if specified in the law". So it would read "later or on a subsequent date if specified in the law;"

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: The movant agrees with me to put a comma there. So I would move to put a comma in after the word "later". So we would have "becomes effective later, or on a subsequent date if specified in the law".

DELEGATE KELSCH: Second.

PRESIDENT WENSTROM: Are you aware of the insertion of this comma? It's been amended — further amended. Does the Clerk have the amendment?

CHIEF CLERK GILBREATH: Mm-hmm (nodding). The proposed amendment to the amendment is that: Insert a comma before the word "or" in the amendment so it would then "read ", or on a subsequent date if specified in the law".

PRESIDENT WENSTROM: Are you ready for the question? The question is on the amendment to the amendment. As many as are in favor of adopting it, say "aye;" opposed "no." The "ayes" have it and the amendment is adopted.

Any further amendment?

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I would like this remark inserted in the record for the future Supreme Court to worry about.

Under the present wording, I would say that if a law is passed on July 15th, it becomes effective approximately October 15th, because October 15th is later than July 1st of the same year, and that we don't have to wait for another full year to go around until July 1st of the next year as an effective date.

PRESIDENT WENSTROM: Your remarks will be inserted in the Journal.

The question then before the Convention is on the adoption of the amendment as amended; that on line 4 — page 4, line 26, after the word "later", we insert a comma and add the words "or on a subsequent date if specified in the law".

The question is on the amendment to the amendment — or the adoption of the amendment as it reads.

DELEGATE KELSCH: In view of the remarks of Delegate Paulson, I have to answer that July 1st after it's filed is later than October.

DELEGATE PAULSON: Right.

DELEGATE KELSCH: Because if a law was passed on July 15th, it couldn't be filed the next July 1st until a later date.

PRESIDENT WENSTROM: The question before the Convention is the adoption of the amendment. Those in favor will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed "nay." The "ayes" have it and the amendments are adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Proposal No. 5-12 be deemed properly re-engrossed and placed on the calendar.

PRESIDENT WENSTROM: Delegate Unruh moves that Redraft Proposal No. 5-12 be deemed properly re-engrossed and be placed on the calendar for first passage as amended.

Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It is seconded by Delegate Stanton. Any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Proposal — Redraft Proposal No. 5-12 is before the Convention for passage as amended.

Any further discussion? Hearing none, those in favor of its passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote?

The vote is closed.

Roll call discloses there were 87 "ayes," there were 2 "nays," nine delegates were absent and not voting. The Redraft of 5-12 has been passed.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, may I explain my vote?

PRESIDENT WENSTROM: You may.

DELEGATE RUNDLE: Delegate Paulson pointed his ideas at the Supreme Court. All I would say is I hope they understand this, because I'm certain that some here do not.

PRESIDENT WENSTROM: Any further discussion? We'll continue.

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Delegate Hendrickson.

DELEGATE HENDRICKSON: Perhaps this is an appropriate time to let you know the motto that Style and Drafting followed as we worked on these proposals.

"I know that you believe you understand what you think I said, but I am not sure you realize that what you heard is not what I meant." (Laughter)

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-119, has had the same under consideration and recommends that the same be amended as follows:

In line 10, after the word "all", delete the comma, and after the word "and" insert the word "shall".

In line 11, delete everything after "inviolate.", and delete lines 12, 13 and 14 and insert in lieu thereof the following: "A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases."

Renumber the lines accordingly.

And when so amended, recommends that the same be placed on the eleventh order as Section 7 of Redraft Proposal No. 5-9.

Delegate Unruh, Chairman.

Delegate Unruh moved that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Style and Drafting on Committee Proposal No. 1-119.

Is there any discussion? Hearing none, as many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it.

Redraft Proposal No. 5-9 is before the Convention. The question before the Convention — I think you will all recall that we have not as of now passed Section 7. At the time it is for the adoption of the Report on Style and Drafting. That is the Report that is before you at this time. So the question then would be on the adoption of these proposed amendments.

Now, will you read them?

CHIEF CLERK GILBREATH: Proposed amendments:

In line 10, after the word "all", delete the comma, and after the word "and", insert the word "shall".

In line 11, delete everything after "inviolate.", and delete lines 12, 13 and 14 and insert in lieu thereof the following: "A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases."

PRESIDENT WENSTROM: You've heard the reading of the amendments to Section 12 — Section 7. I'm sorry. Any discussion? Any discussion on Section 12 — the question of adopting the amendment? Hearing no discussion, the question is on the adoption of the amendments to Section 7 as read by the Clerk.

Those in favor of adopting will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." The "ayes" have it and the amendment is adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Proposal 5-9 be deemed properly re-engrossed and placed on the calendar.

PRESIDENT WENSTROM: Delegate Unruh moves that Redraft Proposal No. 5-9 be deemed properly re-engrossed and be placed on the calendar for passage as amended.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, may we have the Clerk read Section 7 for us slowly, so that we all can understand exactly what it says — the completed section as amended?

PRESIDENT WENSTROM: Very well. Will the Clerk read the Section 7 as it is presently before the Convention?

CHIEF CLERK GILBREATH: "The right of trial by jury shall be secured to all, and shall remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases."

PRESIDENT WENSTROM: You have heard the reading of the section as amended. Any questions?

The question before the Convention is on the motion as offered by Delegate Unruh; that the Proposal be deemed properly re-engrossed, that it be placed on the calendar for passage as amended.

Those in favor of its adoption will say "aye;" those opposed "no." The "ayes" have it and the Proposal is before the Convention as amended.

Any further discussion?

The question is on the passage of the Redraft Proposal No. 5-9 as amended. Those in favor of its passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 76 "aye" votes, there were 9 "nay" votes and 13 delegates absent and not voting. Section 7 of the Redraft No. 5-9 has passed.

Delegate Unruh, do you wish to —

DELEGATE UNRUH: No, not now.

PRESIDENT WENSTROM: Are there any announcements? Any announcements? We will be on the eighth order.

CHIEF CLERK GILBREATH: Would you return all your proofs and mark the one that you have chosen for — to put in the composite that you return to the Staff Office?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: On the question of those pictures, those of us who really took a great likeness for ourselves aren't too happy with some of them. Is it possible that we can substitute a different photo other than those that were taken in the west balcony?

PRESIDENT WENSTROM: Do you want to go back to the graduation picture?
(Laughter)

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, the people taking the pictures and Dean Bard and I discussed this, and we would discourage it because what will happen is that — I remember one Senate picture, for instance. Somebody had brought in another one and it was a different background and it sticks out pretty — even worse than the man's picture.

DELEGATE AUBOL: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: It seems to me that, if they can retouch the picture itself that they took, they should certainly be able to take care of some background material.

PRESIDENT WENSTROM: Anything under the eighth order? Are there any announcements?

Any committee meetings that are scheduled for the balance of the day? Delegate Byrne.

DELEGATE BYRNE: I want to remind the members of Coordination and Transition we will meet immediately after adjournment in G-5 and 6.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President, I think all of the members of the Ballot Committee are aware that we are having a meeting until our work is done.

PRESIDENT WENSTROM: Any further announcements — Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President: The Calendar Committee will meet at a quarter-to-nine on February 14th in the President's office.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Is the desk clear?

PRESIDENT WENSTROM: The desk is clear.

DELEGATE SAUGSTAD: I move that we adjourn until 9:00 A.M., February 14th.

PRESIDENT WENSTROM: Delegate Saugstad moves that the Convention do now adjourn — does a delegate wish to excuse the absent members?

Delegate Daniels moves, and Delegate Dawson seconds, that the absent delegates be excused. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the absent delegates are excused.

Delegate Saugstad moves that the Convention do now adjourn until 9:00 A.M., February 14th. Do we have a second?

DELEGATE DAWSON: Second.

PRESIDENT WENSTROM: Delegate Dawson seconded. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the Convention will be adjourned until 9:00 A.M. on February 14th.

(The Plenary Session adjourned at 3:33 P.M., Friday, February 11, 1972, until 9:00 A.M., Monday, February 14, 1972.)

V O L U M E XXVIII

(February 14, 1972)

MORNING SESSION

(The twenty-eighth day of the Plenary Session commenced at 9:35 A.M., Monday, February 14, 1972, as follows:)

PRESIDENT WENSTROM: Would the Convention please come to order?

Our Chaplain for this morning is Mr. R. R. Patzer, Pastor of the Seventh Day Adventist Church of Bismarck, North Dakota.

REV. R. R. PATZER: Our Heavenly Father, hallowed be Thy name.

We thank Thee for our country, and particularly for our state. The blessings that have rested upon the citizens of our state have been many. And as our leaders, our state leaders, cope with the many problems that confront them, may they have more than human wisdom. We are thankful for men and women of this Convention with convictions, and as they seek to do their best may they stand for something lest they fall for anything.

And so, Our Father, grant that at the end of all labor put forth in this Constitutional Convention that there will be a manifestation of even greater progress in our fair state, for the betterment of all people.

We unite our hearts with that of the Apostle Paul who enjoined us to pray for kings and for all that are in authority, that we may lead a quiet and peaceable life in all godliness and honesty. This is our prayer in Thy name. Amen.

PRESIDENT WENSTROM: We will be on the third order of business — Roll Call. The Clerk will open the key, you will indicate your presence.

Has every delegate indicated his presence? The key is closed. Roll call discloses 97 present, one absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 10th day of February, 1972, and finds the same to be correct.

Delegate Simonson, Chairman.

Delegate Paulson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report, Committee of Revision and Correction of the Journal. Is there any discussion? Hearing none, as many as are in favor of its adoption will say "aye;" opposed "no." The "ayes" have it. The report is adopted.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE BUTLER: I have a motion at the desk that I would like to have read. And I propose the passage of this motion.

CHIEF CLERK GILBREATH: Delegate Butler moves that this Convention, when considering the Constitutional Ballot Committee recommendations, strictly limit the debate to the issue of whether the particular alternate proposal be placed on the ballot. Further, that the Chair rule any debate on the substance of the issue be out of order.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE BURKE: Second.

PRESIDENT WENSTROM: Seconded by Delegate Burke.

Is there any discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I don't know how the President could rule the substance out of order when you're trying to decide whether the matter should be on the ballot.

It would seem to me that the substance or the issue involved would be essentially in that discussion.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I think we have debated the issues for the last four weeks, and for a long time before that in the committee. And I question whether there would be any additional pertinent information that will influence the vote of whether or not it should be on the ballot at this time as relates to the substance of the issue.

Now I recognize that there is a proposal that was put in the other day that we haven't discussed a great deal relating to the section of right-to-work in the Constitution. But as far as I know that is the only one that hasn't had a thorough — and I want to emphasize "thorough" — discussion in this Convention.

And my point in making this motion this morning is to find out how many of these we're going to have on the ballot, and if there's any desire to discuss the substance of the issue that we bring it back in the routine method of reconsideration to discuss the subject.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the motion as offered by Delegate Butler.

Mr. Clerk, would you re-read the motion?

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: One of these alternate proposals I'm interested in, and I propose to make an amendment. And it would change the direction of that amendment — of that proposal completely. And I would certainly like to be able to argue this out on the floor of this Convention. I hope this motion does not pass.

PRESIDENT WENSTROM: Will the Clerk — Delegate Aubol.

DELEGATE AUBOL: Mr. President.

I also would hope the motion does not pass. I think the delegates have met the issue. But if something new comes on the floor, a new idea comes, I think we should have a chance to hear it. I don't think we are going to rehash things we have talked over and over. We are tired of some of these things ourselves. I do not favor the motion at this time.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I would like to speak against the motion. As a member of the Constitutional Ballot Committee, I think if we pass this one we're drawing an awful thin, fine line. When we talk about whether or not a proposal will be included on the ballot as an alternate, there will be several cases where we will have to refer to the substance of the actual proposal. And I hope that this amendment or this motion fails.

PRESIDENT WENSTROM: Further discussion?

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President.

I would like to report my presence after my 6:45 A.M. class. Despite the fact the roads were good, I arrived a little late.

PRESIDENT WENSTROM: Would you read the proposed motion.

CHIEF CLERK GILBREATH: Delegate Butler moves that this Convention, when considering the Constitutional Ballot Committee recommendations, strictly limit the debate to the issue of whether the particular alternate proposal be placed on the ballot. Further, that the Chair rule any debate on the substance of the issue be out of order.

PRESIDENT WENSTROM: The question then before the Convention is on the adoption of the motion as offered by Delegate Butler. Those in favor will vote "aye;" those opposed will vote "nay." Those in favor of the motion will say "aye;" those opposed say "nay." The "noes" have it. The motion lost.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: We will be on the eighth order of business.

CHIEF CLERK GILBREATH: Delegate Peters would like to announce that there are eighteen students from the twelfth grade of Carson School, Carson, North Dakota, and Mr. Gerald Bodine in the gallery today.

PRESIDENT WENSTROM: Will the students rise and be recognized by the delegates of the Convention?
(Applause)

We will be on the fifth order of business.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: May we still be on eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE DAWSON: The Ballot Committee has finished their work this morning and the staff is working on some of the amendments that were necessary for the proposals that were made. And the idea of the committee would be that at this time we would like to announce what each of the nine alternate proposals are that have come before the committee. Not get into discussion and debate on these issues, but after they are announced you will have some time to think about them, and by that time the staff will have the reports ready and on your desks, and we will take them up in the order of the priority as a result of a straw ballot last week, and they will be open for discussion and debate.

Is this the time to do this?

PRESIDENT WENSTROM: I think this would be a good time.

DELEGATE DAWSON: Well, 4-1 will have the top priority on the straw ballot. And that is the issue dealing with unicameral or bicameral legislature. It was a very complicated one to work with, as you can imagine. The staff did a terrific job in going through all of the proposals. When it arrives on your desk this morning it will have the latest Style and Drafting changes and bring up to date all of the articles that would be affected if a unicameral legislature was approved by the people. The ballot form you see there gives you the choice of having the two-house legislature or the one-house legislature. The Attorney General's office tells us that this is the proper way to do this; that we would have to pull the bicameral, you might say, out of the Constitution and give equal balance to the unicameral approach. That is, you would vote for one or the other on the ballot. And you will see that on the ballot form when it comes out. I don't think it's necessary to go into any more detail on that.

The second one at the head of the priority was the eighteen-year-old votes. And Delegate McIntyre is going to make an announcement on that.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate McIntyre.

DELEGATE McINTYRE: Fellow Delegates:

Alternate Proposal 4-7 would put the question to the people in the following manner: Shall the following language be made a part of the proposed Constitution of the State of North Dakota (mark one only)? Persons eighteen years of age or older are declared to be adults for all purposes. You would either vote "yes" or "no." There was considerable discussion in our committee on this idea. We did recommend that we include it as an alternate proposal on the ballot. There was much discussion, and the real question in our committee was not so much whether it should be an alternate issue, but the age limit. You see persons eighteen years of age was put in the alternate proposal. There was considerable discussion on whether or not this should be nineteen years. And it was moved to amend in our committee to delete "eighteen" and include "nineteen". That motion failed. And at that time we moved out Alternate Proposal 4-7.

That's all I have.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: 4-2 will be discussed by Delegate Hoghaug.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Members:

4-2 relates to the gambling procedure which we have talked a great deal about. The Convention earlier in January deleted or repealed Article I of the amendment. So the proposal as we are recommending to go on the ballot concerning this would be: Which alternate set out below should the Constitution of the State of North Dakota contain (mark only one)?

"First: All forms of gambling shall be prohibited unless the legislative assembly provides for the authorization and regulation of specific forms thereof."

Or the other alternate: "The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets."

This proposal, like all of the proposals that are being submitted to the Ballot Committee, the majority action of the entire assembly will be listed first and the alternate proposal will be second.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President: 4-8 will be discussed by Delegate Kessel, followed by Delegate Hubrig with 4-9; both pertaining to right-to-work.

DELEGATE KESSEL: Mr. Chairman, Fellow Delegates:

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: The Burbidge proposal has been discussed on the floor, and it was adopted by the delegates earlier. The only question that Alternate Proposal 4-8 presents is whether or not the Burbidge proposal shall be in the Constitution or whether it shall not. And the question will then be on the ballot:

"Shall the proposed Constitution contain the following language?" Reciting the Burbidge proposal. And the question will be answered "yes" or "no". Which simply means that if the majority of the people do not want anything in the Constitution on the right-to-work they would vote "no," and so be it. Thank you.

PRESIDENT WENSTROM: Thank you.

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

On Proposal 4-9 we discussed in committee, and there was, like Delegate Kessel said, it was discussed to be a combination with 4-8.

First, before I go any further, I want it distinctly understood here this morning by me reporting on 4-9 that I'm not trying to take advantage of the Burbidge proposal. When it comes to the floor here, 4-9 will show Burbidge wording on the ballot form as well as the wording of 4-9 and the voters will have a choice between the 4-8 wording and the wording of 4-9 in order to give the general public the opportunity to have a choice between the two of them. And that's about all I've got to discuss on that matter at this time.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Delegate Lander will discuss 4-4, which had fifth order of priority.

PRESIDENT WENSTROM: The Chair will recognize Delegate Lander.

DELEGATE LANDER: Mr. President, Fellow Delegates:

If you have read 4-4 in your books you will see that the proposal on initiative and referendum as in 4-4 contains the provisions of the present Constitution. Our committee on our own and in consultation with some of the proponents of 4-4, decided that it would be too bad to waste all the good reworking which had been done of the order in which the whole process was presented. And accordingly we worked out with the proponents what appeared to be the main issue of contention and are going to be recommending the amendment of 4-4 in such form that we would in either instance retain the order as approved by the Convention earlier but have up for voter action the issues which are issues — which are these: The question of how many signatures ought to be involved, as you know, the percentage against the old figure; how many petitioners ought to be on the petition, the five versus the twenty-five; whether the petition ought to have to be submitted to the Secretary of State prior to its being submitted to the people; what action of the law would be suspended by the operation of the petition; and, finally, how long the Legislature will be restricted

to the two-thirds vote on repealing anything. As you know, we passed it at seven years, the proponents of 4-4 have asked for a period of ten years. And so there again, as with the others, this whole issue would be pulled out of the Constitution and the voters will then have the opportunity to vote for what we propose at the Convention or for these other — the other provisions of the old or existing Constitution. You will be voting an "X" for one or the other if this is adopted.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President:

Delegate Chase will discuss 4-3.

PRESIDENT WENSTROM: The Chair will recognize Delegate Chase.

DELEGATE CHASE: Mr. Chairman:

This proposal was voted on by the Convention as in your blue sheet 4-3. And as long as the Convention voted on it with that particular language in front of them, they acted on this particular proposal as is and recommended its indefinite postponement. I'm sure it will come up for more discussion later on.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President:

4-5 dealt with the appointment rather than the election of judges, and the committee recommends indefinite postponement. There's no change from your blue sheet on that.

4-6 refers to changing the term to four years as passed by the Convention for Senators and two years for House members. And the committee has recommended indefinite postponement on that.

We would like these last three proposals on which the committee has recommended indefinite postponement come up after we have discussed the top five priorities.

PRESIDENT WENSTROM: Any further discussion? Hearing none, we will go on the fifth order of business.

CHIEF CLERK GILBREATH: Mr. President.

PRESIDENT WENSTROM: Roy. Delegate Unruh.

CHIEF CLERK GILBREATH: You want to IP all these now?

DELEGATE UNRUH: Yeah, read it.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposals Numbered 1-1, 1-4, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-18, 1-19, 1-20, 1-22, 1-23, 1-24, 1-25, 1-26, 1-27, 1-28, 1-29, 1-30, 1-32, 1-33, 1-34, 1-36, 1-37, 1-38, 1-39, 1-40, 1-43, 1-44, 1-45, 1-46, 1-47, 1-48, 1-49, 1-50, 1-52, 1-53, 1-54, 1-55, 1-56, 1-57, 1-58, 1-59, 1-60, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-68, 1-70, 1-71, 1-72, 1-73, 1-74, 1-75, 1-76, 1-77, 1-78, 1-79, 1-80, 1-82, 1-85, 1-87, 1-88, 1-89, 1-91, 1-92, 1-93, 1-94, 1-95, 1-96, 1-97, 1-98, 1-99, 1-100, 1-101, 1-102, 1-103, 1-104, 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112, 1-113, 1-115, 1-116, 1-118, 1-119, 1-120, and Delegate Proposals Numbered 2-23 and 2-26 has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Style and Drafting; that the proposals as read by the Clerk be indefinitely postponed. Is there any discussion?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Mr. President and Delegates:

What we're going to do here is indefinitely postpone all the committee proposals so that in the future if we pass this motion any changes that are considered or attempts to amend will refer to your green sheet. So that we don't have to go bouncing in and out of the green sheets to the proposals, back again, like we did the other day, which wastes time. So by tomorrow morning we will have a re-engrossment of the green sheets, because we did do some amending the other day. And they will be printed and put into your books tomorrow. But for today, if we

do have any amending, why we'll refer to the green sheets only and not the committee proposals. And that's the purpose of this motion.

PRESIDENT WENSTROM: Any further discussion? Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

I'm kind of confused. I understand the procedure here, but I think our final action or our main action was on all these proposals. And I don't think that the record should show that these were indefinitely postponed. If we need a motion to the effect that all changes will be geared to our second passage, I think that is what would be in order. I don't think we should indefinitely postpone action when we've had the only vote on each issue.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: In answer to Delegate Engelter, what we've done now is passed two sets of measures. We can't have two sets alike. We have to consider them one for purposes of orderly procedure. And that's the reason for the motion.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Question.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: The question before the Convention is on the indefinite postponement — or rather on the adopting of the committee report which calls for the indefinite postponement of the proposals —

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: — that were referred to the Committee on Style and Drafting.

Delegate Kelsch.

DELEGATE KELSCH: I think Delegate Engelter has raised a point. On the first passage those numbers that were pointed out to indefinitely postpone, that was the report on passage. And I wonder if actually the proposition we're talking now are redraft proposals of those. And I wonder if we should really indefinitely postpone them. Because if you're checking to see that 50-vote majority carried the matter on the issue, that was first passage.

PRESIDENT WENSTROM: In other words, Delegate Kelsch, your question is on voting to reconsider our first passage on each of these proposals?

DELEGATE KELSCH: My concern is that if we accept the committee report and indefinitely postpone all those proposals that I'm worried about the state of the record as to our first passage on all those. Because that was really important action of the Convention. And I think we could — the President could rule that we work off the combined articles as we acted on the second reading, because they are redrafts of the earlier ones. I don't think there's any need to indefinitely postpone those earlier ones because the later ones are redrafts. I think all we need is a ruling that we'll work off the redrafts rather than the original proposal.

If we indefinitely postpone them, I'm concerned about the record of our action. On one hand we said it was first passage, that was the ballgame; now we are indefinitely postponing them. I just don't know that that's the proper thing to do at this time. Thinking out loud, I think Delegate Engelter had a good point though.

PRESIDENT WENSTROM: There is no question in my mind but you have raised a good question. In fact, we raised it this morning when we were visiting on the procedure here.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: It seems to me that taking, for example, the green Proposal 5-12, which states that it is a redraft of Committee Proposals Numbered 1-29 and about nine others, we have only passed those 1- numbers once. The second time around we passed them as redrafted. In a sense they were the same proposals. That was what we had on eleventh order. I don't think it's necessary to kill the originals. And the suggestion of my delegate neighbor and I is that those original 1- proposals be laid on the table where they may reside in perpetuity unless they are revived.

CHIEF CLERK GILBREATH: Can't lay it on the table.

PRESIDENT WENSTROM: We have the peculiarity in our Rules that the motion to lay on the table is not permissible.

Delegate Burke.

DELEGATE BURKE: Mr. President:

I thought maybe I'd take a whack at it, too.

Mr. President, I can see the concern of Delegate Engelter and some others, Delegate Rundle, that the vote on these proposals can be indefinitely postponed is in effect wiping them out. And it seems to me that preceding the vote to indefinitely postpone we should have a motion to show that the vote of this Convention on these proposals is reflected in the green sheet redrafts so that my vote on a particular proposal won't be wiped out by this indefinite postponement. I think there should be a motion to show that our vote of the Convention on these is reflected in these redraft proposals.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I think there's a technicality maybe we can correct by a motion to amend the motion to read "not be indefinitely postponed, but that those proposals be renumbered in conformity with the numbering system in the green drafts and that that motion withheld we would be glad to move it.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I was going to suggest that — I don't know that we have to do anything unless someone feels that we have to. But we have shown — we have the original proposal as passed in one series. And then we show later a redraft of that. And doesn't that show the course of the action of the Convention on that? Isn't that sufficient just to let them stand that way? They've been redrafted — something has happened to them, they've been redrafted, and accepted by the Convention with slight changes in style and drafting. Is there any real need to do anything with them?

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: The reason, the purpose of asking to have these various committee proposals indefinitely postponed, was a matter of mechanics of handling the business before us here in the very closing days. We only have three remaining days. And so that we do not have the cumbersome matter of going back and — that is in the event of reconsideration and in the event of a motion to reconsider, and if that motion should prevail, and then comes the question do we go back and amend the original proposal and then have that proposal considered to be properly re-engrossed. First of all, passed on the first passage as amended — first, reconsider it and then have it amended, and then pass it for first passage, and then to suspend the Rules again and have it considered to be properly redrafted by the Committee on Style and Drafting, and then have it go to the eleventh order and have it passed on second passage. The point here was that if these are indefinitely postponed then all the Convention has before it will be the — all of the proposals will be identified by article and section. And by tomorrow morning you will have on your desks — it's thought you will have on your desks — the complete draft of all of the articles and sections as we have passed them on the floor as amended on the eleventh order. Then in the event there is any reconsideration to try to amend any portion we will not be confused as to what we're talking about. We will be talking about the proposals as an article so-and-so, section so-and-so, line so-and-so. And you will have that before you so that it will be readily understood. It will also simplify it greatly so far as the staff is concerned; particularly for engrossing. And because of the time limitations it was thought that this would be the better and more efficient way to handle this problem. This was discussed at considerable length in the Calendar Committee this morning, and it was decided the motion that was made by Delegate Unruh was to — what should we say? — facilitate the mechanics of anything that may come up in these last few days. Thank you.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President.

There's one thing may not have been discussed; it depends on if you're a political animal or not. But quite a few people read the Journals. I had a phone call from

one of my people following the Journal and who noticed how you vote. If this motion passes it would be a very handy tool if you wanted to show them how you voted for everything once and against it the next time. I think — I don't believe this is a wise move from a standpoint of being fair about it. Politically it would be pretty handy.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President.

Now in checking over, for example, with the legislative branch, portions of our proposal, every one of the proposals we dealt with are mentioned in Style and Drafting Proposal 5-12. And that was introduced by the Style and Drafting Committee, we dealt with it, we voted on it, reference is made in the title to each of the proposals. Now I see no harm in indefinitely postponing the other proposals or withdrawing them; one way or the other. But to leave all those proposals — it's a mechanical matter — to have them all lay on the desk and not disposed of is wrong. When we took the action we accepted the Style and Drafting's recommendation to all these proposals, then we, in fact, said that we no longer need those other proposals. They are identified in these redrafts. I see no harm in indefinitely postponing it.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President.

I think we're kind of hung up on a procedural deal here that I don't believe is really anything that big. It seems to me the Rules clearly point out to the public and to us what is happening to these proposals. I think we all understand we're going to be working off the green sheet. I believe the delegates such as Rundle and Kelsch and those who are concerned about this thing, I think their concern should be taken into consideration. And let's just work off of the green sheets and understand that the Rules have taken care of the steps of what has happened to these proposals. I don't think we should indefinitely postpone them.

PRESIDENT WENSTROM: Fellow Delegates:

I do think that this is a question that merits real concern. I agree with Delegate Burke, I believe. I think we should have something in the record to show on roll call vote that Committee Proposal No. 1-1 became proposal — or became Article — a part of Article — a section of Article so-and-so. I think that that should be in the record. And I think if we did have that in the record, if that was incorporated in the record, there could be no question. In other words, we would be placing in the record the fact that we did renumber those basic committee proposals. That seems to me that that's what we should do before we indefinitely postpone these. After we have something in the record on a roll call vote that showed just what we did, that we renumbered, that this is the process of renumbering, then these would have no further use. And I believe we should follow that procedure.

Delegate Pearce.

DELEGATE PEARCE: Mr. President:

May I ask first from the Clerk whether the engrossed copy of the green Style and Drafting Committee Redrafts contain on the left-hand margin the references to the committee proposals such as 1-43? They do?

CHIEF CLERK GILBREATH: Yes.

DELEGATE PEARCE: Then I am wondering if a motion would not be in order to be voted upon by roll call vote in substance — and I haven't had time to draft this — that Style and Drafting Redraft Proposal No. 5-1, for example, might be deemed — which was passed on the eleventh order of business — be deemed for all purposes to have been the second passage of the Committee Proposals 1-43, 1-44, et cetera, which are listed in both the title and along the margin of the engrossed bill. And holding in that the remark that you have just made which would seem to me would identify and carry the committee proposals into the Committee on Style and Drafting.

PRESIDENT WENSTROM: Delegate Pearce. I have a question I would like to direct to Delegate Pearce. There is one point that the Chair would like to raise on that procedure, and that is that during the time that we debated and voted on second passage we reiterated again and again that we were only voting on the matters

that pertained to the work of the Committee on Style and Drafting except in those rare cases where the Rules were suspended and there were floor amendments. So I question, Delegate Pearce, whether or not second passage would hold as far as first passage was concerned, because of the fact that we raised that question so many times.

Delegate Pearce.

DELEGATE PEARCE: Well, I had considered that. Really, I thought perhaps in my motion that it be deemed to be the second passage. Because actually what we were really doing is simply passing the restyled language of the committee proposal. And while we may have done it sometimes in a number of sections together, I think there was no doubt in the minds of the Convention and all of the delegates that it was on the eleventh order of business, the second reading and second passage of those proposals has changed in wording for style only. And that's why it seemed to me that my motion, which if carried and was recorded, that that be deemed to have been the second passage. Other than that dilemma, I see no way of doing it other than passing them all over again on eleventh order, which would seem to be a complete snafu.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: If you will refer to, just for example, page 417 in your Journal, you will notice in our report, procedural committee, at the bottom we say the following language: "Your committee moves that the Rules be suspended, that Style and Drafting Proposal 5-9 be introduced, such proposal being a redraft of Committee Proposals . . ." Then it goes on to number all of the Committee Proposals there. I think, Mr. President, the hang-up seems to be that for preservation of the votes by which we passed these Committee Proposals on first passage. And if it's possible for me to amend the motion that Clerk Gilbreath read, I would move that the record of the votes by which these committee proposals passed on first passage be preserved.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Some of the objections to what we're doing I think may be answered. Now of course all of the delegates do not have the engrossed bills as I have them before me. All of us on the Calendar Committee received copies this morning. My understanding is that everybody will have them on your desks tomorrow morning. Is that right?

PRESIDENT WENSTROM: That is the intent.

DELEGATE HERNETT: All right. Now, for instance, here on the first sheet, which is the Preamble, for example on there I think it identifies everything you're talking about. Up at the heading it talks about Style and Drafting Redraft Proposal No. 5-8. Now that's referring to the green sheets. And then the next line talks about style and drafting, which proposal is a redraft of Committee Proposals 1-1, et cetera. So all the identification you can ever ask for is on here, is on these sheets, which you will have in front of you tomorrow morning.

Now, I think the advantage in what we're doing here is the thing that we have to consider, these white sheets, that is as you will have them, are the amended green sheets. It's still — we're still on the green, but the white ones are the amended green sheets. And on the floor of this Convention I'm sure that we're going to want to talk about the enrolled and engrossed bills or proposals of the white sheets, which are the amended green ones, if I make myself clear. In other words, if there are any amendments or motions to be made you're going to be talking about this white one.

Now I don't know what kind of motions are necessary to clear this up this morning. Maybe you don't want to indefinitely postpone the greens necessarily, but supposing the motion was made whereby the Convention confined its motions and its discussions to the enrolled proposals, which is the white one, the new ones, and if we voted on that and passed it, that's where discussions would be held then on these proposals.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: Mr. President, Fellow Delegates:

I think that, you know, we can get rid of these in another way similar to — similar to what Delegate Sinner indicated by making some type of a motion to trans-

fer, incorporate, and renumber the old committee proposals into the Style and Drafting Proposal. With a motion like that, we would not then have any committee proposals, but we would have reference to them. And at the same time we would, I think, in a sense be withdrawing these committee proposals. Because we have transferred them, we've incorporated them, and renumbered them into the Style and Drafting Proposals. And I would think that a motion to that effect would take care of all our misgivings and difficulties without having anything referred to, withdrawn or indefinitely postponing.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President:

I see no objection to indefinitely postpone. However, I believe that the motion should precede the motion to indefinitely postpone in somewhat this fashion, for example: Style and Drafting Redraft Proposal No. 5-9 should show that this incorporates committee and delegate proposals by a certain number. And that the vote by which these committee and individual proposals are adopted would be carried over and incorporated within 5-9, such as Delegate Unruh mentioned. And that the roll call vote on these be preserved. So that when we indefinitely postpone then Delegate Rundle can say, "Well, my vote was preserved in this green sheet." So I think this is a staff matter, I don't think it can be made from the floor. And perhaps we should put this off until later in the day.

DELEGATE SINNER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I'll move that further action on the motion before us be suspended until after lunch.

PRESIDENT WENSTROM: Delegate Sinner moves that further action on adopting the Committee Report of the Committee on Style and Drafting be deferred until this afternoon.

CHIEF CLERK GILBREATH: Want me to read it? I can read it, then they can think about it.

PRESIDENT WENSTROM: What?

CHIEF CLERK GILBREATH: Read Unruh's motion to him.

PRESIDENT WENSTROM: Yes.

CHIEF CLERK GILBREATH: As I have Delegate Unruh's motion, it is that his Committee Report be amended to read:

"Further, that the vote by which the above committee and delegate proposals were passed on the tenth order be preserved as the first passage of the sections of the redraft proposals into which they were incorporated."

That's what we're holding action upon.

PRESIDENT WENSTROM: Do we have a second to Delegate Sinner's motion?

DELEGATE SINNER: Mr. President:

In view of the reading of the committee's motion, I'll withdraw the motion. I think that sounds pretty good.

PRESIDENT WENSTROM: I don't want it that way. I don't like to be the one person here that's going to be arbitrary on this. But I'm real concerned about this, and the last thing we want to ever have happen is all the work we've done up to this point be nullified because we did something that was wrong. And I'm going — I'm going to ask for a motion to delay action on adopting this particular committee report —

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: — until such time as we do have this figured out and do have it done. Delegate Sinner moves to delay action and Delegate Kelsch seconds the motion on adopting this Committee Report until this afternoon.

As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. And we will take this matter up this afternoon after giving it further consideration.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I'm not sure whether this is the right order to discuss

this, but a number of delegates have come to the Rules Committee to ask about the last part of amendment and suspension of rules. You may remember that it reads: "During the last two days of the Convention, the rules may be suspended by affirmative vote of fifty delegates." By way of explanation, when the Rules Committee met to amend the Rules and revise them for the Plenary Session, they had asked all the chairmen of the substantive committees to make recommendations. And this was one of the recommendations that came from one of the chairmen. The thinking was that the last two days there might be procedural matters — I think what we've had here now might be a case of it — that might need quick action. And so for that reason the rule was added: "During the last two days of the Convention, the rules may be suspended by an affirmative vote of fifty delegates." It was for the matter of taking care — for the reason of taking care of procedural matters.

PRESIDENT WENSTROM: Any further discussion?

Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

I'm not certain that I was the only one that made the suggestion, but I did make it to the Rules Committee. I felt that, as Mrs. Geelan has indicated, that there might be procedural problems that would require action that could perhaps not secure two-thirds vote. The Rules Committee adopted this language. It's found, by the way, on page 42 of your Rules. I can see now that as we approach these last two days there are many of the delegates who feel, or at least some of the delegates who feel, that this Rule should be used to bring before the Convention substantive matters. Now that was not my intent at the time I made the suggestion. So that we might have a determination of the feeling of the Convention on this question, I would like to move now that Rule 36 found on page 42 of the Rules be amended by striking out the last two lines.

PRESIDENT WENSTROM: Is that Rule 36?

DELEGATE HAUGEN: Yes.

PRESIDENT WENSTROM: Delegate Haugen moves an amendment to the Rules by striking the last two lines in the Rules, of Rule 36, page 42, in the Rule Book. It reads: "During the last two days of the Convention, the Rules may be suspended by affirmative vote of fifty delegates."

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Ladies and Gentlemen:

We're been operating under this Rule thinking it meant just what it said for many days. I don't think it's proper at this time to change it. In the first place, if fifty people find that they have made what they think is a serious mistake, it should not require two-thirds vote to bring it back. You want to remember there's no — there's not another house to correct our mistakes. There is no governor to veto anything we do here. We're on our own. And I don't think this Rule should be changed, especially at this time when everyone knew what it was and very few knew that it was meant for one thing. The Rule didn't state anything about substantive matters or procedural matters. I thought it was a Rule that meant just what it said. And I don't think we should change it now. Because we might find some sad mistakes that we want to change. Thank you.

PRESIDENT WENSTROM: Any further discussion?

Do we have a second to Delegate Haugen's motion?

DELEGATE BUTLER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Butler.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Could I ask a question in this connection: What is the requirement of the Rules as to what vote will have to be necessary on this motion in order to change the Rules; majority or two-thirds?

PRESIDENT WENSTROM: No, it takes two-thirds vote. It takes 66 votes to amend the Rules.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I speak in opposition to the amendment, too. I think if we're to take our jobs here seriously, there's something that really needs some reconsideration, needs some correcting, we'd better be able to do it as easily as possible. This is no time to pull the rug out from underneath the delegates.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: Just in regard to the statement as offered by Delegate Stanton, I don't think it is the intent of any delegate in this Convention to pull the rug out from under any other delegate. That's not the purpose of the Rule.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I appreciate what the President has said. And that is certainly true. It's my — it certainly is not my intent in offering this motion to — well, I guess the words "pull the rugs out" are as good as any or as good as any I can think of. No, it's not that at all. But we have two days left of this Convention after today. We have seen already this morning the discussions that we can get into on changes on this matter of what to do about these original sections. And we have a matter of time here.

Now there's a good many — I wouldn't say there are a good many things — there are some things about this proposed Constitution I don't agree with. And I am sure that some of those things might be brought up and they could be reconsidered by a majority vote now. But, on the other hand, there are some of the things that I strongly support that might also be brought up and changed if we can consider these things on a majority vote. And I think just on the basis of the fact that time is of the essence here that we should favorably consider this motion. More than that, this Convention I think has had a good set of Rules; it's been extremely fair to the minorities and to the individuals themselves. And the Convention has also shown when there is any significant reason for reconsideration that it was willing to go along with reconsideration. But to have a blanket reconsideration on a majority vote I do feel could tie us up in debate that would ruin or prevent, let's say, the completion of our work on time.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: I wonder if I might, knowing what the intent, I think, of Delegate Haugen's motion is, if I could amend the motion by leaving the last two lines in but adding these words: "Except that a motion to reconsider a proposal that has passed the first and second passage would require a two-thirds vote." If I could get a second I'll try to explain the reason for that amendment then.

DELEGATE POULSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Poulson.

DELEGATE GEELAN: That way we could leave the motion to have a majority vote on suspension of procedural matters, but the reconsideration of proposals that have already been acted on would still require the two-thirds vote. So I would suggest that amendment.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'd like to speak just very briefly on this particular motion. I have a proposal that I would like to reconsider. Now I have the motions all typed out laying on the table ready to go when the time comes, if it comes. But if I can't get a two-thirds vote from this assembly to reconsider, I might as well tear up those sheets of paper right now anyway. I think that this is a good motion. It doesn't give any real reconsideration, it just helps qualify the thing a little bit. And if anybody can't get two-thirds of this assembly to reconsider it shouldn't be reconsidered.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President:

I believe there is a fatal defect in Delegate Geelan's amendment in that the majority vote could suspend the Rules. And I believe Delegate Haugen, if I may speak — may I speak on Delegate Haugen or am I limited to Delegate Geelan?

PRESIDENT WENSTROM: I think we should stay with Delegate Geelan's motion.

DELEGATE BURKE: Thank you.

PRESIDENT WENSTROM: Amendment to the amendment. Does the desk have the amendment?

CHIEF CLERK GILBREATH: Yeah. Mrs. Geelan's?

PRESIDENT WENSTROM: The amendment to the amendment as offered by Delegate Geelan.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment: "That the amendment be — be retaining the last sentence of Rule 36 rather than deleting it, and after the word 'delegates' add the following: ', except a motion to reconsider a proposal that has passed the first and second passage would require a two-thirds vote'."

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Question to the Chair. Now the motion for the amendment to the amendment requires a simple majority or does it require a two-thirds vote?

PRESIDENT WENSTROM: The amendment to the amendment requires a simple majority.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: We already have said many times that the second passage was just on form, style and drafting of changes, which truly it wasn't in many cases. But this is what we've been saying. So the second vote — second passage meant nothing. And I can't see that this amendment would help at all. It wouldn't as far as my opinion is concerned.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment to the amendment as offered by Delegate Geelan. Those in favor of adopting her amendment will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed "nay." The "noes" have it. The amendment lost.

We are back on the main motion as offered by Delegate Haugen. Any further discussion?

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President:

Does this take a two-thirds vote to change the Rule now?

PRESIDENT WENSTROM: This takes 66 votes to change the rule. So inasmuch as this will require a 66 votes to change the Rule, I am going to ask the Clerk to open the key and you may indicate your vote.

Has every delegate voted? Delegate Scheel, have you voted? Does any delegate wish to change? The vote is closed.

The vote indicates 47 "ayes," 49 "nays," two delegates absent. The amendment failed.

At this time the Chair will declare a ten-minute coffee break.

(The Session recessed at 10:42 A.M. until 11:01 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: May we be on the eighth order?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE DOBSON: The Public Information Committee will meet during the lunch hour in the Large Hearing Room. Bring your own lunch.

PRESIDENT WENSTROM: Anything further under the eighth order? Any further announcements?

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: May I extend a sincere thank-you to our Clerk, Roy Gilbreath, for the beautiful posey? I thank you very much. (Applause)

PRESIDENT WENSTROM: We'll be on the seventh order of business — Reports of Select Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Procedural Committee on Resolutions, to whom was referred Resolution L, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Scheel, Chairman.

Delegate Scheel moves the report be adopted.

PRESIDENT WENSTROM: The question is on the Committee Report of the Committee on Resolutions that Resolution L be indefinitely postponed.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President:

I don't know how much resistance the sponsors of this resolution are going to make against the motion to indefinitely postpone. But since the members of the Convention have not seen the resolution, I would move that it be read at length from the desk, not printed in the Journal, and not printed as a bill, and laid over for one day.

PRESIDENT WENSTROM: Delegate Meidinger moves that the Rules be suspended, that Resolution L be not printed as a bill, be not — that it be printed in the Journal, that it be laid over one Convention day.

Will you read it?

CHIEF CLERK GILBREATH: Resolution No. L, introduced by Delegate Meidinger, Trenbeath, Poulson, Larsen, Lander, Litten, Engstrom, Griffin, Sullivan, Jestrab, Fritzell, Hernet, Knudson, Christensen:

"A resolution requesting that the area of taxation of the extractive industries be investigated by the investigative branch of the legislature.

"WHEREAS, the state of North Dakota has become one of the greatest suppliers of lignite coal for the production of electricity, and potentially for the production of methane gas; and

"WHEREAS, most of this production is exported from the state, currently either in the form of coal or electricity; and

"WHEREAS, North Dakota is the only state in the nation exporting a mineral resource without gaining some tax remuneration for it while its citizens are paying taxes to other states by the purchasing of products imported from them; and

"WHEREAS, the production of coal is extremely degrading to the environment of the state, in the first instance by the destruction of the land surface in the process of strip mining, turning the land into an impassable desert and removing its productive capacity for centuries to come, and secondly polluting the atmosphere by the burning of the coal in the process of producing electricity; and

"WHEREAS the destruction of the land by strip mining effectively removes it from the property tax rolls so that it no longer contributes to the support of government, at the same time that the burden of property taxes on the owners of other lands is becoming more and more difficult to bear; and

"WHEREAS, a similar extractive industry, the state's oil industry, is required to pay severance taxes on its production and on production and distribution facilities to aid the support of state and local government;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the Legislative Council of the State of North Dakota be requested to study the feasibility of placing an appropriate severance tax on lignite coal;

"BE IT FURTHER RESOLVED, that the clerk of the convention be instructed to forward an enrolled copy of this resolution to the Legislative Council."

PRESIDENT WENSTROM: You've heard the reading of the resolution. The motion is that the Rules be suspended, that the resolution be printed in the Journal, that it be read from the desk, and that it be laid over one Convention day.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I would just want to elaborate on the report of the committee that it be indefinitely postponed. I think the feeling of the members, even though some of those who felt this might be a good idea nevertheless, in consideration of the business of the Convention they did not feel it was the proper concern of the Convention, the proper province of the Convention, and therefore recommended unanimously that it be indefinitely postponed.

DELEGATE ROSENDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Yes. As a member of that committee, I'm wondering if there isn't a little irregularity here due to the fact that we indefinitely postponed this measure before it was ever read at the desk?

PRESIDENT WENSTROM: Delegate Rosendahl, it has not been indefinitely postponed.

DELEGATE ROSENDAHL: It has in committee.

PRESIDENT WENSTROM: Oh, in committee?

DELEGATE ROSENDAHL: It never was referred to the committee from the desk. And now it's being referred back after we indefinitely postponed it. I'm just wondering about it.

PRESIDENT WENSTROM: Delegate Rosendahl, it was referred to the Committee on Resolutions.

DELEGATE ROSENDAHL: Yes. But after it was indefinitely postponed by the committee.

DELEGATE LANDER: The committee can't do that.

PRESIDENT WENSTROM: Well, I'm sorry, that's not a question, I don't believe, for the Convention itself to decide. I believe that's something that the committee would have to decide on the action that they took.

DELEGATE ROSENDAHL: Well, isn't it — isn't it usually the case where something like this comes up it would be read at the desk.

PRESIDENT WENSTROM: No.

DELEGATE ROSENDAHL: — and then you would refer it to the proper committee?

PRESIDENT WENSTROM: No. No, that's not the usual procedure, Delegate Rosendahl. It's usual procedure is that we receive it and refer it to the committee. And then when it comes back with the committee action that's the time. And that's why we have a committee recommendation at this time for indefinite postponement.

DELEGATE ROSENDAHL: But I wonder — I wonder, Mr. President, if we checked the records if this wasn't indefinitely postponed in the committee before it was ever brought to you.

PRESIDENT WENSTROM: I fail to follow the question. The question here is on the question of some — if there's some problem in the committee, then that's in the committee. But here the question is whether we're going to adopt Delegate Meidinger's motion to lay it over one day and act on it tomorrow or whether — or whether we want to indefinitely postpone it. So the first thing we are going to have to do is act on Delegate Meidinger's motion.

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Mr. President and Delegates:

I support Delegate Meidinger's motion. Until the delegates generally have had a chance to look at this resolution they can't very well decide whether they support the content of the resolution or whether it's a logical concern of the Convention.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I rise to oppose the motion of my good Chairman, Delegate Meidinger. I know this has been heard in the Convention considerably. I know it was heard in our committee. I think it was referred to another substantive committee besides the one on which I serve. Our committee refused to act on it, that committee refused to act on it. I know it went to the Rules — to the Resolutions Committee once previously and was indefinitely postponed and

passed back to Delegate Meidinger. It was not — I believe here — it was handled through the floor at that time, and so I presume it is still alive. But I would support the delegate — the committee recommendation to kill it and to vote against this motion to continue considering it for a couple of reasons. One, my concern is that we move more and more into the legislative arena, and that we ought not to do that. And that this would just be a final step down the road into the legislative arena. This resolution is clear if you listen to it. It says that there shall be a severance tax on coal applied in the State of North Dakota, not where it shall be applied. And it directs — does not direct, but suggests to the legislative assembly that they've been remiss in apparently not doing that over the years. And in that sense I think it's directed to the Legislature. When it came up in our Education Committee I made an off-handed comment that the best thing we could do with this is everybody take a copy and mail it to your favorite legislator and then properly let the legislators act through the Legislative Council to do this kind of study, and this kind of inquiry if they want to make it. But I don't believe it's any business of this Convention to be dealing with this matter. And certainly we're too busy at this time, I think, to lay it over a day, to print it in our record, for heaven's sake, where I have every conviction it does not belong. And in that sense I think we ought to vote to defeat the motion of Delegate Meidinger on it at this time.

PRESIDENT WENSTROM: Delegate Kretschmar.

DELEGATE KRETSCHMAR: Mr. President:

I would yield my time to Delegate Knudson.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: I believe the remarks of Delegate Sanstead are out of order. They are not directed to the motion. If we're going to discuss the content of this resolution I have a great deal more comment I would like to make regarding the content. That's not the motion before us.

As far as the point of our directing advice to the Legislature, I believe we have a precedent in the opposite direction. Friday afternoon Delegate Hill, who is employed at present by a committee of the Legislative Council, told us that this committee which is his employer had directed a message to this Convention conveying what they thought we should do. I don't see how it is outside our responsibility to send comments in the opposite direction.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Pass.

PRESIDENT WENSTROM: Any further comment? The question —

DELEGATE HILDEBRAND: Mr. President.

PRESIDENT WENSTROM: Delegate Hildebrand.

DELEGATE HILDEBRAND: I rise to support the decision by the Resolutions Committee. And I think that certainly this is more of a directive to this Convention than any directive by the research committee should be considered to be. I don't quite see that the research council should give a directive to the Convention to in turn give a directive back to the research council and the Legislature, telling them what they should do. Doesn't this seem to be a happy merry-go-round that we don't quite have time for at this stage of the game? Certainly a cat with nine lives has a better way of staying alive. I wonder which one of these lives it is that we're working on at this time.

PRESIDENT WENSTROM: The question before the Convention is the —

DELEGATE LARSEN: Mr. President.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: Fellow Delegates:

I rise to support this amendment. I feel it's a good one. I feel that we are here to plan for the future. And I can see no other way than to support this amendment or resolution.

PRESIDENT WENSTROM: Delegates, the question before the Convention is on the motion as offered by Delegate Meidinger that this resolution be printed in the Journal, that it be laid over one legislative day —or one Convention day.

Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman: Because of the fact that this is to be

printed in the Journal, I have to speak at this time. I can't wait until tomorrow. This was presented to our committee, and we felt that it is something that will not only harm the passage of the whole Constitution — and this should be our primary concern as delegates to the Convention — we should stay out of the matters of that nature.

Now I personally support that resolution as an individual. But as a delegate to this Convention, this Constitutional Convention, I do not feel that we should get into this. And by laying it over until tomorrow and printing it in the Journal, we are already establishing what we have set out originally not to do, to get involved in these other issues. I therefore hope that, number one, the motion to carry it over until tomorrow is defeated; and then I do hope that the proposal of the committee to indefinitely postpone it takes precedence as number two.

PRESIDENT WENSTROM: The question — I think the Convention is aware of the question. We are voting on Delegate Meidinger's motion. As many as are in favor of its adoption will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the motion of Delegate Meidinger will say "aye;" those opposed say "nay." The "noes" have it. The motion lost.

We are back on the committee report to indefinitely postpone Resolution L.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: In line with the committee's unanimous verdict, I'll move that the Resolution L be indefinitely postponed.

DELEGATE BINEK: Second.

PRESIDENT WENSTROM: It's been moved and seconded, seconded by Delegate Binek, that Resolution L be indefinitely postponed.

Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it, and the motion, Resolution L is indefinitely postponed.

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: I rise on a point of personal privilege.

PRESIDENT WENSTROM: State your privilege.

DELEGATE KNUDSON: Mr. President, members of this Convention:

We have now indefinitely postponed what is really a harmless resolution conveying the sentiments of at least a sizeable group of delegates on the question of whether coal production should be taxed.

Fellow delegates, by the time Delegates Gipp and Nicholas have reached the age that Delegate Cart has now achieved, the western one-third of North Dakota will be a desert of spoil banks. Rather than being called the Badlands of North Dakota, it will probably be called the Deadlands of North Dakota. And if either one of these then old gentlemen should be queried by his grandchildren that — or probably great-grandchildren by that time — "Hey, Grandpa, how come they say 'Deadlands? Were they every alive? How did they get dead?" This old gentleman can answer, "Yes, children, they were alive. I can remember when they were green hills covered with growing crops and grazing cattle. They died in the process of mining the coal out from under these lands. And, children, back in 1972 I was a delegate to the second Constitutional Convention of the State of North Dakota, a Convention which refused to even consider whether the people who profited by this devastation should be taxed while they were doing so."

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President:

Since I've been referred to in the time element, I would like to express my ideas on this whole thing. This has been before the Legislature, I'm sure, in recent time. And there is where it properly should be. This Convention should not be indulging in resolution of this kind, it should go to the Legislature for its solution.

PRESIDENT WENSTROM: Any further inquiry? Hearing none — Delegate Kessel.

DELEGATE KESSEL: I can only answer that by saying that as long as we have legislators like Delegate Knudson this body will have no worries at that time.

DELEGATE KNUDSON: Mr. President.

PRESIDENT WENSTROM: Delegate Knudson.

DELEGATE KNUDSON: Now since my name has been mentioned I can respond like Delegate Cart, I feel. This idea first came up among members of our committee from two different angles; from the environmental angle and from the angle of revenue to finance schools. Delegates came to me and asked, "Is it true that coal production is not taxed? Why isn't it taxed?" And my only answer could be, "The coal industry is sacrosanct. The idea of taxing that industry is one of the unmentionable things. It's something that is not done. And the only reason it is not done is that the coal industry has one of the toughest lobbies in existence." Certainly this has been brought before the Legislature many times, every session in my memory, but it's just something that is not done.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: It might just be that those youngsters in that day might just know a little bit more about the difference in legislation, in statute law and in constitutions. So they might just say, "Grandpa, why didn't you take care of that in the Legislature?"

PRESIDENT WENSTROM: We'll be on the twelfth order of business.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: May I just add to what Delegate Knudson said? That when the Burlington Northern gets through with Colstrip, Montana, if you think you've seen a lobby in the North Dakota Legislature, wait until the Burlington Northern moves in.

PRESIDENT WENSTROM: We'll be on the twelfth order of business — Resolutions.

DELEGATE LARSEN: May we be on the twelfth order of business?

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: I would like to make a personal request; that Delegate Knudson's remarks be placed in the Journal.

PRESIDENT WENSTROM: Do you so move, Delegate Larsen?

DELEGATE LARSEN: I just make that as a request. But must it be made in the form of a motion?

PRESIDENT WENSTROM: I believe we should have at this time.

DELEGATE LARSEN: If so, I'll make a motion.

PRESIDENT WENSTROM: Delegate Larsen moves that the remarks of Delegate Knudson be placed in the Journal.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lander.

Any discussion? As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. The motion carried.

We will continue on the twelfth order of business.

CHIEF CLERK GILBREATH: Resolution No. N, introduced by Committee on Constitutional Ballot:

"A resolution expressing the intent of the Convention as to the form of the question on the adoption of the proposed 1972 constitution."

PRESIDENT WENSTROM: Resolution M?

CHIEF CLERK GILBREATH: N.

PRESIDENT WENSTROM: N?

CHIEF CLERK GILBREATH: N like in "no".

PRESIDENT WENSTROM: The Report of the Committee on Constitutional Ballot — the resolution will be referred to the Committee on Resolutions.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Is it in order to move that the Rules be suspended and that it not be referred to the committee, and placed on the tenth order for first passage?

PRESIDENT WENSTROM: Yes, it would be in order.

DELEGATE DAWSON: I so move.

PRESIDENT WENSTROM: It's been moved that the Rules be suspended, that Resolution N be not referred to committee, that it be placed on the calendar for first passage. Do we have a second?

DELEGATE ERICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Erickson.

Is there any discussion?

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

What is Resolution N all about? Are we going to take a vote on this right now?

PRESIDENT WENSTROM: We will read it from the desk.

CHIEF CLERK GILBREATH: Resolution No. N, introduced by Committee on Constitutional Ballot:

"A resolution expressing the intent of the Convention as to the form of the question on the adoption of the proposed 1972 constitution.

"WHEREAS, the Committee on Constitutional Ballot has been charged with the responsibility for preparing recommendations for the form of the ballot; and

"WHEREAS, the committee has had this question under consideration;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the form of the ballot as pertains to the question of whether the proposed constitution should be adopted and the North Dakota Constitution of 1889 as amended, be repealed shall be as follows:

"Do you approve of the proposed 1972 Constitution? (mark one only); "yes", "no".

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson, we are just a little bit ahead of ourselves here. We did have a motion, and we did have it seconded. But I failed to put the motion that this be placed on the calendar at this time. So I'm going to back up just that far and put the motion that this be placed before the Convention. So as many as are in favor of suspending the Rules and placing this resolution, Resolution N, before the Convention at this time will vote "aye;" and those opposed will vote "no." As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. And now we are back on the right-of-way. So we have heard the reading of Resolution N.

Now, Delegate Dawson.

DELEGATE DAWSON: Mr. President:

The reason this is in resolution form is because the Ballot Committee could only take action on proposals that had been submitted by twenty delegates. So this is in resolution form. And there is an amendment at the desk. Everyone has a copy of this, incidentally, on their desk. But there is an amendment.

PRESIDENT WENSTROM: Delegate Dawson, does every delegate have a copy of the resolution, too?

DELEGATE DAWSON: They should all have copies of the resolution, but not of the amendment.

PRESIDENT WENSTROM: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Resolution N:

In line 15, delete the words "Do you approve of" and insert in lieu thereof the word "Shall".

Further, in line 15, before the question mark, insert "be adopted".

And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Now do we have some discussion on the proposed amendment to the resolution?

Any discussion pertaining to the amendment to the resolution? Hearing none, as many as are in favor of adopting will vote "aye;" and those opposed will vote "no." As many as are in favor of adopting the amendment to Resolution N will say "aye;" those opposed say "nay." The "ayes" have it, and the amendment is adopted.

Now we are back on the resolution.

CHIEF CLERK GILBREATH: Better engross it.

PRESIDENT WENSTROM: Pardon?

CHIEF CLERK GILBREATH: Better engross it.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

I believe I am making a correct statement when I say the reason that we brought it on the floor this morning was so that it could go over to the Style and Drafting Committee for the finishing touches on it. And this — we had the Secretary of State at our committee meeting on Friday, and a representative of the Attorney General's office there, and discussed this. And this was actually what amounts to how the people would vote on the package of the Constitution. And if we had any side issues they would be on the side of it so the main body of the Constitution of the form that we would be submitting it to the way of having a "yes" and "no" vote on the main package of the Constitution. But it was our only reason for bringing it out this morning, so the Style and Drafting Committee could get to work on it if there is any work to be done on it.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I move that the Rules be suspended and Resolution N be considered properly re-engrossed and put on the calendar for final passage.

PRESIDENT WENSTROM: Delegate Lamb moves that the Rules be suspended, that Resolution N be deemed properly re-engrossed, and be placed on the calendar for passage.

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman:

Before that motion is put, I have a question to the committee. We have just amended the question that goes on the ballot. What we don't say on the ballot then is that the 1889 Constitution is being repealed. Where is that statement to be made?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: It's my understanding that when we present this Constitution that the repealer of the old Constitution will precede in writing on the ballot the Preamble and the rest of the new Constitution.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President:

I have a question. Maybe it doesn't belong here. But do the people vote on the main body of this? Is this going to be explained? Will they vote — if it is "no" will that be the end of it? Is this the way the ballot will be?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

Oh, Delegate Kelsch. I'm sorry.

DELEGATE KELSCH: Mr. President.

I think essentially that the instructions to the voters on the ballot will have to state that; if a majority vote for adoption of the new Constitution, the old Constitution will be repealed. If a majority vote "no" the old Constitution remains in effect.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on Delegate Lamb's motion.

Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

Probably this is a question, but it should be directed to the committee here. I'm a little confused by the resolution. Is this a resolution to the Secretary of State, a

resolution to ourselves? When do we officially, as a body, say, "This is the ballot?" Now I'm just questioning the propriety of this in a resolution form. I'd like to be able to vote sometime that this is the ballot.

PRESIDENT WENSTROM: Can anyone answer Delegate Burke's question? Delegate Scheel, any answer for Delegate Burke's question?

DELEGATE DAWSON: Well, Mr. President, —

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: — this language had to come from someplace. It's too late to turn in delegate proposals. Our committee, as far as a committee proposal, cannot take action unless there was a proposal that had been signed by twenty delegates to the Convention. And, therefore, the staff said that this had to come out in the form of a resolution. But we are talking about the official wording that would be on the ballot.

PRESIDENT WENSTROM: Further discussion?

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I am still real hazy here as to what is going to be on the ballot. When they bring up these ideas, do we repeal the other Constitution, is that the wording, in an explanatory sentence that tells them if they do not adopt this we go back to 1889? I wonder if we shouldn't refer this back to committee again for over the noon hour or something to come back here with the complete wordage that's to be on the ballot. I think there's a question I asked some delegate, "Is the whole Constitution going to be printed?" One says "Yes," the next one says "No." I think we have to have it clear here as to exactly what is going to be the consequence of our vote.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I missed a meeting or some of this committee, so maybe I shouldn't be commenting. But it is my memory when we talked this matter over with the Chair that it was your suggestion that the Secretary of State had the final say in terms of the ballot form on this. And our action on this particular question was suggestive. Now maybe that's been changed since I've been in the committee. But that was my impression as to one of the reasons that this came in in a resolution form.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Might I inquire which committee is responsible for working up the ballot along with the instructions to the voters on the ballot?

PRESIDENT WENSTROM: Well, Delegate Kelsch, I think it's going to have to be a combination of the delegates — of the Committee on Constitutional Ballot and the Committee on Style and Drafting. And then we have to recall that I do believe the Secretary of State is going to have the last say how the ballot is going to be presented to the voters.

Any further questions? The question before the Convention is on Delegate Lamb's motion that the Rules be suspended, that Resolution N be deemed properly re-engrossed and be placed on the calendar for passage. Those in favor of the motion will say "aye," opposed "no." The "ayes" have it, and Resolution N is before the Convention for passage.

Delegate Baker.

DELEGATE BAKER: Mr. President:

Now at this time, Mr. President, I move that the vote on the adoption of Resolution N be taken by recorded roll call.

PRESIDENT WENSTROM: Recorded roll call vote on Resolution N has been requested. Will ten delegates rise? That is a sufficient number.

Delegate Saugstad, did you wish the floor?

The question before the Convention is the adoption of the Resolution N, and roll call has been requested.

Delegate Lander.

DELEGATE LANDER: Yes.

Mr. President: Would Delegate Baker please yield to a question? I stood up as one of your ten, but I want to be sure that I didn't miss some obscure reason for having a roll call vote on this question.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: The question was raised here as to the procedure, the legal aspects of the situation. And it occurred to me that if we had fifty delegates of this Convention officially recorded as being in favor of this ballot form, that that ought to clear any question.

PRESIDENT WENSTROM: Any further discussion?

The roll call and recorded vote has been requested. Those in favor of adopting the Resolution N will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

DELEGATE HARTL: Mr. President.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Hartl votes "aye".

PRESIDENT WENSTROM: Delegate Hartl votes "aye".

The roll call discloses 92 "ayes," 4 "nays," two delegates absent and not voting. Resolution N has been adopted.

We'll be on the eighth order of business — Announcements. We are about to recess.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: The co-chairman of the Public Information Committee is supposed to now announce that the Public Information meeting called for noon has been delayed until at least the afternoon recess. We'll keep you advised.

PRESIDENT WENSTROM: Any further announcements? Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

May be we on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order.

DELEGATE LONGMIRE: Mr. President:

I made a will before I attempt to make this next motion because I'm sure I won't live beyond it. But I move that Delegate Proposal — no Redraft Proposal 5-12 be placed on the calendar at this time. If I can get a second, I'll tell you why.

DELEGATE BAKER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Baker.

DELEGATE LONGMIRE: Mr. President:

It's been called to my attention that we have possibly eliminated every legislator from about fifteen different committees and groups that they have customarily served on since these groups were formed; one of them being the LRC itself. And I have a list of all of the others that are named. And on all of those groups legislators have been serving. And if this motion carries, I intend to offer an amendment on page 2, line 1, of 5-12, which would eliminate the word "any" and insert in lieu thereof the word "a full-time". The LRC and others are very much concerned about leaving this in its present manner. That's the legislative proposal, of course. And if we don't do something about it at this time we may have to dissolve about fifteen or twenty good commissions in the State, including the LRC.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: I think that we better back up just a little way. I think you should move to reconsider our action whereby we've passed —

DELEGATE LONGMIRE: Well, I was going to get it on the calendar first and then move it to reconsider it.

PRESIDENT WENSTROM: I'm afraid that's backwards.

DELEGATE LONGMIRE: Okay. I will move that we reconsider our action on 5-12.

PRESIDENT WENSTROM: Delegate Longmire moves that we reconsider our actions whereby the Convention passed Redraft 5-12. And now do I have a second? Second?

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kwako.

The question —

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I would go along with this certain reconsideration if Delegate Longmire would include in his motion only Section 4.

DELEGATE LONGMIRE: Mr. President:

I am very happy to amend my motion to just include that, with the consent of my second.

DELEGATE KWAKO: Yes.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: Do you have me as the second?

PRESIDENT WENSTROM: I have you as the second.

DELEGATE BAKER: I'm afraid I can't agree to that on account of — unless something new is in the picture from Friday when Delegate Paulson called our attention to what seems to me also to be a defect over in Section 9 where the language would need changing, I think, if the intent is that only ninety days elapse between the passage of an ordinary bill to the time it becomes law. Now maybe there is some newer interpretation of that that's developed in the meantime. But I think that that's a defect; it should be corrected at this same time.

PRESIDENT WENSTROM: The question before the Convention is on the motion of Delegate Longmire to reconsider the action whereby we passed Redraft Proposal No. 5-12.

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, Delegates:

I would oppose any reconsideration beyond Section 4 unless it is specified only Sections 4 and 9. I don't want to open up the whole bill again. And I don't think either one of the errors are of sufficient import to make any difference in the final Constitution.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson, just so we have this right now, do you wish to open 9, too?

DELEGATE PAULSON: I don't want to — Mr. Chairman, the present motion is open up all of 5-12. Mr. Longmire's motion was to reconsider Redraft 5-12. That opens all of it.

PRESIDENT WENSTROM: That is correct.

DELEGATE PAULSON: And I oppose reconsideration on that basis. I would rather have him state where it is than open up the whole thing.

DELEGATE LONGMIRE: Well, Mr. President, —

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: — my motion was changed to —

DELEGATE PAULSON: Second.

DELEGATE LONGMIRE: — to include Section 4.

PRESIDENT WENSTROM: Delegate Longmire, —

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: — there is a little bit of confusion there in that when you offered to place your reconsideration on only Section 4 your second withdrew his second.

DELEGATE LONGMIRE: I see.

PRESIDENT WENSTROM: And so at the present time if you're only going to reconsider Section 4, then we should have an amendment from the floor to your original amendment.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I don't believe that I can vote for reconsidering unless I have some idea what amendment Delegate Longmire would like to make. I was concerned and had some interest in Section 4 previously.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: The amendment that I would make would be very minor. It would be on page 2, line 1, of the green proposal, strike the word "any" and put instead thereof the words "a full-time".

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I move an amendment to the motion that would insert ahead of the words "Redraft Proposal No. 5-12" the words "Section 4 of".

DELEGATE PAULSON: Second.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Second.

PRESIDENT WENSTROM: Delegate Paulson seconds the amendment.

We have an amendment to the motion to reconsider. And it would now read that we reconsider our action whereby we passed Section 4 of 5-12.

Is there any further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I think that Senator or Delegate Longmire is misreading the language here. It says, "during the term for which he is elected, no legislator shall be appointed to any office which has been created." The fifteen boards and the Legislative Council that are now in existence have already been created and would not be affected by this language. I don't think the crisis is anything as we might think it might be.

PRESIDENT WENSTROM: The question before the Convention is on the amendment to the motion to reconsider.

Delegate Sinner.

DELEGATE SINNER: Mr. President:

Delegate Omdahl, it goes on to read "or for which the compensation has been increased." And that, in fact, seems to me to prohibit every increasing the compensation for any board that a legislator serves on.

PRESIDENT WENSTROM: The question is on the amendment. Those in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it. The amendment is adopted.

We are back on the motion of Delegate Longmire to reconsider Section 4 of Redraft Proposal 5-12 as amended.

Any further discussion? Those in favor will vote "aye;" those opposed will vote "nay." In that this is a reconsideration of a proposal, we will open the key and you will indicate your vote.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Speaking further on the motion, those who have studied the situation and who have studied this proposal the way it reads at the

present time say that there is serious doubt in their minds whether or not legislators could serve on these commissions and committees if we leave it the way it is at the present time; and those are Education and Public Employees, Government Operations and Urban Affairs, Higher Education Advisory Committee, Human Resources, Justice and Law Enforcement, Transportation and Commerce, Legislative Council, Legislative Audit and Fiscal Review Committee, Capitol Grounds Planning Commission, Legislative Compensation Commission, Heritage Committee, Law Enforcement Council, Education Commission of the States, Regional Medical Education Board, Education Commission, Multi-State State Tax Compact Advisory Committee, the Governing Board of the Council of State Governments. Because all of these are state commissions on which legislators are serving at the present time. If we do not reconsider it and pass it, we may, in effect, abolish all of those groups as far as legislators are concerned.

PRESIDENT WENSTROM: The question before the Convention — Delegate Haugen.

DELEGATE HAUGEN: Mr. President.

On the basis of the argument and the proposed amendment I would support the move to reconsider.

PRESIDENT WENSTROM: The question is on the motion to reconsider Section 4 of Redraft Proposal 5-12 as amended. Those in favor will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will indicate your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The roll call indicates 84 "ayes," 14 "nays," and all delegates present and voting. So the motion to reconsider Section 4 of Redraft 5-12 has passed.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

I move a minor amendment to this proposal — yes, Redraft Proposal. And it's at the desk.

PRESIDENT WENSTROM: The Clerk will read the amendment, proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-12:

On page 2, line 1, delete the word "any" and insert in lieu thereof the words "a full-time". And renumber the lines accordingly.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE SINNER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sinner.

DELEGATE LONGMIRE: Well, Mr. President, I think the reason for this is obvious; that all of these agencies are just part-time agencies on which legislators — I think most of them the law provides — that some legislators that — that some legislators serve on them at this time. And this would change this so that legislators could serve on these commissions if we pass it.

I might say, Mr. President, that I do not personally serve on any of these groups at the present time, and do not intend to be serving on any of them.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President:

I'm rather confused by this attempt to amend. Delegate Longmire has informed us earlier that if this was not amended that these various boards would be abolished because the legislators couldn't serve on them. But under the present Section 39 of our present Constitution it seems to me in essence to say the same thing. Now am I led to believe that the Legislature is violating the Constitution right now?

PRESIDENT WENSTROM: Any further discussion? Delegate Rundle? Delegate Lander.

DELEGATE LANDER: Mr. President.

I would only suggest that if we pass this, then that Style and Drafting had better look at all of Section 4, because I think you don't even have to have the second sentence after it's amended this way.

DELEGATE RUNDLE: Well, Mr. President, Ladies and Gentlemen:

I'm against this amendment. I don't think there's any problem whatsoever. The jobs have been created previously. They wouldn't be affected if they didn't increase the compensation. And the compensation probably is about right now even if we have a little more inflation. I note that many of these commissions are taking trips to New York, California, many other places. The Council of State Governments has all kinds of trips. And I get all the literature from all these things. And If I were going to weigh it for a year I'm sure it would fill a box three feet high. If this would help hold them down a little, I'd be more in favor of it. I oppose the amendment. And I suspect that the lawyers who objected came from the Council itself.

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: In answer to Delegate Lamb's question, I think the answer is rather obvious. It's altogether possible that the Legislature and its members are in violation of the present Constitution. It seems to me that that's all the more reason why we should not perpetuate that incongruity. It's been suggested by some that legislators should not serve in executive roles. And I agree with that completely. However, many of the offices of boards and commissions on which legislators serve are absolutely essential, it seems to me, for the Legislature to take intelligent action on very many of the complex roles and complex issues that face the Legislature. And even though I concur with those who do not want legislative members serving in the executive function, I think that to put the language in that we have in the original draft is to go much, much too far. And I think we have to change it.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Let's be very clear that this new language doesn't alter our situation. We don't need — we don't need the amendment. These offices are not in jeopardy; they are now in existence and will continue to exist. There might be a question as to whether or not an effective raise of five dollars per meeting day or so forth may have to be delayed a couple of years, but I don't think that's a particular crisis. And at this date I believe to have to reconsider and insert words here and there just to take care of somebody's particular fears are unfounded.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President:

I think Delegate Lander raised a point that if we do amend this section then there should be no need for the second line because the whole thing is covered in the first sentence. Now would Delegate Longmire respond to that?

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment to Section 4 of Redraft 5-12 as offered by Delegate Longmire. Any further discussion?

The question is on the amendment then. Those in favor of its adoption will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed say "nay." The "nays" have it.

DELEGATE SINNER: Division.

PRESIDENT WENSTROM: Amendment lost.

DELEGATE SINNER: Division.

PRESIDENT WENSTROM: Division has been requested. That is a sufficient number.

DELEGATE KELSCH: Mr. President.

I wonder if we have to suspend the Rules before we make a substantive amendment or has that been done?

DELEGATE LONGMIRE: We did that.

PRESIDENT WENSTROM: No, I don't think we have to. We reconsidered our action.

CHIEF CLERK GILBREATH: On which we passed —

PRESIDENT WENSTROM: That it be reconsidered.

CHIEF CLERK GILBREATH: — 5-12.

PRESIDENT WENSTROM: The reconsideration whereby we passed Section 12 — 5-12. So I think we're — I think we're right. The question right now is that division has been requested. So those in favor will indicate their vote by voting "aye;" and those opposed will vote "nay." The Clerk will open the key and you will indicate your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates 50 "aye" votes, 2 delegates absent and 46 "nay" votes. The amendment has been adopted.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I move that the Rules be suspended, that this Redraft Proposal be deemed properly re-engrossed and placed on the calendar for second reading, I guess it is, is it not?

PRESIDENT WENSTROM: Delegate Longmire moves that the Rules be suspended, that Section 4 of Redraft Proposal 5-12 be deemed properly re-engrossed, and that it be placed on the calendar for passage as amended. Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Any further discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I want to ask Style and Drafting, I wonder if the sponsors of that Style and Drafting might indicate what the second sentence indicates in reference to the first. One is saying you can't hold any full-time office, then you can't hold any full-time office in which the remuneration has been increased.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Perhaps my motion was made — worded improperly, but I assume that Style and Drafting would be looking at this further anyway as a routine procedure. But if that is not true, then I would want to amend my motion to refer it to them for proper consideration.

PRESIDENT WENSTROM: Well, Delegate Longmire, I think this will automatically go over to the Committee on Style and Drafting.

Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Delegates:

I think that it should be pointed out that prohibition is also against the resigning and acceptance of an office that has been created. Under the first paragraph — under the first sentence a member of the Legislature can resign and accept an office which was in existence and for which he did not vote for a pay raise as a full-time office. In other words, when we get into the new system if the Governor wants one of the members of the Legislature to resign and be appointed to the Board of Higher Education, or something like that, he can do that under Section 4. But the Legislature which creates this new board, none of them will be able to take the new appointive offices that are being created in the executive branch.

DELEGATE LONGMIRE: Right.

PRESIDENT WENSTROM: The question — Delegate Sinner.

DELEGATE SINNER: Mr. President:

That was a very good explanation. And in the Legislative Functions Committee that was the whole basis of the discussion. And the intent of the — as far as I could ever understand in the Legislative Committee — was precisely that; that the Legislature would not create an office and then pick out one of its members to resign and serve for it. And I think that the language is really very accurate the way it is now.

PRESIDENT WENSTROM: The question before the Convention is on the passage of Section 4 of Redraft Proposal No. 5-12. Those in favor of its adoption as

amended will vote "aye;" and those opposed will vote "nay." The Clerk will open the key, you will indicate your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 85 "ayes," 11 "nays," 2 delegates absent and not voting. Section 4 of Redraft 5-12 has passed.

Anything under the eighth order?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President.

Owing to an unforeseen development, the Public Information Committee will not meet as previously announced during the noon hour. But we anticipate meeting at the end of the afternoon session.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: How long does the Chair plan to recess?

PRESIDENT WENSTROM: One hour.

DELEGATE SAUGSTAD: There will be a short meeting of the Calendar Committee about 12:45 or quarter-to-one.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Any further announcements? Delegate Unruh.

DELEGATE UNRUH: Style and Drafting will meet at about twenty minutes to one. That way you can catch your own lunch down in the lunch room.

PRESIDENT WENSTROM: Anything further under the eighth order?

Hearing none, we will be in recess until one o'clock.

CHIEF CLERK GILBREATH: Delegates are reminded to return their proofs for the composite picture to the Executive Director's office. Please return all proofs with the pose to be used for the composite marked on the back.

(The Session recessed at 12:06 P.M. until 1:00 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:22 P.M., Monday, February 14, 1972, as follows:)

PRESIDENT WENSTROM: The Convention will please come to order. The Convention will please come to order.

We will be on the seventh order of business — Reports of Select Committees.

DELEGATE DAWSON: Mr. President:

May we be on the twelfth order?

PRESIDENT WENSTROM: Without objection, we'll be on the twelfth order. We're on the twelfth order.

DELEGATE DAWSON: Mr. President:

I move that the Convention be on the fifth order of business for consideration of alternate proposals only; and, further, that they be discussed in their order of priority.

PRESIDENT WENSTROM: Delegate Dawson moves that the Convention be on the seventh — I believe it would be the seventh order of business.

CHIEF CLERK GILBREATH: Seventh order.

PRESIDENT WENSTROM: Select Committees.

CHIEF CLERK GILBREATH: I'm sorry.

PRESIDENT WENSTROM: Seventh order of business. Then we continue to serve with the work of that order on the reports of this committee, and that the proposals be considered in the order of their preference.

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engelter.

I think you are aware of the motion. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it. And we will follow that procedure.

The Clerk will read the first report.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to which was referred Alternate Proposal No. 4-1 has had the same under consideration; recommends that it be amended, and when so amended recommends the same do pass.

Delegate Dawson, Chairman.

Delegate Dawson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Alternate Proposal No. 4-1, that — the question is on the adoption of the report — that the proposal be amended. As many as are in favor of adopting the report will say “aye;” those opposed “no.” The “ayes” have it. And the report is adopted.

We'll be on the sixth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to which was referred Alternate Proposal 4-7, has had the same under consideration and recommends that the same do pass.

Delegate Dawson, Chairman.

Delegate Dawson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the motion adopting the Committee Report of the Committee on Constitutional Ballot on Alternate Proposal No. 4-7; that it be given a “do pass”. As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it. Alternate Proposal No. 4-7 will go on the tenth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to which was referred Alternate Proposal No. 4-2, has had the same under consideration and recommends that the same be amended and when so amended recommends the same do pass.

Delegate Dawson, Chairman.

Delegate Dawson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report on Alternate Proposal 4-2; that it be amended, and when amended that it do pass. Any discussion? Hearing none, as many as are in favor of the motion to adopt will say “aye;” opposed “no.” The “ayes” have it and this will be on the sixth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to whom was referred Alternate Proposal No. 4-8, has had the same under consideration and recommends that the same be returned without recommendation.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Constitutional Ballot; that Alternate Proposal No. 4-8 be accepted without recommendation. Any discussion? Hearing none, as many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it, and this will go on the tenth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot to whom was referred Alternate Proposal No. 4-9, has had the same under consideration and recommends that the same be returned without recommendation.

Delegate Dawson, Chairman.

Delegate Dawson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Constitutional Ballot, Alternate Proposal No. 4-9; that it be accepted without recommendation. As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it, and this will go on the tenth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to whom was referred Alternate Proposal No. 4-4, has had the same under consideration and recommends the same be amended, and when so amended recommends the same do pass.

Delegate Dawson, Chairman.

Delegate Dawson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Alternate Proposal No. 4-4; that it be amended, and when so amended that it be given a "do pass". As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Alternate Proposal No. 4-4 will go on the sixth order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to whom was referred Alternate Proposal No. 4-3, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Dawson, Chairman.

Delegate Dawson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Constitutional Ballot, Alternate Proposal No. 4-3; that it be indefinitely postponed.

DELEGATE HERNETT: Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: At this time I would like to move an amendment to Alternate Proposal No. 4-3, and ask that it be returned to the Ballot Committee. After — I think I better move the amendment first. I'm going to move an amendment to Alternate Proposal No. 4-3.

PRESIDENT WENSTROM: Delegate Hernet, I think that what you'll have to do is defeat the motion here to indefinitely postpone this proposal as required by — or as recommended by the Committee. Because it has not been our custom to amend a committee report until it gets on the sixth order. So that in order that you can amend this, then you will have to defeat the Committee Report that it be indefinitely postponed.

DELEGATE HERNETT: Well —

PRESIDENT WENSTROM: I presume — I presume that you could suspend the Rules, something like that, if you can muster strength enough to suspend the Rules and offer an amendment. But we have not followed procedure such as this during this Convention.

DELEGATE HERNETT: Well, Mr. President, I would be willing to do anything I have to. I've been told by some of the members of the committee that this is the procedure they expected me to us, and that it should be and will be returned to the committee and they would come out with the proposal as amended then. This is what I'd like to do if I could figure out how to do it.

PRESIDENT WENSTROM: Well, Delegate Hernet, I think that you're — you have two outs, you can either suspend the Rules, and if you can muster strength enough to suspend the Rules you can offer an amendment; otherwise you would have to defeat this and then take it and refer it to the committee and then go up there with your amendment. If you can keep from defeating — if you can keep the Convention from indefinitely postponing this proposal as is recommended, well, then of course you can amend it on the sixth order — tenth order.

DELEGATE HERNETT: Delegate Chase, I'm sure, has the answer to all of this.

DELEGATE CHASE: Mr. President.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: I do not have the answer. I think the Chair has ruled correctly. I think that that's what the delegates will have to do, is move against the indefinite postponement and send it back to committee.

I do wish to speak on this when Delegate Hernet is finished, Mr. Chairman.

PRESIDENT WENSTROM: Well, the Chair is going to rule that any motion to amend without a stipulation that the Rules be suspended is out of order. Because we have not followed procedure which we are attempting to do now.

DELEGATE HERNETT: Well, would it take two-thirds to —

PRESIDENT WENSTROM: It takes two-thirds vote to suspend the Rules; 66 votes.

DELEGATE HERNETT: Well, I'm going to urge you to vote it down, sure. I hope this motion —

PRESIDENT WENSTROM: That takes 50 votes to vote it down.

DELEGATE HERNETT: I hope this motion does not prevail. Because I have an amendment that I think would interest the Convention, and I'd like to be able to discuss it and propose it. So I ask that the motion does not prevail.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: Mr. President:

May I speak in support of the committee's action? But before I do, I want to call every delegate's attention here to the material on your desk which is the motion that Delegate Hernet is interested in so you can become somewhat familiar with it. It's "Report of Procedural Committee Alternate 4-3" and is labeled "Article V, Executive Branch." And the first paragraph is where all of the amendment is.

But on speaking in favor of indefinitely postponing 4-3, I'd like to call your attention to Article V on the green sheet headed by Proposal 5-13, Section 1, line 23, where it says: "The legislative assembly shall periodically review the principal executive departments and may by law change and prescribe the manner of selection of chief executive officers appointed by the governor under the provision of this article."

And then further on, in Section 6, line 27, and I think you're familiar with this paragraph: "The legislative assembly shall allocate the executive power among not more than fifteen principal state departments . . ."

And if you turn the page you go to where: The governor may, for more effective administration, make changes in the allocation of functions, powers and duties among and within the executive departments, other than those headed by constitutionally elective officials."

And this is the part I wish you to keep in mind. Because this is the very heart of the executive article that provides for reorganization of this department; either by the legislative assembly or by a combination of the executive and legislative effort.

Now a few days ago in explaining these sections it was pointed out to the assembly here that upon periodic review the Legislature may change the manner of selecting appointive officials. And it was the Executive Committee's intent, I believe, that this meant upon the first reorganization, upon the initial organization, those particular offices were named to be elected and the balance were to be appointed. Maybe it would be in two years, maybe five, or someplace down the road. But it could be changed.

Now we have kind of a new development here that I think most of the delegates are aware of. But in case all of you are not, I have a couple of letters I'm going to read just a part of a paragraph of. And one is addressed to The Honorable Helgi Johanneson, Attorney General, dated February 10th. And the last paragraph says:

"I wish to know if both of these proposals —" and what the letter is about is whether or not Style and Drafting made a substantive change on the executive article —" I wish to know if both of these proposals which are supposed to be identical in substance allow the Legislature to take away the Governor's power of appointment granted in the third paragraph —" and here is the important statement —" before he has ever filled such offices by appointment."

Now this was signed by Delegate Hill.

And the next day, February 11th, the letter is answered and signed by Helgi Johanneson. And the last paragraph of that letter is:

"It is the view of this office that there is no difference in the meaning of these two proposals —" again they are talking about Style and Drafting and the original executive proposal —" and that under either proposal the Legislature could take away the Governor's power to appoint even before he makes any appointments."

Now this is very important. And I remember Delegate Sinner had some question on this thing. And as I remember he tried to put an amendment in which was defeated. So this is an entirely new ballgame. It further dilutes the Executive Committee's intention, and all that really remains is a sense of constitutional direction saying to the Legislature, "We think these offices should be elective — appointive, but you do as you darn please." Even before implementing the Constitution in 1976, if that's what the Coordination and Transition Committee decides, you can make them all elective or one or any part of 'em. This is what this letter implies. I'm not going to argue with the Attorney General. I don't especially care for it, but this is apparently what it says can be done.

There is, however, one vital part of the original executive proposal that remains, and that is the capacity to make some changes for more effective administration among those executive officials not constitutionally elected or protected. Now remember, Fellow Delegates, this can only be done among those officers that are not

constitutional. This very point is one of the principal objections to Alternate Proposal 4-5.

Now in the light of what all of us have done in making some constructive changes in the judicial and the legislative branch of the government, isn't it reasonable to also strengthen at least somewhat the executive branch on all of the other alternate proposals? The choice is clear and simple. Even in the case of a major change, such as unicameral, the framework of the changes for more efficiency has not been altered. This is good. You can vote for eighteen-year-olds, you can vote for right-to-work, you can vote for unicameral, or whatever you want, but the framework for a good, sound Constitution is not damaged. This is not true, however, in the case of this alternate. It would be next to impossible to put this on the ballot with a complete explanation of the all the implications involved.

Delegates to this Constitutional Convention, we respectfully ask you to go along with what this Convention has previously passed and reject Alternate Proposals 4-3 by voting for indefinite postponement. I know Delegate Hernetz has raised a question. He thinks that he has an amendment that might be more appealing. And I'm not going to speak on that amendment right now, this is another subject. However, I believe that it only means that we'll be doing more talking, more haggling, more discussing and so forth. And we have other alternate proposals that you have voted on in your straw vote that would be more controversial and more likely to be an alternate on the ballot. I do hope you will support the committee's report to indefinitely postpone 4-3.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lander.

DELEGATE LANDER: Mr. President:

I hate to raise the procedural point at this point. But it was my understanding that what we had been working on in the Ballot Committee for about four days now was that you would have the opportunity here to discuss and vote on finally each of our alternate proposals in the order of the preference as expressed by you people here last week. I realize at the moment, which ought to have been apparent before, that in order for us to do that we would have to switch back and forth on orders and suspend Rules very fast. However, I would argue for doing that. Because it seems to me what we are doing now is subverting all of the work that this committee went to. Because right now you're being asked to vote on indefinite postponement of 4-3, which in our minds you should not even have been thinking about until you have had a chance to dispose finally of the five other areas which you had said you thought were more important than that. So if there's any sympathy for what I'm saying here now, I would urge — despite the fact that I hope eventually we will indefinitely postpone 4-3 — since that's before the house I would urge you to at this moment vote down the indefinite postponement and then if it's agreeable with the Chair I would like to move or have somebody move that we go right back up where we started, 4-1, suspend the Rules and begin to discuss and dispose of 4-1 and get that out of the way in respective order before we proceed further. I know that it's a little complicated, but if we are going to resolve what on earth we are going to have and how important they are, I think we must do it in that order and use our Rules to help us rather than to hinder us in that process.

PRESIDENT WENSTROM: Well, Delegate Lander, the Chair does not take the position that this is disagreeable to the Chair or something in that manner. The question here is that we are in the process of adopting committee reports. And I'm not trying to pass the buck. But if it is the wish of your Committee on Constitutional Ballot that we do not consider these indefinite postponements until such time as the Convention has acted on the other proposals, then these should still be in the possession of your committee and not up here on the desk. These have been turned in to the Convention floor for action and we are proceeding on them.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I move that 4-3, 4-5 and 4-6 be returned to committee.

PRESIDENT WENSTROM: It's been moved —

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Do we have a second?

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lamb. It's been moved that Alternate Proposals No. 4-3, 4-5 and 4-6 be returned to the Committee on Constitutional Ballot.

Are you aware of the question? Is there any further discussion? As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. And these reports will be returned to the Committee on Constitutional Ballot.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I move that the Rules be suspended and we discuss 4-1 at the top of the tenth order.

PRESIDENT WENSTROM: Delegate Dawson moves that the Rules be suspended and that the amendments as presented on the Committee Report be adopted and placed at the top of the order of business for tenth order. Do we have a second?

DELEGATE ENGSTROM: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engstrom.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Alternate Proposal No. 4-1 as amended by the Committee on Constitutional Ballot is before the Convention.

Is this Alternate Proposal No. 4-1 now before the delegates in printed form?

CHIEF CLERK GILBREATH: Yeah, they have it.

PRESIDENT WENSTROM: They do have it. Fine. Then the Clerk will read it.

CHIEF CLERK GILBREATH: Proposed amendments to Alternate Proposal No. 4-1 are as follows: —

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I move we dispense with the reading of 4-1 as it's several pages long. And I think we can probably briefly tell the delegates what the changes are that have been made.

PRESIDENT WENSTROM: It's been moved that we dispense with the reading of Alternate Proposal No. 4-1. Do we have a second?

DELEGATE FIEDLER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Fielder. Is there any discussion? Hearing none, as many as are in favor of the motion to dispense with the reading will say "aye;" opposed "no." The "ayes" have it, and we will dispense with the reading.

Now Delegate Dawson.

DELEGATE DAWSON: Once more, Mr. President, the changes that have been made here to incorporate 4-1 instead of the bicameral wording that we have already voted on in the Constitution have been mainly where it's referred to "both houses", where they refer to "legislative assembly" or where they refer to "each house" or to "the other house" or "in joint session" or "house of origin." All of these have been changed to incorporate the wording for a one-house Legislature.

Now there are a few things that I think should be pointed out. You have the Report of Procedural Committees on 4-1. If you refer to the second page under Article IV, Section 1, this is all new. And this replaces Section 1 that has been adopted and calls for a single chamber composed of a minimum of 99 members and designated as "the legislative assembly of the State of North Dakota".

Under Section 5 on that page, reapportionment, the fifth line it states: "No district shall elect more than four legislators . . ." This is to comply with the changes that we made in reapportionment where we allowed two districts to be combined so that you can elect two Senators and four House members. And so this again allows four legislators to be elected in a district.

On the third page at the very bottom of the page where it ends with the period, "biennium." Previously there was wording to the effect that "neither house may recess nor adjourn for more than three days without the consent of the other house." And of course that has been removed.

Now you can flip over several pages because these pages refer to both houses and things like that. On the next to last page under Article XI, impeachment, there had to be some changes made there because the wording under "impeachment" is that the House of Representatives shall have full power of impeachment and the Senate shall have sole power of trial in impeachment. And incorporating into a one-house system we used the wording as shown here in the second sentence under Section 7 which says: "Impeachment may be voted by a majority of the members elected to the legislative assembly, but a vote of two-thirds of the members elected shall be required for conviction."

And on down on that page you see the ballot form: "Shall the proposed constitution contain a provision for a two-house legislature or a one-house legislature? (Mark one only) Two-house legislature (bicameral); one-house legislature (unicameral)."

PRESIDENT WENSTROM: You have heard the explanation of Alternate Proposal No. 4-1. Is there any further discussion?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Are we on the sixth order now amending, accepting amendments?

PRESIDENT WENSTROM: We are on the tenth order.

DELEGATE LONGMIRE: Of the final passage of this proposal?

PRESIDENT WENSTROM: We are on the adoption of the Committee amendments, Delegate Longmire. The adoption of the Committee amendments to Alternate Proposal No. 4-1.

Any further discussion?

DELEGATE BURKE: Mr. President.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Is this the time and the place for discussing whether we wish this on the ballot?

PRESIDENT WENSTROM: I believe that that would come later, Delegate Burke. I believe that this is the point where we are adopting the amendments that the committee made to this particular alternate proposal. So the question — Delegate Lander.

DELEGATE LANDER: Mr. President:

I guess I shouldn't worry, but at the top of the page 5, which is a part of the section referring to how this one legislative assembly would act, the first paragraph, if you happen to be comparing what we passed for bicameral with this, you will find that the first wording of that paragraph is almost directly out of the original unicameral suggestion as it came out of committee and has the provision for the public hearing and two considerations. I don't know how important that is to some of you, but in case you were concerned if we had reflected that here, we have done so.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President:

One other thing that was just called to my attention I forgot about. Under your blue proposal, original proposal, on this they had the Section 2. And Section 2 was taken, out, amended out, by the committee.

PRESIDENT WENSTROM: Would you —

DELEGATE DAWSON: The Section 2 referred to: "At the November election in the year 1984 the question: "Shall the one-house legislature be retained?"

And that is the portion that was — that whole paragraph was amended out.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendments to Alternate Proposal No. 4-1. Those in favor of adopting the amendments will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendments say "aye;" opposed "no." The "ayes" have it. The amendments are adopted.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I move that the Rules be suspended and Alternate Proposal 4-1 be placed on the tenth order.

PRESIDENT WENSTROM: Delegate Lamb moves the Rules be suspended, that Alternate Proposal No. 4-1 be deemed properly re-engrossed, and that it be placed on the calendar on the tenth order.

Any discussion? May I have a second?

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lander.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Alternate Proposal No. 4-1 is before the Convention on the tenth order.

CHIEF CLERK GILBREATH: Alternate Proposal No. 4-1, submitted by Delegates Benson, Bender, Poulson, Brakke, Bassingthwaite, Aubol, Billey, Lander, Hardmeyer, Hill, Hoghaug, Hougén, Hubrig, Erickson, Fritzell, Geeland, Haugen Decker, Larsen, Thompson, Wallin, Tudor, Simonson, Sinner, Sondreal, Urdahl, Warner, Wicks, Miller, Sullivan, Paulson, Litten, Dawson, Scheel, Roney, Vogel, Maxwell, Sanstead, Rosendahl, Peterson, Chase, Christensen, Binek, Schmit, Engstrom, Dobson, Nicholas, O'Toole, Kelsch, Kessel and Jestrab.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: May I inquire; is it necessary to read this entire alternate if we suspend the Rules?

PRESIDENT WENSTROM: I think you may. Whatever the Convention wishes, they can do.

DELEGATE HAUGEN: I do move, Mr. President, that the Rules be suspended and we dispense with the reading of the proposal.

PRESIDENT WENSTROM: Delegate Haugen moves that the Rules be suspended and we dispense with the reading of Alternate Proposal No. 4-1.

DELEGATE QUAM: Second.

PRESIDENT WENSTROM: The motion was seconded by Delegate Quam.

Is there any discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President:

Even though the reading is suspended, the proposal will be printed in the Journal, is that right?

PRESIDENT WENSTROM: I beg your pardon?

DELEGATE AUBOL: It will be printed in the Journal, however?

PRESIDENT WENSTROM: The amendments, but I don't believe that the whole proposal will be.

The question — the question is on the motion to suspend the Rules and dispense with the reading of Alternate Proposal 4-1. As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it. And it is not necessary to read the proposal.

The Alternate Proposal No. 4-1 is now before the Convention for discussion.

Delegate Rundle.

DELEGATE RUNDLE: Mr. Chairman or Mr. President:

I saw Roy breath a sigh of relief. I kind of wanted it read. There is a lot of — lot of things in here.

Now, the committee was very fair with me on another proposal. And I wonder if they noted that on page 2 of this measure — 1, 2, 3, — line 3 it says: "A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by two-thirds vote of the members elected."

Well, this affects the other proposal, initiative and referendum, under this system, if this should happen to be accepted, with no choice. And the alternate proposal that is in on initiative calls for ten years. And I would point out to the members of this assembly that the way it is now it's forever. And now this other proposal cut it down to ten and one — the House passed seven, now this is seven. In other words, it gives you no choice, if this is accepted, under the part of the initia-

tive, which of course takes a two-thirds. And it does give a little advantage to certain people under this system. I wondered if you considered that.

PRESIDENT WENSTROM: Any of the members of the committee have an answer for Delegate Rundle?

DELEGATE BENSON: Mr. President.

PRESIDENT WENSTROM: Delegate Benson.

DELEGATE BENSON: Well, the committee had to work on the latest information we had, which was seven years. Now if later on in the game initiative and referendum gets changed to ten, I imagine this section will have to be amended again.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I think that this was drafted so that it would correspond to the initiative and referendum as it has now been passed. And I would think that we could work this so that if the initiative and referendum is put on an alternate with the changes that Delegate Rundle has moving it from seven to ten years, that — and that is carried by the voters when they vote, that that can work into an amendment to either the bicameral or unicameral, Section 8. And I think that could be done through schedule. Because I think if the electors do by majority, vote in favor of the alternate that you are suggesting, Delegate Rundle, that should amend these other two, whichever house they pick, two-house or one-house.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Thank you, Delegate Kelsch. That answers my question.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Would the Chairman of the Constitutional Ballot Committee yield to a question?

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Try.

DELEGATE LONGMIRE: Was it the idea of the committee to leave intact the main Constitution we're voting on with the bicameral provisions in that Constitution?

DELEGATE DAWSON: No. The idea of the committee and advice from the Attorney General's office, Secretary of State's office, is that the bicameral would be pulled out of the Constitution, so to speak, and that whichever carried the highest number of votes in the alternate proposal would be the one that would be locked into the Constitution.

DELEGATE LONGMIRE: Well, in other words, then we would be voting on about three constitutions at least in considering the length of them, and so forth; we would have the main one that we passed taking out the bicameral, we would have the part of those sections that refer to the bicameral, and then we would have this third one, the part of the sections that apply to the unicameral; is that right?

DELEGATE DAWSON: That was my understanding.

DELEGATE LONGMIRE: Thank you, Mr. Chairman.

Well, Mr. President, it seems to me here that if we pass this alternate proposal, and certainly I would have no objection to the people deciding which type of legislative assembly they desire, but it seems to me that we are developing here a situation that is so confusing to the people that we could easily lose the whole Constitution in an effort to let the people vote on bicameral and the unicameral legislature. And it seems to me that is a big price to pay to get a vote on this issue at this time when it could be brought at some later date when it would not be so confusing to the whole Constitution. For that reason, I think I will be voting against this proposal of it going on the ballot, mainly because of the practical aspects of it. It seems to me that there are numerous problems that you face when you do it, and you will have a situation so confusing that people will not understand it. And when they don't understand it, we know by past experience they usually vote "no." I would vote against this because I think it would endanger passing the whole Constitution that

we hope will be passed and for which we have worked and worked so hard in the past few days of this assembly.

PRESIDENT WENSTROM: Further discussion?

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I would like to ask Delegate Kelsch a question. You gave the opinion, if I understood it correctly, that in case the alternate on initiative, which provides for this ten-year period, was enacted, which — whichever one of these was enacted would be automatically changed?

DELEGATE KELSCH: I think as a matter of mechanics in setting the Constitution up, if the people select the alternate for ten years, that will have to be as a — as a separate question that will have to override either the bicameral or unicameral one that says seven years. And that could be — if that's stated in the schedule someplace this will be the effect. Then I think — in other words, when people vote specifically on initiative and referendum that should be the overriding vote. I think we can do that mechanically unless someone sees the reason we can't.

DELEGATE HAUGEN: I've wondered about this before. I don't think I've had a satisfactory answer. Why is it necessary to change all these sections that contain the reference to two-house — two houses in the legislative assembly? If the unicameral then is decided on or approved by the people, then couldn't all of these be automatically changed so that you wouldn't have to have all of these in this proposal? Just don't seem — it certainly — Mr. President, it certainly clouds the issue to have all of these where the only change is they eliminate the reference to the two houses.

PRESIDENT WENSTROM: Can you answer Delegate Haugen's question?

DELEGATE LANDER: I can try.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President:

We discussed this in committee because many of us had the same concern which you are expressing. This does get complicated. We were advised — I don't know how legal the advice is — but we were advised that as in other cases attempting to do this by reference is a very bad way to do it. And this is why we chose this route. If you are going to do it, you've got to have the whole of one against the whole of the other. Obviously I'm no lawyer. And if the weight of legal opinion is that we could do it the other way, fine. But at least — at least as presented to us in committee it did not seem possible to do that.

PRESIDENT WENSTROM: Delegate Burke.

DELEGATE BURKE: Mr. President, Fellow Delegates:

It disturbs me very much, the alternate proposal, Proposal 4-1, or this unicameral-bicameral. And I have the same doubts as Delegate Longmire. I was sent here as a delegate to make a Constitution. I've done that. And as a part of the Constitution I have put in a bicameral Legislature; right or wrong, we put that in there. Now the Ballot Committee comes along and says, "Whoops, wait a minute now. We're going to — we're going to take out what you did and give it to the people." I can't go along with that at all. Now if the ballot proposal says — said: "Shall the unicameral system of Legislature be substituted for the bicameral?" I would have no objection to that. But to undo my work and take it out of the Constitution we have made and say, in effect, "Burke, you made a mistake. We're going to let the people vote on it." I can't go along with that system at all. And I would certainly vote down this proposal as the ballot is proposed. I realize there are technical problems. But as far as I'm concerned you've got to solve them before I go along with this on the ballot.

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Mr. President:

In regard to Delegate Burke's question, the confusing thing — and Delegate Longmire also — the confusing thing may be to the voters if this is on the ballot and that bicameral is in the Constitution, that they may vote for the Constitution, turn around and vote for unicameral, and the unicameral may win but not have as many votes as was cast to pass the Constitution. And as a result bicameralism would then

be the method that we would use for our legislative process. So to un-confuse the voters you have to take this out so that they both have equal positions on the ballot.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: I'd like to yield my time to Delegate Longmire.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, I just wanted to clarify a point of procedure necessary. I'd like to make this inquiry; is it not true that we have already passed the bicameral system in the main body of our proposals that we have finished?

PRESIDENT WENSTROM: That is correct.

DELEGATE LONGMIRE: Then would it not be necessary for us to reconsider our action if we brought this — these amendments to pull the bicameral system out of the main body of the Constitution that we've already passed?

PRESIDENT WENSTROM: Are you asking me?

DELEGATE LONGMIRE: Yes.

PRESIDENT WENSTROM: In my opinion it would be necessary to reconsider our action in order to take the bicameral section out of the Constitution as we have it here.

DELEGATE BENSON: Mr. Chairman.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President:

I would ask for the Chair to respectfully reconsider that ruling on Longmire's question. I think that what we did when we passed any proposal is simply say, "We submit this to the people of North Dakota." And what we chose — when voted here 60-some to 30-some to choose the bicameral system of Legislature we were simply stating our preference as to the bicameral over the unicameral. I don't think it's fair to imply by that vote that we also said, "We will not give the people of this state the right to speak on the one-house." And we're not passing laws, ladies and gentlemen. This is not the final action. The people of this state must vote on these questions. And all we said when we passed bicameral was, "We want the people of the State of North Dakota to see this should be our bicameral Legislature." I see nothing — no need to reconsider that action to allow us now to say to the people, "We also see some merit in the unicameral system, and there's divided feeling among the delegates." I could be for bicameral but still say I want the people to speak on the subject. So all we're asking is we submit at the same time to the people both the unicameral and the bicameral legislative system. I think we cannot put it in the main document because then you do confuse the voters. What if you'd say a hundred thousand voters voted, seventy thousand voted for the Constitution with bicameral in it, then sixty thousand voted in favor of unicameral on a separate question? Which one carried? They don't get a clear choice. The only way you can give a voter a clear choice is by putting it as Illinois did, I think wisely so, put it out as a separate issue. We're not — what's so sacred about a body? We are submitting this to the people for their vote. There is no document that's been written. We're saying, "These things we give you the choice on." I don't think we should have to reconsider. I think a majority — if the majority doesn't want it, fine. Unicameral doesn't go in. I think the majority of this Convention, as you can see by the number that introduced this proposal, a majority wanted this on as a separate question. I don't think we should allow it to be reconsidered. The majority wants it on, votes come out, vote "yes" or "no", pick the one that you like, that's the way it should be submitted.

PRESIDENT WENSTROM: Well, Delegate Kelsch — and I'm not going to argue a point with a group of delegates at this Convention — but I am going to say that we did pass a proposal, and do have it in this document as it is today. And there is no way you are going to take it out of here without moving to reconsider our action and taking it out.

Now you can also appeal the decision of the Chair. But while I'm presiding that's what you are going to do. This is actually what this Convention has done. And just simply adopting an alternate doesn't take the other one out of the Constitu-

tion. Unless — unless I have misread this, there isn't anything in this particular proposal that says that we are reconsidering our action we've already taken.

DELEGATE KELSCH: Mr. President:

The committee's report — if I may speak again — doesn't call for us rejecting what we have already done. It confirms that. It goes only to the matter of presenting it to the people; method of presenting it. We're not changing any language or style of the article.

PRESIDENT WENSTROM: The fact remains that this Convention has adopted the section in here that provides for a bicameral Legislature. And until such time as we get that out, it's going to have to stay there.

Delegate Kessel.

DELEGATE KESSEL: It really comes down to this, as the Attorney General told us — we had this same problem before us quite a number of days and we were skidding all over the place. Finally we were told the only way you can resolve this is to say the Secretary of State will have the final say-so on how this should be done. The Secretary of State appeared with the Assistant Attorney General, Mr. Sand, and he said, "Whatever this man tells you, this is what I'm going to follow." So this man told us that, "If you want an alternate on, you're going to have to take them out and place them separately. Because they could not possibly vote one way and approve the bicameral and then turn around and approve the unicameral with less votes. You're defeating your purpose. It can't be done." So we abided by this ruling, and now the delegates are going to have either to abide by it or else kick out about nine of these alternate proposals so we get our Constitution before the people. And this is about the sum and substance of it. If we want these alternate proposals, they are going to have to go on as fair a footing one way as the other. Otherwise we will just have to leave it as the delegates have spoken in the main Constitution.

PRESIDENT WENSTROM: Delegate Kessel, the Chair is not arguing the point of whether there should be alternate proposals or not. The Chair is only stating that in my opinion that you are going to have to reconsider this document, this section — this section of this document in order to get it out of there. It's perfectly fine with me to have the people vote on it. But the question that still remains is in this document as you have now.

Delegate Benson.

DELEGATE BENSON: Mr. President:

If we go and adopt this unicameral proposal which has been presented to us that would have to be done on the part of this Convention. Then when this is presented to the people I don't find that it would be very confusing. What we are saying is this: — for some of you who have your Illinois proposal there it might help to look at it — it says there in the legislative articles, Section 1, it provides for the election of representatives to the general assembly of multi-member districts in the cumulative district. Section 1, subsections a and b, Section 2, part 4 contained in the document shall be placed in the constitution. Then it goes on the next paragraph and says something very much the same way. It seems to me that we would have to handle this the same way. We vote on the basis of the Constitution and then we have two propositions that we have. And we are going to ask the voters to make their choice. Do we split this section in or do we split in this section?

PRESIDENT WENSTROM: Delegate Benson, I agree, except that we have already plugged one section into the Constitution.

Delegate Burbidge.

DELEGATE BURBIDGE: May I yield to Delegate Burke?

PRESIDENT WENSTROM: Yes.

DELEGATE BURKE: Mr. President, Fellow Delegates:

On several occasions I've disagreed with the Attorney General. And this is one on which I disagree. Much has been made of the fact that there would be confusion if we vote for the Constitution. And then if we vote, as I suggest, to plug in the unicameral with a lower vote, what would it mean? But there is a simple cure to this by putting this as a constitutional amendment. And if unicameral is run as a constitutional amendment, then there is no problem at all whether the vote is half that of the original Constitution or not.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. President and Delegates:

I think that we're getting off the track. The form of the ballot is going to be with us until the end of this session. We are here to determine whether the unicameral system should be offered as an alternate. If we approve this proposal that is before us, then it has gone by tenth reading. It hasn't changed the ballot or hasn't changed the status of the bicameral system. If tomorrow we are still convinced that the unicameral and the bicameral system should be offered side by side as alternates proposed by the Ballot Committee, it takes a simple majority to reconsider and take that action. You can't do it with a two-thirds, it's quite apparent. But I warn you that we're talking alternates simply to get the people involved and interested in approving this Constitution. If we start going on alternates on technicalities, we might just as well close up shop now and go home. Let us consider why we are considering alternates. We want approval of the document.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President:

Are you ruling from the Chair that we have properly before us on tenth order the question of adoption of Alternate Proposal 4-1? Is that the question before us?

PRESIDENT WENSTROM: Yes, that's before the Convention. This other is all — this is all side —

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: No one is talking about the merits of the bicameral and unicameral, so I think I'll start the ball rolling, since I'm the Chairman of the committee that's been struggling with this for about six months. I must say, when we started as a committee, I didn't care too much about either unicameral or bicameral. I didn't think the unicameral situation would ever get off the ground, but I was wrong. Delegate Sinner and Delegate Omdahl did their work well. And as the committee kept meeting it became very apparent that the work was being done pro unicameral, and with the bicameral there was nothing being done. In other words, the people that supported the bicameral were not giving the merits of the bicameral. And I think it is very important that this be done.

Now the criticism that I have heard in this debate and in committee of the bicameral system has not been the fact that we have two chambers, but it's been personalities within the bicameral system, it's been procedures, it's been constitutional revisions. And so let's face it, ladies and gentlemen, this is a very major decision we're making here right now. And someone says, "Let the people vote on it." Now I say that the people out there want to continue the bicameral system because it has worked. Only the restrictions in the Constitution have been a hindrance. And some of the procedures. Now we have taken care of a lot of these restrictions in our recommendations to the people. We are going to be voting on these. Now there are two farm organizations firmly on record supporting the bicameral system. The GNDA polled; I think sixty percent of the people, these are businessmen, support the bicameral system. And I think if you were to take a poll, a statewide poll, you'd find that the people want to keep representative government as two houses; and deliberations, checks and balances, and all the other arguments, as I suppose there will be a dozen. Somebody mentioned here 53 delegates signed to put the unicameral on the ballot. That is not true. 53 delegates put their name on a proposal to have it considered, not voted on, to consider it by this body.

Now had they come to me and wouldn't have had 20 names, I'd have signed it to get it on for consideration. Now so those 53 people that signed that to bring it out here before this chamber are not necessarily voting to put the two on the ballot. Now certainly if we put two big documents here that we have here as side issues, we are talking about confusing, man alive, we're really going to confuse them. And there are portions in this unicameral thing that I could never even attempt to put out to people. Now it only requires two days here for final passage, and the bicameral system requires four days. And there must be other things in there. And I'm sure that it's safe to say that probably a third of the delegates wouldn't under-

stand what's in this and what's in the bicameral, really understand it. And we've been working with it. Now how do we expect the people, when they come to the polls, to understand it? So there are so many issues that people can make decisions on besides having this as an alternate. I think we're just going to hurt the chance of the Constitution, we're going to hurt the chances of the people really having a body or a method by which to govern themselves, and that's the legislative body. I hope that the delegates refuse to use this as a side issue. We have other side issues that are very important.

DELEGATE SOLBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Solberg.

DELEGATE SOLBERG: Mr. President:

The question has been raised here, and the statement has been made, that if we cannot pass this Constitution as is that we need these side issues and side proposals. I wonder what facts can be established to prove such a statement. I might as well make the statement then that with side issues of any type, such as we have proposed to us in this list before us today, that this is going to be the cause for the lack of interest on the part of the people and also that they, in turn, will vote it down because of the side issues. Why can't we say that just as much as side issues bringing us success in adoption; why don't we then evaluate this thing mentally and properly within our own minds and say that if we have done our job well, if we have created a document here than I can go out and sell and you can go out and sell, we'll sell this document for its merits and not because of its side issues.

And another thing that we have done is to provide for referrals and initiatives, and the Legislature can set up provisions for amendments. There's no crime to amending a constitution once it's adopted. Let's get the Constitution adopted and then talk about these types of things. I think this body should stand solidly behind the idea of not having any side proposals of any kind whatsoever, any of the nine, and throw them all out and let's adopt the Constitution and ask the people to adopt what we believe in.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I think that when all of us as delegates started considering whether or not we should have alternate proposals, we probably all had different reasons in our mind as to why we are — why we should or should not. It was my feeling that we need alternate proposals; one reason being that we have taken some very definite steps in our document and we should stand behind it. But we should offer the people of this state an opportunity to make a choice of some of those, not as a whole package. Because if you're looking for the proof, you can look at Illinois' Constitutional Convention; when the body of their constitution passed but their alternates failed. And I assume that that was one of the reasons in the minds of some of the delegates as to why the alternates were put on. Others felt, like I do, on initiative — unicameral-bicameral, that this was an exciting issue; it was exciting not only in committee but for the people of North Dakota. I have heard more discussion and more comments on unicameral-bicameral than I have on any single issue that this Convention has dealt with. So these are the reasons I think that we should be considering as far as alternates are concerned.

The Legislative Functions Committee in November voted nineteen-to-one to recommend to this chamber that unicameral-bicameral be put on as an alternate. Fifty-three people signed an alternate proposal petition. Most of them voted for the same reason; that they felt the same excitement, felt that the people would eager to go to the polls and to make a choice. So I don't know what the mechanics are. Maybe we have a mechanical problem here, but I only hope the honest belief that most of us delegates had that unicameral-bicameral be an alternate issue did not go by the wayside purely because of mechanics. We can still get the job done here.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Mr. President and Fellow Delegates:

Some of you who voted for and believe in the bicameral system were really good guys when you signed the proposal to allow the unicameral proposition to come to the floor for consideration as an alternate. But let me remind you if you now vote to allow this to be placed on the ballot as an alternate, the unicameralists are

going to take off their kid gloves and put on their boxing gloves and are going to do everything they can to beat the bi-cameral system and you. The unicameral proposals throw our whole governmental process out of whack. We strengthen the executive and legislative; the unicameral proposal threatens to take away one-third of the representatives of the people. I don't think we really meant to do that here. There are many reasons why the unicameral should not be an alternate on the ballot. One of most importance is this: On January 14th the bicameral was voted on by 61 — voted for by 61 of the delegates here, 35 voted for the unicameral system. Then the whole bicameral proposal passed 68 "aye;" 27 "nay." That's pretty decisive. It doesn't even make good sense for those of us who voted for and believe in the bi-cameral system to agree to place the bicameral government in jeopardy by placing unicameral on the ballot as an alternate. Why would we extend an invitation to anyone to work to eliminate one-third of our representatives? I don't think many in our districts would commend us for it.

Don't forget, in a few days we leave here and we are going to go back to our districts. Our responsibility is not to each other, but to the people of North Dakota. We have a record to stand on here. We will have a lot of questions when we get home. If you believe in the bicameral system and are thinking of putting unicameral on as an alternate, you better be prepared to go home to organize, to spend a lot of time, make a lot of money working for the bicameral system, because the unicameral people are already doing it.

But then again, if you are from a small district the unicameralist may not even bother with you, they may not go to your district. They could ignore you and concentrate their efforts in the large cities where the votes are. And don't forget, two delegates here, one from Fargo and one from Minot who voted unicameral and who are associated with two of the state's largest newspapers are unicameralists. I would not reasonably expect that their editorials would support bicameralism.

You've heard this issue will stir up voter interest, get out the vote. And believe me, that's just what it is doing. It's true. It's already stirred up plenty of interest. Some people are coming here Saturday just for that reason. Lost my place. Anyway, it's going to stir up plenty of interest and that would encourage more "no" votes than "yes" votes. By allowing unicameral on the ballot as an alternate, after the large bicameral vote that we had here, would really give the people of North Dakota reason to wonder about our common sense.

I think nothing could endanger the proposed Constitution as much as a bitter, decisive battle among the delegates after we leave here. And the bicameral-unicameral issue can generate just such a situation. It already has. Our energies shouldn't be spent fighting each other. Our responsibility is to the people of North Dakota. Our responsibility is to assure them that we will not jeopardize the form of government we now have.

I shall handle my responsibility by voting "no" on placing unicameral on the ballot as an alternate. I urge you to do the same. Use your responsibility and defeat this alternate.

PRESIDENT WENSTROM: Fellow Delegates, there seems to be a question about my ruling a little bit ago when Delegate Longmire asked about my ruling on the bicameral proposal that has been passed and is in the present draft of our Constitution. I ruled that in order to take it out of here and put it side by side with the unicameral proposal and not give it an advantage — I didn't use that term — if they are going to be side by side we are going to have to reconsider our action whereby we placed it in this document. Because we can't have both of them in that document. And this one is already in there; the bicameral system is in here. My ruling was made at a request from Delegate Longmire. And it really should have nothing to do with the debate that's on the floor at the present time. That is another question that will have to be decided by the Convention. I only make these remarks because our secretary up here had one opinion on what I stated and — but if I did state it that way so that you got the wrong impression, I think that this is, as near as I can say, what I intended to say. Because in my opinion, again, what we have put in this document, the only way we can take it out of there is by a motion to reconsider. I hope that straightens it out if anyone was confused.

Delegate Pearce.

DELEGATE PEARCE: Mr. President:

I would like to say that I wholeheartedly concur with that. Some delegates may remember when I raised the question when we were talking about eminent domain that you couldn't take a man's property away and guarantee his right of possession at the same time. I'm reminded of that argument now.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President:

The question before us seems to me to be really one of whether or not we want to give the people a chance to decide between two good systems. I have believed in the one house system ever since I was in the Senate in 1963 through '65. I have believed that the same organizational structure that men use everywhere else could work in these halls. And my beliefs have been confirmed these last thirty days.

The beginnings of the effort to arouse interest among the people in this concept were poor, indeed, and the amount of money that's been expended can be counted in about \$150. But there have been people all around the state who have responded to the idea that a one-house system could work better. I would be the last to suggest that this Convention should present to these people only the one-house system. I think it would be tragic and folly. Because I think that the danger would be greater that people would not be willing to buy the idea. And yet I think it would be also sad to not recognize what students of state government have been saying for years — and they have said it over and over again — that the states should consider the one-house system and try it. My beliefs were reassured last Saturday when Stanley Holmquist, the long, long veteran, the leader of the Minnesota House of Representatives —

DELEGATE KNUDSON: Senator.

DELEGATE SINNER: — said that he was resigning to work for legislative reform; chiefly the adoption of the one-house system. To those who say, and it's been said, that this was a frivolous idea, I say is Stanley Holmquist's idea frivolous? Is Jess Unruh, a long-time member of the California Legislature, is his opinion frivolous? I admit that it's new to people of North Dakota. I only ask that the people be given a chance to look at this new idea and to vote on it, that's all.

PRESIDENT WENSTROM: Delegate Jim Hougen.

DELEGATE HOUGEN: Yes. Mr. President and Fellow Delegates:

I think we're making a tremendous mistake by trying to talk about the advantages and disadvantages of unicameral and bicameral. We aren't here to do that right now. The only thing we're going to consider is what alternate proposals are we going to have? And I think our Convention has spoken strongly that we are going to give the people an opportunity to voice their opinion on the bicameral versus unicameral. When we had our poll taken just last Friday, I think that it was at the top of the list as one of these things that should be considered as a side issue.

Now I signed every alternate proposal that was given to me. Not that I agreed with all of them, but I felt that I wanted to give these people a chance to put forth their views. Quite frankly, I disagree very violently with at least four of the alternate proposals. But I think it is tremendously important that we give the people an opportunity to make up their mind on some of these issues. And I think that the people are tremendously interested in the unicameral system. And if we try to say that we aren't going to have this as a set aside issue, I think we've lost the cause right now.

We have passed a Constitution that is complete. And I'm very much interested in the idea that was brought forth by Delegate Burke. And I addressed this question to the Alternate Proposal Committee: Can we not have this complete document that we have passed now on the ballot and immediately following the ballot can we not, and with this now established, go to the Attorney General and the Secretary of State and say shall we amend our approved Constitution by a unicameral system, perhaps, a change in the referendum-initiative, or maybe even the right-to-work. I think this is the system that we should follow and I would direct this question to Delegate Dawson. Have we tried this yet? Could we not pass the entire Constitution, ask this of the Attorney General, and then say — to get around the question that has been raised — can we amend or shall we amend this Constitution with the following changes? I think if we would bring out a strong vote for the Constitution as a whole, and secondly, we would be giving the people an opportunity to speak on some of these issues that I think are very volatile. This is a question directed to Delegate Dawson.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President:

As we stated, we had people from both the Attorney General's office and the Secretary of State's office in. And the form that we adopted is the form that they suggested. However, I think if this body has the authority to propose some other type of ballot forms, such as, "Shall a one-house legislature be substituted for the two-house legislature as proposed in the Constitution?", and further state, "A majority of 'yes' votes shall adopt the one-house legislature," maybe that's what we're thinking about if we want this to go through.

DELEGATE HOGHAUG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Members:

As I envision this the whole official ballot will present both of these proposals in full, but there will be a separate ballot sheet which the people take into the polls with them to do their voting on. If you'll look at the next to the last page towards the bottom, the only thing on the ballot the people will be discussing — the actual ballot that they take to the polls with them to vote on, is: "Shall the proposed Constitution contain a provision for a two-house legislature or a one-house legislature? (Mark one)" And then the committee will follow the same procedure in all cases. A two-house Legislature which received a majority vote from this house is listed first and then the one-house Legislature, unicameral is second. The full text will be in the ballot that will be posted at the polling places. But it won't all be a great big long ballot listing all those things there. I think that should help clear the air a little.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Mr. President, Fellow Delegates:

If you'd like to look at page 181 in the Journal you will find that I supported the bicameral system because I believed in it. But somehow or other I also have a feeling that the people of North Dakota should be given an opportunity to speak. I was wrong once before in my life, and this would give them an opportunity to rack up the second score and show that perhaps I was on the wrong side.

I think that we would be remiss if we didn't allow this to go to the people. And, frankly, I welcome the opportunity that will be given those supporters of the unicameral system to come forward with or without their boxing gloves, as well as the supporters of the bicameral system.

Prior to this Plenary Session I had the privilege of attending some meetings with the other delegate from my district who has been — who it has been alleged that he supports the unicameral system. I hope in the ensuing months I shall continue to have that privilege. I think that we can sensibly present the unicameral-bicameral issue to the people. I know that the other delegates are not very emotional — I don't know about myself — but I think that the opportunity of alternates is vital to the success of the Constitution. But, more importantly, there is a certain dignity about being able to go to the polls and having a choice. And this is the choice that the people of North Dakota should have and I, for one, would be surprised if the people who support the unicameral system prevailed. But certainly I would not hang my head in shame for having tried. But I will hang my head in shame if we don't give them the opportunity.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Roney.

DELEGATE RONEY: Mr. President, Fellow Delegates:

I sit here almost with a sick stomach to think that we ever worked this long and hard, and we have voted on issues "yes" and "no," and a majority of the delegates' will has been carried out and now by the means of an alternate proposal we mean to substitute that losing cause and put it on equal footing with the winning cause. I think 98 delegates have come down here and have been very dedicated, have worked very diligently, to do this one thing; they've adopted a new Constitution. Not a half, not a fourth, but a new Constitution. And if we want to give these people an alternate proposal, I am all for it. But I am not about to undo that which we have done in order to satisfy the alternate provisions.

I signed this proposal, and I will have to vote against it at this time. I would have to vote against it because it undoes the wish of the majority. I don't think we

have to go home and apologize to anyone for what we have done. And if we are going to have to go home and sell this Constitution merely on the alternate proposal, or if we think that this is some device that we're going to give the eighteen-year-old or the labor people or somebody else to come in on a side issue and vote for it, then what are we — what have we adopted all of this thing for? Send the thing home or send it in the waste basket right now. There is no use wasting any more taxpayers' money to call for an election to vote on half the Constitution or to vote on something that they absolutely are not going to understand. If we cannot somehow put an alternate proposal that serves as a substitute for something in the main body, then it is no longer an alternate proposal. It only says that we have wasted all this time and could not make our minds up. I strongly urge you to defeat the alternate proposal to put both these issues as an alternate proposal and take them out of the main body.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President:

Can I speak again? I can't get anyone back here to give me their time.

Mr. President, just a couple of comments just for the record. Delegate McIntyre mentioned that there was a lot of citizen activity and citizen support for the unicameral. Why shouldn't there be? There's been a committee working very actively for six months. Now if we'd had committees working in these other areas there would be much support for that, too. And I disagree with Delegate Hoghaug that the document will not be on the ballot. People will have to understand they can't just vote for a unicameral or a bicameral, they'll have to know what is in it.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Well, this has been discussed very fully in the committee. And I think even though I disagree at this point with Delegate Roney, because some of these things were presented by the Illinois Convention this same way and they worked for about nine months, so I don't think you could use these same arguments. But it seems to hinge on whether or not — and I haven't been at all these committee meetings — but it seems to hinge on whether or not the opinion of the Attorney General is valid on this thing. And I think this was the basis the committee used in setting these things up as to how they should be handled. And I think that's the real — real crux of the matter. And in terms of an alternate, whether or not we should have this, the Convention has already said that this is number one on their list of alternates. And so really that boils the question down to whether we should have any alternates or have no alternates if this one is defeated, I think.

PRESIDENT WENSTROM: Delegate Peters.

DELEGATE PETERS: Mr. President and Fellow Delegates:

I've been listening to the arguments pro and con here. And it's rather amusing sometimes how the different delegates will change their arguments. We've been told that we've been down — we're down here to do a job, and that we should get it done. We're supposed to do it. Now these same delegates are telling us to make it an alternate and let the people decide.

Another thing that comes to my mind, too, is are we coming to the point in this country where a minority is going to rule us all the time? If we have a majority group and they win something, if we have a minority that's aggressive, they seem to be able to have their way. And that is a sad state of affairs.

I think that when we make a decision like we did when we voted on the bicameral here, voted two-to-one, that we should have the intestinal fortitude to stick by a decision like that.

I wonder what the people of North Dakota would be thinking today, if this was being televised, and all the confusion that we are having here. If we delegates are going to be so confused, why certainly the people out in the state are going to be confused, too. And they are going to vote "no" on this. But I think we should spare them that and vote this thing down and get on with our work.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President:

I don't care to get into the merits of bicameral and unicameral because simply I think we are talking about whether people are intelligent enough to make a decision

on the part of the Constitution, since we have already concluded that they are smart enough to vote on the whole Constitution. But the question of alternates has been brought up, and I think we should be cognizant of the fact that new constitutions were defeated in Rhode Island, New Mexico, New York and Maryland in which cases they did not have any alternates available. Whereas Illinois, Pennsylvania and Hawaii have had optional choices for the people to make, and there they were very successful in their revisions.

And I think that it's a matter of whether or not the people are wise enough to make a decision by themselves. If Delegate Hoffner is so convinced that a large, vast majority of the people are in favor of the bicameral system, then he should have no fears about letting the people make a decision. And I have said on an occasion before that we hear all the talk in this Convention about "Let the people decide this and let the people decide that. And I noted, too, as Delegate Peters has, in that we all kind of switch sides depending upon what the issues happen to be to satisfy our own attitudes. It seems to me that all through this process that we have — there's been publicity out, the people are expecting an opportunity to vote on these measures, and I think that this last-minute attempt to throw up technicalities is only an attempt on the part of those who would like to prevent the people from having this option. I think that they would be more suspicious about the intelligence of this Convention if at this late date we decided, "No, you're not wise enough to vote on this measure. We are not going to let you take a crack at it."

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President, Fellow Delegates:

We've been dealing in pure conjecture for at least an hour here trying to make up our minds. Some are saying, "People will vote against it if you do this," and others say, "They will vote against it if you do that." For heaven's sakes, nobody knows what the people are going to vote against or for just by sitting here arguing about it. The big issue, as I see it here, is that we, when we were sent down here to make some decisions on this thing, have made some drastic changes. Now whether or not the people will buy them, we won't know this until we find out the results of the voting. But we have made some drastic changes — we think they are good. The majority of those voted on every issue that appears in the new Constitution, so the majority of them think they are good. But we're all victims of habit. Something that we may have had for 82 years doesn't necessarily mean that it's good or that it's bad. It means that we've been doing it and that we're victims of habit. Now when it comes time to change, maybe if properly explained some things that haven't been good can be sold. I'm not arguing the merits or the demerits of the bicameral-unicameral. That's not the issue as I see it here now. What we are considering is that we are asking the people of North Dakota to buy a document that is different; there have been changes made. Some of them have some pretty strong hangups as to what is good and what is not good. And it would seem to me that we are taking a chance, a great chance of jeopardizing the entire document, if we are going to go out and cram it down their throat and say, "What we've gone and done is good, now take it or leave it." Now we may think this, but are we going to be able to sell it? That's the whole point. The only reason for having side issues is that they may have a choice on some controversial issues. It's as simple as that. And I see nothing wrong with people having a choice to make. I have every confidence in their intelligence, and I would be honored to have a part in giving them a choice.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President:

I, too, would like the people to have a choice. At the hearing, the public hearings that I attended in September, that was one of the main questions asked. And it was asked by many people. And when I read about the public hearings in other areas it seemed, too, that the people were concerned that they would have some choices. I hope that they will be able to have some choices on the ballot.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Mr. President.

I am a little different than Delegate Poulson. I have never been wrong, but I haven't always been right. I'm very much bicameral, but I feel that there should be a choice on the ballot. And I think that we've lost sight of what we're talking about

here. If you're against this proposal, well, vote it down. But if you feel that we should have an alternate on the ballot, let's pass it. And by the discussion and the ruling of the Chair, the Style and Drafting Committee will know that they have to change the ballot, they'll change it.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, in 1967 the State of Maryland proposed a new state constitution which was widely regarded as a model. It was submitted all in one package. And it was defeated. Soundly. The reason it was defeated was because there was a minority against this provision, a minority against that provision, and so on. And pretty soon these minorities added up into a majority of "no" votes. So that's why Illinois took the other route in using alternates. And they used them — two of the key ones in an either/or fashion rather than a "yes" or "no" vote. And it is better than using either/or, either two-house or one-house. Because then you don't get a "yes" vote or a "no" vote piggy-backing on the "yes" or the "no" vote on the main body.

So it seems to me, Mr. President, that if we don't adopt this alternate we might as well kill all of the alternates and go home and start praying. Because that's the only thing that's going to stop the minorities from defeating the new Constitution.

DELEGATE KESSEL: Amen.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Mr. President:

There's an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-1:

In Section 6 of the amendment delete everything after the words "as follows:" and insert in lieu thereof the following:

"Shall a one-house legislature (unicameral) be substituted for a two-house legislature (bicameral) as proposed in the Constitution? A majority of 'yes' votes shall adopt a one-house legislature. Yes. No."

And renumber the lines accordingly.

PRESIDENT WENSTROM: We have an amendment before the Convention. Do we have a second?

DELEGATE AUBOL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Aubol.

Are there any questions? Delegate Kessel.

DELEGATE KESSEL: Will Delegate Dawson yield to a question?

DELEGATE DAWSON: Yes.

DELEGATE KESSEL: As the Chairman of our committee, when you were told that this could not be a legal question, and now it would be voted in by the delegates, where would we stand when we know and everybody has been told that this is not legal, that it would give an unfair advantage to one or the other? And I ask this question not as a proponent of one or another, I couldn't care less which one goes in. But we've got to establish a precedent not only for this, but for other questions. What would be the status of this if this delegation now went for this amendment and we already know it's not legal? And where would we stand?

DELEGATE DAWSON: I think that the line on this that says, "A majority of 'yes' votes shall adopt a one-house legislature," would cover it. In other words, even though there were fewer "yes" votes on that than there were on the main Constitution, the sentence says that a majority of "yes" votes would establish the one-house system.

DELEGATE KESSEL: Would we not have to have a legal opinion on this from Mr. Sand? My thought and theory is if we approve this and then he holds it not legal, and the Secretary of State would not go along with this, and we're gone, what would then happen?

DELEGATE DAWSON: Well, I think we can get that opinion if this thing is approved and we vote in favor of adopting the entire alternate proposal. I think we can get that opinion in a very few minutes.

DELEGATE KESSEL: Thank you.

DELEGATE DAWSON: If we're wrong, we'll have to come back on the floor

with it. I think this just seems to be the hang-up. We weren't discussing whether we were for or against the adoption of this alternate proposal, we've been talking practically entirely on the ballot form. And I hope that this will clarify the ballot form so we can get on with the main motion.

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson, I believe that you intended to add in this amendment that this be a "two-house legislature"?

DELEGATE DAWSON: Yes.

PRESIDENT WENSTROM: It says "two-hour" on my document. Be a wonderful thing if we could adopt it. (Laughter)

Delegate Simonson.

DELEGATE SIMONSON: We have been talking about who has made mistakes and when we have been wrong. And I'm a little different than Delegate Thompson. I was wrong once and I thought I had made a mistake, but then I discovered that I hadn't. But the point that confuses me now is — and I'd like a ten-minute recess for someone to answer it — why are we at this point now? Why was Delegate Dawson appointed Chairman of an Alternate Proposal Committee if we are all of a sudden now against having alternate proposals? Why are we at the point we are at now? Who appointed that committee? Who decided there would be an alternate committee? I thought it was a vote of this body that we would have alternate proposals, and all of a sudden they seem to be aggrieved with sin. Can anyone clear this up for me?

PRESIDENT WENSTROM: Delegate Simonson, unless someone else wishes to comment — Delegate Hoffner.

DELEGATE HOFFNER: Mr. President:

I'd like to answer that. There are some people here who probably feel there shouldn't be any alternates, there are some people who feel there should be, but there are some people who feel that this should not be one of them. It's as simple as that.

I have a question for Delegate Dawson, if he would yield.

Would your amendment encourage those supporters of the unicameral to vote just for the side issue and not for the main document? So that the plurality will be there — gamble that the main document will still pass?

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: If they do not vote in favor of the main document, all of the side issues will go down anyway. So it would still encourage both sides to vote in favor of the main document.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. Chairman:

Is there any possibility of having a recess before we vote on this? Here again, I am one of the people on this committee. I think we're trying to do something that some people would like to do. As far as I can see, we just can't do it. And we might as well wake up to the reality. It's a very nice deal, but it ain't going to work. So we're going to have to decide if we want an alternate anyway, which is unpleasant to some people, or not have an alternate at all. Unless the Attorney General's staff is going to change their opinion from Friday to Monday, I don't know — I realize they are not God, but for the moment who is better at playing God?

PRESIDENT WENSTROM: Delegate Lander. Delegate Lander, you asked about a recess. A motion for a recess is always in order.

DELEGATE SIMONSON: I so move.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: If you will note, I asked you to please note I haven't said "boo" on this subject. I move for a recess, the time to be set by the Chair and not subject to amendment.

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: It's been moved that we do have a ten-minute

recess and it's been seconded by Delegate Simonson. As many as are in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and we will have a ten-minute recess. But be back in ten minutes.

(The Session recessed at 3:01 P.M. until 3:17 P.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order? Will the Convention come to order? Will the Convention come to order?

We'll be on the eighth order of business. The Chair will recognize the Sergeant-at-Arms.

SERGEANT-AT-ARMS CRANDELL: Mr. President:

Will you please ask your Chief Clerk to rise?

PRESIDENT WENSTROM: Will the Chief Clerk please stand?

THE PLENARY SESSION STAFF: (Sung in unison.)

"Let us call you Sweetheart

You're a guy — 'true blue'.

It's been such a pleasure

Working here for you.

Amendments with our 'Elmers'

Every day we do.

Now the end is coming.

And we'll all miss you!"

(Applause)

SERGEANT-AT-ARMS CRANDELL: Mr. President.

PRESIDENT WENSTROM: Sergeant-at-Arms.

SERGEANT-AT-ARMS CRANDELL: I also have another one here from some more of his admirers across the hall, the committee clerks.

"To our Valentine Roy:

"Morning, noon and night we've tried to attrite.

"We've amended, inserted, re-worded, deleted
and left here so completely depleted.

"But when things were really bad, there were
questions that we had,

"Would he holler? Would he jest? His reply:
'You can do it. You're the best.'

"For your patience, contrites and ours, we
thank you, Roy, for your lovely flowers."

(Applause)

PRESIDENT WENSTROM: When we recessed we had an amendment before the Convention as offered by Delegate Dawson. The amendment was seconded by Delegate Aubol.

Now do we have any further discussion on the amendment?

DELEGATE UNRUH: Read it once more.

PRESIDENT WENSTROM: Read the amendment.

DELEGATE PAULSON: Mr. President.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I request that this question be divided so that the 4-1 — is that it — body of 4-1 and Section 6 are separated.

PRESIDENT WENSTROM: Delegate Paulson, I believe that the amendment — that your request does not affect the amendment, does it?

DELEGATE PAULSON: Well, then I want to move to delay action on Section 6 until some later date.

PRESIDENT WENSTROM: Do you wish to delay action for further consideration of this entire section to a time certain?

DELEGATE PAULSON: Mr. President and Delegates:

I think that we're getting ourselves all tied up in the wrong question at the wrong time. I think, first of all, we should determine whether we're going to have

some alternates. And when we determine whether we are having two, three, four, five alternates, that is the time to determine how they should go on the ballot. So I would like to set aside any discussion of ballot form at this time until we have gone through the various alternate proposals and accepted the body and then examine the legalities and illegalities and what is actually necessary to get the question before the people. We are talking two different things here, and I think first of all we have to determine whether we want the alternates on the ballot and then after we determine which ones we want determine how we can get them on so the people will understand them.

PRESIDENT WENSTROM: Then, Delegate Paulson, you're going to move that we give no further consideration to Section 6 of Article XI of the Report of the Procedural Committee relative to Proposal No. 4-1?

DELEGATE PAULSON: Until all of the other basic alternates have been considered and acted on.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I'd like to speak against Delegate Paulson's motion. I think the decision here should be made first in Section 6. Because how this is presented is going to make a lot of difference on how the delegates vote. And I think this is true with all the alternate proposals.

PRESIDENT WENSTROM: Do we have a second to Delegate Paulson's motion?

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: If Delegate Paulson would just fix a date sometime after the first of March I'd second it.

DELEGATE RUNDLE: Second.

PRESIDENT WENSTROM: The question. It has been moved by Delegate Paulson we delay Section 6 of Article XI of Alternate Proposal 4-1 or — 4-1 until such time as we have arrived at the number of proposals we are going to have. I believe that was all. That is almost per resolution. And the motion was seconded by Delegate Rundle.

Any further discussion on the question? The question is — those in favor of Delegate Paulson's motion will say "aye" and those opposed will say "nay." Those in favor of Delegate Paulson's motion will say "aye," those opposed will say "nay." The "nays" have it.

DELEGATE PAULSON: Division.

PRESIDENT WENSTROM: Division has been requested. That is a sufficient number.

Again, those in favor of Delegate Paulson's motion will vote "aye;" those opposed will vote "nay." The Clerk will open the key, and you will indicate your preference.

Has every delegate voted? Delegate Scheel? Has Delegate Scheel voted? Any delegate wish to change his vote? The vote is closed.

The vote indicates 46 "ayes," 47 "nays," five delegates absent and not voting. The motion lost.

Now we are back on the motion as offered by Delegate Paulson — or Delegate Dawson and seconded by Delegate Aubol relative to the style of Section 6.

The question is on the adoption of the motion.

Delegate Longmire.

DELEGATE LONGMIRE: Mr. President:

In all of the debate I have forgotten just what this amendment is. Could we have the amendment read again?

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-1: In Section 6 of the amendment, delete everything after the words "as follows:" and insert in lieu thereof the following:

"Shall a one-house legislature (unicameral) be substituted for a two-house legislature (bicameral), as proposed in the Constitution? A majority of 'yes' votes shall adopt a one-house legislature. Yes. No."

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman:

I would urge a "no" vote on this. We, as a committee, as I stated, skidded for two days. And finally we asked for a sense of direction. We were told that this type of a ballot would give an unfair advantage one way, and that it would not be legal. Just prior to our recess I had hoped that somebody would go and see Mr. Sand. I ran into him down at coffee and I asked him if anybody had seen him. And he said, "No." I repeated the substitute — the amendment to him. And he says, "It just couldn't be done that way." Now I would urge the defeat of this amendment. If it can be changed, then we can change it. But at least we've got the benefit of the committee's work and the Attorney General's ruling at this time. Otherwise if this carries, we've got to go right back and unwind again. So I say let's leave it status quo and then take it from there if it can be changed. We're going to have the same question in three or four other alternate proposals.

PRESIDENT WENSTROM: Delegate Chase.

DELEGATE CHASE: It's a little difficult to get an official opinion in five or ten minutes. And we were down to the Attorney General's office and talked to the Attorney General. And he looked at the amendment and said it was difficult to give an immediate opinion, but if it was clear it's possible that it could be legal. Now here we have Sand talking at one point — they are both talking off the cuff a little bit. So I don't think you should hold either one of them entirely responsible. They asked us to be responsible for this statement. Did you get the statement? Did you get it correct? But anyhow, I think we should go ahead and vote on the amendment. I believe that if it were declared not to be legal or showing too much preference, we would have to go back and act on it tomorrow. I think the amendment has some merit. I hope we consider it and adopt it.

PRESIDENT WENSTROM: Question.

DELEGATE DOBSON: Mr. President:

There was some discussion earlier about confusing the voters. It seems to me you are going to confuse them if you're going to give them five or six "yes" or "no" choices on the ballot. Presumably most of us will be trying for a "yes" vote on the main body. What effect would it have on the main body if the people voted two-to-one "no" on a unicameral legislature? That's why I think we should only have one "yes" and "no" vote on the ballot, and that's on the main body. Then on these alternates they should be "either/or" questions; either two-house or one-house, and so on. So I hope the amendment is defeated.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President:

I was once a long time ago First Assistant Attorney General. However, my authority has waned considerably since that time. I have spent a lot of time sitting down and trying to draw out sample election results and considering what people would do in the election booth. And I must say that it seems to me that it's impossible to come up with a ballot that is meaningful or that could carry no matter what you put in either part of the Constitution if the alternate stands alone, apart from one side of the question embedded in the main Constitution.

Now certainly we can't expect the Supreme Court to uphold us when we say that a minority vote will override majority votes. Which, if we have bicameral in the main Constitution, and a hundred thousand people vote "yes" — which a lot of people certainly hope will happen — and then at the same time say that if eighty thousand vote "yes" on the unicameral and only seventy-nine thousand vote "no", that the eighty thousand votes for the unicameral will override the hundred thousand votes for bicameral. And I think that's what's in the minds of the Attorney and Assistant Attorney General who speak on this question. And I have not been able to conceive of any way to phrase the question.

My understanding in Illinois was that when they gave you a choice of either appointing or electing judges, they put nothing in the main body of the Constitution on that point. They just said: "Here's the choice." And we can't — and I've thought that from the beginning — we can't take sides and then hand it to the people and say, "You decide the issue for us." And so I would agree that if we were to have any

possible, conceivable, meaningful choice we have to move from our position of having already made one of those choices. You could vote not to have the choice or you could vote to reconsider and take it out of the Constitution, the provision for bicameral. For one, I wouldn't vote to do that. But if fifty people perhaps tomorrow do that, then you could have unicameral or bicameral off by itself and the people can make a choice; otherwise, I think it's impossible. I think you can readily convince yourself of this if you vote right now on your desk on what should be on the ballot. And what is to prevent someone from coming in and voting "yes" on the main Constitution with the bicameral, voting "yes" on the unicameral? He is thus voting on both sides of the question.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Mr. President, Fellow Delegates:

It would appear from all of this then that we have about two choices. Now our President has ruled, and I agree with his ruling, that the bicameral is in. We put it there. Now if we're going to make a side show out of this — and during coffee I was accused of being prejudiced because I voted unicameral — much to the dismay of the unicameralists I really couldn't care less right now which way it goes. I don't have strong feelings either way. It's not all black, it's not all white. There's a big gray area. They both have their faults and their good points.

Now the issue is: Are we going to give the people a choice? If we give them a choice, it would seem to me that since we have already plugged in the bicameral, then we go one of two ways; we can also plug in the unicameral, then put it to the side and let them make a choice, or number two, we can put out the bicameral so that there is a hole there and then give them two plugs over here and they can pull the bicameral plug or the unicameral plug and put it in the hole. Is it that simple, or am I being too oversimplified on this.

PRESIDENT WENSTROM: Well, Delegate Miller, I think you're a little oversimplifying it, especially as long as we are now considering an amendment to the — I think that you will agree we are considering an amendment here to the original amendment. The question is on the adoption of the amendment as offered by Delegate Dawson and seconded by Delegate Aubol. And it was just read from the desk.

Delegate Sinner, did you wish the floor?

DELEGATE VOGEL: Mr. Chairman, may I ask a question? If we vote down this amendment, then are we back to the original proposition proposed by the Ballot Committee?

PRESIDENT WENSTROM: We are back to the Section 6 as it is on this particular piece of paper.

DELEGATE KWAKO: Question.

DELEGATE LAMB: Question.

PRESIDENT WENSTROM: It will be back to the proposal as originally given to us. So the question — the question is on the amendment as offered by Delegate Dawson. Those in favor will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendment will say "aye;" those opposed will say "nay." The "noes" have it. The amendment lost.

We are back on the proposal as presented by the Committee on Alternate Proposals to the Constitutional Ballot.

The question — Delegate Butler.

DELEGATE BUTLER: Just a point of inquiry, Mr. Chairman, on the vote that we will take. For one, a "no" vote prevailing will kill the issue permanently unless it's reconsidered; is that right?

PRESIDENT WENSTROM: That would be my interpretation; yes. The question is if we are going to put this on the ballot as an alternate.

Now those in favor of having this alternate proposal, Proposal No. 4-1, on the ballot will vote "aye;" those opposed will vote "nay."

Delegate Rundle.

DELEGATE RUNDLE: Just a question, Mr. President. This includes the entire article or was it divided?

PRESIDENT WENSTROM: The attempt at division failed.

The question then will be called and those in favor will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will indicate your vote.

Has every delegate voted? Does any delegates wish to change his vote? The vote is closed.

Roll call indicates 59 "aye" votes, 38 "nay" votes, 1 delegate absent and not voting. Alternate Proposal No. 4-1 will be referred to the Committee on Style and Drafting.

Delegate Dawson. Delegate Dawson, would you come to the desk, please?

The Chair will recognize Delegate Dawson.

DELEGATE DAWSON: Mr. President:

I move that the Rules be suspended and we take under consideration 4-7 at the top of tenth order.

PRESIDENT WENSTROM: Delegate Dawson moves that the Rules be suspended and that Constitutional Ballot Alternate Proposal No. 4-7 be placed at the head of the tenth order. Do we have a second to the motion?

DELEGATE POULSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Poulson.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Alternate Proposal No. 4-7 is before the Convention.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I hate to ask the question, but the one which we have in front of us on 4-7, the third line says — recommends that it be amended, et cetera. They used the word "amended". When we reported 4-7 here an hour or so ago we didn't use the word "amended". I want to make sure we don't get fouled up later because we didn't amend right now. I'm not sure, I'm just asking that question.

PRESIDENT WENSTROM: Well, Delegate Lander, the copy of the Committee Report that I have before me does not show an amendment.

CHIEF CLERK GILBREATH: The one we accepted said "do pass".

PRESIDENT WENSTROM: It says "do pass" at the top of it.

Delegate Lander.

DELEGATE LANDER: Then I would like some confirmation from the other delegates as to whether what they have in their hands says "amended" or "do pass". I don't know the answer.

PRESIDENT WENSTROM: It's a good question. We all want to be talking on the same subject. Maybe Delegate Dawson will straighten us out.

DELEGATE DAWSON: What was the question?

PRESIDENT WENSTROM: Delegate Dawson, there seems to be a difference between the Committee Report that I have and the desk has and the one that the delegates have. It seems that the one that I have before me says that the committee says "do pass," and then it seems that the delegates have one that requests or urges that it be "amended".

DELEGATE DAWSON: Was it amended?

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: I was on the committee. There was an attempt made to amend it, but the attempted amendment failed. So then we later on recommended a "do pass" as Delegate Lander has indicated.

CHIEF CLERK GILBREATH: That's the way it reads.

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: The language on the sheet that has been distributed opposite the "yes/no" boxes is different from the language preceding the "yes/no" boxes in the 4-7 probably that we have received in our books.

CHIEF CLERK GILBREATH: That's right. As we have it from committee it

was "do pass" and there were no amendments recommended by the committee and Delegate Dawson has now put it on the tenth order without amendment.

PRESIDENT WENSTROM: However, Fellow Delegates, you recall that if you wish to amend, if there are some amendments to it, why you can amend under tenth order.

DELEGATE DAWSON: Delegate McIntyre, you have kind of handled it. Was it our intention to amend from the blue sheet?

DELEGATE McINTYRE: Well, Mr. President, —

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: — the only amending that was done on this thing at all was — the only thing that touches on that, the committee had before it a motion to amend the word "eighteen" to "nineteen"; that failed. And the original motion, which included the language that you see on your black and white sheet, was the motion that prevailed stating that persons eighteen years of age or older are declared to be adults for all purposes. The only issue was how the question would be phrased. And the committee chose the language under your white sheet. And that's different, right, from the blue sheet in your book.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Might I suggest that members of the committee simply, if the white sheet is the correct one, — or I'll move it, to save time — that be considered the amendment to Proposal 4-7 stated right there. It's stated right there.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal No. 4-7 is as follows:

On page 1, delete all of lines 12 through 18 and insert in lieu thereof the following:

"SECTION 2. BALLOT FORM.) The form of the ballot as pertains to the question set out in this proposal, and as it shall be submitted to the electorate as a separate issue, shall be as follows:

"Shall the following language be made a part of the proposed Constitution of the State of North Dakota? (Mark one only) Yes. Persons eighteen years of age or older are declared to be adults — persons of eighteen years of age or older are declared to be adults for all purposes." Then there is a "yes" and "no" box.

And renumber the lines and pages accordingly.

PRESIDENT WENSTROM: The question before the Convention is on this amendment. This is an amendment to Alternate Proposal No. 4-7.

Delegate McIntyre.

DELEGATE McINTYRE: I would encourage —

PRESIDENT WENSTROM: Excuse me. Just a second here. Now has Delegate Dawson offered this amendment?

CHIEF CLERK GILBREATH: Kelsch.

PRESIDENT WENSTROM: Delegate Kelsch offered this amendment. We have an amendment at the desk.

DELEGATE KELSCH: I think it properly should be made by Delegate Dawson. It's that committee's work. But I'll make it if no one else will.

PRESIDENT WENSTROM: That's adequate. All we had was this (indicating).

CHIEF CLERK GILBREATH: "Do pass."

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I would encourage a "yes" vote on the amendment. It simply changes the wording of the question that existed in your blue sheet 4-7 and now includes the wording of the white sheet on your desk.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LANDER: Question.

PRESIDENT WENSTROM: The question is on the adoption of the amendment. If there is no further discussion, those in favor of its adoption will vote "aye" and those opposed will vote "nay."

Delegate Schmit.

DELEGATE SCHMIT: Mr. President:

Unless the committee can explain why they amended this, I feel that the language in the original proposal of 4-7 is much preferable to the amended language. And I would resist this amendment.

PRESIDENT WENSTROM: Any member of the committee wish to comment?

DELEGATE LANDER: Mr. President:

Yes. As you proceed through here, you will find that in each of these we have tried to ask a question first, such as here: "Shall the following language be made part . . ." et cetera. But then at the point where the voter actually makes his selection we want to have, at least if it's short as it is here, the exact wording of what would be in the Constitution. And so the person who votes either "A" or "B" or "yes" or "no" has, insofar as they can, the exact wording of the proposed entry. And he will find a consistent approach in all of our alternate proposals this way.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Would an amendment to the amendment be in order?

PRESIDENT WENSTROM: Amendment to the amendment is in order.

DELEGATE MILLER: Mr. President:

I would move that in the line down there opposite the boxes the word "eighteen" be stricken and "nineteen" inserted.

PRESIDENT WENSTROM: Delegate Miller moves that the word "eighteen" following the word "persons" be stricken and the word "nineteen" be inserted in lieu thereof.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: This — I'm advised that this has to be done in Section 1 also. So I would move that my motion include the change in Section 1. I don't even see it. Oh, yeah, it's at the top in the title; "contains a provision declaring persons eighteen years of age . . ."

Mr. President, I would want my motion to include that change there also.

PRESIDENT WENSTROM: Does the desk have the amendment?

DELEGATE MILLER: And on line 9 — my gosh, this is getting complicated. Three different places, Mr. President; in the title, line 9 and line 10.

PRESIDENT WENSTROM: Do we have a second to Delegate Miller's motion?

DELEGATE MILLER: And I guess in line 15, too.

DELEGATE HAUGEN: Mr. President.

DELEGATE HAUGEN: I believe that Delegate Miller is amending the original proposal, the blue or green sheet, whatever it is, which has already been amended by the white sheet.

PRESIDENT WENSTROM: I believe, Delegate Miller, you are offering an amendment to material that at least the Chair has not had before it. The delegates may have. However, I do not have.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Well, if we're working from this white sheet — and I guess we are — why I only see it in one place, and that's opposite the "yes" and "no" boxes.

PRESIDENT WENSTROM: That is the only place I see it.

DELEGATE MILLER: Has this been seconded, Mr. President?

PRESIDENT WENSTROM: Beg your pardon?

DELEGATE MILLER: Has this been seconded?

PRESIDENT WENSTROM: Yes, it has been seconded.

DELEGATE MILLER: Could I speak to it, sir?

PRESIDENT WENSTROM: Yes, sir.

DELEGATE MILLER: Fellow Delegates:

We've opened a whole kettle of worms with this eighteen-year-old vote.

PRESIDENT WENSTROM: Delegate Miller, excuse me, but I wonder if we shouldn't — I wonder if we shouldn't either adopt or reject this amendment and then make the amendments, the proposed amendments, following that. You see then we would be back on the proposal with this amendment on it if the delegates so wish.

DELEGATE MILLER: This would be fine, Mr. President. I'll withdraw my motion. I just wanted to catch it before it was dead.

PRESIDENT WENSTROM: Well, if this dies, I am quite certain that your amendment would die with it. But I think — I do think that would be the simpler way to do it; attempt to pass this, and then come back and make those alterations in addition.

DELEGATE MILLER: Mr. President:

I believe that it could be of material effect on the outcome of the vote if this word is changed. If it's your wish, I'll withdraw the motion.

PRESIDENT WENSTROM: The question here is that we're — we have an amendment. And if you wanted to just strike the word "eighteen" in this particular amendment why I would go with you. That is all right.

CHIEF CLERK GILBREATH: I can read it.

PRESIDENT WENSTROM: But when you start amending the other material, then, that is not in the amendment, it is no longer an amendment to the amendment, except this one place it's an amendment to the amendment. It's a little technical thing there.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I believe that Delegate Schmit had a good question here. If I understand, the white copy which is an amendment to the blue copy, you have the people voting before you have the question put to them. It would seem to me that you have your question and then the "yes" or "no" vote immediately after that would be better order, just like you have it in the original proposal.

PRESIDENT WENSTROM: Further discussion?

Now I understand, Delegate Miller, that you withdraw your amendment. So we are voting on the amendment here as offered by the committee.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Along with what Delegate Longmire just mentioned, I think it was the intent of our committee that the statement "Persons eighteen years" and so forth would be first and then the "yes" or "no" would be directly below that. It was not the intent of our committee to have it set up this way. I think the statement should be first and then directly below the blocks where the "yes" or "no" vote would be directly below that. I think I speak for the committee when I say that.

PRESIDENT WENSTROM: Any further discussion?

The question then before the Convention is on the adoption of the amendment as offered by the committee. Those in favor of its adoption will vote "aye" and those opposed will vote "nay." As many as are in favor of the adoption of the amendment will say "aye;" opposed "no." The "ayes" have it; the amendment carried.

Now Delegate Miller.

DELEGATE MILLER: Mr. President:

Do I work from this white sheet and the blue?

PRESIDENT WENSTROM: You will have to work from some document other than the one that I have. You offer your amendments, Delegate Miller, and the Clerk will take them.

DELEGATE MILLER: I'll yield to Delegate Lander.

DELEGATE LANDER: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: You see we have — if you look at the white sheet it

refers to the amendment of Section 2 of 4-7. Everything in 4-7 under Section 2 is as you have had it all along on the blue sheet. And so if we are to consider an amendment, it would be that the — that the word “eighteen” as it appears first in the unnumbered third line, then in line 2 and in line 9 and in line 10 and then in the unnumbered line of the white amendment of the ballot all be changed from “eighteen” to “nineteen”.

DELEGATE MILLER: Second.

PRESIDENT WENSTROM: Will the Clerk now read the proposal as the amendments are proposed?

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal No. 4-7:

In the title delete the word “eighteen” and insert in lieu thereof the word “nineteen”.

Page 1, line 2, delete the word “eighteen” and insert in lieu thereof the word “nineteen”.

Page 1, line 9, delete the word “eighteen” and insert in lieu thereof the word “nineteen”.

In the amendment offered by Delegate Kelsch delete the word “eighteen” and insert in lieu thereof the word “nineteen”.

PRESIDENT WENSTROM: Now you have heard the reading of the proposed amendment. Is there any discussion?

The question before — Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President, Fellow Delegates:

I would like to speak against the amendment. I know of no criteria that makes a nineteen-year-old an adult over an eighteen-year-old. And we speak to the rights of eighteen-year-olds in our present Constitution in some of the changes that we have now made. We say that they are adults and mature and old enough to be elected to the State Legislature, and they may vote and they may do many of the other things that the adults of today now do. But we do not say that they are adults for all purposes. It was the feeling of the majority of the committee that the eighteen-year-olds should be the age, and I dislike very, very much including nineteen-year-olds simply to get the thing approved by the voters. And that's what some of the committee members that approved this have told me; that there is no chance that the State of North Dakota will declare eighteen-year-olds to be declared adults for all purposes and that the State of North Dakota will vote this alternate proposal down overwhelmingly. And it will discourage the young people of this state in that age group to take any part in their state and government. And I say that just the opposite, that we — this to the eighteen-year-old groups, the nineteen and twenty-year-olds for the chance of them to vote on this particular issue. And I think that the adults of today, of twenty-one years and older, want to speak to it. Therefore, I encourage you to vote “no” on this amendment. Let's get to the very issue of this thing and include as one of our alternates that eighteen-year-olds should be declared to be adults for all purposes.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: First of all, I wonder if the Clerk missed the word “eighteen” in line 10? Do you have that included?

CHIEF CLERK GILBREATH: Yeah.

DELEGATE MILLER: Well, to cover Delegate McIntyre's arguments on this, I don't think that there's a ghost of a chance that the voters in North Dakota will allow eighteen-year-olds to become adults for all purposes. I feel rather strongly that these young people ought to be given this franchise. So if we leave the word “eighteen” in, the nineteen and twenty-year-olds are going to be deprived of this. Now if we change it to nineteen, I think there's a good chance that they will approve it because of the number of reasons that have already been spelled out here. No point in me taking your time on this. There is a differentiation not in whether they've reached maturity or majority mentally or so on at eighteen, but because of the various ramifications that have developed as regards those who are still in high school and age eighteen. But, generally speaking, by nineteen they are out of high

school and either are employed or in the service or in college and it's a whole different ballgame. I just can't believe that the voters would look with favor at all upon eighteen-year-olds voting. But I do think they would have some compassion for the nineteen and twenty-year-olds. This is the prime reason, really the only reason, I'm interested in doing this. For that reason I would urge your support of this amendment.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I, of course, resist the amendment. And let me give you one practical reason why. In the Constitution that you people are working on now you have passed some laws which now will make it possible for a person eighteen years of age to become sheriff and not be able to enforce the liquor laws because he can't go into a bar.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. Chairman — Mr. President. Fellow Delegates:

I am a member of the Ballot Committee. I'd just like to make one correction. The proposed amendment was attempted in committee and it lost, yes, by a vote of seven-to-seven. It happened one of our members was absent at the time. So actually it was a tie vote. And I think this is a very fair question. I think it would be a cruel hoax to play on the young people of our state to put this in at eighteen. In my opinion a proposal would be defeated soundly, and we'd be taking a step backwards; because instead of encouraging our young people to take part in politics and be citizens, they'd be defeated so badly that they'd lose heart. And I sincerely hope you will approve the amendment.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

By adopting this amendment we are going to be placing incongruity in the Constitution. We are going to say if you are nineteen you can get married and drink beer, where if you're eighteen you can't. Even though at eighteen you can be elected to the Legislature, you can vote, you can go in war. So I hope the amendment is defeated so we don't put an incongruity like that in our Constitution.

PRESIDENT WENSTROM: Delegate Larsen.

DELEGATE LARSEN: Mr. Chairman:

Today I received a clipping from the Republican — Humboldt Republican from the Great State of Iowa. And in it they have a picture of a young man by the name of Jodie Smith, Ayreshire's nineteen-year-old mayor. He's been the center of the news media since he was elected. For example, the day after election Jodie gave 45 to 50 interviews and a broadcasting statement. He's already been invited to the Dick Cavett Show. Now Jodie decided to run for mayor because he was old enough under the new law and no one had filed against the incumbent. Jodie's opinion on an eighteen-year-old's capacity for responsibility seemed obvious, but we asked him anyway. "Sure enough," he said. He feels that nineteen-year-olds are mature enough to hold the responsibility and do the responsibility of an adult. Thank you.

PRESIDENT WENSTROM: The Chair will recognize Delegate McIntyre.

DELEGATE McINTYRE: I just wanted to answer Delegate Thompson's fears. If an eighteen-year-old is elected sheriff, then he certainly could appoint a twenty-one-year-old deputy.

Actually, I agree with the nineteen-year-olds. I favor the eighteen-year-old, too, but I worry about the high school kids not being separated from the drinking problem. I think the nineteen-year-old amendment cures this. I feel that one time this Convention brought the eighteen-year-olds into the Constitution, then they pulled them out. I think the reaction by some of the younger people is not good. And it just seems to me that the nineteen-year-old provision solves a lot of problems and doesn't create too many new ones.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: Mr. President, Fellow Delegates:

I think if the real issue here is the drinking question, I think the Legislature is the proper place to handle that question. I think by having a mandate in our Con-

stitution that persons nineteen years or older shall be declared adults for all purposes will create some problems with regard to some of the statutory law that we already have. We say that females can get married at the age of eighteen. And I think the intent of our constitutional — setting nineteen as an age would declare that all statutory laws would have to be changed to conform with our Constitutional provision. I think we're going a step backward by selecting nineteen-year-olds as an alternative just to solve the problem with regard to drinking. I think the real place to handle any of these issues is in the Legislature. Eighteen-year-olds will be able to vote, they will be able to run for office, and they can go to the Legislature and request that certain changes are going to be made.

Now I visited with a fellow attorney in Mandan who has been working on age restrictions in the Constitution — or in statutes. He said there are a hundred and forty different classifications dealing with age that are going to be coming before the Legislature within the next year. I think the Legislature has a big responsibility in this area, and I think they can handle it.

PRESIDENT WENSTROM: Any further discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President, Fellow Delegates to this assembly:

We are again attempting to legislate morality and the Commandments. We cannot command the eighteen-year-old. We are not going to command the nineteen-year-old. I would simply call your attention to our teenage years. If they are responsible you currently give them the keys to your car; if they are responsible you currently invite them to partake of the intoxicants in your household; if they are responsible you advise them to have fun with their friends over the week-end. I ask you at this time why should we now determine that eighteen versus nineteen makes them more responsible and adults for all purposes? I urge you to defeat the amendment.

PRESIDENT WENSTROM: The question before the Convention — Delegate Peters.

DELEGATE PETERS: Mr. President, Fellow Delegates:

I think the Convention has a moral obligation in this case. I don't think there is a one of you here that knows — that doesn't know that an eighteen-year-old can be fully responsible for making decisions, especially along the drinking line. I would never want to be guilty of telling an eighteen-year-old that he's old enough and responsible enough now to make a decision which may make him an alcoholic or a drunkard for the rest of his life. I don't favor — I wouldn't favor to do that for a nineteen-year-old. But as the case is here, I would rather go for the lesser of the two evils, so I support the amendment.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: Delegate Nething.

DELEGATE NETHING: Mr. President, Fellow Delegates:

Earlier today I had placed on each of your desks an article and an editorial that appeared in the North Dakota — or the Spectrum, which is the student publication at North Dakota State. And I find myself somewhat in a dilemma, because I definitely favor the privilege — the fact that nineteen-year-olds probably — the only thing, they should be permitted to consume and purchase alcoholic beverages as opposed to the eighteen-year-olds. And yet I'm going to oppose the amendment because I really think that the considerations over and above the drinking are of such a consequence that we shouldn't put this in the Constitution. The interview that I refer to here pretty well covers my feeling on it. The comments I made the other day. And, incidentally, the editor of this particular paper who wrote the editorial, in visiting with him I asked him how old he was, and he said he was twenty-one. I think he has a pretty good way of writing, and I think probably when he was eighteen he might have been quite mature. But there are so many ramifications over and above this drinking one that I would urge that not only would the amendment be defeated but that the entire proposal be defeated as a side issue. I think if we have it at eighteen those that fear that the voters are going to vote against it are absolutely right. And my fear then is will the Legislature ever act in this area where I think they should be acting in at least a portion of it? But an overwhelming rejection on that particular issue could well discourage any Legislature from ever acting. And I do not feel — of course, it's a little different. Earlier when this was passed 73-

to-20 I was hoping we could make it a side issue, but when you're on the other side the next time at 63-to-30, why I'm trying to encourage those 63 people to vote against it again.

PRESIDENT WENSTROM: Any further discussion? Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman:

This Convention originally put this in. And after some thought and deliberation they took it out. And it just doesn't seem that for the sake of making it a wee bit more palatable to the voters that we could now sell our convictions.

Delegate McIntyre and I agree now that this should stay at eighteen. We agree for different reasons, however. Supposing that we pass this Constitution and then when an eighteen-year-old legislator is elected and he comes up here to the legislative assembly and then he cannot even attend this smoke room caucus with the other legislators, now we are definitely being inconsistent. Let's let the people decide if eighteen, nineteen, twenty and twenty-one-year-olds are fit to be adults for all purposes or let's let them decide otherwise. Why should we now start hedging on our own decisions? I urge the defeat of this amendment.

PRESIDENT WENSTROM: The question before the Convention is on the amendment as offered by Delegate Miller, seconded by Delegate Peters.

CHIEF CLERK GILBREATH: Lander's motion.

PRESIDENT WENSTROM: I have got by Delegate Miller. Is the Chair in error? Did Delegate Lander offer it?

DELEGATE MILLER: Yeah, Lander did it.

PRESIDENT WENSTROM: Well, the record will show that Delegate Lander did it.

Again, the question is on the adoption of the amendment as offered by Delegate Lander. As many as are in favor of adopting the amendment will vote "aye;" those opposed will vote "nay."

Delegate Sinner.

DELEGATE SINNER: Mr. President.

I don't know about the rest of you, but I'm not quite ready to vote. Would someone tell me what would happen if nineteen would be approved and put on the ballot and it were passed, would that in any way affect the propriety of an eighteen-year-old running for the Legislature in any real way? Is there a real damage to that alternative of an eighteen-year-old if the nineteen-year-old provision were passed? My problem is that I'm inclined to be concerned, as Delegate Nething is, that if — if this is put to a vote as an eighteen-year-old question and defeated, I don't know where it will leave us. It will leave us in a very bad situation as far as I can see. Whereas, if the nineteen-year-old provision would not be damaging seriously to any other statutes, I'm inclined to want to go along with Delegate Miller. And if there is no real serious damage to the eighteen-year-old right under the Legislature and the other things that the Legislature has allowed eighteen-year-olds, then I'm going to go along with Miller.

PRESIDENT WENSTROM: Any further discussion? Again, the question before the Convention is on the adoption of the amendment as offered by Delegate Lander. Those in favor will vote "aye;" those opposed will vote "nay." The Clerk — no, don't have to record the vote. Those in favor of adopting the amendment will say "aye;" those opposed say "nay." The "noes" have it. The amendment lost.

DELEGATE MILLER: Division.

PRESIDENT WENSTROM: Division has been requested.

DELEGATE McELROY: Can we have a recorded division?

PRESIDENT WENSTROM: Did someone say "recorded"?

DELEGATE McELROY: Could we have a recorded vote, please?

PRESIDENT WENSTROM: If ten delegates will rise, you may have a recorded vote. That is sufficient. Again, the question is on the amendment as offered by Delegate Miller. And those in favor of its adoption will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted?

DELEGATE DAWSON: Dawson votes "nay."

PRESIDENT WENSTROM: Every delegate voted? Any delegate wish to change his vote? The vote is closed.

The vote indicates 33 "ayes," 62 "nays," and three delegates absent and not voting. So the amendment has failed.

Delegate Devine.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE LANDER: Excuse me. Are you going to do it?

PRESIDENT WENSTROM: Your question.

DELEGATE DEVINE: May we be on the eighth order for a moment?

DELEGATE LANDER: Mr. Chairman:

What was that vote, please?

PRESIDENT WENSTROM: It was 33 "yes" votes.

DELEGATE LANDER: 33?

PRESIDENT WENSTROM: 33 "yes" votes, 63 "no" votes.

CHIEF CLERK GILBREATH: 62.

PRESIDENT WENSTROM: With three delegates absent.

Now Delegate Devine.

CHIEF CLERK GILBREATH: 62.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: May we be on the eighth order for a moment?

PRESIDENT WENSTROM: Without objection, we will be on the eighth order.

DELEGATE DEVINE: In view of the time and in view of the progress made by this Convention, I hope that the Convention will consider ordering an evening session tonight.

PRESIDENT WENSTROM: Thank you.

The question before the Convention, that is the Alternate Proposal 4-7 — Delegate Dawson moves that the Rules be suspended and that Alternate Proposal No. 4-7 be deemed properly re-engrossed; that it be placed at the head of the calendar for first passage.

Do we have a second?

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engelter.

Is there any discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: It's unfortunate, I think, that this Convention in its earlier action decided to declare eighteen-year-olds to be adults for only some purposes. I felt very strongly that if you called an eighteen-year-old adult for some purposes you'd have to in all good conscience call him an adult for all purposes and allow him this right. Now we face ourselves with the question of an alternate proposal on this question. Now this was the second priority. And I am confident that the individual that in that straw vote felt that although we have made our decision that this could be one of the questions offered to the people of the State of North Dakota as an alternate issue, I think that the young people in this state want to speak to it.

PRESIDENT WENSTROM: Delegate — Delegate McIntyre, the question we have before the Convention at the moment is on the adoption of the motion to suspend the Rules and deem this properly re-engrossed and put it on the calendar.

DELEGATE McINTYRE: Excuse me, Mr. President.

PRESIDENT WENSTROM: And unless you were talking to that particular motion, you will have the floor when we are through with that.

The question then is on the motion to suspend the Rules and deem Alternate Proposal No. 4-7 properly re-engrossed and to be placed at the head of the calendar for passage. As many as are in favor of the motion will say "aye," opposed "no." The "ayes" have it, and Alternate Proposal No. 4-7 is before the Convention.

Now Delegate McIntyre.

DELEGATE McINTYRE: Mr. President:

I think I've already said it, but I urge you to support this report and allow the people of this state to make the choice. It should be their decision as to whether they feel that eighteen-year-olds are adults or not. Thank you.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE STANTON: Question.

DELEGATE KWAKO: Question.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: The question before the Convention is on the passage of Alternate Proposal No. 4-7. Those in favor of its passage will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll discloses 66 "ayes," 29 "nays," three delegates absent and not voting. Alternate Proposal No. 4-7 has been passed and will be referred to the Committee on Style and Drafting.

Chair will declare a ten-minute break.

(The Session recessed at 4:23 P.M. until 4:33 P. M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. Will the Convention please come to order?

The Chair will recognize Delegate Dawson.

DELEGATE DAWSON: Mr. President:

I move that we suspend the Rules and move on the motion of 4-2, and also include in the motion that we dispense with the reading.

PRESIDENT WENSTROM: It's been moved by Delegate Dawson that we dispense with the reading of Alternate Proposal No. 4-2, that the Rules be suspended, and that the amendments to the Alternate Proposal be adopted.

Do we have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: Seconded by Delegate Cart.

Are you ready for the question? Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it.

Now Delegate Dawson.

DELEGATE DAWSON: Mr. President:

I move that 4-2 be properly engrossed and placed on tenth order.

PRESIDENT WENSTROM: Delegate Dawson moves that Alternate Proposal No. 4-2 be deemed properly re-engrossed; that it be placed on the tenth order for passage. Do we have a second?

DELEGATE LITTEN: Second.

DELEGATE HOGHAUG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hoghaug.

Is there any discussion?

Delegate Rundle.

DELEGATE RUNDLE: Just a quick question of Delegate Dawson. Do you think this would prohibit farming?

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the motion to suspend the Rules and deem it properly re-engrossed, placing it on the tenth order for action. As many as are in favor of the motion say "aye;" opposed "no." The "ayes" have it, and Alternate Proposal No. 4-2 is before the Convention for action.

Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President and Delegates:

This morning I briefly presented a proposal for your consideration. I'm not sure if we've amended this or not. But the committee, in their efforts to present

the exact problem to the people for final decision, put the exact language on the ballot form. Earlier in this session we deleted Article I amendments by a repealer, and now by deleting that article we by inference said that the Legislature shall provide for authorization. So now the proposal that we're asking the people to decide is: "All forms of gambling shall be prohibited unless the legislative assembly provides for the authorization and regulation of specific forms thereof." That is what, in effect, we did when we repealed Article I of the amendments.

The next alternative would be to go back to the old Constitution and say that: "The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets." That language is in our old Constitution.

I think the choice is plain for the people. And I hope that the delegates will see fit to use this as one of the alternate proposals.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: The question before the Convention — Delegate Hill.

DELEGATE HILL: I just have one question on this, Mr. President. I see one of the alternates speaks to gambling, the other one speaks to lotteries. I noticed in our criminal laws we have a definition of lottery in one chapter and a definition of gambling in another chapter. Has the committee concluded that gambling and lotteries are synonymous?

PRESIDENT WENSTROM: Can someone answer Delegate Hill's question? Delegate Kessel.

DELEGATE KESSEL: I will attempt to answer that. No, they did not. And that is the reason that the word "gambling" was taken out of our original proposal and changed to "lotteries". I think there have been some court decisions, not in North Dakota but in other states, that they are not synonymous.

PRESIDENT WENSTROM: Further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I would like to speak against this particular issue as being an alternate. I think that although it's high on the priority list, it is one of the particular actions that the Convention took that they can well explain without any trouble at all when they go back to their districts.

Secondly, I am not at all happy with the ballot form that you see before you. As you recall, this Convention voted by substantial margin to repeal lottery sections of the Constitution. My thinking of an alternate is that you should have the choice — the people should have a choice if it's an alternate to uphold the action of the Convention to repeal lotteries or put a section in. This ballot form does not do that. It gives you only two — it gives you two alternatives, both of which do not speak for or follow through with what this Convention did on first passage.

And with the vote the other day, I am just not sure as to whether the delegates here are sure as to whether we should have an alternate or not, or whether we are really thinking that lotteries should be back in the Constitution. Now I voted to repeal the lottery section. But I'm more concerned about the priority list on alternates that we have at this point. And I feel strongly enough that if this is voted down, I would entertain a motion to reconsider our action on lotteries that this Convention took in the early weeks.

PRESIDENT WENSTROM: Any further discussion? Delegate Chase.

DELEGATE CHASE: I support, Mr. President, the committee's proposal here. I think it's a clear and concise manner of deciding what you want. And in either proposal you are speaking to gambling, you are not leaving it out of the Constitution. I think it's clearly set out here: "Do you want the old language or do you want some forms of gambling specifically provided for by the Legislature?"

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I don't gamble in any way, shape or form, whether I'm in Bismarck or Las Vegas. I have no real interest. But it would seem to me in looking at the ballot form that the first choice, if adopted by the people, would put

a much stronger anti-gambling section in our Constitution than we have now. All forms of gambling, which I suppose would include playing poker. I can find no prohibition against playing poker in the present Constitution. Article I, first amendment to our Constitution, simply says: "The legislative assembly shall have no power to authorize lotteries or gift enterprises." I don't understand that playing poker is either a lottery or a gift enterprise. And I'm sure there are other forms of gambling. I don't think that a horse race is a lottery. And I don't know whether it's a gift enterprise or not, I don't know about that. But it does seem to me that when on the first question on the ballot you're talking about all forms of gambling, the second choice you're using the words of the present Constitution "lotteries or gift enterprises." Looking back at the history as to why this amendment was made, and looking back at the so-called Louisiana Lottery, that was the type of thing that was permitted by the Constitution. And I don't think that many forms of gambling are presently prohibited by our Constitution. So it does seem to me that the ballot form would provide the alternatives that no form of gambling should be authorized unless the Legislature specifically permits it, which is a little different than whether we put the old section of the Constitution back in or leave it out.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: Would someone explain exactly what a gift enterprise ticket is? Is that selling tickets on something from door to door? What is a gift enterprise ticket?

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Mr. Chairman, Delegate Haugen states he has some for sale.

PRESIDENT WENSTROM: Delegate Haugen. Delegate Haugen, no commercializing.

DELEGATE HAUGEN: Mr. President:

I brought these along.

PRESIDENT WENSTROM: You may answer the question for the lady, however.

DELEGATE KESSEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I may have a chance to do that. We now find pretty well that what they are doing, instead of having lotteries, you make it in the form of a gift certificate that you make a donation and that actually entitles you to a few of the rights. And I think this is probably what they mean by a gift enterprise. Some of our organizations, say you donate \$25, and for this you have a chance at this and a chance at that and so forth. This, I think, is sort of one of the gift enterprises that we have in our Constitution now which is being violated every day.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Mr. Chairman:

Would Delegate Kessel yield to a real legal question?

DELEGATE KESSEL: Yes.

DELEGATE TRENBEATH: Does the prohibition of lotteries include pari-mutuel betting?

DELEGATE KESSEL: Illinois, I might say, has exactly the same constitutional prohibition that we have. And the Illinois Supreme Court decided that the word "lottery" does not speak to pari-mutuel racing in any manner or form. Now I think North Dakota, however, did not quite go along with that theory. Because we did put that on the ballot a few times. So evidently they felt it did. But the court decision in Illinois said this does not cover pari-mutuel racing.

PRESIDENT WENSTROM: Further discussion?

Delegate Hartl.

DELEGATE HARTL: Mr. Chairman:

For those who can't see Delegate Haugen's red ballot here, I would ask you to defeat Committee Proposal 4-2 so that I can have my son, age two and one-half, pur-

chase a chance at this gift enterprise that the Sons of Norway are sponsoring, since I'm rather afraid to as the State's Attorney.

I would call your further attention to articles which appeared in certain papers within the past week; articles of enterprise for profit entitled "Mouse in the House". The other quotation in quotes "And where it stops nobody knows". The people attracted to these two particular games of sport and chance, it is illustrated by the pictures I have on my desk, obviously are those persons in a majority under the age of eighteen in these two particular photos. We recognize that this was at a certain place in the State of North Dakota; we recognize that the same type of enterprise is available in some of our lodges; the same enterprise is available in our state in county fairs during the summertime. The bingo which was advertised on local TV last night which the ladies can play through the local grocery stores is also a gift enterprise. With all of these things I think we, the people, have been fooling ourselves for a sufficient amount of time. I would urge a "no" vote on the Proposal 4-2 so that we can once clean our house and show our children that we are acting as proper law-abiding citizens.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, Fellow Delegates:

Since I spoke about time, I will try to keep mine short. I do want to make the Convention aware that if this a set-side or an alternate issue, and if it is rejected by the people — in other words, if the people want to retain the present provision — this will be a clear mandate to the Attorney General and to all of the State's Attorneys to enforce the present laws.

PRESIDENT WENSTROM: Further discussion?

Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman:

Just because of what Delegate Devine and Delegate Hartl said, we try to make it a little bit more simple for the people. If they want to continue to violate the Constitution as they now are, they have an opportunity to speak by allowing the Legislature directly in this Constitution to provide for bingo and some other things. That this would not alter it in any manner other than it is now. If you defeat it, then the Legislature has no way of doing this. So this does give them an opportunity. And it's very clear; either you keep what you have now and then you speak to all the authorities that they must enforce it, or you allow the Legislature directly rather than by indication to do what we have been doing all the while. Therefore, I speak in favor of this.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: The question before the convention is on the passage of Alternate Proposal No. 4-2 as amended. No further discussion, those in favor will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call indicates 58 "aye" votes, 39 "nay," one delegate absent and not voting. Alternate Proposal No. 4-2 has passed.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I move that we suspend the Rules and that 4-8 and 4-9 not be read, and that they be amended as proposed by the committee.

PRESIDENT WENSTROM: Delegate Dawson moves — Delegate Dawson moves that Alternate Proposals No. 4-9 and 4-8 be considered at one time, that the Rules be suspended, and that these proposals be placed on the calendar for tenth order for consideration.

Do we have a second?

DELEGATE AUBOL: Mr. President.

DELEGATE KESSEL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Kessel.

Delegate Aubol.

DELEGATE AUBOL: Just a point of inquiry. What happened to Delegate Proposal or Alternate Proposal 4-4? I thought we were going to consider these in order of priority.

DELEGATE LANDER: We are.

DELEGATE AUBOL: I don't believe we have acted on 4-4, have we?

CHIEF CLERK GILBREATH: 4-8 and 4-9 come first.

DELEGATE CHRISTENSEN: That was fifth.

PRESIDENT WENSTROM: The question before the Convention — Delegate Kessel.

DELEGATE KESSEL: 4-4 is in fifth order on priority.

DELEGATE AUBOL: It's next in my books.

PRESIDENT WENSTROM: The question before the Convention is on the motion to suspend the Rules and place Alternate Proposals No. 4-8 and 4-9 before the Convention for consideration on tenth order. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the two proposals, 4-9 and 4-8, are before the Convention on tenth order. You will recall these were both accepted without recommendation.

DELEGATE DAWSON: I move that they be amended as proposed by the committee.

PRESIDENT WENSTROM: There are amendments at the desk.

CHIEF CLERK GILBREATH: Proposed amendments to Alternate Proposal 4-8: Page 1, delete all of lines 16 through 20 and insert in lieu thereof the following:

"SECTION 2. BALLOT FORM. The form of the ballot as pertains to the questions set out in this proposal, and as it shall be submitted to the electorate as a separate issue, shall be as follows:

"Shall the proposed constitution contain the following language? (Mark one only)" You have a "yes" and "no" box.

"There shall be no discrimination against a qualified natural person's right to practice a trade or profession or a citizen's right to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade, labor or professional organization."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Which proposal was that?

CHIEF CLERK GILBREATH: 4-8.

PRESIDENT WENSTROM: Do we have a second to the motion as read?

DELEGATE LANDER: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Lander.

Is there any discussion? Any discussion? Delegate Kessel.

DELEGATE KESSEL: Mr. Chairman:

This is the portion of 4-8 that was assigned to me. And as you will notice, the only change we made from the original of 4-8 was in the ballot. Again, in accordance with the instructions received from the Attorney General's office this would have to be pulled out of the Constitution even though it was adopted by the delegates and placed on the side and then if the people in their vote say that they want it in, it would be put back in. And it's very simple. I don't think the merits of the thing needs any discussion at this time. You are all aware of what it means. And so 4-8 merely means whether or not you want to keep it in the Constitution.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention then is on the adoption of the amendment.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I believe this came out of committee without recommendation, so I suppose we need a motion.

PRESIDENT WENSTROM: Yes, there should be a motion.

CHIEF CLERK GILBREATH: He just made it.

PRESIDENT WENSTROM: When you made the motion to suspend the Rules and place it on tenth order, I took it for granted that you were making the motion. And I believe the record will so show.

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

I don't know if I'm out of order or not, if I am I wish you'd say so right away.

As I understand, there will be probably a question. The vote will be now to accept 4-8, am I right, or reject it?

PRESIDENT WENSTROM: The vote now will be on the amendment to 4-8. This, as I understand it, is an amendment to 4-8. And the question before the Convention at this moment in my interpretation is on the amendment to 4-8, amending this — putting this on the proposal.

Delegate Hubrig, the way I understand the question we are voting on is this material right here, the adopting of this part of the amendment to go on the proposal. We are not voting on adopting the proposal, merely the amendment.

The question before the Convention is on the adoption of the amendment to Alternate Proposal No. 4-8. Those in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it, and the amendment is adopted.

Delegate Lander.

DELEGATE LANDER: Mr. President:

I will then — and I hope it's in order — move the committee amendments to 4-9 as at the desk.

PRESIDENT WENSTROM: The amendments as proposed to Alternate Proposal 4-9.

CHIEF CLERK GILBREATH: Proposed amendments to Alternate Proposal No. 4-9 are as follows:

On page 2, delete lines 3 through 8 and insert in lieu thereof the following:

"Which of the following sections shall the proposed constitution contain? (Mark one only)

"There shall be no discrimination against a qualified natural person's right to practice a trade or profession or a citizen's right to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade, labor or professional organization.

"To attain or accumulate a value as a result of labor shall be a property right, and the state or its subdivisions shall not impair an employment-related contract. No individual contract of hire shall preclude the right of a majority of employees in a bargaining unit to associate and bargain a collective contract of employment."

And renumber the lines accordingly.

PRESIDENT WENSTROM: You've heard the reading of the amendment to Alternate Proposal No. 4-9. Is there any discussion?

DELEGATE KWAKO: Question.

PRESIDENT WENSTROM: The question is on the adoption of the amendment to Alternate Proposal No. 4-9. No discussion? Hearing none, as many as are in favor of adopting the amendments will say "aye;" those opposed say "no." I think we should do that over again. Again, those in favor will — of adopting the amendments will vote "aye;" those opposed will vote "nay." As many as are in favor of adopting the amendments will say "aye;" those opposed say "nay." I believe the "ayes" have it. The "ayes" have it.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I move that 4-8 and 4-9 be properly re-engrossed and placed on tenth order for indefinite postponement.

PRESIDENT WENSTROM: I think I will have to rule the motion out of order, Delegate Dawson. I think that you can move to re-engross them and deem them properly re-engrossed and suspend the Rules and place them on tenth order, and then the Convention will have to decide where it should go from there. So if you would like to move to deem them properly re-engrossed.

DELEGATE DAWSON: I so move.

PRESIDENT WENSTROM: Delegate Dawson that the Rules be suspended and that Alternate Proposals — that the Rules be suspended, that Alternate Proposals No. 4-8 and 4-9 be deemed properly re-engrossed and they may be placed on the calendar for passage as amended.

Any question?

Delegate Butler.

DELEGATE BUTLER: The motion now in order. Mr. President, to move for indefinite postponement on 4-8 and 4-9?

PRESIDENT WENSTROM: No, Delegate Butler, I do not believe the motion is in order. The Chair will rule that the motion is out of order.

The question before the Convention is that these — the Rules be suspended, that these two Alternate Proposals be deemed properly re-engrossed, that they be placed on the calendar on tenth order for passage.

Now those in favor of the motion will say "aye;" those opposed will say "no." As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it. And Alternate Proposals No. 4-8 and 4-9 are on tenth order for final disposition.

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

Would I be in order to move 4-9 to the top of the calendar for consideration immediately?

PRESIDENT WENSTROM: You would be in order.

DELEGATE HUBRIG: I so move, then.

PRESIDENT WENSTROM: Delegate Hubrig moves that Alternate Proposal No. 4-9 be placed at the head of the calendar. Do we have a second?

DELEGATE HENDRICKSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hendrickson.

Is there any discussion? Hearing none, as many as are in favor — Delegate Hubrig?

The question before the Convention is that Alternate Proposal No. 4-9 be placed at the head of the calendar.

As many as are in favor of the motion will say "aye;" those opposed say "no." The "ayes" have it. Alternate Proposal No. 4-9 is at the head of the calendar for action.

Is there any discussion on Alternate Proposal No. 4-9 as amended?

Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

The only reason that I proposed 4-9 originally was of all the conversation we've heard — I call it conversation, some people call it threats. I'm not here to threaten anybody — but my idea was of the conversation we've heard, the newspaper headlines, about the right-to-work. I personally feel that if the voters — if we could accept 4-9 now and leave it to the voters of North Dakota to make a decision which one of the two proposals do they want, I do believe that then nobody in organized labor or outside of organized labor could go out and try to defeat the Constitution on those bases because they would have a right to vote on the thing. This would settle the matter. And this is one of the reasons that I proposed 4-9 is to put out an alternative of the two issues. And I would hope that the delegates would take this into consideration when you vote on this proposal. Leave it to the people.

We've heard a lot of conversation in 1947 and '48 when the vote was taken to the people. Some conversation has been it wasn't a fair vote because of the misname, all of that. And I think it's fair in putting the Proposal 4-9 that we do not even refer to such words as "a right-to-work" or "right-not-to-work". It's put out in plain English. And on the ballot I would hope that the ballot form would say the wording not leading to that. Leave it to the people. Don't try to mislead them. I believe if this could be passed and put on the ballot, I believe it could be to the best interests of the Constitutional Convention and to the best interests of getting a new Constitution in the State of North Dakota. And I sincerely hope that you will give it your consideration today.

PRESIDENT WENSTROM: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President:

May I ask a question of Delegate Hubrig?

Delegate Hubrig, the language to attain or accumulate and so forth, I wonder if you'd explain that? I just can't see this going through Style and Drafting the way it is. There is no explanation of the words, what they mean, what the source is. I wonder if you'd give us a little guidance on that.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: You mean the first paragraph, Delegate Unruh?

DELEGATE UNRUH: No, I mean —

DELEGATE HUBRIG: Or the first sentence?

DELEGATE UNRUH: The second. The whole thing.

DELEGATE HUBRIG: Well, the first sentence, actually what we're meaning there is if you work for an employer you've certainly got a paycheck coming. So this is where the property right would become involved. Probably we should have used the word "paycheck" instead of "property right". Because certainly you earn something if you work for somebody. That's been at least since the long — as long as I have understood it, I believe.

And then we go on into the part there where it says "No individual contract of hire shall preclude the right of a majority of employees in a bargaining unit to associate and bargain a collective contract of employment". And actually that wording is now in the statutes to an extent, that you have got the right to bargain or contract. But the difference amounts to, by putting this wording in here, it is felt by the legal people that drafted this for me that at no future date could the Legislature pass laws that would impair the right of bargaining for the employees or the employer. Actually it would leave it open to the point that there would be no interference from the state in the process of collective bargaining.

Now understand, we do not get into collective bargaining unless a majority of the employees working for a corporation in a given location vote to have a union represent them in the first place. And the reason I state this, that the question should arise, I visited with the Attorney General's office about this and the question has arisen: "Could you write a union shop contract?" And this is not my intent. He said if I would make that statement on the floor that if anybody tested it in the courts that the courts could go back to the record here today of what my intentions were with this wording. And he feels that this would clarify the position for the courts if they had to make a decision at a later date if somebody brought suit. And it is not my intent to make this a union shop clause.

DELEGATE UNRUH: Now, Mr. President, —

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: — I'd like an answer on the second clause.

You say the state or the subdivisions shall not impair an employment-related contract. I take it that means that a no-strike provision in any contract would then be invalid; is that right? As between city employees and the city and so forth.

DELEGATE HUBRIG: You mean that it would get the governmental employees an opportunity to strike?

DELEGATE UNRUH: Yeah.

DELEGATE HUBRIG: No, that is not my intention. Because the courts have held, up to the Supreme Court, that public employees are not entitled to strike. They are a second-class bunch of citizens.

PRESIDENT WENSTROM: Any further discussion?

Delegate Devine.

DELEGATE DEVINE: Mr. President:

Would Delegate Hubrig yield to a question?

PRESIDENT WENSTROM: Does Delegate Hubrig yield?

DELEGATE HUBRIG: Yes.

DELEGATE DEVINE: Delegate Hubrig, would this prevent the courts from ordering any group of people back to work?

DELEGATE HUBRIG: No, it would not.

DELEGATE DEVINE: Even though it — Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Even though it indicates that the state shall not impair a contract?

DELEGATE HUBRIG: Yes.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'm eager to support an alternate proposal on the right-to-work section. But I find myself in a position having to vote "no" on 4-9. I don't think that the people of this state can intelligently vote on 4-9. We find ourselves here in this assembly confused on what it means or what it does not mean. My idea of an alternate proposal would be the alternate of the Burbidge proposal against repealing any — any right-to-work section in the Constitution. And somehow if we're to have an alternate proposal on this we're going to have to word it in that way. Because this is — I can't see how we can expect the people to vote on it when I know they are going to go to the polls and this is the wording and be very, very confused.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I signed the proposals that were necessary to put both of these before the Convention. And over the week-end I've done a lot of thinking about what the Convention ought to do. I think the decision has been made that we're — the thrust of the Convention is to have the provision in the Constitution of some sort that provides constitutional backup for a right-to-work provision. Now so we come — being that the decision has been made, we sort of come to a strategy problem. And I think that's really what we are talking about here is that are we going to do — what are we going to do to accommodate the position that labor has held during this Convention? At first I thought, well we've got to defuse the issue so when and maybe the way to defuse the issue is to put it on the ballot and then we can always say, "Well, we are going to give you a chance to vote on it so you won't be against the new Constitution because we favor giving you a chance to vote on it." The problem is that the North Dakota AFL-CIO does not want it on the ballot.

Now I haven't talked at any great length with the president of the AFL-CIO since the original voting, except in my last conversation with him which must be almost two weeks ago he indicated that he did not want an alternate proposal on the ballot. I don't know if his reasoning is that he wants to be in a better position to oppose the whole document or his organization doesn't want to expend large sums of money to conduct an extensive campaign to get the proposal deleted from the Constitution.

I have come to the conclusion that it would be unwise for the Convention to place a right-to-work alternate on the ballot. And if we do so or if we take that course, I should say, we might be opening ourselves up during the coming campaign to get the Constitution ratified. However, at the same time, if we put it on the ballot we might incur the wrath of the organization and they will expend no effort on the issue itself but will spend added efforts to defeat the Constitution.

I think maybe the conciliatory approach that we ought to take is not to put it on the ballot in deference to their wishes, and then those of us who still feel very strongly that we have a terrific document here as I think most of us feel — that those of us that feel that way and who voted on the labor side of the question on the previous votes, that it becomes our responsibility to prevail upon organized labor to support the new Constitution in spite of the fact that they were unable to gain ground that they'd hope to gain.

I have been working on a letter that I hope the delegates who voted with labor on this would sign that we would write to them. And in hope that maybe as a few weeks pass and as the scars of the Convention start to heal that we can show that there are many other good things in this Constitution that are worth supporting, and that labor is no worse off under the new Constitution than it was under the old. Be-

cause basically the same provision carries forward. Of course, I don't know what we're going to do about the wrath that may come upon us from the legal profession, but they are usually divided so we're safe.

DELEGATE KWAKO: Question.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President:

If we are going to have a set-aside on this question, I favor the language of 4-9 over 4-8. I know that the AFL-CIO has said in the past they do not want a set-aside on this question. However, they have not seen the language of 4-9. And I think that the provisions of 4-9 do give the people of this state a choice.

PRESIDENT WENSTROM: Further discussion? The question before the Convention is on the passage of Alternate Proposal No. 4-9.

DELEGATE HUBRIG: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: I don't want to take up any more of your time. This has been hashed back and forth many times on the floor here. But I would like to point out one other thing here before you vote on it. Actually most — oh, I would say 95 percent of the people today working in the State of North Dakota are actually operating under federal law. There's only about five percent of the working people today that work under any laws that are passed by the State of North Dakota because of the Taft-Hartley Act. The only thing that the 95 percent of the people or the 97 percent of the people that are working under federal law right now, their right to work actually says this: That they can't write a contract covering a hundred percent of the people.

PRESIDENT WENSTROM: Further discussion? Delegate Jim Hougen.

DELEGATE HOUGEN: Yes, Mr. Chairman. This is the time when I really don't know for sure what I should say. I do know from many talks with Delegate Hubrig that he and I have a very different opinion on the right-to-work. I favor, and I think that it's very necessary that our Constitution have, a right-to-work clause in it. I also note that Delegate Hubrig is very interested in having a document that will be accepted by the voters of North Dakota, and also by the labor organization. And I feel that Delegate Hubrig has given this proposed Alternate No. 4-9 support because he feels that labor then will be better able to buy our entire Constitution. And for this reason I'm going to vote for Delegate Proposal 4-9. Even though it's one of our issues I will have to work for the right-to-work provision.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the passage of Alternate Proposal No. 4-9. No further discussion? Those in favor of its passage will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 29 "ayes," 68 "nays," one delegate absent and not voting. Alternate Proposal No. 4-9 has failed to pass.

Next for consideration is Alternate No. 4-8.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: Delegate Omdahl has said much of what I —

PRESIDENT WENSTROM: Delegate Geelan, I don't believe your mike is working.

DELEGATE GEELAN: Mr. President, —

PRESIDENT WENSTROM: That's fine.

DELEGATE GEELAN: Fellow Delegates:

Delegate Omdahl has said much of what I would have said. And I join him in that.

As many of you know, I have spent most of my adult life in association with the labor movement in North Dakota. I have learned to respect and admire the membership of organized labor. I have faith that we can go to them and tell them in spite of

what we did on Section 23 that we have a good Constitution, a brave Constitution. And I still have faith that we can convince them that they cannot only live with it, but they can support it. But if you put this as an alternate proposal you give labor no choice, you give many of us no choice, because with this "yes" and "no" proposal that you have here labor has no choice but to go out on an all-out "no" campaign. And knowing what "no" campaigns do, and what the effect of a "no" vote is, I can't think of anything that would be a step closer to defeating the entire Constitution than to accept 4-8 as an alternate proposal. I sincerely hope that you defeat it.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: I, too, agree with Delegate Omdahl and Mrs. Geelan. If this proposal has come from those people that were in the minority I could go along with it a hundred percent. But as long as we have spoken let's not justify our action by putting it on as an alternate proposal. I urge the defeat of it.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: Mr. President:

I was one of the ones that signed this alternate proposal, but I did so unwillingly because I think, as a couple of other people that signed it, I was not aware that the language of the question would read "There shall be no discrimination against." I'm not naive enough to believe that the people will really be able to understand the subtleties by that language, and I think we have to vote it down.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Mr. President:

I can't agree with the interpretation put on this by Delegates Omdahl and Geelan. First of all, it doesn't make any difference whether the AFL-CIO wants this on the ballot or not; we'll make the decision as delegates. Now if it is put on the ballot as a separate issue, that gives labor a free shot at knocking this out of the Constitution. It would be self-defeating for them to campaign also for a "no" vote on the main body. Because if a "no" vote prevailed on the main body, then they'd be back to the 1889 Constitution with Section 23. Even if they — even if labor was successful in getting a "no" vote on Delegate Burbidge's proposal, it would be foolish for them to campaign for a "no" vote on the main body.

Now we've talked about coalition minorities. There's a good one building here. If you get labor going against the main body, plus maybe an automobile dealer, plus the John Birchers, you might have fifty percent in a hurry. I think we should put this on the ballot as a separate issue.

PRESIDENT WENSTROM: The question — Delegate Devine.

DELEGATE DEVINE: Mr. President:

I realize the question has been called for. But I would like to explain a little bit of the background of this because I was the one that carried it to the Convention. This alternate was proposed in response to those claims that we heard that we were being unfair to certain groups. And at the time the original Burbidge proposal was before the Convention I, and I believe that many others, voted for it, not that we were voting against any particular group, and definitely not voting against the Constitution. I voted to retain it because it was probably the most emotional and political issue before the Convention. And I thought that by placing it as an alternate issue before the people they could decide this question specifically on the issue. However, I think Delegate Dobson probably expressed my feelings at the time. I will not at this time vote for it, I suppose, because it's not my intent to embarrass labor.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KWAKO: Question.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: The question before the Convention is on the passage of Alternate Proposal No. 4-8.

DELEGATE URDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Urdahl.

DELEGATE URDAHL: I don't quite understand just what this is going to do. If we defeat it, if this were defeated, would this mean that there would be nothing in the new Constitution relative to right-to-work?

PRESIDENT WENSTROM: No. It's my understanding, Delegate Urdahl, — unless someone from the Committee wants to answer — it's my understanding that we already have a section in the present Constitution pertaining to right-to-work.

DELEGATE URDAHL: And it would revert to what is in the present Constitution?

PRESIDENT WENSTROM: No, No, I think what we've run into is a question —

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: In voting down this particular motion, all you're doing is voting down the opportunity of an alternate proposal. The action this Convention took earlier in regards to the Burbidge proposal is kept within the Constitution as a part of the body. All you're doing — all we're considering here is the alternate proposal.

DELEGATE URDAHL: Thank you.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Any further discussion?

Delegate Lander.

DELEGATE LANDER: Mr. President:

I just want to say I always thought this was a good idea, and I'm going to vote "yes" and urge a few others to do so, too.

DELEGATE SANSTEAD: Mr. President.

PRESIDENT WENSTROM: Delegate Sanstead.

DELEGATE SANSTEAD: You know, Mr. President and Fellow Delegates, considering the general tendency to vote "no," when I recall not too many sessions ago when we had three items on the ballot, that we finally put an item on the ballot that said something like this: "Shall the legislative council be abolished?" And, sure enough, everything was "no" at the end of that election, and so the Legislative Council wasn't abolished. And I'm beginning to wonder, knowing the four items that were on the ballot in Illinois and all four of them soundly trounced, that we just might end up with a "no" vote on this particular proposal and in that sense some people maybe ought to consider that in voting.

PRESIDENT WENSTROM: The question before the Convention is on the passage of Alternate Proposal No. 4-8. Those that are in favor of its passage will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 30 "aye" votes, 67 "nay" votes, one delegate absent and not voting. Alternate Proposal No. 4-8 has failed.

Delegates, it's now five-thirty. We have one — we have four alternate — Alternate Proposal 4-4 for consideration, and then we have three alternate proposals that the committee recommended for indefinite postponement. That is what we have on the calendar. I believe maybe it would be better if we recessed from — at five-thirty now and came back about eight o'clock and finished this up.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: I would like to move that we work for another hour, until about six-thirty, rather than come back.

DELEGATE BINEK: Second.

PRESIDENT WENSTROM: I will be happy to put the motion if someone wants to move that we work until we complete it.

DELEGATE NICHOLAS: I will so move.

PRESIDENT WENSTROM: It's been moved by Delegate Nicholas that we come back — we continue to work until such time as we have cleared the calendar.

DELEGATE DEVINE: Second.

PRESIDENT WENSTROM: And it's been seconded by Delegate Devine.

Now is there any further discussion? Hearing none — Delegate Sinner.

DELEGATE SINNER: Mr. President:

I'll move that the motion be after a ten-minute recess.

PRESIDENT WENSTROM: We'll take the other motion first. The motion is that we continue to work until we finish our calendar, and the motion has been seconded.

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

What is on the calendar?

PRESIDENT WENSTROM: I just read those four items there.

DELEGATE AUBOL: Are those final three alternate proposals on the calendar?

PRESIDENT WENSTROM: They're not on the calendar, Delegate Aubol, but they — we agreed at one point today to not consider them until we had considered these others, if you will recall that. Remember? And we withdrew them.

So the motion before the Convention is that we continue to work until such time as we have completed the work at the desk. As many as are in favor — Delegate Cart.

DELEGATE CART: Well, Mr. President, I would just like to urge that this motion to continue working be defeated. Because we are going to need at least two hours, I think, to finish this up. And by that time most of the eating places will be closed.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I speak for the motion. I think we've got a job to do, and I think we should stay here until we get this calendar cleaned up.

And, Mr. Cart, I'll find a sandwich for you someplace.

DELEGATE NICHOLAS: I would just like to say that Mr. Cart and I don't go to the same places.

PRESIDENT WENSTROM: The question before the Convention is on the motion that we continue to work until such time as we have completed our calendar. As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and we'll continue to work.

The Chair will declare a ten-minute recess. Please be back in ten minutes.

(The Session recessed at 5:35 P.M. until 5:48 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please come to order. The Convention will please come to order.

The Chair will recognize Delegate Dawson.

DELEGATE DAWSON: Mr. President:

I move that the Rules be suspended and that 4-4 be moved to tenth order, that it not be read, —

CHIEF CLERK GILBREATH: Huh-uh. Don't. He moves to adopt the amendments.

DELEGATE DAWSON: Oh, adopt the amendments. Okay. Is it on sixth order now?

CHIEF CLERK GILBREATH: Yeah.

DELEGATE DAWSON: Okay. I move that we adopt the amendments for 4-4.

PRESIDENT WENSTROM: Delegate Dawson moves that the Rules be suspended; that we adopt the amendment to Alternate Proposal No. 4-4. Do I have a second to the motion?

DELEGATE HOGHAUG: Second.

PRESIDENT WENSTROM: Delegate Hoghaug moves — seconds the motion.

CHIEF CLERK GILBREATH: Want to dispense with the reading?

DELEGATE DAWSON: Pardon?

CHIEF CLERK GILBREATH: Want to dispense with the reading or not?

DELEGATE DAWSON: Yeah, dispense with the reading.

PRESIDENT WENSTROM: The motion is by Delegate Dawson that the Rules be suspended, that we dispense with the reading of the amendments, and that we adopt

the amendments to Alternate Proposal No. 4-4 as recommended by the Committee on Constitutional Ballot.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and the amendments are adopted.

DELEGATE DAWSON: Mr. President:

I move that 4-4 be moved to tenth order for passage.

PRESIDENT WENSTROM: Delegate Dawson moves that the Rules be suspended and that Alternate Proposal No. 4-4 be placed on tenth order for passage. Do we have a second?

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engelter.

Any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it, and Alternate Proposal No. 4-4 is before the Convention.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I want to move the amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-4 is as follows:

Delete Section 8 "Enactment" and renumber the lines and section accordingly.

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE LAMB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Lamb.

Now do we have any discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Now, Mr. President, I favor putting Section 2, 4, 5 and 9 on the ballot separately, but it makes no sense whatsoever to put Section 8 on the ballot separately. The only difference between Section 8 in your alternate proposal and Section 8 in the main body proposal is that the period of time that the Legislature could not repeal or amend, initiate or refer a measure would be changed from seven years to ten years. I fail, first of all, to see any significance in changing it from seven to ten years.

Secondly, it's been pointed out that in our bicameral-unicameral alternatives this creates a rather difficult technical problem. So having heard a little bit of argument for changing this to ten years, I think we should adopt this amendment which would make it seven years, uniform throughout.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Ladies and Gentlemen:

Well, we are back to cutting the dog's tail off an inch at a time now. The reason I have ten years in here instead of forever — which I might point out to you is the way the present Constitution is — it takes a two-thirds vote forever now, the way it is. And I met with the committee, I met with about three committees on it, and I thought I was being as reasonable as I could. I would have rather had the whole — the proposal — the old one entirely. But they said, because we have a certain set form and schedule, numbering, that I should change. So I did. We rewrote the whole thing to conform with their rules, but to leave a separate and a definite choice. And a separate and definite choice is quite a difference between seven and ten years. And I think it will give the people that like the old provision at least a little edge over the seven years. They may not like the change at all, but it will be some change. And if we are going to have alternates, they shouldn't be amended to be almost the same. And I'd urge you to defeat this amendment.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as of-

ferred by Delegate Dobson that we strike Section 8. Those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay." Those in favor of adopting the amendment say "aye;" those opposed say "nay." The "ayes" it. The amendment is adopted.

DELEGATE RUNDLE: Division, please.

PRESIDENT WENSTROM: That is sufficient. Division will be granted.

The question again is on the adoption of the amendment to strike Section 8. Those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay." The Clerk will open the key, you will indicate your preference. Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates 58 "ayes," 36 "nays," four delegates absent and not voting. So the amendment has been adopted.

The question before the Convention —

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: I think, Mr. President, that we better — if we're going to have that amendment we'd better take out the words that refer to it in the ballot also; referring to the ten and seven years. And I so move. It would be in the ballot, on the first portion of the ballot, take out the words after the semicolon, after "measure" on the sixth line from the bottom.

DELEGATE SINNER: Take the semicolon.

DELEGATE LAMB: Take the semicolon and make that a period. And then go down to "years.," take that part out, too, and then on the next page it would be after the semicolon after "measures for ten years after the effective date," the whole rest of it, make that a period instead of a semicolon.

PRESIDENT WENSTROM: Does the desk have the proposed amendments?

Delegate Hoghaug, do you have a question?

DELEGATE HOGHAUG: Mr. President and Delegates:

I think for the Ballot Committee to be consistent on the ballot, the order should be reversed; the two percent and those parts should be first, and then the 10,000, 7,000 signatures and that should be second. The committee, as I understand it, voted that anything that this body adopted would be listed in the front position and the alternate proposal would be listed second. So I would suggest that the ballot part should be reversed.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I think that the ones that are on the delegates' desks are supposed to have it in that form. At least the one that I have does. The ones that were passed out later today — not in committee this morning but later today — begin with two percent; right?

DELEGATE HOGHAUG: I'm sorry, Mr. President, I was looking at the old sheet.

DELEGATE GEELAN: Mr. President.

PRESIDENT WENSTROM: Delegate Geelan.

DELEGATE GEELAN: While you're struggling with this amendment, aren't we faced with the same question now? Can we take this first proposal out of the Constitution and place it as an alternate? Isn't that the same problem that we had in the other proposal?

PRESIDENT WENSTROM: That is correct.

Delegate Hendrickson.

DELEGATE HENDRICKSON: May I ask a question of the Chair? When was it in the process of our procedure here did we put all our proposals into one united document?

PRESIDENT WENSTROM: I believe, Delegate Hendrickson, that you people in the Committee on Style and Drafting are the ones that put them into these individual articles that we have been considering at the time that we considered your changes and the language and the grammar and the punctuation and so forth. At that time the Committee on Style and Drafting are the ones that placed them in a group.

DELEGATE HENDRICKSON: Well, perhaps my understanding was wrong. But perhaps I can ask, Mr. Chairman, I thought that we put these in this form for convenience sake but they were kept as individual proposals by putting the number in the edge — at the edge and that way we considered them really an individual proposal and grouped them together for convenience sake. I didn't realize we had grouped them together as a whole into one document yet.

PRESIDENT WENSTROM: Well, I don't believe that we have put them in one document as yet. I believe that your interpretation is right. There is a little notation on the margin showing the origination of each of the statutes, you see, in articles that we have now. I think that's — but this was done in your Committee on Style and Drafting.

The Clerk will read the amendments as offered by Delegate Lamb.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal as recommended by the Committee on Constitutional Ballot be amended as follows:

In the amendment in Section 2 after the words "an appropriation measure" delete the following: "; measure may not be repealed or amended except by two-thirds vote of legislative assembly for a period of seven years."

Then in the same Section 2 after the words "emergency measures" delete the following: "; for ten years after the effective date, measure may not be repealed or amended except by a two-thirds vote of the legislative assembly".

DELEGATE LANDER: Put a couple of periods into that.

CHIEF CLERK GILBREATH: We didn't take the period out, so it stayed there.

PRESIDENT WENSTROM: Is that in line with your amendment, Delegate Lamb?

DELEGATE LAMB: Yes.

PRESIDENT WENSTROM: Any further discussion on the amendments? The question is on the amendments as offered by Delegate Lamb. May we have a second? Do we have a second to that proposal?

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Omdahl.

And Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President, I don't understand the amendment. I had some legal advice here, and I didn't pay too strict attention.

PRESIDENT WENSTROM: Would you like it re-read?

DELEGATE RUNDLE: Please.

PRESIDENT WENSTROM: Delegate Rundle, would you like the amendment re-read?

DELEGATE RUNDLE: Please.

PRESIDENT WENSTROM: The Clerk will re-read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-4.

In the amendment in Section 2 after the words "an appropriation measure" delete the following: "; measure may not be repealed or amended except by two-thirds vote of legislative assembly for a period of seven years."

Then in the same Section 2 after the words "emergency measures" delete the following: "; for ten years after the effective date, measure may not be repealed or amended except by a two-thirds vote of the legislative assembly".

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE POULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Would Delegate Lamb please yield to a question?

PRESIDENT WENSTROM: Will Delegate Lamb yield?

DELEGATE POULSON: As I understand this amendment on the proposed alternate ballot in both instances the voters would be voting irrespective of how they voted whether they wanted a two percent carry of it or the 7,000 signature carry of it; the seven-year waiting period — that is what I like to call it — would be deleted so that, in other words, the legislative assembly could, if they so chose, in the next session repeal?

DELEGATE LAMB: Mr. President.

PRESIDENT WENSTROM: Delegate Lamb.

DELEGATE LAMB: Delegate Poulson, no, they would not. Because from the prior amendment of Delegate Dobson's we took out of the proposal the period of ten years. And so we will revert back to what we have already passed, seven years. We are not — the people won't be speaking to the period of years except in the main body of the Constitution.

DELEGATE POULSON: Thank you very much.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment as offered by Delegate Lamb.

Any further discussion? Hearing none, those in favor will vote "aye;" those opposed will vote "no." Those in favor of adopting the amendment will say "aye;" those opposed say "no." The amendment is adopted.

Any further discussion?

Delegate Dawson.

DELEGATE DAWSON: I suppose it's necessary to properly re-engross 4-4 and place it on tenth order for passage.

PRESIDENT WENSTROM: Delegate Dawson moves that the Rules be suspended, that Alternate Proposal No. 4-4 be deemed properly re-engrossed, that it be placed on the calendar for passage as amended.

Do we have a second?

DELEGATE FIEDLER: Second.

PRESIDENT WENSTROM: That's seconded by Delegate Fiedler.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. Alternate Proposal No. 4-4 is before the Convention for passage.

Is there any discussion?

Delegate Haugen.

DELEGATE HAUGEN: Mr. President:

I guess everyone is ready to vote on it. I suppose they've made up their minds. My whole political background is such that I'm happy that we're retaining the initiative and referendum in the Constitution. But I can see no justification whatsoever with retaining the present number of signatures. The number of signatures that was worked out by the Constitution, the two percent and the four percent, seem completely reasonable to me. And I think that this alternate should be defeated.

PRESIDENT WENSTROM: Is there any further discussion? The question then is on the passage of Alternate Proposal No. 4-4 as amended. Those in favor of its passage will vote "aye;" those opposed will vote "nay." The Clerk will open the key, and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 34 "ayes," 58 "nays," six delegates absent and not voting. Alternate Proposal No. 4-4 has failed to pass.

The Chair will recognize Delegate Dawson.

DELEGATE DAWSON: Mr. President:

I would move at this time that we change our order a little bit and move 4-5 to the top of the tenth order.

PRESIDENT WENSTROM: Delegate Dawson moves that we move —

DELEGATE DAWSON: I believe, Mr. President, we have to return that from committee.

DELEGATE HAUGEN: Mr. Dawson, should that be one of the amendments?

DELEGATE DAWSON: No, that's a blue sheet.

Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: Did we have these in committee? Do we have to move them back to the floor?

PRESIDENT WENSTROM: We'll have to take them back through the desk, through the Clerk, on fifth order.

CHIEF CLERK GILBREATH: Or seventh order.

PRESIDENT WENSTROM: Seventh?

CHIEF CLERK GILBREATH: Yeah.

PRESIDENT WENSTROM: I guess it's seventh, seventh order.

DELEGATE DAWSON: Can we move then to bring back 4-3, 4-5 and 4-6 all in one motion, and that 4-5 be placed at the top?

PRESIDENT WENSTROM: I believe that we will just accept these one, two, three, and then your motion will be in order.

CHIEF CLERK GILBREATH: 4-5 first.

DELEGATE DAWSON: 4-5; right.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to whom was referred Alternate Proposal 4-5, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Dawson, Chairman.

Delegate Dawson moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Alternate Proposal No. 4-5; that it be indefinitely postponed.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I believe some of the delegates are looking for 4-5 and 4-6 in the white sheets. They are not in the white sheets because there was no change made, so they are in the blue sheets in the back of your Journals.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Committee Report that Alternate Proposal 4-5 be indefinitely postponed.

Delegate Aubol.

DELEGATE AUBOL: Mr. President:

Now if the Committee's Report is accepted on voice vote here, that is the end of the proposal; is that right? It does not go to sixth order for any more action, or tenth order?

PRESIDENT WENSTROM: That is correct. This is the motion to indefinitely postpone Alternate Proposal No. 4-5.

If there is no explanation — Delegate Omdahl.

DELEGATE OMDAHL: Are we on the — we're on the adoption of the Committee Report?

PRESIDENT WENSTROM: We are; yes, sir.

DELEGATE OMDAHL: Mr. President:

I have felt very strongly about this matter of having appointed rather than elected judges. But I notice that the delegates would rather keep the number of measures on the ballot down to a minimum. Three or four seem to be the most popular. And since there seems to be a sharp break in the number of points accumulated by the measures at this point I think that it would make a cleaner ballot to keep this off the ballot even though I sure would like to see George Longmire when he's back in the Legislature put it on the ballot at some later date.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the Alternate Proposal Report on No. 4-5; that it be indefinitely postponed.

DELEGATE MAXWELL: Question.

PRESIDENT WENSTROM: As many as are in favor of adopting the report will say "aye;" those opposed say "no." The "ayes" have it, and the report is adopted and Alternate Proposal No. 4-5 has been indefinitely postponed.

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: I move that the Rules be suspended and 4-6 be moved to the top of the tenth order.

PRESIDENT WENSTROM: This will be on sixth order. And the motion is not necessary, Delegate Dawson.

The Clerk will read the Committee Report.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to whom was referred Alternate Proposal No. 4-6, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Dawson, chairman.

Delegate Dawson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Alternate Proposal No. 4-6; that the proposal be indefinitely postponed. Do we have any discussion?

DELEGATE KWAKO: Question.

DELEGATE LITTEN: Question.

PRESIDENT WENSTROM: Any discussion? Hearing none, the question again is on the adoption of the Committee Report on Alternate Proposal No. 4-6; that it be indefinitely postponed. As many as are in favor of adopting the report will vote "aye;" those opposed "nay." The "ayes" have it. The report is adopted. Alternate Proposal No. 4-6 is indefinitely postponed.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Constitutional Ballot, to whom was referred Alternate Proposal No. 4-3, has had the same under consideration and recommends that the same be indefinitely postponed.

Delegate Dawson, Chairman.

Delegate Dawson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report on Alternate Proposal No. 4-3; that the report be indefinitely postponed.

Delegate Meidinger or Hernet.

DELEGATE HERNETT: Mr. President:

We are right back where we were this morning. I realize this is an uphill battle, especially at this time of the night, because I'd like to go and eat dinner, too. But I would like to at least explain. It isn't probably on the question exactly. I realize the question is the motion for indefinite postponement. But if you don't mind, I would like to explain a little bit what I had in mind and then you can vote the proposal down and perhaps over this evening or dinner hour you can think about it and you might change your mind in the morning.

The reason — you will see on your desk you have a copy of this proposed amendment to Alternate Proposal No. 4-3. You will notice on the back page the two alternates, A and B, which, if this proposal was passed, this is what the people would be voting on. One thing about it I would say this; it is not a "yes" and "no" vote. We passed one earlier here today which calls for "yes" or "no" votes. And I think those are very dangerous. But what this will do, as you will see, it will add in one place four more to be voted upon. And the thinking behind it was this: I think that wherever constitutional revision comes up between now and election time, one of the most hotly-debated issues is going to be the short and the long ballot in the executive department. I — in my committee I'm real proud of our committee action. And my personal feelings are that we came out with a real good proposal. And I'm not speaking here at this time because I think that we didn't, I think we did. My only reason for even talking about this is because I would like to see this Constitution passed. And I'm sure that the pressure is going to be on about the short ballot and the long ballot. And I was thinking of this as sort of a pop-off valve if we have something like this as an alternate. The thinking behind it was that there are four state officials presently elected by the Constitution who perhaps should be considered in matters that are here and they are not named. My thought was this: That we apparently decided here that we are not going to do anything different about the Auditor; we are going to have an Auditor General. So I'm not thinking about that, and I'm not — but what we do have, though — oh, yeah, and I'm not thinking about the Superintendent of Public Instruction, and not about the Labor Commissioner, because that is statutory now. But we do have the State Treasurer, the Agricultural Commissioner, the Insurance Commissioner and the Tax Commissioner. Now, I haven't listed these by name, but it just calls for four principal departments and to elect four more.

Now I realize that this might defeat some of the thinking that my committee had when we came out here, we came out with our proposal. But maybe it could possibly be the means of saving this Constitution.

Now I'm sure you all saw in the paper here yesterday or the day before there is going to be a meeting here in Bismarck next week. They call themselves "State Representative Government" and they are going to also oppose appointment rather than election of certain state officials. I don't know exactly which ones they are thinking about, but this is the type of a thing that I can see coming.

My friend, the downtown automobile dealer, threatened in November he's going to take after this area of the Constitution. So these are the reasons we are doing this. And, as I said before, I realize it's getting late and it's an uphill battle trying to change this thing tonight. But what I am asking for now is that you resist the motion for indefinite postponement. And I hope that you do, and then we can have a further discussion on this tonight or tomorrow morning.

PRESIDENT WENSTROM: The question before the Convention is on the motion to adopt the Committee Report for indefinite postponement to Alternate Proposal No. 4-3.

Delegate Chase.

DELEGATE CHASE: Mr. President:

I'm not going into this. I explained it all to you this morning. I hope that you will back up the committee and vote for the indefinite postponement. I call your attention again to the letter from the Attorney General. And this wasn't an opinion that he made in five or ten minutes; this is one that he considered with his staff and said in the last paragraph that, "Under this proposal the Legislature could take away the Governor's power to appoint even before he makes any appointments." So I think we have compromised this thing about as far as we can go and still keep some of the features in there for possible reorganization, which could not be done even under the alternate proposal as suggested by Delegate Hernetts when he goes on with four other principal departments as being constitutionally elective. And, therefore, I hope you back up the committee and move for indefinite postponement.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE MAXWELL: Question.

PRESIDENT WENSTROM: Delegate Trenbeath.

DELEGATE TRENBEATH: Well, Mr. President and Delegates:

I know Delegate Hernetts doesn't make any moves without doing a lot of thinking on the subject. And I think he's right. I think we should leave this overnight and think about it. Because I am sure — I'm sure that this is going to be one of the real bugaboos to getting our Constitution passed. And I think what his proposal is is reasonable. And I think if we don't think about it, why there's going to be quite a few speak to us in a short period of time on how they do feel about this. I know they have wrestled with this, they have wrestled with that. They have got a pretty good proposal. What Delegate Hernetts has proposed here is probably a real good valve, or whatever you want to call it, that just might be enough. And it has a lot of merit. And I think we should defeat the indefinite postponement, give us a little chance to think about it until tomorrow.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I think this is one of those that we term a "sleeper". And both Tony Binek and I know that in our end of the state they are very concerned about this particular area. And I do hope that you defeat the committee's idea and go along with further discussion and look into it a little bit further.

DELEGATE VOGEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Vogel.

DELEGATE VOGEL: I urge you to uphold the committee. Because what's the question here is not shall we add four more elected officials, but shall we virtually destroy the heart of the executive article which was adopted by this Convention several days ago? Because without the power to reorganize the executive department, and if — if the Governor is surrounded by elected officials, then the power to reorganize the executive department has been effectively destroyed. We will find ourselves leaving here with the executive department the same maze of crisscrossing lines of responsibility and ineffectual administration with which we came here.

This is the heart and I think the most important matter that was before the delegates. And to accept this type of an amendment would destroy the executive article if adopted. I hope that it is defeated.

DELEGATE BERG: Mr. Chairman, Fellow Delegates:

I'd like to have you know what happened to me yesterday morning. My wife and I went to two different churches — (applause) — and for also two reasons. I was wondering myself if I would be asked any questions in regard to our proposed new Constitution. I never had a chance to put my overshoes on in either one of the two churches until people came to me and asked me, "What are you going to do with the election of your state officers?" Every person that came to me and spoke, these were the people talking that I saw yesterday morning, were in favor of an opportunity of a side issue on this. I tried to explain to them that we did have a good proposal, it can be reviewed, it could be changed. Invariably they came back and said, "If we don't have it, there's only one way we can do it and that's to vote against the entire document." I thought this was quite interesting. These were people from church that were concerned in government. I, therefore, would definitely urge a defeat to the committee's report.

PRESIDENT WENSTROM: Any further discussion? The question before the Convention is on the adoption of the Committee Report to indefinitely postpone Alternate Proposal No. 4-3.

The Chair will recognize Delegate Aubol.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Now the sheet that we have in front of us was not a part of the committee report, though; is that correct, Delegate Dawson?

DELEGATE DAWSON: No.

DELEGATE AUBOL: Thank you.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I would pass.

DELEGATE BAKER: Question.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I would just like to reiterate what some of the committee has said here in this regard; that if we take the Constitution — if we think the Constitution is so endangered that you are going to cut the heart out of the executive section in order to save it, that's exactly what we're talking about here. Because I think you can visualize how the thing is going to work. If you elect each of these people, put them around the table as a planning council now, and each one of them knows he's completely autonomous regardless of what the rest of them vote on, the rest of them do, the rest of them say, all he has to do, the only person he is responsible for in his own mind, is not for good state government, he's responsible for one thing, that's getting elected next time. And if you study this thing, we've been studying it for six months, if you really think that you've got to take the heart out of the executive article in order to have the people of North Dakota approve it, then vote for resisting this indefinite postponement. As for me, I would definitely be for indefinite postponement.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, Ladies and Gentlemen:

Delegate Hernet may or may not thank me, with my great personal popularity here, but I support his amendment. I would like to say that we have had no scarcity of gubernatorial candidates either this year or for many years. In fact, we have too many in some parties. These people take the office knowing what the rules are. Now we've had one for a long time, and he wants to have more power. But we'll have governors, I hope, in my lifetime who don't last that long. And they won't want to reorganize as badly as he has done. They do not have to run for this office if it's so frustrating.

I might tell you that being in the Legislature or a convention like this has its frustrating moments when you don't win very often. And he could just as well elect the other officers and not worry so much about it.

Now so far as the people out in our district are concerned, Delegate Peterson, who is of the opposite political party than me, agrees with me wholeheartedly this is one of the three big things. And regardless how important it is to some of us here, it was important to the people. And I personally — we have some awfully

good sections in this Constitution. I'd hate to see them go down the drain because of one section, although I'm voting my convictions anyway. I think we should elect them. I told the committee early in the deal, I met with the committee, and said I wouldn't object to cutting down on the number of state officers, but I wanted to elect them. So I am not switching, I'm on the record. I hope Delegate Hernet's amendment carries.

DELEGATE STANTON: Mr. President.

PRESIDENT WENSTROM: Delegate Stanton.

Just for the record, Delegate Hernet does not have an amendment before the Convention.

DELEGATE RUNDLE: Okay.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: I just have to say this, Mr. President, it's really strange how some people here are so concerned with the heart of the executive functions section and could care less about the heart of the legislative sections. I would support the move not to indefinitely postpone this.

DELEGATE HERNETT: I just have one pertinent comment, Mr. President.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: The ones who are supporting the move to indefinitely postpone are apparently assuming that the people are going to vote for the four additional candidates. In other words, you don't trust the people.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the committee report to — that Alternate Proposal 4-3 be indefinitely postponed.

Delegate Sinner.

DELEGATE SINNER: Mr. President:

What I started to rise to say here a little bit ago and decided against it I have decided now again to say. That I think that if the proponents of this would like to wait until morning I'm not opposed to that. I think they have that right to give it that much more consideration. I, therefore, move that the motion before us be tabled until tomorrow morning.

PRESIDENT WENSTROM: I'll have to rule your motion out of order. We have no provision in our Rules to table.

DELEGATE KESSEL: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Kessel.

DELEGATE KESSEL: As a member of this Ballot Committee, we were confronted with so many issues that some of us got to the point where we were ready to indefinitely postpone every one of them. Now we have covered the nine of them. Now we are now down to three. The majority of the delegates spoke and said they wouldn't mind four. Now if this is such an important issue, I can't see but what we could sleep on this overnight and listen to the amendments that they want. I've heard them. I can't say I am ninety-nine and two-thirds percent impressed, but there's some merit. And I would urge now to defeat the committee's proposal, hear out Mr. Hernet and his constituents, and then maybe we can vote him down then. But they will have had their chance to have had a hearing.

DELEGATE POULSON: Mr. Chairman.

PRESIDENT WENSTROM: Who asked? Delegate Poulson.

DELEGATE POULSON: Mr. Chairman:

I move that this particular issue, Alternate Proposal 4-3, be laid over one Convention day.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: It's been moved and seconded that Alternate Proposal No. 4-3 be laid over one Convention day. Is there any further discussion? Hearing none —

DELEGATE SINNER: Mr. President.

PRESIDENT WENSTROM: Delegate Sinner.

DELEGATE SINNER: I wish that the amendments could be placed on our desks so that we can have a chance to look at them before discussion in the morning.

PRESIDENT WENSTROM: Are copies of Delegate Hernet's —

DELEGATE HERNETT: They are on everybody's desk.

PRESIDENT WENSTROM: They are on everybody's desk; is that right?

DELEGATE HERNETT: Been there for a day.

PRESIDENT WENSTROM: Then the question before the Convention is on the adoption of the motion as offered by Delegate Poulson that Alternate Proposal No. 4-3, further consideration of Alternate Proposal No. 4-3, be laid over one legislative —

CHIEF CLERK GILBREATH: Convention.

PRESIDENT WENSTROM: — Convention day.

As many as are in favor of the motion will say “aye;” opposed “no.” The Chair is going to rule that the “ayes” have it.

DELEGATE POULSON: Division.

PRESIDENT WENSTROM: Division has been requested. That is a sufficient number. It will be granted.

The question is on the motion to lay Alternate Proposal No. 4-3 — to lay it over one Convention day. Those in favor of that motion will vote “aye;” those opposed will vote “nay.” The Clerk will open the key, you will indicate your choice.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed. The tally indicates 70 “aye” votes, 25 “nay” votes, three delegates absent and not voting. The motion to lay over Alternate Proposal No. 4-3 one Convention day has passed, and it will be considered tomorrow.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: May we be on the eighth order of business?

PRESIDENT WENSTROM: We will be on the eighth order of business, without objection.

DELEGATE PAULSON: The long-delayed Public Information Meeting is now scheduled for eight A.M. tomorrow in the Large Hearing Room downstairs. Need you all for some advice.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: Mr. President:

We have a short, very short, but very important meeting of the Coordination and Transition Committee immediately after adjournment here tonight in G-5, G-6. Bring your proposals so we can get it in proper form for introduction tomorrow.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President:

While we are thinking overnight, I think we should think about what we did with the initiative and referendum alternative.

PRESIDENT WENSTROM: Further announcements?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: The Style and Drafting Committee will meet tomorrow morning at eight-thirty in G-7.

PRESIDENT WENSTROM: Any further discussion? Any further announcements under the eighth order?

The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: The Calendar Committee will meet at nine-thirty tomorrow morning, February 15th. Tuesday, nine-thirty.

I now — I move that we adjourn until ten A.M.

CHIEF CLERK GILBREATH: Excuse the absent.

DELEGATE SAUGSTAD: There were no absent members.

DESK REPORTER KING: He came in.

DELEGATE SAUGSTAD: There were no absent members. I believe that's right.

PRESIDENT WENSTROM: Delegate Saugstad moves —

DELEGATE SAUGSTAD: And I move we will adjourn until ten A.M., February 15th.

DELEGATE CHASE: Second.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Saugstad, seconded by Delegate Chase, that the absent delegates be excused — it's been moved by Delegate Saugstad and seconded by Delegate Kwako that we do now adjourn until ten o'clock tomorrow morning. Those in favor of the motion will say “aye;” those opposed say “no.” The “ayes” have it. We will be adjourned until ten o'clock tomorrow morning.

(The Plenary Session adjourned at 6:43 P.M., Monday, February 14th, 1972 until 10:00 A.M., Tuesday, February 15, 1972.)

V O L U M E XXIX

(February 15, 1972)

MORNING SESSION

(The twenty-ninth day of the Plenary Session commenced at 10:17 A.M., Tuesday, February 15, 1972, as follows:)

VICE PRESIDENT SAUGSTAD: Please come to order. All delegates in their seats, please. All delegates in their seats?

This morning the invocation will be given by Pastor H. E. Hendrickson, Trinity Lutheran Church of Bismarck.

REV. HENSEL HENDRICKSON: Let us pray.

This is an important place, dear God, a temple dealing with lives and hopes of people.

This is an important time, dear God, summarizing ideas and feelings in togetherness.

This is an important event, dear God, to count the blessings of the past and to plan for the contemplation of the future.

These are important people, dear God, with much responsibility and many burdens to carry.

There have been many important words written and spoken, dear God, to guarantee people liberties You have allowed us to have.

May what is said and done here point to Your importance as our Lord and as our God.

In Your name, we pray. Amen.

VICE PRESIDENT SAUGSTAD: Next we'll be on roll call. The board will be opened and you will indicate your presence. Saugstad is present.

Has everyone indicated their presence? The board will be closed.

DELEGATE DAWSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dawson.

DELEGATE DAWSON: Do you want to indicate President Wenstrom's presence? I think he's down visiting with the Attorney General. He didn't indicate on the board.

VICE PRESIDENT SAUGSTAD: There are 97 percent. Therefore, we have a quorum.

Next we'll be on the — Delegate Rundle, did you wish the floor?

DELEGATE RUNDLE: May we be on the eighth order? No. Tenth order. Twelfth order. Now the advice is coming in — motions and resolutions.

VICE PRESIDENT SAUGSTAD: Would you allow us, first, to have the Journal approved, and then we'll — all right. We're on item four — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 11th day of February, 1972, and recommends that the same be corrected as follows:

On page 458, line 23, delete the word "first" and insert in lieu thereof "second".

On page 460, on line 8, delete the word "first" and insert in lieu thereof "second".

And when so corrected, recommends the same be approved.

Delegate Paulson, Acting Chairman.

Delegate Dobson moved the Report be adopted.

VICE PRESIDENT SAUGSTAD: Now the Chair will recognize you.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: I apologize for being in such a hurry, but Delegate Hill has been prodding me.

Mr. President, I move that we reconsider the action by which we indefinitely postponed Alternate Proposal 4-4 — is that correct? Barbara was supposed to keep me posted. 4-4.

DELEGATE LANDER: Second.

VICE PRESIDENT SAUGSTAD: Delegate Rundle — Delegate Rundle. The Chair would hold at the present time that in this — at this particular moment, that your motion is out of order, in that we have before us the Committee — actually, we are presently on item five, which is the Report of Standing Committees, and we are acting on the Report of the Ballot Committee, and we are on Proposal 4-3, which was up for indefinite postponement, and upon — and we are still on that motion. And what happened was that last night, when we recessed, without having taken care — and we were still debating that motion, and so at this time technically we should not accept another motion until the motion that is before us has been taken care of.

DELEGATE RUNDLE: Thank you.

DELEGATE CHASE: Mr. Chairman.

DELEGATE HOFFNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Chase.

DELEGATE CHASE: Isn't it possible to honor Delegate Rundle's request here somehow, either by moving that this particular motion be moved to the top of the calendar before we consider the pending business?

VICE PRESIDENT SAUGSTAD: I believe that it is always proper to introduce a motion to temporarily suspend consideration of what we have before us, if you choose to do so.

DELEGATE CHASE: I so move that we temporarily suspend what we have before us and consider that one.

VICE PRESIDENT SAUGSTAD: Further action on Delegate Proposal 4-3?

DELEGATE CHASE: Yes.

DELEGATE PAULSON: Second.

VICE PRESIDENT SAUGSTAD: All right. Now we have had a motion to temporarily suspend further action on Delegate Proposal 4-3. Now was there a second to that motion? Seconded by Delegate Paulson.

Now, does anyone wish to speak on this motion? I believe Delegate Hoffner was on the floor, first, and then Delegate Nething.

DELEGATE HOFFNER: Mr. President. On the last page of the Journal, page 490, Delegate Paulson moved that the Alternate Proposal 4-3 be laid over one Convention day, and I didn't think that that necessarily meant that it would necessarily have to be the first order of business today.

VICE PRESIDENT SAUGSTAD: Delegate Hernettt.

DELEGATE HERNETT: Well, Mr. Chairman, I was hoping it would be the first order of business today. This is the order of business we adjourned on last night, and I'd like to continue it. I think this is something that should be settled before we get onto the other one. I hope this motion does not prevail.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: I hope that the motion does prevail. This particular issue sort of slipped by the Convention — at least I thought so, yesterday. Personally, I was kind of surprised that no one spoke on the subject, and then I thought, well, maybe they all felt like I did; the Committee had come out strongly in favor of placing initiative and referendum on the ballot, but then when the board went up there, it was all red, and I certainly think this issue merits more discussion and we ought to go back and pick up the pieces before we proceed. And so I hope that we will support the motion that has been made on the floor.

VICE PRESIDENT SAUGSTAD: Any further discussion?

We're on the motion of Delegate Chase that further consideration of Delegate Proposal 4-3 be temporarily suspended.

I am now — now, if you vote — you're voting to temporarily suspend further consideration of Delegate Proposal 4-3, which, as I understand it, is to open up for a further motion that we may reconsider action on Delegate Proposal 4-4. So, if you're voting "aye," you are voting to suspend further consideration of Delegate Proposal 4-3.

I will now put the motion. I will now put the main motion.

All in favor signify by saying "aye." All opposed "nay."

The Chair will rule the "ayes" have it, unless a division is called for. How many want a division?

All right. The "ayes" have it. So that now the motion of Delegate Chase prevails and we will temporarily suspend further consideration of Delegate Proposal 4-3.

Now the Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President. How do you proceed, Delegate Hill? I'm not quite sure of the motion involved. I yield to Delegate Hill.

VICE PRESIDENT SAUGSTAD: Delegate Hill.

DELEGATE HILL: Well, I was mainly involved with drafting a viable alternative here, and at this time I would move we reconsider the action yesterday by which we indefinitely postponed Alternate Proposal 4-4.

Is that in order?

VICE PRESIDENT SAUGSTAD: The motion really should, I suppose, be that by which Delegate — or Alternate Proposal 4-4 lost.

DELEGATE HILL: All right.

VICE PRESIDENT SAUGSTAD: Are you now placing that in the form of a motion?

DELEGATE HILL: Yes.

VICE PRESIDENT SAUGSTAD: You are moving that this body reconsider its action by which Delegate Proposal — or Alternate Proposal 4-4 lost?

DELEGATE HILL: That's correct.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE RUNDLE: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Rundle. Is there any discussion now?

DELEGATE BUTLER: Mr. President.

VICE PRESIDENT SAUGSTAD: I'll recognize Delegate Hill, first.

DELEGATE HILL: This is essentially the same proposal which was submitted as an alternate by Delegate Rundle, with one exception; it provides that a referendum petition shall not suspend the operation of a statute enacted by the Legislature unless it has 12,000 signatures on the petition, and the petition itself requests that the measure be suspended. 7,000 signatures under this alternate would be adequate to refer a measure. But the presumption would be that the Legislature acted correctly, rather than the petitioners, and the measure would not be suspended until it was voted out by the people, if that was their decision.

Delegate Rundle, you may recall yesterday we first voted on Section 8, which was a provision that the two-thirds vote needed a change in an initiated or referred measure approved by the people being in effect ten years. Delegate Rundle has requested that be placed back on the alternate, and it is there. But the main change — or what this alternate does, from the proposal adopted by the majority of the delegates to this proposal, is that it provides that an initiative measure can be submitted to the people by 10,000 votes, rather than 12,000 votes; a measure can be referred by the electors with 7,000 signatures, rather than 12,000-some signatures, which two percent would be, and maintained, as I said from yesterday, is that a measure shall not be suspended on a referendum unless it has 12,000 petitioners and the petitioners so request. And I want to point out one of the reasons for this, and I think this is somewhat the same statement I made earlier when I tried to change the majority of the Legislative Functions Committee proposal, and what we're doing when we say "a measure shall be suspended until voted on by the electors,"

is we're saying that the petitioners are probably correct and we should suspend the law immediately. In effect, we're saying that the Legislature acted foolishly, and I think we should give the benefit of the doubt to the Legislature, because here's what can happen: If, for example, the Accounts and Purchasing Department, when their appropriation was referred, their department should have been closed up, according to our Constitution. They didn't. If our new Constitution is adopted, we're going to have a host of new laws which set forth the duties of the various new departments. Say, for example, the Board of Higher Education. They are created now by Article 54 of our present Constitution. That provision of the Constitution would be repealed on July 1 of '73, if approved, and then the Legislature would have to establish the Board of Higher Education as provided by the Constitution. If somebody referred the law passed by the Legislature establishing the Board of Higher Education, the question is: Who would run the institutions pending the outcome of the election?

The supreme courts of a number of states have said that the Legislature has no authority to pass a law identical or close to the assumptions of the measure which is referred by the electorate. I could say on the initiative rank, which create the various new departments that are going to be created, some of the old officers and such, and the other departments which may be repealed, may be in a different section of the law or they may be in one that's not referred. Who carries out these functions of the government when that measure is suspended pending the outcome of the election? And this is what we're doing, basically, when we provide for suspension pending the vote — is we're providing for chaos in the state government. And all the people that worked in the state government and have seen the effects of these initiatives and referrals over the last several years would agree that the suspension of a law pending the outcome of a vote is the deadliest thing that can happen in the referral and initiative process, and most of the people who initiate — or refer these measures, they are not concerned about suspending the law, except in certain types of statutes, and I don't think that we should require a suspension, and this would be an alternate, I think, that would work quite well, if placed on the ballot, and I would urge you support this alternate.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Butler — Delegate Dobson.

DELEGATE DOBSON: Well, Mr. President, Delegate Hill is doing a good job of confusing the delegates on talking on an amendment which hasn't been offered. But the question before us is shall AP 4-4 be reconsidered? I think it should be, because if we put the signature increase in the main body of the Constitution, it's like putting a stick of dynamite in there, because at least a substantial minority, if not a majority of the voters in the State, oppose the signature increase. I think 4-4 should be on the ballot as a separate issue. So I support reconsideration. If we reconsider, Delegate Hill could offer his amendments, which, by the way, were soundly rejected a few weeks ago for a very good reason, and they should be rejected again, and we should simply take 4-4 as it now stands and use that as the alternate.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: Mr. President. I would also like to urge reconsideration of our action yesterday.

VICE PRESIDENT SAUGSTAD: Did someone else ask for the floor? Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President. Fellow Delegates:

I would certainly support this motion to reconsider. I don't think that we had the opportunity yesterday to really give this important issue all the consideration that is due it. I hope you vote to support the measure.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I, too, rise to support the motion to reconsider.

VICE PRESIDENT SAUGSTAD: Delegate Butler.

DELEGATE BUTLER: Mr. President. I request that we have a tabulated vote on it; not recorded.

VICE PRESIDENT SAUGSTAD: Delegate Butler requests a division vote, but not a recorded vote. Is that correct?

(Delegate Butler nodded.)

VICE PRESIDENT SAUGSTAD: That will be fine. A division vote will be granted.

Delegate Kessel.

DELEGATE KESSEL: Mr. President, I have no objection to the reconsideration, but I just don't like the underhanded way of heading off another proposal, and I just want to voice my opinion that this isn't according to Hoyle, at least.

VICE PRESIDENT SAUGSTAD: Delegate Hill.

DELEGATE HILL: I would also like to correct that impression. I drafted an alternate for what I thought was an improved initiative and referendum alternate. I had no intention of killing another alternate proposal.

VICE PRESIDENT SAUGSTAD: We are on the main motion of Delegate Hill, which is to reconsider the action taken on Alternate Proposal 4-4, which had failed to pass yesterday. I am now ready — no. I'm going to open the board and you may indicate your choice. If you vote "aye," you are voting to reconsider. If you vote "no," you are voting against reconsideration.

The board will be opened and you may indicate your choice.

Saugstad votes "nay."

Has everyone indicated their vote? Does anyone wish to change their vote? If not, the board will be closed.

The vote indicates 71 "ayes," 25 "nays," two absent and not voting. Therefore, the motion to reconsider has carried.

Now we have before us Alternate Proposal 4-4.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Is this working?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE RUNDLE: I believe the — I offer the amendment, and I believe it's at the desk.

CHIEF CLERK GILBREATH: There's a printed sheet up here, but it doesn't say what you want to delete, nor does it say what you want to insert in lieu thereof, and we would have to be working off the amendments as adopted yesterday on page 480 of your Journal.

DELEGATE RUNDLE: You mean the attorney slipped?

DELEGATE HILL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hill.

DELEGATE HILL: I believe Delegate Rundle would like to make his amendment to delete everything after Article III and insert in lieu thereof what is printed on that page.

CHIEF CLERK GILBREATH: After Article III?

VICE PRESIDENT SAUGSTAD: Delegate Rundle, is your motion then to delete everything after Article III? — that is, Sections 2, 4, 5, 8 and 9?

DELEGATE RUNDLE: Yes.

DELEGATE HILL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hill.

DELEGATE HILL: I believe, if Delegate Rundle had a druther, he's druther leave Section 9 alone and leave that in.

VICE PRESIDENT SAUGSTAD: Delegate Rundle, did I hear you — understand you correctly to say that you would like to move — I understand from the desk force that Section 8 was eliminated yesterday by an amendment from the floor.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: That was to be in the amendment. The thing is

exactly the same as it was as I offered it yesterday, with the exception of another section that Delegate Hill mentioned, where the petition — it will not suspend the operation unless it has 12,000 signers. That's Section 4 on the sheet that was prepared.

CHIEF CLERK GILBREATH: As I understand it then —

VICE PRESIDENT SAUGSTAD: Mr. Clerk, read the proposed amendment.

CHIEF CLERK GILBREATH: As I understand, you want to delete everything in the engrossed alternate proposal, starting with Article III. You would take that out and in Section 2, you would delete Section 4, and Section 5, you would delete in its entirety. Is that correct?

DELEGATE RUNDLE: Okay. I'm getting advice from so many quarters here that I am having trouble. 2, 4 and 5 would be deleted.

Does that check?

CHIEF CLERK GILBREATH: Then you want to —

DELEGATE RUNDLE: And the new material be inserted.

CHIEF CLERK GILBREATH: And insert the new material and renumber the lines and pages accordingly?

DELEGATE RUNDLE: Correct. Thank you.

VICE PRESIDENT SAUGSTAD: The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: In the engrossed Alternate Proposal, delete Article III — all of the following: Article III, all of Section 2, all of Section 4, all of Section 5. Insert in lieu thereof the following sections:

"Section 2. PETITION.

"Each copy of the petition shall contain the full text of the measure and the names and addresses of at least five sponsors, one of whom shall be designated as chairman. No law shall prohibit any person from giving or receiving compensation for circulating petitions nor interfere with freedom in securing signatures.

"Section 4. SIGNATURE REQUIREMENT.

"The petition may be submitted to the secretary of state if signed by ten thousand electors in the case of an initiated measure and seven thousand electors in the case of a referred measure. A referendum petition signed by twelve thousand electors shall suspend the operation of all but emergency measures, if so requested in the petition.

"Section 5. SUBMISSION.

"A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred or initiated measure shall be voted upon at the first statewide election held more than ninety days after the submission of the petitions or at a special election called by the governor.

"Section 6. CERTIFICATION.

"The secretary of state shall determine the validity and sufficiency of the signatures. If he finds irregularities, he shall notify the sponsoring committee and allow twenty days for corrections, but this time shall not be used for the addition of signatures. If the secretary of state finds a petition valid and sufficient, he shall certify it and prepare a ballot containing the full text of the measure and a ballot title summarizing the measure.

"Section 8. ENACTMENT.

"If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. For ten years from its effective date, a measure approved by the electors may not be repealed or amended by the legislative assembly except by a two-thirds vote of the members elected to each house."

Evidently I skipped a part of a sentence in Section 8, Enactment. So I'll read that over.

"If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. For ten years from its effective date, a measure approved by the electors may not be repealed or amended by the legislative assembly except by a two-thirds vote of the members elected to each house."

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President and members of the Convention:

This is what is commonly known as a compromise, and sometimes the word "compromise" denotes cowardice. But I gave in on a section that had been bothering quite a few people. Otherwise, it's the same as I had it yesterday. It gives quite a division for an alternate proposal. There's enough difference between that and the one in the main body, so there's some choice, and I urge its adoption.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Dobson.

DELEGATE DOBSON: This appears to be a compromise between Delegates Rundle and Hill. As you might recall, this matter of suspending referred measures came across the floor sometime ago. I'm not going to belabor you again with all the reasons why a measure should be suspended when referred. Suffice to say that Delegates Rundle and Hill's idea as contained in Section 4 of their amendment was defeated by this body by a two-to-one margin, and something this defective should not be placed even in an alternate by a back-door method at this late date.

Secondly, Section 8, "Enactment," the only change there is from "seven years" to "ten years," and I haven't heard a good reason yet why it was changed from "seven years" to "ten years," and that's why this body yesterday voted 58-to-36 to knock Section 8 out of AP 4-4. So I would urge rejection of the Rundle-Hill amendment, and having rejected the Rundle-Hill amendment, then to vote through the Constitutional Ballot Committee's proposal as contained in AP 4-4.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Hill.

DELEGATE HILL: I might want to just clear up one thing that was killed on the floor here a couple weeks ago. It was not only the method of suspension; it was the number of signatures required on the initiative and the referendum and the constitutional ballot. There were three other items in my amendment that was killed earlier, in addition to the method on suspension.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none — Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman and Delegates:

I find a great confusion in a great number of amendments offered, and I would much rather, as Mr. Dobson has, work from 4-4 as it was passed yesterday, and then consider it section by section, instead of having a group amendment which throws in more new curves than I am used to. I would think — and I offer this for your consideration as we come into this — that if we, as a Convention, offer to the voters a simple alternate of a lower number of signers on the initiative and referendum petitions, you then have the clearcut issue. I don't think that there is anything wrong with the basic body of law that the committee and the Convention as we have developed governing the circulation and checking of petitions. I think that the big issue is simply the number of signatures required, and I think most of us could go along with an alternate involving signatures only, and I think probably the best way to arrive at this solution is to vote down these amendments and then proceed to turn down 4-4 so that it may cover the signature requirements, only.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, we are on the motion of Delegate Rundle that we adopt the amendments which were read from the desk. If you vote "aye," you are voting for the adoption of the amendments. If you vote "no," you vote to reject the amendments.

I am now about to put the main motion. All in favor signify by saying "aye;" opposed "no."

The Chair will rule the "noes" have it, unless a division is called for.
Hearing no call for a division, the motion lost.

Now we have before us Alternate Proposal 4-4 as reported from the Alternate Proposal — or Ballot Committee.

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: I think we should point out that we have it before us not as reported by the Committee, but as amended on the floor with Section 8 deleted.

VICE PRESIDENT SAUGSTAD: Yes. I stand corrected on that. As amended on the floor.

Delegate Sinner.

DELEGATE SINNER: Mr. President, I rise to speak in favor of the adoption of this Proposal. I voted for it yesterday and was dumfounded at the vote that showed on the board. When the initiative and referral were discussed on the floor, I think I said, about as clearly as I knew how to say, that I'm not a great enthusiast for initiative and referral; but there are a lot of people who are great enthusiasts of initiative and referral, and I — I'm perfectly in accord with giving them a chance to approve the old — basically, the old system as it stands.

DELEGATE PAULSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: I'll move to amend Alternate Proposal No. 4-4 by striking Section 2 and Section 5. If these amendments are approved, then we would have to correct Section 2 as to ballot form.

VICE PRESIDENT SAUGSTAD: Delegate Paulson, is there a copy of your amendment at the desk?

DELEGATE PAULSON: No.

VICE PRESIDENT SAUGSTAD: Delegate Rundle, did you wish the floor? We're waiting now for the desk force to type up the amendment proposed by Delegate Paulson.

DELEGATE RUNDLE: Then you would —

VICE PRESIDENT SAUGSTAD: I would not want to accept any further motions until we have taken care of this matter.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-4: Delete from Article III Sections 2 and 5 in their entirety.

VICE PRESIDENT SAUGSTAD: Delegate Paulson, as read from the desk, was that your —

DELEGATE PAULSON: Pardon me?

VICE PRESIDENT SAUGSTAD: Yes. As read from the desk, was that your motion?

DELEGATE PAULSON: I was busy. Would you read it again, please?

CHIEF CLERK GILBREATH: Delete from Article — in the proposed amendment to Alternate 4-4, delete from Article III Sections 2 and 5 in their entirety.

DELEGATE PAULSON: Yes.

VICE PRESIDENT SAUGSTAD: Now Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

First, I would like to correct the statement that it was a Hill-Rundle compromise, because at least a dozen people came to me — some last night already — that they were going to — they would like to have this reconsidered. And so there were several members involved. Now, if you take out Section 2 and 5 and if this amendment carries, I shall urge the defeat of the Alternate and vote against it. There is absolutely no sense — no sense of fair play whatsoever in carving something up to suit yourself. It's supposed to have some differences in it, and I would just point out to you that I did give on the ten years, and that was taken out. I might be able to live with that. Now you take out some more little things, which these don't amount to anything, and what do you have left? And I resist this amendment. You're either going to take this the way it is or kill it!

VICE PRESIDENT SAUGSTAD: Delegates — an oversight on the part of the presiding — the Chair. I did not secure a second to Delegate Paulson's motion.

Delegate McIntyre seconds Delegate Paulson's motion.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: I would like to ask for a division of the question as between Sections 2 and 5 for this reason:

I think it would be unfair to Delegate Rundle to take out Section 2; but I think we can knock out Section 5, because it's really not necessary to put that on the ballot. There's not enough change there.

VICE PRESIDENT SAUGSTAD: Delegate Dobson has requested a division of the question — a division of the amendment, and he asks that we vote separately on the deletions of Sections 2 and 5. That request is granted.

Any further discussion?

DELEGATE STANTON: Mr. President, are we on the amendment?

VICE PRESIDENT SAUGSTAD: Yes, we are on the amendments as offered by Delegate Paulson.

DELEGATE STANTON: Okay. I want to speak against the amendment.

The purpose of an alternate is to give the people a choice, and I think it is unfortunate that some people think compromise is for other people and not themselves.

VICE PRESIDENT SAUGSTAD: Delegate Hildebrand.

DELEGATE HILDEBRAND: Mr. President, we had one of the delegates express, just awhile ago, that they picked up other little things on this, and certainly I would like to say I, too, am opposed, although for different reasons. I believe it would be only proper that we turn the calendar back to last July, because that's about where we are when the Committee on Legislative Functions first started to work at this problem. We went through all these things. We worked hard at every committee meeting after that. We thought we came to the Convention with a good plan, and with a few minor changes accepted it. Now, this morning we have members of the Legislative Functions Committee eager to make amendments and to second amendments to cut this thing all to pieces, and I was just wondering where this leaves us. If we can't come out of this with any more positive thinking than all that, it's almost time to go home. What are we going to say when we do?

DELEGATE MCINTYRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Let's see. There were about three people up here. I'll start over here. I'll start with Delegate Berg and then Delegate Hubrig.

DELEGATE BERG: Mr. Chairman, I, also, am a member of the Legislative Functions Committee. I agree with Delegate Rudy to a certain extent only. During our conversation and our Committee, we definitely spoke of leaving the the section as it was. We did come up with a compromise on the figures on the two percent. I was one of the people of the Legislative Functions that did feel that this should have been a side issue. Let the people decide if they want to leave the signatures as they were or if they want to go to the two percent. I'm going to agree with some of the other delegates here that the other sections are okay; but Section 4, I believe, should be the alternate. Let them vote on that one particular section.

VICE PRESIDENT SAUGSTAD: Now Delegate Hubrig.

DELEGATE HUBRIG: Probably this is the first time, Mr. Chairman, in the history of the Convention here that I have to agree with Delegate Stanton. (Laughter) I hate to say this, but I do — when she said, "Let the people decide it." What were we scared of yesterday? We were scared of the people. Now let's be down-right — are we scared of the people or are we not? And I have to take my hat off to Delegate Stanton for making that statement, and I support her one hundred percent.

VICE PRESIDENT SAUGSTAD: Delegate McIntyre.

DELEGATE MCINTYRE: Mr. President and Fellow Delegates:

We're talking about an alternate proposal here, and I think that we're talking about one thing, and really one thing only, and that is the number of signatures. I think, when you get out into the State, and you talk about initiative and refer-

endum, I don't know of anybody I've talked to that has talked about anything else but the number of signatures. These other things are not that important. Now, if we want to give the people of North Dakota an alternate choice, let's do it for the right reasons. Let's do it for the number of signatures, and that is we're talking about Section 4. There's no reason to reconsider all these other sections. Section 4 is the crux of the whole thing, and why don't we admit it?

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Mr. President, I think I've had more experience with this one item than anyone on the floor, and I prepared some material, submitted it to the Legislative Committee last summer, and I tried to recognize the change that had occurred in a period of 53 years. When the original figures that are now in the initiative and referendum were adopted, only men could vote, and we had a smaller population than we have today. I proposed specific figures of 12,000 for referendum and 17,000 for an initiated measure. These were not adopted. The Committee's proposal is very close on the referred figure that I submitted — two percent of our population. That figures out, in round figures, to 12,350 signatures. So there's very little difference there. There is a great, basic difference though in the present initiative and referendum to what was presented by the Committee and adopted by this Convention, and that is the prohibition against permitting anyone to pay any solicitor or one circulating petitions for their work performed. I think that is a very vital part of the functioning of this initiative and referendum process. Unless you can get a huge army of volunteers to go out and secure these signers, it's going to be pretty difficult to go out and expect the people to donate endless time and not be compensated at least for their expenses. So there are other issues than this, and the way the measure is written in and presented so far in the Constitution, the two things will stand out: That is, this signature requirement, and the prohibition against paying anyone for work in this field. So I certainly have no quarrel with the signature requirements; it's close enough to what I submitted that I will certainly support that, because I think the change is justified. We now have the men and women, both, that will sign, plus the addition of those 18, 19 and 20-year-olds, which we didn't have 53 years ago. So you have about 65-to-66 percent of your total population that is now eligible to sign these petitions, where we only had approximately 30 percent 53 years ago.

So I see no reason why this should be submitted as an alternate proposal. The issue will be clear in the Constitution as it will be submitted to the public, and they can make their determination right there.

DELEGATE PAULSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: I think that Mr. Cart should stand corrected. The proposed Constitution does not carry any prohibition on the payment for signatures. That was in the draft. It was deleted by the Convention body and the Proposal now stands silent on that question.

DELEGATE CART: That is correct. I stand corrected.

VICE PRESIDENT SAUGSTAD: Delegate — oh, I had promised Delegate Hendrickson. And then Delegate Omdahl.

DELEGATE HENDRICKSON: Is the motion before the house on deletion of 2 and 5?

VICE PRESIDENT SAUGSTAD: That is correct.

DELEGATE HENDRICKSON: Then I will not speak to the number of signatures, but I hope you'll take your green sheet and read Section 5 and see if you feel there's anything in that section that really should go out before the people. I feel that the Legislative Functions Committee and this body accepted this section there, and I support the motion to delete Section 5.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: Mr. President. I support the motion of Delegate Dobson in this regard: I think that if the — those who really want to have a side issue on initiative and referendum feel that Section 2 is important — the number of electors who must represent the petitioners — I don't think we ought to just completely doctor up what they think is important and submit what we think is im-

portant to the voters. And so I think that Section 2 does have a significant enough difference so that it ought to be preserved and submitted with the number of signatures. However, I also agree with Dobson on Section 5; that there is no substantial difference between the alternate and the original; and so I don't think we need to cover up the ballot with that actual language.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, we are now on the main motion of Delegate Paulson —

DELEGATE BERG: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Berg.

DELEGATE BERG: Either I'm confused or Delegate Paulson and Delegate Cart are confused. In Article III on our white sheet of the proposed Procedural Committee Report, on the last two lines of that page, it says, "No law shall prohibit any person from giving or receiving compensation for circulating petitions," which was passed 34-to-58.

VICE PRESIDENT SAUGSTAD: Hearing no further discussion, we're on the motion of Delegate Paulson that Section 2 of Alternate Proposal 4-4 be deleted.

Now, if you vote "aye," you're voting to delete Section 2. If you vote "nay," you're voting to retain Section 2. I am now about to put the main motion. All in favor, signify by saying "aye," all those opposed, say "nay."

DELEGATE CHASE: Could we have that vote again? I think that came up a little fast. I know there were four or five of us here in front that were not voting, Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Yes, Mr. President. Now we talked about deleting Section 2. Are you talking about deleting Section 2 of the Rundle-Hill amendment or deleting Section 2 of the —

VICE PRESIDENT SAUGSTAD: Delegate Aubol, we are on Alternate Proposal 4-4, and under Article III there is Section 2, entitled "PETITION," and the motion of Delegate Paulson is that Section 2 be deleted. Does everyone understand the motion now? Now I'm about to put the main motion. All in favor signify by saying "aye," all opposed "nay." The "noes" — the "nays" have it and the motion lost.

Now we move to the second portion of Delegate Paulson's motion, which is to delete Section 5 of Alternate Proposal 4-4. If you vote "aye," you vote to delete Section 5. I'm about to put the main motion. Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President and Ladies and Gentlemen:

Whoever said that the only thing in this of importance was the number of signatures strictly did not know what he or she was talking about. If you cannot suspend the operation of measures, what is the object of the referendum? And if you will read it carefully, you will see it says, "except emergency measures," and so, therefore, a two-thirds vote in the Legislature would correct this, if it's that important, and this is one of the main powers of the referendum — is to suspend laws that the people do not agree with, and I would resist very strongly this motion to delete. This is just as important as any other section in there.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman. The Section 5 simply repeats the present Constitution in its treatment of emergency measures. Emergency measures are not now suspended by the filing of a referendum petition with 7,000 names. It is not even suspended with the filing of a petition with 30,000 names. But a petition with 30,000 names forces the calling of a special election. There is the added provision in Section 5, as has been passed by this Convention, that the appropriations for maintenance and support of state departments and agencies will not be suspended by the filing of a referendum. The question will go on the ballot, but in the meantime nobody can force a special election by filing a referendum against the appropriation for departments of higher education or the governor's office or even the Legislature; so that is the only place that has actually been changed from the present system.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Mr. President, so that the delegates are fully aware of the changes here, they can turn to Committee Proposal 1-109 in their books, if they would like to. The only difference between the Committee Proposal and this Alternate Proposal are two things: One, the Committee — that's the Legislative Functions Committee — would suspend any measure except emergency measures and appropriation measures that support maintenance of departments of state government and state institutions, where Rundle would only provide this: He would suspend any measure except emergency measures. In other words, under Delegate Rundle's alternate here, appropriation measures would be suspended.

The other change is down there in the last sentence, under the committee proposal. A referred measure would be voted upon in a general election or at a special election. Rundle's would allow it to be voted on in primary, general or special, and I submit, Mr. President, that the changes proposed by Delegate Rundle are of not such consequence as to warrant putting Section 5 on the ballot separately. Therefore, I support Delegate Paulson's motion to strike Section 5 out of Alternate Proposal 4-4.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none — Delegate Rundle.

DELEGATE RUNDLE: Mr. President and Ladies and Gentlemen:

I thank Delegate Dobson for reminding me of that last sentence, because this is rather important, too. I see no reason whatsoever for barring initiative or referendum from a primary election, and here we are talking about trying to get people to vote at these elections and then barring certain measures. Now, if the people want to initiate them in the proper time, in time for a primary election, just why should they not be on that election? It might help us get out a greater turnout and I think this is quite important.

DELEGATE DOBSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: If I could speak one more time. I want to thank Delegate Rundle for giving me one more reason to delete Section 5, and that is you would allow a referred measure to be voted at a primary, but not an initiated measure.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Daniels.

DELEGATE DANIELS: I think I'm getting more confused as time goes by. In deleting Section 5, we are just leaving this off the ballot. Is this true? In either case, no matter which would win — Delegate Rundle's or the original — this would still be in the Constitution. Is this right?

VICE PRESIDENT SAUGSTAD: Does anyone care to answer Delegate Daniels? Delegate Omdahl.

DELEGATE OMDAHL: That is correct. All we are talking about here is what's going to be on the alternate. The rest of it would still be in the body of the Constitution.

VICE PRESIDENT SAUGSTAD: Does someone want to yield their time to Delegate Rundle? Delegate Paulson.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

Again, on this primary, this, as far as I'm concerned — I don't know how to go about it at this moment. If I would win this little argument, I would amend. A referred or initiated measure was strictly an oversight in the drafting. I didn't notice it until Delegate Dobson told me about it. But if this — if this amendment is defeated, I would offer that, because that was intended to be in there. Thank you.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: We could save a lot of time if Delegate Dobson and Delegate Rundle would get behind the rail and discuss this matter while we voted. (Laughter)

VICE PRESIDENT SAUGSTAD: In that there is no further discussion, we

will now revert to the motion of Delegate Paulson, which is to delete Section 5 from Alternate Proposal 4-4.

I'm about to put the question. If you vote "aye," you're voting to delete Section 5. All in favor signify by saying "aye." Opposed "nay."

I will rule that the "ayes" have it, unless a division is called for. Who's calling for a division? All right. There are a sufficient number for a division.

All right. Now, if you vote "aye," you're voting to delete Section 5. If you vote "nay," you're voting to leave it in Alternate Proposal 4-4.

DELEGATE SANSTEAD: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead.

DELEGATE SANSTEAD: May this be a recorded vote?

VICE PRESIDENT SAUGSTAD: How many desire a recorded vote? There seems to be no response for it. There is not sufficient response for a recorded vote. We'll have a division vote.

All right. The Clerk will open the key and you may vote. Saugstad votes "no."

Has everyone voted? Does anyone wish to change their vote?

Saugstad wishes to change his vote to "aye."

Has everyone voted? Does anyone wish to change their vote? If not, the record will be closed for the result.

CHIEF CLERK GILBREATH: There were 48 "ayes," 47 "nays."

VICE PRESIDENT SAUGSTAD: The motion carries. Section 5 is deleted.

We now have before us Alternate Proposal 4-4 as amended. Are there any further amendments?

Delegate Paulson.

DELEGATE PAULSON: Mr. President, I'll have to come down to make an amendment on the ballot form.

VICE PRESIDENT SAUGSTAD: We will take a — just a very short — about a five-minute recess while this amendment is being prepared.

(The Session recessed at 11:19 A.M. and 11:28 A.M., the same day.)

VICE PRESIDENT SAUGSTAD: The Convention will please come to order. Delegate Paulson, I believe you had a further amendment you wished to add.

DELEGATE PAULSON: Mr. President, have an amendment at the desk.

VICE PRESIDENT SAUGSTAD: All right. The Clerk will read the amendment — proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-4:

In Section 2, Ballot Form, after the word "electors" delete the following: "; petition suspends operation of measures, except an emergency measure or an appropriation measure."

Further down, in the next section, where you vote, after the words "constitutional measures," delete the following: "; petition sponsored by five electors; petition suspends operation of measure except emergency measures."

DELEGATE PAULSON: Mr. Chairman. That second amendment started too early. It's in the next line. The "petition sponsored by five electors" stays in the ballot question, and the deletion begins after the word "electors".

CHIEF CLERK GILBREATH: After the word "electors" delete "; petition suspends operation of measure except emergency measures."

VICE PRESIDENT SAUGSTAD: Is there a second to Delegate Paulson's motion?

DELEGATE MILLER: Second.

VICE PRESIDENT SAUGSTAD: Delegate Miller seconds.

DELEGATE PAULSON: Mr. Chairman, this amendment simply corrects the ballot section that would be passed if it now goes on the ballot as an alternate.

VICE PRESIDENT SAUGSTAD: Any further discussion? We are now on the amendment — the proposed amendment offered by Delegate Paulson —

DELEGATE CART: Mr. President.

VICE PRESIDENT SAUGSTAD: — that was just read from the desk.

Delegate Cart.

DELEGATE CART: Could we have it read now with the amendment out — the words taken out?

CHIEF CLERK GILBREATH: Delegate Cart, are you requesting that the Chair — I mean that the Clerk read the language which will be left in Alternate Proposal 4-4?

DELEGATE CART: Yes.

VICE PRESIDENT SAUGSTAD: Yes. Under Section 2, after — where it says “Mark one only,” would you read what language will remain, please?

CHIEF CLERK GILBREATH: It would now read: “Two percent of population for number of signatures for both initiated and referred measures. Four percent of population for number of signatures for initiated constitutional amendment. Petition sponsored by twenty-five electors. Petitions must be approved as before prior to securing signatures. Ten thousand signatures for initiated measures, seven thousand signatures for referred measures, twenty thousand signatures for initiated constitutional measures, petitions sponsored by five electors.”

VICE PRESIDENT SAUGSTAD: All right. Is there any further discussion? We are now on the motion of — Delegate Rundle did you wish the floor?

DELEGATE RUNDLE: What are we on?

VICE PRESIDENT SAUGSTAD: We are on the motion of Delegate Paulson's amendments, which were read from the desk and will further delete some of the material that was on the — that would appear on the ballot, so that it will conform with the portions which are remaining or are left in Delegate — or Alternate Proposal 4-4.

Hearing no further discussion, we are now on the motion of Delegate Paulson. If you vote “aye,” you vote to adopt the proposed amendment. I'm about to put the main motion.

All in favor, signify by saying “aye;” opposed “nay.” The “ayes” have it and the motion has been adopted — the motion carried and the amendments are adopted.

DELEGATE PAULSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: I move that Alternate Proposal 4-4 be deemed properly re-engrossed and put on the calendar for first passage.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE LITTEN: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Litten.

We're on the motion of Delegate Paulson that Alternate Proposal 4-4 be deemed properly re-engrossed and be placed on the calendar for first passage.

Is there any discussion? Is there a second to that motion? Delegate Chase. All right.

Now, Delegate Rundle, did you wish the floor?

DELEGATE RUNDLE: No.

VICE PRESIDENT SAUGSTAD: All right. Is there any further discussion? If not the board will be opened and you may record your vote.

DELEGATE RUNDLE: I'm a little late, but not early, I suppose.

VICE PRESIDENT SAUGSTAD: That motion has been made, seconded and adopted.

Say, I beg your pardon! I thought I put the motion, but maybe I did not.

We are on the motion of Delegate Paulson that 4-4 be deemed properly re-engrossed as amended and be placed on the calendar, on the tenth order, for first passage. All in favor signify by saying “aye;” opposed “nay.” The “ayes” have it.

Now we have the vote on Alternate Proposal 4-4. Is there any discussion?

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Ladies and Gentlemen:

I ask that my remarks be recorded. I have a copy, but I'm sure Barbara can keep up.

I urge a "no" vote on this proposal. There is nothing much left of my alternate proposal. I see no reason to have it included. There is no choice left for me or anyone who thinks as I do, except to vote "no" on the whole proposed Constitution.

Thank you.

DELEGATE KWAKO: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Kwako.

DELEGATE KWAKO: Thank you.

Fellow Delegates, I'd like to second Delegate Rundle's ideas at this time. It is true, when we look at this Proposal, the people will not have a choice, and I think, in their wisdom, they will surely vote the document down. Thank you.

VICE PRESIDENT SAUGSTAD: Delegate Chase.

DELEGATE CHASE: Well, I have to disagree with Delegate Rundle, although I fully support this as being a separate alternate on the ballot. I think, when you look at the ballot now and see what has been canceled out, the choice is going to be much clearer to the electorate, instead of being confused by other things, and I think Delegate Rundle's original concern on this thing about the signatures, and so forth, now has a better chance of voter acceptance than retaining the old signatures and many of the old features that he wanted.

DELEGATE BUTLER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Butler.

DELEGATE BUTLER: Yesterday this body showed some courage, in my opinion, in voting against putting this particular proposal on the ballot in the form it was submitted. Today we've emasculated it and we're now going to vote again whether we put it on the ballot. I, for one, feel we should have the courage to stand behind the proposal that's in the Constitution now and not put this on the ballot in any form.

DELEGATE KESSEL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kessel.

DELEGATE KESSEL: Fellow Delegates: On the 28th day of January, this delegation voted, by 80-to-12, to put in what we have in the present Constitution. Yesterday 58 delegates agreed with the Committee that this should be indefinitely postponed. I can't understand how all of a sudden, in a matter of 24 hours, the people of North Dakota have become so concerned that this now should be put on as an alternate. I feel that this can be left out. I have found no people down in my territory that ever expressed too much concern about this. They have on many others that we have indefinitely postponed. I urge that we defeat this motion and leave it as it is.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen, and then Delegate Benson.

DELEGATE HAUGEN: Yesterday I almost went home with a swelled head. I thought that the few words I said in opposition to this was what caused the vote against it. I think yesterday that the members of his body felt honestly that this alternate had no place in the new Constitution. There has been some — I don't know what the correct word is — maneuvering — maneuvering. There has been some — I hesitate to say — deals, but there have been — there have been political manipulations, so that many of the delegates have changed their minds not because of the belief that this should now be on the Constitution, but because it might affect certain things that we're going to do after this question is settled. I still hope that the delegates will vote against placing this as an alternate.

VICE PRESIDENT SAUGSTAD: Delegate Benson.

DELEGATE BENSON: Mr. President: I certainly agree with what I heard awhile ago — that we felt that the Committee brought out a good section on the

initiative and referendum. I still think it's a good one. But I also think that we could be — that we are safe in presenting to the people of North Dakota this alternate proposal, and let them state their choice. The choice now is narrowed down to where it is quite simple to make. It is essentially — the argument will be essentially upon the number of signatures required, and even though I voted against this yesterday, in the proposal today I'm going to support it, and I think it will make a good alternate.

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Mr. President, in the last 24 hours I've been dealing. I called home and I got some advice from people whose opinions I trust, and it was expressed to me, from four or five, that this would indeed be a good sensitive area to consider. I voted yesterday to put it on the ballot and I hope we'll have more support for that today.

VICE PRESIDENT SAUGSTAD: Delegate Dobson.

DELEGATE DOBSON: Mr. President. Fellow Delegates:

This proposal has not been emasculated. The two sections which were deleted — Sections 5 and 8 — made such minimal changes that they didn't warrant placement on the ballot separately. What we've got left here is the real guts of this proposal — Sections 2, 4 and 9. Well, what do the people care about here? They mainly talk about signatures. If we put this in the main body, you're going to have McCarney against it. You're going to have Ed Dornacker's committee against it. You're going to have the John Birchers against it. We've already got Labor mad. So I think Delegate Rundle is right, for once. If we put this in the main body, we're going to get a "no" vote on the main body. As was pointed out previously, that the people have voted six times not to increase signatures. I think this time they may be prepared to accept this modest increase. But it would be politically prudent to put this on the ballot separately. We can't put a stick of dynamite like this in the main body.

DELEGATE STANTON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Stanton.

DELEGATE STANTON: I guess I've been fighting ever since our first committee meeting in trying to retain the signatures of 7,000, instead of 10,000; not particularly because I think they're that good, but I think they're that important to the people of the State of North Dakota, and I would like to remind Delegate Dobson that this is not a slight increase. We are going on the referral from 7,000 to 12,000-plus. I don't think anybody in the State is going to call that a slight or a modest increase. We have here extended the power of the executive, the legislative and judicial branches, and we have restricted the power of the people, and I feel that I'm just going to vote "no" against this proposal. As the alternate was first before us, the people who signed it, it was simply to go back to the old section in the old Constitution, and we felt this gave the people a very clearcut choice, and it did. Our Committee on Ballot chopped it up, cut it up, forced Earl to revise it, and changed it; and, again, on this floor we changed it. So, really, I don't know what we have. So I have no choice other than to vote against the proposal this morning.

DELEGATE DAWSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dawson.

DELEGATE DAWSON: I would like to correct that. The Ballot Committee did nothing with this proposal except for the ballot form.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: Since this was in our Committee, I should mention that the main objection — and the people that testified were those that felt that the signature numbers should be increased. They talked about the sponsors. At one time the Committee thought there should be a hundred sponsors. They came down to twenty-five. Now this alternate proposal says five, and one of the objections was to allow for paying someone to circulate the petitions. Now I think this is a very good proposal and the people should be given a chance to vote on it.

DELEGATE SANSTEAD: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sanstead.

DELEGATE SANSTEAD: Mr. President, I yield to Delegate Rundle.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President, I'm not going to talk on it at all, except that I would like to back up Delegate Stanton. Chairman Dawson said the Committee did not change anything. He's absolutely right. But they made me change it, and I was strictly given to understand — not by the Chairman, but by some members — that it had no chance; so I changed it completely. The young attorney had it drawn up twice. So there was pressure put on to change it, I assure you.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: Mr. President: Although I sympathize with the frustrations which some of my friends whom I have been supporting here recently feel at the present time, I feel that after 24, 48 or 72 hours have passed, that this alternate proposal will appear much more appealing than it does right now. I urge you to adopt Alternate Proposal 4-4.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: I hope that this goes on the ballot. I am a three percenter, myself, and I was in the Committee. I think that the initiative and referendum have been somewhat abused; but then that's my own opinion, and I supported it in the Committee to put it in the document. At the same time, I recognize that people feel very closely to this provision of the Constitution, having voted on it about seven times or eight times previously, and having voted to keep it as it is. So I recognize their particular interest and the wide public interest in this particular thing, and I would hope that those who have supported the seven and ten thousand signatures at this time would let calmness rule. We don't want to let, you know, a pride of authorship or our own feelings of frustration blind us from doing what, in the long run, is going to look pretty good about a week from now.

DELEGATE AAS: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aas.

DELEGATE AAS: Mr. President. There is obviously more here than meets the eye the first time. I believe Delegate Rundle and Delegate Hill have been somewhat scared by some of the changes that have been made. I have tried to urge Delegate Rundle to support this proposal because I think it does include most of what he has; but I think that we should delay the vote on this until after our recess, and I would so move.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE STANTON: Second.

VICE PRESIDENT SAUGSTAD: Delegate Stanton seconds the motion.

Now, Delegate Aas, you have moved that further consideration of Alternate Proposal 4-4 be delayed until after the noon recess.

DELEGATE AAS: Yes. And I say that because I believe that we should reconsider it and we should have a chance to think about this a little longer before we pass — we make this vote. There is good justification for placing this on the ballot, and perhaps, after a little more reconsideration, we can vote on this in a little bit better thinking manner than we are in if we vote on it at the present time, and I would like to see us delay for just a little while.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE HUBRIG: Yes.

VICE PRESIDENT SAUGSTAD: Delegate Hubrig.

DELEGATE HUBRIG: Yes, Mr. Chairman. I would support Delegate Aas, whom I haven't supported before; but I would now. (Laughter) In fact, the word "McCarney" came out, and I might have to support McCarney before very long here, if this keeps on going the way it's going.

DELEGATE NICHOLAS: I'd just like to say —

VICE PRESIDENT SAUGSTAD: Just a moment. Delegate Nicholas.

DELEGATE NICHOLAS: I'd just like to say to Delegate Hubrig that politics makes for strange bedfellows.

DELEGATE McINTYRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate McIntyre.

DELEGATE McINTYRE: I would speak against this motion and speak for the Convention at this particular moment. I think that we're ready to make a decision here. Several amendments have been made. They were made in good faith. A majority of this delegation has made a decision on those amendments. We're now ready to make a decision as to whether we want this as an alternate or not, and let's not get confused. Let's do what we're supposed to do here and take this vote.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Aas.

DELEGATE AAS: Mr. President: I feel the delegates should take this vote at a little less emotional stage than now; perhaps an hour or two would help us a lot.

VICE PRESIDENT SAUGSTAD: We are now on the motion of Delegate Aas that further consideration of Alternate Proposal 4-4 be delayed until after the noon recess.

I'll now put the motion. If you say "aye," you're voting to delay action until later in the day on Alternate Proposal 4-4.

All in favor, signify by saying "aye;" opposed "no."

The Chair is in doubt. The Clerk will open the board and you may indicate your preference. If you vote "aye," you are voting to delay further consideration until after the noon recess.

The board will be opened. You will indicate your preference. Saugstad votes "nay."

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and we will take the ballot.

The tally showed 49 "ayes" and 48 "nays." So the motion prevailed. So further action will be delayed on Alternate Proposal 4-4 until after lunch.

We'll be temporarily on the eighth order of business. Are there any announcements? There will be announcements from the Chair — from the desk.

CHIEF CLERK GILBREATH: The Apple Creek Country Club, six miles east of Bismarck on Old Highway 10, will have their special stag night Tuesday for Convention delegates.

Delegates are reminded to return their proofs for the composite picture to the Executive Director's office. Please return all proofs which are supposed to be used for the composite, marked on the back.

VICE PRESIDENT SAUGSTAD: Are there any further announcements? Delegate Unruh.

DELEGATE UNRUH: Mr. Chairman, how long did we plan to recess?

VICE PRESIDENT SAUGSTAD: Until one o'clock.

DELEGATE UNRUH: There will not be a meeting of Style and Drafting then.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson.

DELEGATE HENDRICKSON: Could the Chair explain the word "stag"?
(Laughter)

VICE PRESIDENT SAUGSTAD: The Chair would suggest that anyone that does not know inquire from their next-door neighbor.

DELEGATE DECKER: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: I would suggest that that means the girls have to go alone. (Laughter)

VICE PRESIDENT SAUGSTAD: There will be a meeting of the Calendar Committee at 12:45 in the President's office.

If there are no further announcements, we will now stand recessed until 1:00 P.M. sharp.

(The Session recessed at 11:54 A.M. until 1:00 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:08 P.M., Tuesday, February 15, 1972, as follows:)

VICE PRESIDENT SAUGSTAD: The Convention will please come to order.

All right. Will you please take your seats?

We have before us Alternate Proposal 4-4. Is there any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

Is it working now? Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President. Ladies and Gentlemen:

The cooling-off period was effective. I hereby reverse my position and will vote "yes." (Applause)

DELEGATE KWAKO: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kwako.

DELEGATE KWAKO: Since Delegate Rundle was so kind in changing his vote, I think I will have to do the same. Thank you. (Applause)

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, the board will be opened and you may record your vote.

Delegate Larsen.

(Delegate Larsen shook his head.)

VICE PRESIDENT SAUGSTAD: All in favor vote "aye." Saugstad votes "aye." Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed. The Clerk will take the record.

The record discloses 73 "ayes," 14 "nays," 11 absent and not voting. Therefore, Alternate Proposal 4-4 has been passed.

Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I'd like to ask that my few remarks be put in the record to clear off the blast before dinner.

DELEGATE KWAKO: I'll second that.

VICE PRESIDENT SAUGSTAD: We next have before us under consideration — we are now reverting back to the Committee Report —

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Please, could I ask if the record could be cleared of my remarks before dinner, or is it too late?

VICE PRESIDENT SAUGSTAD: Did you ask to have your remarks that you made just subsequent to the vote taken — put in the Journal? The only way — Delegate Rundle, the one motion that you could use would be to have your remarks that you made before noon recess expunged from the record.

DELEGATE RUNDLE: I make that motion.

DELEGATE SANSTEAD: Second.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE SANSTEAD: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Sanstead. Delegate Hildebrand.

DELEGATE HILDEBRAND: Mr. President. Is that motion debatable? (Laughter)

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Mr. President: Does Delegate Kwako want his remarks expunged?

DELEGATE KWAKO: It isn't in.

VICE PRESIDENT SAUGSTAD: Are there any further remarks? We're on the motion of Delegate Rundle. Now, Delegate Rundle's motion was that the record as far as his remarks which he made just prior to the noon recess be expunged from the record.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: I just hope that Miss Kings — Mrs. King's remarks are not going to appear in the record! (Laughter)

VICE PRESIDENT SAUGSTAD: Any further remarks?

Hearing none, we are on the motion of Representative Rundle. If you vote "aye," you're voting to expunge the record.

I'll now put the motion. All in favor, signify by saying "aye;" opposed "nay."

The Chair will rule the "ayes" have it. The record is expunged.

Now, we have before us — we are now back to where we were at the opening of the Session this morning. We have before us the Committee Report on Alternate Proposal 4-3. The Committee Report was for indefinite postponement.

Delegate Hernet.

DELEGATE HERNETT: Well, Mr. President, this is the third time that I'm going to ask that you resist the motion for indefinite postponement on the Committee Report. I believe that my motion is slightly weaker now than it was this morning at ten o'clock, especially after the last vote, because now we have had four — and what I'm going to ask for is the fifth one. But I did notice in the paper this morning a quote by Delegate Omdahl, where he said, "Failure to provide some separate issues on the ballot would be like saying to the voters they're not smart enough to vote on these issues." So I hope that he will support me on this motion.

Last night I was pleasantly surprised to find the support around this delegation for my position. Most of it was unexpected. I thought I had a real losing cause, and found out that I didn't. I think this proves that people in this Convention are genuinely disturbed by the long and the short ballot. I would like to point out a couple things before, that I didn't last night, that might influence you. For instance, here I happen to have in front of me a summary of the changes made in the Executive Branch by — as adopted in our Constitution, and I would like to read this — a little of this, because this is the kind of a thing that is being put out or — in this coming informational campaign. Here's what it says:

"The Executive Branch, Section 1, provides that the elected state officials shall be the governor and lieutenant governor, elected jointly, the secretary of state, Attorney General, and the three Public Service Commissioners, thus eliminating the constitutional elective offices of auditor, treasurer, superintendent of public instruction, insurance commissioner, agriculture commissioner, tax commissioner."

Now, that better shake you up, if that's the kind of information that may be going out, because I think that this would really concern people.

Now, there are a few other sentences in this description of the Executive Branch. One of them says, "The legislature, however, is authorized to prescribe the manner of selecting other chief executive officers. The executives of the major departments will be appointed by the governor, subject to confirmation by the senate." And that is all the explanation there is of this section.

Now, as I said last night, I will support my Committee's report and I will go out and campaign and work for a "yes" vote on the Constitution and on this section; but I am concerned about getting "yes" votes on the whole Constitution.

Now I'm sure that many of us here today would like to see this whole thing go away. I think you'd like to sweep it under the rug, if you could. But I think we have to face up to this: It is something that — it is an issue that we are not going to be able to dodge, and I think that the concern of most of the people here that spoke last night in opposition to setting up any kind of an alternate here is their concern that the people will vote for the alternate. If you feel that way, I think it should show you that there is a need for something here. Now, if you turn down the Committee Report for indefinite postponement, I expect to propose an amend-

ment, and I have no particular pride of authorship of this amendment. As far as I'm concerned, after I've proposed it, anybody here can amend the amendment, and I am certainly not adverse to compromise. My amendment — what it amounts to is that, instead of having seven elected officials, it would amount to eleven. Now, I would, without any hesitancy, compromise at three or two, or even one-and-a-half elected officials, if it had to be. I have heard there is a possibility of saying "four or more" or "three or more" or "two or more," or something like that. My only point is to get some kind of an alternate on the ballot, because I think this is one of the hottest issues that you're going to be faced with between now and the next election, and I hope you do not support the Committee Report for indefinite postponement.

VICE PRESIDENT SAUGSTAD: Delegate Chase, I believe, asked for the floor.

DELEGATE CHASE: Mr. President. Yesterday I spoke in favor of adopting the Committee's Report to indefinitely postpone 4-3. However, with this amendment laying off to the side, that I think deserves a full discussion before this group — I am not in favor of it — I am going to speak against it — but I am not going to talk about it right now; however, I think the fair thing to do is to go ahead and not adopt this Committee Proposal to indefinitely postpone, so that the amendment can be back here and we can talk over the whole ball of wax in one thing and get it settled. So I hope that the group here will not support the Committee, and bring this thing back to the whole body.

VICE PRESIDENT SAUGSTAD: Delegate Scheel.

DELEGATE SCHEEL: Mr. President: I would second the motion of Earl Chase, because I think that, unless we can sell our proposal to the delegates here, so that they feel that what we have proposed will stand against any kind of questions that come up to us when we get out in the field selling this thing between now and election time, why what Chairman Hernetts portends will actually occur. But I believe we can convince you that, if you will take five or six minutes with each of these people that have this conjecture that they need a long ballot in order to make a good executive department, we can dispel that.

VICE PRESIDENT SAUGSTAD: Delegate Dawson.

DELEGATE DAWSON: Mr. President. I go along with Earl Chase, also, on this. The indefinite postponement of a proposal that the Committee indefinitely postponed was entirely different than the amendment that is being offered by Delegate Hernetts, and so I think that it is proper to get to the amendment.

VICE PRESIDENT SAUGSTAD: There being no further discussion, we are now on the adoption of the Committee Report. The Committee Report is for indefinite postponement of Alternate Proposal 4-3. So that if you vote "aye," you're voting to indefinitely postpone Alternate Proposal 4-3. If you vote "nay," you are voting to place Alternate Proposal 4-3 on the calendar for further discussion.

DELEGATE FALLGATTER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Fallgatter.

DELEGATE FALLGATTER: I'm sure that I'm not aware of all the problems that Alternate Proposal 4-3 creates, or of the complexities it presented to the Ballot Committee. But nothing could disturb me more than to have to tell the people in my district that we left them no choice on the selection and election of their state officials on the ballot. Nothing would kill our new Constitution more quickly than leaving the voter no alternative on this issue. This action can only be construed to mean a further restriction of the powers of the people. The focus of attention at election time will be on the side issues. On this fact alone could hinge the success or failure of our new Constitution. Therefore, I would urge the resistance of the Committee Report on indefinite postponement.

VICE PRESIDENT SAUGSTAD: Any further remarks?

Because of the importance of this matter before you, instead of calling for a voice vote, I'm going to ask that the Clerk open the board so that we will have a division vote. Now, if you vote "aye," you're voting to adopt the Committee Report, which was for indefinite postponement.

The board will be opened and you may cast your vote. Saugstad votes "nay."

Has everyone voted?

DELEGATE NETHING: Nothing votes "aye."

VICE PRESIDENT SAUGSTAD: Nothing votes "aye."

Has everyone voted? Does anyone wish to change their vote? The board will be closed. The Clerk will take the tally.

The record shows 73 "nays," 24 "ayes." Therefore, the Committee Report is not adopted.

Now, we have before us Alternate Proposal 4-3.

DELEGATE HERNETT: Well, Mr. President, I move that the Alternate Proposal No. 4-3 be amended, and I would like to move that it be not read. The reason I'm saying this, because there's only one change, and that's in that first line, and then, on the back page — everybody has this on the desk — and on the back page, it shows how the alternate and the present section could look. So I would like to move that the amendment be adopted. And then I guess I can make another motion that it be not read from the desk.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman: Just so they can get the record straight, I move that Alternate 4-3 be moved to the sixth order of business.

VICE PRESIDENT SAUGSTAD: That would not be necessary, because, technically, this is now on the tenth order.

DELEGATE PAULSON: Well, all we did was turn down a Committee Report. That's what it was.

VICE PRESIDENT SAUGSTAD: Yes. Well, I believe, so that the record be clear, I personally prefer that someone make a motion that it be placed on the tenth order for first passage.

DELEGATE PAULSON: I'll correct my motion. Tenth order would be right.

VICE PRESIDENT SAUGSTAD: Thank you. Who seconded that motion? Delegate Trenbeath.

So we're now on the motion of Delegate Paulson that Alternate Proposal 4-3 be placed on the tenth order for first passage.

I will now put the motion. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it.

Now, we have before us Alternate Proposal 4-3.

DELEGATE HERNETT: Well, Mr. President —

VICE PRESIDENT SAUGSTAD: Delegate Hernet.

DELEGATE HERNETT: I will propose the amendment to Alternate Proposal 4-3.

VICE PRESIDENT SAUGSTAD: All right.

DELEGATE HERNETT: And they can read it at the desk.

VICE PRESIDENT SAUGSTAD: All right. Is there a second?

DELEGATE KWAKO: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Kwako.

We are now on the motion of Delegate Hernet.

DELEGATE HERNETT: Now, Mr. President, do I need a motion to not read it?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE HERNETT: Well, I'll make that motion that it not be read from the desk. Now what I mean by this, there's certainly no need to read this whole Executive Branch article.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE RONEY: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Roney.

I will now put that motion. The motion — we're on the motion of Delegate Hernet that the proposed amendment to Alternate Proposal 4-3 be not read from the desk. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The motion prevails. Now, Delegate Hernet.

DELEGATE HERNETT: Now, Mr. President, I just call your attention to the last page, which is about everything that you're going to need to look at, at this particular point. As you know, the original Alternate Proposal 4-3, which is the blue one in your book, as I remember, would propose to go back to the Constitution as it is now; in other words, electing fourteen officials. The one that came out from our Committee on Executive Functions was seven. This is proposing four more, which would be eleven. Now I went into this last evening a little bit, and I think, instead of me going into an explanation now, I think I'll just quit here and see what kind of a discussion comes up, and if there's any other — if anybody has any ideas of how this could be amended and an alternate proposal be put on the ballot to take off a little of the pressure that I'm sure is building up around the State on this issue, I will welcome it.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Mr. President. Would Delegate Hernettt yield to a question?

VICE PRESIDENT SAUGSTAD: Delegate Hernettt?

DELEGATE HERNETT: Yes.

DELEGATE AUBOL: On the ballot form, under option A, do you intend that to be the option that we have outlined for us in the executive article now?

DELEGATE HERNETT: Yes.

DELEGATE AUBOL: I notice there's one difference there, and that's "chief executives of the principal departments shall be provided by the vote of the legislative assembly." Now, I think in the executive article we call for those chief executives to be appointed by the governor, with periodic review by the Legislative Assembly.

DELEGATE HERNETT: Well, Delegate Aubol, I think you're probably right. The reason that I think this was typed this way was because, after the Attorney General's opinion which Delegate Chase read yesterday, this is probably correct; that they would be selected by the — being selected in a manner provided by the Legislative Assembly is about the effect that that would have.

There is one other point here. I would have no quarrel with anybody that had an idea as to a better way to word this thing on the ballot. As I said earlier, I am for the proposal that our Committee came out with, and if this issue on the ballot could be worded in such a way as to get that kind of a vote, I wouldn't be adverse to that either.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Delegate Hernettt, is this the amendment that you're talking about? Is it the one labeled "Report of Procedural Committees"? And that's your amendment — not the Committee's amendment?

DELEGATE HERNETT: That's mine.

DELEGATE SINNER: Okay.

VICE PRESIDENT SAUGSTAD: Delegate Chase.

DELEGATE CHASE: Mr. President: I wish to speak to the amendment, which is the first paragraph under Section 1 of Report of Procedural Committees, Article V, "Executive Branch," and we talk about the "three public service commissioners and the chief executives of four other principal departments as selected by the legislative assembly."

Now, the supposed new feature of this amendment is the addition of four other principal departments, and not naming them. Should this amendment be adopted, then we could all go back and try and explain this finished document. How do we explain who these people are? What offices they will be filling? Supposedly, they will be some of the presently-elected officers. However, under this proposed amendment, they could include the Highway Commissioner, they could include the head of the Welfare — or what do they call it now? — Social Services Department, or even the Superintendent of Public Instruction. I submit, fellow delegates, that Delegate Hernettt is making a sincere and an honest attempt to make this Constitution more acceptable. In reality, however, this would be a most difficult and complex feature to explain, and would serve mainly to confuse and divide the voters.

Another move that this Convention should certainly do, if we adopt this amendment, is to reconsider the executive articles and strike out most of Section 1, all of Section 6, as I remember — or most all of Sections 6 and 7, as they would only be surplus words with no practical meaning — “window dressing” I think some other delegate called it here one time.

Now, under the Interim Booklet, there was to have been, originally from the Executive Committee, a minority report. Since this session began, those differences were ironed out and the minority report was withdrawn. This Convention then adopted the executive article. I think it was by about a 75-to-22 vote. Let's not mangle the article by accepting this amendment, but proceed to defeat it and I think we have something that is — might call for a little explaining, but so will the legislative article. I've never heard the remark made out in the boondocks, as someone says, “Look at the power they're giving to the Legislature!” This better be something you better be prepared to answer many times, and we're going to have to be prepared to answer other things and explain them, and if it's worth it — and we think it is — then let's do it.

VICE PRESIDENT SAUGSTAD: Delegate Burke.

DELEGATE BURKE: Mr. President. Fellow Delegates:

What concerns me about the proposed amendment is in relation to Section 6. Midway down in Section 6, it provides that “The governor may, for more effective administration, make changes in the statutory allocation of functions, powers and duties . . .” Among them is in the executive department. And then the very specific words “other than those headed by constitutionally elective officials.”

Now, if the Hernet proposal goes through, it freezes for all time any ability to reorganize the executive department under elective officials. And I was very proud when the Executive Functions report came through. I thought at last we have some means by which we can take our State from among the archaic and old-fashioned, wasteful system, and reorganize our government, and I am simply appalled at this amendment, because it destroys — to me, at least — if it were successful for all time, what we've been aiming and praying for in this Convention, and you know the minister yesterday said a very striking thing — we should stand for something, or else we're liable to fall for anything — and those words have been impressed upon my mind ever since he uttered them, and I think we should be of stout heart and good cheer and don't weaken on what we have done, but let's vote down this amendment.

DELEGATE SCHEEL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Scheel.

DELEGATE SCHEEL: First, I'll reply to the arguments or the question asked there by Delegate Burke. In this particular instance, the reorganization of these departments that are headed by elective officials — constitutionally-elective officials — that reorganization can be undertaken by the Legislature. It's only in those areas that the governor cannot undertake reorganization. You see, in the other areas, both the governor and the Legislature can undertake reorganization; in these areas, the Legislature, only.

Now, in speaking to the question before us, there are two things I want to read, because, essentially, this white document that Chairman Hernet has put out here in front of us is the same as the original article, with the exception of adding “four chief executives of the other principal departments to be elected under the constitution.”

Now, I think there's been some misconstruing here. Section 6 of the “Executive Organization” division says there shall not be more than fifteen principal state departments, and right away that sets it in our mind as being fifteen principal state departments; but this is not so. We looked at this thing with the idea of there being from ten-to-thirteen, as I have them written down here, and I'm not going to list them. There are a maximum of thirteen, allowing a couple — two for Education — but, in all probability, it would be closer to eleven principal departments, with a margin of four at some time in the future to provide for expansion.

But then, in Section 7 down here, we say “State Planning Council. The chief executives of the principal state departments shall constitute the state planning

council. The governor shall be chairman of the council," the lieutenant governor, vice chairman, and they shall prepare a comprehensive State Plan based on the comprehensive plan for each department.

Now, exactly what does this mean? First of all, now we're a small state and we have a chance to build a good executive department. We can say that at the outset. As the lieutenant governor is vice chairman of the Planning Council, there will be some on this Planning Council by virtue of election. There will be a secretary of state, there will be an attorney general, and there will be one person representing what we now call the Public Service Commission. There will be a couple on this thing by virtue of appointment. Right now there will be, with the outcome of our work on the Constitution, and that will probably be two members of the Board of Education. But we think, in order to make this State Planning Council amount to something, about half of those people that are appointed on this thing have to be appointed by the governor. And here's why: An elected official basically has only one allegiance — I'm talking about basically now, in all practicality — because he is concerned about being elected. Now this doesn't mean he can't be a good official, and we have a number that are good officials; but, basically, he has this one concern. Now, if he's appointed by the governor, he has one other concern. First of all, he has to get along with the people. You can't imagine the governor appointing somebody that's going to run about and irritate the people and run roughshod over them. What's going to happen is they're going to get rid of the governor the next go-round. But he has one other thing he has to do. He has to produce. He's given a job and he has to produce, and there's somebody looking right over his shoulder to see that he does produce.

Now, this is the difference between an appointive official and an elective official, basically. If the elected official is extremely conscientious — an extremely good man — he can do this; he can say which way he ought to go. But there's one further thing that's needed, and this Planning Commission provides, and that is it provides liaison between these different departments, so they work in concert with one another. When there's an opportunity for reorganization, to put some activity in a better department — for instance, the interrelation between education, social services and health department — you can automatically see the relationships there, and there's relationships there between all these departments, as witness between the lines we have between all the State boards as the State Government is constituted now.

Now, what has this got to do with the question? Merely, if we have a State Planning Council, and we'd say with eleven or twelve members on it, we elect four — the governor, lieutenant governor — that's one office — the Secretary of State, another; Attorney General's another, and the Public Service Commission's another — that's four; two from education, that's six; four more constitutionally-elected — that's ten — and even if we allow we're going to have twelve departments, the governor is going to appoint two. Now, what kind of a Planning Council is this going to amount to? It would take a group of geniuses working in absolute admiration of one another to make this thing work to the ultimate objective that the sum is greater than the total of the parts.

Now nearly everyone we've described his plan to, including those who proposed this alternate of a long ballot, say that the plan we come up with is just what it ought to be; it's just what it ought to be. There are a few that say, "Well, we have a long ballot, but this is a medium ballot. Now this isn't a short ballot." Now some people — and there are men and women — and I have the greatest respect for our Chairman — I think you have to work with him six months to appreciate how good a man he is — and I appreciate the great value on what he's asking us here, but it also placed great value on the fact that we worked six months to come to the objective at which we now are, and if we can't take six minutes to explain this when somebody bumps into us on the street and says — or even if you ask them, "What do you think about the long bill? What do you think about electing all officials?" And he'll say, "Gee, I'm a little against it, but it's probably all right." And we know they're going to go and vote against it. Explain it for five minutes. The only question is: Have we been honest in deciding, despite the fact that we generally agree that the proposal of this Constitutional Convention gives us a much better executive department, that that is not just a dream? I find it very difficult to believe. I can't explain this to somebody in six minutes. I've tried it on a half-

a-dozen individuals and they say, "Yeah, but you're not going to be able to do that between now and the time you get out for election." I believe we can do it.

Now, how would the plan actually work? As I see it, a session meeting once a week. I can see, as it goes on, that the session meets at an interim between elections, probably once a month, although, with a good administrator, it would probably meet once a week. And I think the results that would come out of it would be just tremendous. After all, the power of this thing is actually locked up by the Legislature. They have the power of appointments and they have the power of funding, and who controls the pursestrings actually controls the operations, if they so choose.

Actually, if we're going to take this alternative and put it on the ballot, we're going to come up with something that's less than we right now have and as a consequence of this, if you don't take the trouble to explain this thing, we're going to have a worse executive department than we have right today, and I'm not saying that because the one today is bad; I'm just saying we're here to try to make an improvement, and I think that if we adopt — if we put this thing out as we now have it in the Constitution and sell it on that basis, we'll have a better Constitution, and I think, if we put it on there as an alternate and don't take — which will invite us not to make the explanations that are necessary to sell this thing — that we'll come up with maybe a good Constitution and a very poor executive department. I just ask, no matter how this thing goes, that you try to sell the idea of the ballot exactly the way we have laid it now, between now and the day of election.

VICE PRESIDENT SAUGSTAD: Delegate Butler.

DELEGATE BUTLER: Mr. President and Fellow Delegates:

What I'm going to say has been said before several times in the last four, five months around here. We are asking for responsibility in the executive department and we have the proper presentation in our new Constitution that we are working on in this delegation to provide responsibility to the executive department, because he can direct the executive that he appoints. You elect those officials of the various departments and they can tell the governor to go plumb to, and I mean it, and they do, and I certainly urge that this amendment be defeated and that this opportunity for putting this on the ballot is knocked off.

VICE PRESIDENT SAUGSTAD: Delegate Rude.

DELEGATE RUDE: Mr. President. Fellow Delegates:

It appears that a feeling of fear has developed here, which, of course, is not good. Executive reorganization is not new. Thousands and thousands of people have been exposed to the concept and desire for reorganization. Our present Constitution has been in force for about 82 years. Out of those 82 years, at least during 30 years of that time, the projection of executive reorganization has been made by four dedicated and conscientious governors — Governor Schafer in 1929, Governor Moses in the late 1930's, Governor Davis and Governor Guy. There had to be a reason for this. It could be compared to a bad dream. "I am the Governor of the State of North Dakota, but where is my committee? There I see them, all walking away from me. I try to contact them, reach out for them, but they do not hear me. And suddenly I realize that they do not need to. I am deflated." And so it has been with each of our past and present governors. We are not concerned here with checks against abuse of power. The Legislature of every state has ample opportunity for this purpose. Rather, the problem is one of providing constitutional language which facilitates, rather than restricts, the governor's efforts to safeguard and promote the public interest. Let's not now have language in our Constitution to deter the desired governmental structure and to not hamper the chief executive in the greatest of all his roles — that of being chief executive and chairman of the State Planning Council, with members compatible and cooperative in the operation of safeguarding and promoting the public interest.

VICE PRESIDENT SAUGSTAD: Delegate Brakke asked for the floor.

DELEGATE BRAKKE: Mr. President: I rise to oppose the Alternate Proposal 4-3 — or the amendment. I am a member of the Executive Functions Committee. This Committee has worked many long hours to arrive at a decision on this Proposal

that was submitted to the Convention. Very few amendments were offered and the executive article is a good one. The fears of the Committee are well founded when it becomes evident that the heart of the Committee work is at stake. Accountability, responsibility, efficiency and responsiveness are built into our article. At one time in the process of evolving in our Committee work, I felt we had two options — the short cabinet form of government and, two, the long ballot. The Committee brought these options together and, in my estimation, combined the best parts of each and created an exceptionally sound document.

Three strong recommendations were constantly in our thoughts; one was to limit state executive agencies; two, give the governor the power to propose reorganizational changes through executive order; and, three, to create fewer boards and commissions by consolidation. These are now a part of our executive article. The idea that we are giving the governor dictatorial powers is absurd. We are giving him a mandate to endeavor to make improved changes within his department, but being well aware that the Legislature has the final say. Certainly the hodgepodge of existing agencies is known to all the delegates. The more elective officials we have, the more ineffective an executive order will be. We, of course, are aware of some of the attitudes that do prevail; that if the people are not allowed to vote for more executive officials, they'll oppose the Constitution. I don't believe it! I believe the executive article as it now is written can stand on its own and inevitably prevail; that the voters will realize its merits and overwhelmingly support it, such as most all delegates are supporting it. I hope we're not going to have an alternate proposal on the executive article.

VICE PRESIDENT SAUGSTAD: Delegate Fritzell.

DELEGATE FRITZELL: Mr. President: I understood when I was elected to this Constitutional Convention that our number one priority was reorganization of the executive branch, and in going through all the other constitutions, one of the things they have been doing is cutting down the number of elected officials from four to five, and so forth. Now, if we accept this amendment, we will go back second-from-the-bottom in the United States in the number of elected officials.

VICE PRESIDENT SAUGSTAD: Delegate Stanton.

DELEGATE STANTON: Mr. President: I prefer the alternate proposal on the long ballot not because I thought the Executive Functions was bad or that I think it's mostly good, but because I think, as does Delegate Hernet, that this is a very sensitive issue with most of the voters, and this is their Constitution, as well as ours. Yesterday, although a majority of us had voted bicameral, and we, too, had worked pretty darned hard, the majority here voted to put unicameral on the ballot as an alternate. Now the unicameral section that passed was not given a full consideration in the bicameral section's words — that is, in relation to all branches of state government, which is perhaps the major flaw in both of these alternate proposals. But I still think it is absolutely necessary to put the long ballot on as an alternate issue if we have any hope of passing the Constitution.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President. I rise to support the Chairman of the Executive Functions Committee — Delegate Hernet — under whom it was my pleasure to serve as a member of that very fine Committee, and to reiterate what he said about the work of that Committee. It was good — mighty good. But that's not the point here now. The point here now is: Is this a sensitive enough area to warrant an alternate proposal on this subject of the long ballot versus the modified short ballot, which, I think, would be an accurate description of the section we have adopted. And I think it is.

Further, I feel that the heart of the argument has gotten off that subject here when you begin to talk about what effect this kind of set-aside would have on the operation of the rest of the executive section. I'm quite sure that the Chairman will agree with me that, so far as the question which we actually have before us, the only thing that we would have to consider would be Section 1 — that part found on the first page of the material and the top of the second page, along with the ballot question under Section 2 of the document — that Section 2 language, of course, beginning on the next-to-the-last page, and the ballot form on the last page.

Now, it may be true, also, that because of the freezing of four of these executive

departments in the Constitution as elective, that there might be a complication. But this would be easily corrected by a simple amendment, such as the Chairman has indicated. One language that I think of in that connection would be to provide that chief executives of not more than four other principal departments be elected. In that way, you see, then the Legislature would have the option of providing for the election of four or three or two or one or none, under a specific set of circumstances, and they would not be frozen in that number in the Constitution. So it seems to me that it boils down to this: If you agree with Chairman Hernet, as I do, that this is a sensitive thing, and there has been much expression about the sensitiveness of this here in this Chamber just yesterday, and I think there may be more than I even was aware of, because yesterday, when I was asked what the story was in the Minot area, I said, "Well, I don't know. They don't seem to care much." And then I thought that over for awhile, and I called back and I was informed that on one of these radio talk programs that runs in that community, the one subject that has had some attention was this particular question — election of officials. So there's somewhat more interest in my home community than I thought there was. And as has been pointed out, there is very much sensitivity in other areas of the State. So I think that the thing for us to do here now is to decide: Is this sensitive enough to have a separate vote on? And, if so, then to adopt the amendment as suggested by Delegate Hernet. And then, if there are defects and there's too much stuff here, then take care of that by additional simple amendments.

VICE PRESIDENT SAUGSTAD: Delegate Grant Trenbeath.

DELEGATE TRENBEATH: Thank you, Chairman Stanley Saugstad.

Well, Fellow Delegates, I spoke on this briefly yesterday, and I don't know as I can add anything to what Delegate Baker has said, except that this is a sensitive issue, and maybe it's more sensitive in my area than it is elsewhere in the State. But this is one thing, before I came down here, that I heard really the most comment about. I am sure that on these alternative proposals that the one that will probably create the most interest, as far as getting people to the polls is concerned, is going to be the one on the 18-year-olds, simply because it's going to get the young people out and the old people out, and when they go into that booth, they're going to vote for this Constitutional Convention, if they get a chance on their choice. I'm sure the bicameral and the unicameral are going to be discussed over the State very, very broadly. But these people that are going to be discussing this issue are people that are informed about the Constitution and are going to vote for it; but they're going to vote and they're going to go out and argue as to whether they should or should not have a unicameral or bicameral.

But on this issue here, this sensitive issue, these people that are going to generate the talk on this one are the ones that are going to go to the polls to vote against the Constitution, and I feel that very strongly, people, and I don't go completely along with the argument that we're destroying the work and the sincerity of that good committee that worked on this thing. I think we will have a lot of pleasant experiences and a lot of good experiences of reorganization of our executive department, and I don't think it's going to destroy it all. And I'm not in disagreement that probably four is too many. Maybe we should do as Senator — or Delegate Baker suggests — change that wording "up to four" or "down to three." I don't care. I'm saying that, by golly, I'm afraid that, if we take this thing out to the people in North Dakota, the steam is going to build up on this one — it's a real sleeping giant.

VICE PRESIDENT SAUGSTAD: Delegate Hendrickson, and then Delegate Dobson.

DELEGATE HENDRICKSON: Mr. Chairman, I would like to ask my seat mate a question.

On the last page here, where we've got the A. and the B., what we would propose to the people, the A. reads — which refers to the Constitution we have accepted — "with the remaining chief executives of the principal departments being selected in a manner provided by the legislative assembly."

Now, on the first page of 4-3, we have "shall be appointed by the governor." Now this has appealed to me, because I see these appointed officials serving at the pleasure of the governor and I know you explained this before when one of the

delegates asked you, but I invite your position now to explain the difference there in that as compared to what I think we have on the green sheet.

VICE PRESIDENT SAUGSTAD: Does anyone wish to answer? Delegate Hernet.

DELEGATE HERNETT: Well, I could whisper in her ear, but since she asked me a question, it's the same one that I think Delegate Aubol asked. This probably isn't real honest, the way this is set out here, but, as Delegate Chase read yesterday, the copy of the Attorney General's opinion on what we are doing or what we did adopt, the effect of it as put out here — if I make myself clear. In other words, the Legislature can make these selections. It necessarily will not be appointment by the governor. In other words, the Legislature can bypass his appointments, and that was about what the opinion was that Vance Hill received from the Attorney General said. So this is, in essence, the way it is.

VICE PRESIDENT SAUGSTAD: Let's see. I think Delegate Dobson and Delegate Pearce had asked for the floor.

DELEGATE DOBSON: Well, Mr. President, I have mixed emotions on this issue because I greatly favor the executive Functions Committee. But I also recognize that this issue of a long or short ballot is a real political hot potato.

Now what's the purpose of these set-aside issues? As I see it, they're to act as lightning rods, so that your lightning bolts of opposition aren't directed against the main body of the Constitution, but, rather, to the set-asides. We already know of two groups which are greatly concerned about the issues; one is the signature increase for initiative and referral, and the other is the short ballot. I refer to McCarney's group and Representative Dornacker's group, and both of these groups are going to play a significant role in the forthcoming campaign.

I think this matter of a short ballot is at least as sensitive as the initiative and referral signature increase. So I have come reluctantly to the conclusion that I think we should put this on the ballot separately, and then go out and campaign for the Executive Functions Committee's position. In that way, I think we can win the day on the set-aside and the main body as well.

VICE PRESIDENT SAUGSTAD: Delegate Pearce, and then Delegate Aas.

DELEGATE PEARCE: Mr. President: I have a bad cold; so, fortunately, I won't be able to speak very long.

I did not sponsor a Delegate Proposal, but I did sign the petition to put on Alternate Proposal 4-3; so, in a sense, it's my only child here. It used to be said that it was a wise child that knew his own father. Nowadays it's a wise father that can recognize his own child. (Laughter) And I don't recognize in the Alternate Proposal what I signed. What I signed on the blue sheet was, I thought, to give the people essentially the choice to retain what we've had for 83 years. I did agree that I thought the lieutenant governor and the governor should be elected together, since one is essentially a replacement for the other.

As I look at the white pages of 4-3, I see little, if any, resemblance to what I signed. I agree with the remarks of Delegate Chase that I wouldn't know myself, what I was looking for if I voted for that, because I wouldn't know what four departments might be considered principal. I don't know what creatures might yet be created in the future who would be headed by someone. I think that it is essential for the safety of the journey of our new Constitution in the next few months that we give some people a chance to retain some essential parts of what they've had.

As I remarked a long time ago, forty thousand people didn't even want us to get together here and monkey with it, and I've had people ask me, "What are you people doing up there?" Well, I suppose I could say, "Well, for one thing, we've eliminated some of the state officials that you elect." "Well, what did you do that for?" Well, in grasping around and not wanting to insult them, I couldn't say, "Well, you people have been generally stupid in the people that you have elected to fill these offices, and we decided that you really didn't deserve to have this right to elect state officials, so we have transferred the selection of those important things to someone else."

To me, that would be an incredible answer, if I expected to get any "yes" votes generated. But if there are any better answers, perhaps we should have some sug-

gestions. I feel as strongly as I feel about anything that, regardless of the theoretical efficiency, regardless of the theoretical good of reorganizing what we choose to call the Executive Department, that our government will never be effective and never be responsible if we remove it farther and farther from the people. If the people that they can vote for are handed to them as placating gifts from time to time by the Legislature, we will gradually see fewer and fewer people vote, because they would recognize it as filled. There was a time in this country when we first began when we were governed by governors appointed by a foreign crown. It wasn't foreign, of course, at that time. We were part of England. Nothing aroused the ire of the people greater than the fact that they could not choose for themselves their own representatives. The Federal Government organization, where we elect a head and appoint everybody else, is often pointed to, surprisingly enough, with pride. Do any of you feel comfortably close to the Federal Government? Do any of you feel that you can complain personally to the Chief Executive Officer of the United States of America and get your ills attended to? If you can, you have more power than anybody I know.

In this State, fortunately, we're still neighbors. We're still almost in the family of nations a family, and I hope we stay that way for awhile. And in order to do that, I think we must get people to participate and, if we don't let the people participate in the choice even, because we're not offering them an alternative here, whether we put this white paper as an alternative or not, you've thrown out the present system and many, many people may resent that.

VICE PRESIDENT SAUGSTAD: Delegate Aas.

DELEGATE AAS: Mr. President and Fellow Delegates:

I rise in opposition to placing 4-3 on the ballot as an alternate.

When I first elected to become a delegate to this Constitutional Convention, I asked myself: What do the people want? I asked myself: Why did the people call for a Constitutional Convention? And the best way that I can answer my own question is to say that they are interested in government reorganization. I'm sure that when we were elected, any one of us, we were not elected to come here to clean up the language, to eliminate antiquated areas in our Constitution, to eliminate the verbosity that might be in it at the present time. We were not elected to create any new concerns or areas of doubt. We were not here to change the Bill of Rights, because we haven't done that very much. We are not here to do some of the other things that some of us feel are important. Apparently the people have invited us here to reorganize government. When organization of government means reorganization of the executive functions, this, Fellow Delegates, I believe is the heart of our efforts here during this convention, and I think that we can go back and sell the product which we have. We can go back and say, "We have created a good government, a good organization and a good Constitution for you to work with." We can go back with pride in the work we have done. We should not be divided. We should not go back and have to apologize for any section of it by offering an alternative when it comes to the reorganization. I hope that we can all go home and support good executive reorganization, and I submit that the executive article which we have before us is excellent, and I hope that we can support it.

DELEGATE URDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Urdahl.

DELEGATE URDAHL: I guess it is true that we hear what we want to hear pretty much, and I sometimes wonder if we don't use the things we don't like ourselves as being the reason why we think the Constitution will be defeated. I think there are probably ten or twelve different things that have happened that we could use in that regard. It seems to me from what I've been hearing, at least, in the past two decades, that one of the things that was needed in our government in the State was reorganization of the Executive Branch, and it seems to me that I could feel that it was a mandate from the people that elected me here — was to do something in this regard. I think that people generally have felt that a governor should be held responsible for the affairs of the State. I think this has been pretty near impossible under the Constitution that we have operated under, and I believe, personally, that the Committee has done a tremendous job in starting this process of holding the executive officer of the State responsible for what happens within the

State. I think it would be indeed confusing if the amendment that has been proposed was approved. I think that each of us can go home to our communities and sincerely defend what has been done here at this Convention, and that we will have a good document, and I don't think for one minute that they expected that we ought to refer to the people very many — very many things that we thought were impossible for us to handle, because, after all, we have to consider that we've had a great opportunity in these past 20-some days now to study the affairs that most of the people have not had that have not been here, and I don't think it can be assumed for one minute that we don't trust the people. I think that we have a mandate from them to do a job for them, and I urge defeat of this amendment.

VICE PRESIDENT SAUGSTAD: Delegate Devine has asked for the floor.

DELEGATE DEVINE: Mr. President, most of what I have to say has been said before, so I'm not going to make any speech. I'll try to keep it down to about three points.

One, I'm in favor of the Committee's work. I intend to go out and support their efforts strongly; however, I do feel that we're making a basic change in our form of government and so our people should be given the right to speak to this. We're going from a weak executive, which is bad, or at least I feel is bad, to a strong executive, which I feel is good. But it's a change. And this is why I would like to see the people speak to this. Now I will vote in favor of the amendment, but I sincerely hope and this is the only point I want to make — I sincerely hope that there's going to be further amendments to clear it up, because I would hate to see it go out the way it is; but, nevertheless, I'm going to support the amendment.

DELEGATE McINTYRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate McIntyre.

DELEGATE McINTYRE: I have to steal a phrase from Delegate Dobson in regard to this particular situation, because although I do approve of the action that the Committee took and Convention passed here earlier, I recognize this minority "no" vote that could come about in this particular situation. But this type of vote that we're talking about will not be appeased by the alternate that is offered here this afternoon. This "no" vote we're talking about is those voters that want to elect each and every one of the fourteen elected officials that they're electing now. I'm against that. I like the executive article as we have it now. But the minority "no" vote, I believe, is going to vote "no" primarily because they don't want to elect four other principal department heads as selected by the Legislative Assembly — or chief executive offices; they want to elect fourteen. They don't want to elect eight or eleven or twelve; they want to elect fourteen. So I don't think this particular alternate is the answer.

DELEGATE HERNETT: Mr. President.

DELEGATE BYRNE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Byrne, first, and then Berg, and then Hernet.

DELEGATE BYRNE: Mr. President: The startling effect of many of the statements made on the floor today appears to be that there is only one way to protect the person to be elected to office in the State of North Dakota, and that is to be protected by a constitutional provision.

Now, I want to point out that nothing is further from the truth. Over a period of many months and many years, many of us have thought about this problem. As I mentioned when the original bill was passed, the opportunity you have now to — not necessarily tomorrow, not necessarily in 1973, but sometime in the future, it might be where you can revise your executive structure, and I point it out as a fact which I don't believe anyone will argue about — that as long as you keep the elected offices by a provision in the Constitution this can never be done. I believe in the method that has been proposed by the Committee. The proposal was once passed here. We have attained what many of us believe is a step towards the right way to do it, and that is that you still will be able to elect state officials, but you will remove it from the constitutional protection and it can be done by statutory action. The heart of it is that, and I just wanted to repeat what I said before, so that we don't get carried away with the idea that there is no other way to do it,

except this matter of electing and keeping them built into the Constitution. That is my main objection to Senator Hernetts proposal — is it builds back in, even by inference, rather than by specifics as we passed it before, the need of a constitutional protection. I, for one, should probably be one of the few or of many that should not be taking this stand. I have many personal relationships here in Bismarck in the Capitol — personal relationships over a period of many years; but I cannot possibly consider this on the basis of people personally involved at the present time. If you want to consider it on a long-range basis so far as state organization and state officials is concerned, it's something of a different color.

VICE PRESIDENT SAUGSTAD: Delegate Berg, I believe, asked for the floor.

DELEGATE BERG: Mr. Chairman and Fellow Delegates:

During lunch hour, I made a telephone call to Harvey, North Dakota. They had just completed a Kiwanis Club meeting there this noon, and I asked a member of the Kiwanis Club if discussion has been going on in regard to the long and short ballot, and he said there was much discussion. He said, "We are in agreement here in our area that we want to elect." He says, "I want to tell you and Mr. Kwako to hold the line. Support the election of all state officials." He said, "And we're going to back you up."

I don't exactly like the proposal of — or the amendment of Delegate Hernetts. I would rather see it have all the State officials. But if this is supposed to be a compromise, Hernetts, I can support it. But I'm just wondering, while you're making up your amendment, had you thought of all state officials — the fourteen? Could I ask that question of Mr. Hernetts?

VICE PRESIDENT SAUGSTAD: Yes. Do you yield?

DELEGATE HERNETT: Yes, I do.

VICE PRESIDENT SAUGSTAD: Delegate Hernetts.

DELEGATE HERNETT: Well, I'll answer the question as much as I can.

I think I explained last night the reason for coming up with the four. I assume that the Convention spoke very plainly here a couple weeks ago about the Superintendent of Public Instruction. I think they spoke very plainly a few or a couple weeks ago about an auditor or an Auditor General, and I didn't want to monkey with these two. Well, that cuts it down to twelve, and the Labor Commissioner presently is statutory, so we don't have to monkey with that one. That's where we got to the eleven. That's the seven plus four.

Now the four that I had in mind in my original idea was to name these people, and if this is what this Convention would want, then there is no problem naming them; in fact, it's the State Treasurer, the Agriculture Commissioner, the Insurance Commissioner and the Tax Commissioner, and it's easy to name them. As I understand, some are disturbed by not having them named — that it might cause some disruption in the Legislature. Maybe it would. But I would have no quarrel with naming them. But that is how we got eleven; in other words, the seven, plus four, because I didn't want, and I didn't think this Convention would ever stand still for monkeying around with those two that have already been well-settled and established that that's what we're going to do.

VICE PRESIDENT SAUGSTAD: Any further discussion?

DELEGATE HERNETT: But I have a couple other things. I just thought I should answer his question, first.

DELEGATE BERG: Yes. Would you yield to another question?

DELEGATE HERNETT: All right.

DELEGATE BERG: Would you be willing to name the other State officials in this — the other State officers?

DELEGATE HERNETT: Well, if you're going to do that, then you might as well go back to the original Alternate Proposal 4-3, which Delegate Pearce talked about. That was all of them in there.

DELEGATE BERG: Well, it is a little bit of a mystery to me, but I would support your amendment all right, but I'm just wondering if you would change it and name the officials, if you will. But I'll still support it, and then I would ask the other members here, too, also to support it.

VICE PRESIDENT SAUGSTAD: Delegate Hernet, did you wish to speak further?

DELEGATE HERNETT: Well, I just have a couple more comments.

Delegate Berg and others here today have commented upon the Executive Functions Committee and about what a good job was done by the Committee, and I think so, too. But — and I suppose many of you wonder why the Chairman takes this peculiar position here on this issue. But I want to repeat, again, that if this Convention would come up with any kind of an alternate in this area, I will say here and now that I will go out and campaign and do everything I can to encourage a vote for the Convention-adopted proposal — not the alternate. But, as I said last night, it's kind of a pop-off valve. Delegate Dobson today called it a "lightning rod." I think it is something that we need, and I would certainly not support it if it becomes the alternate on the ballot.

Now, I think, too, that our Committee has done an outstanding job on this executive functions thing, and I don't want to disturb it at all. Most of the discussion here this afternoon, and the same thing happened last night, is that the people who have discussed this issue here this afternoon all talk as though this is what it is going to pass. The comments were made if this — if we adopt this amendment, that this is going to tear the Constitution to pieces; that it's going to tear the executive functions department to pieces. I don't know why you take that negative attitude. Why don't you assume that the people are not going to vote for this alternate? You're all talking here as though the people are going to vote for the alternate. And I don't think that this is necessarily so, especially if we get out and work for a "yes" vote on the Constitution as adopted by this Convention. I'm not going to assume that this is going to be what the people are going to vote for. I think this is one of the most dangerous parts of this — is to take that negative approach, and I would hope that you would vote in favor of this amendment, and I'm certainly receptive to any kind of amendments — for instance, naming these State officials or, as Delegate Baker has mentioned, calling — saying "not more than four" or "not more than three," or, as I said before, not more than one-and-a-half, if you want to split it, but anything to get the proposal on the ballot.

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: I hate to be presumptuous, but the conversation over the last hour or hour-and-fifteen minutes, has been so wide-ranging that I think we should remind ourselves that before us right now is 4-3 as it is in your blue book for which Delegate Pearce has given a very ardent advance. Then we are now going to vote on the amendment which would say, "No, we're not going to vote if we have an alternate for fourteen people, the way it is now in our book, but the Hernet version." So I think, if you vote "yes" now, it should be because you think that the Hernet compromise, if we have an alternate, is a better alternate than the alternate in the book. If you don't like the Hernet compromise, you should vote for 4-3 as it is in the book. Then, if this is adopted or it goes down, then we can decide what in the alternate is a good idea; otherwise, we're going to have some very strange "yes" or "no" votes not meaning exactly what you want.

VICE PRESIDENT SAUGSTAD: Delegate Birkeland.

DELEGATE BIRKELAND: Mr. President. I believe there is one area that needs just a little explanation at this time.

All afternoon we've been using this one term — "the short ballot." It was even used in the Press when it was said that we would be debating the short versus the long ballot. This Convention has never had before it a short ballot proposal. A short ballot proposal would be similar to what they have in New Jersey, Hawaii and Alaska, where you elect just one or maybe just one or two state officials, all the rest being appointed. I think that makes a big difference, because our proposal calls for not one or two, but seven. And then we are told so many times to put our trust and our faith and our confidence in the Legislature, and that's exactly what we have done in our Committee Proposal — is if the governor ever violates his responsibility of appointing good men, then the Legislature can change it. So we are offering this as a safety valve for the people, and if we defeat this amendment, which I hope you do, I would hope that nobody would go back to their delegates or

their constituents at home and say "We have adopted a short ballot." Far from it. If you want to qualify it, a name to call it — call it a "modified long ballot," because electing seven is a lot different than electing a short ballot.

VICE PRESIDENT SAUGSTAD: Delegate Hartl.

DELEGATE HARTL: Mr. President. Members of the Assembly.

I have sat here as long as each of you individually has sat, and I've listened. I urge the defeat of the amendment as proposed by Delegate Hernet, and subsequently I would urge the defeat of Alternate Proposal 4-3. We were sent down here to do a job. That job was to review our current Constitution, revise where we thought necessary, and submit same to the people. I believe some alternates will give the people a voice. This alternate gives the people nothing other than what the people already have. Granted, forty thousand people said, "We did not want to review the Constitution." Those forty thousand people perhaps could not name the seven officials we have purported to eliminate under the Executive Branch. I would submit to each of you individually: Ask yourselves, when you have visited your constituents, how many can name the individual elected state officials at this time? Secondly, how many of your constituents can advise you as to the type of job that this elected official is doing?

I am not a champion of the individuals in all of these elected officials, nor am I champion of all of these in the appointive positions; but I would submit to you, as good common sense, if you would review the record, I think our State has done an exceptional job in the majority of its appointive positions. Where it has not been an exceptional or above-average job, the appointee has failed to retain the appointment beyond a reasonable period of time.

With this, I would ask that we consider the amendments as proposed to 4-3 in the original Alternate Proposal 4-3, and, subsequently, in turn vote each down to defeat at this time.

VICE PRESIDENT SAUGSTAD: We are now on the motion of Delegate Hernet that we adopt the amendments as were read — no — as have been discussed. They were not read, as I recall, from the desk. But we are now on the main motion of Delegate Hernet that we adopt the amendments as proposed by Delegate Hernet. I am about to put the motion.

All those in — if you vote "yes," you're voting in favor of adopting the amendments.

All those in favor, signify by saying "aye;" opposed "nay."

The Chair is in doubt. The Clerk will open the key and we'll have a division vote. Saugstad votes "aye."

Has everyone voted?

CHIEF CLERK GILBREATH: Green is not working on this side.

VICE PRESIDENT SAUGSTAD: Has everyone voted? Does anyone wish to change their vote?

DELEGATE AUBOL: Mr. President, has Delegate Nicholas voted?

VICE PRESIDENT SAUGSTAD: Has everyone voted? Does anyone wish to change his vote? If not —

CHIEF CLERK GILBREATH: That one's all right. Let's try it and see what happens.

VICE PRESIDENT SAUGSTAD: The board will be closed and the Clerk will take the tally.

There's some question about whether this machine is operating properly or not. Of course the tally shows 39 "ayes," 58 "nays." Now it would appear that the motion lost. Now, if those who are in support of the adoption of the amendment — if they call for a roll call, that will be granted.

All right. That's sufficient. There will be a roll call. You vote "aye" if you're in favor of the amendment.

Say, actually, this — in view of the fact that we have not had a request for a recorded vote, it will go a little more rapidly if you stand. So I'll ask that those who vote "aye" at this time please stand.

DELEGATE HERNETT: Mr. Chairman, I'd like to make a request for a recorded vote.

VICE PRESIDENT SAUGSTAD: Okay. How many want a recorded vote? Okay. We'll have a recorded vote.

Again, if you vote "aye," you vote to adopt the amendment as proposed by Delegate Hernet.

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: No.

DELEGATE BUTLER: Mr. President, would it not be in order to try the machine once more and get the identical vote on the next go-round?

CHIEF CLERK GILBREATH: Well, if it's out, it will be out.

VICE PRESIDENT SAUGSTAD: It will only take a moment to take this.

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: No.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: No.

CHIEF CLERK GILBREATH: Baker.

DELEGATE BAKER: Yes.

CHIEF CLERK GILBREATH: Basingthwaite.

DELEGATE BASSINGTHWAITE: No.

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: No.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: No.

CHIEF CLERK GILBREATH: Benz.

DELEGATE BENZ: Yes.

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Yes.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: No.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Yea.

CHIEF CLERK GILBREATH: Birkeland.

DELEGATE BIRKELAND: No.

CHIEF CLERK GILBREATH: Brakke.

DELEGATE BRAKKE: No.

CHIEF CLERK GILBREATH: Burbidge.

DELEGATE BURBIDGE: Yes.

CHIEF CLERK GILBREATH: Burke.

DELEGATE BURKE: No.

CHIEF CLERK GILBREATH: Butler.

DELEGATE BUTLER: No.

CHIEF CLERK GILBREATH: Byrne.

DELEGATE BYRNE: No.

CHIEF CLERK GILBREATH: Cart.

DELEGATE CART: No.

CHIEF CLERK GILBREATH: Chase.

DELEGATE CHASE: No.

CHIEF CLERK GILBREATH: Christensen.

DELEGATE CHRISTENSEN: No.

CHIEF CLERK GILBREATH: Daniels.

DELEGATE DANIELS: No.
 CHIEF CLERK GILBREATH: Dawson.
 DELEGATE DAWSON: No.
 CHIEF CLERK GILBREATH: Decker.
 DELEGATE DECKER: Yes.
 CHIEF CLERK GILBREATH: Devine.
 DELEGATE DEVINE: Yes.
 CHIEF CLERK GILBREATH: Diehl.
 DELEGATE DIEHL: No.
 CHIEF CLERK GILBREATH: Dobson.
 DELEGATE DOBSON: Aye.
 CHIEF CLERK GILBREATH: Engelter.
 DELEGATE ENGELTER: Yes.
 CHIEF CLERK GILBREATH: Engstrom.
 DELEGATE ENGSTROM: No.
 CHIEF CLERK GILBREATH: Erickson.
 DELEGATE ERICKSON: Aye.
 CHIEF CLERK GILBREATH: Fallgatter.
 DELEGATE FALLGATTER: Yes.
 CHIEF CLERK GILBREATH: Fiedler.
 DELEGATE FIEDLER: No.
 CHIEF CLERK GILBREATH: Fritzell.
 DELEGATE FRITZELL: No.
 CHIEF CLERK GILBREATH: Geelan.
 DELEGATE GEELAN: No.
 CHIEF CLERK GILBREATH: Gipp.
 DELEGATE GIPP: No.
 CHIEF CLERK GILBREATH: Griffin.
 DELEGATE GRIFFIN: No.
 CHIEF CLERK GILBREATH: Hardmeyer.
 DELEGATE HARDMEYER: No.
 CHIEF CLERK GILBREATH: Hartl.
 DELEGATE HARTL: No.
 CHIEF CLERK GILBREATH: Haugen.
 DELEGATE HAUGEN: Yes—aye.
 CHIEF CLERK GILBREATH: Hendrickson.
 DELEGATE HENDRICKSON: No.
 CHIEF CLERK GILBREATH: Hendrickson?
 DELEGATE HENDRICKSON: No.
 CHIEF CLERK GILBREATH: Hernet.
 DELEGATE HERNETT: Aye.
 CHIEF CLERK GILBREATH: Hildebrand.
 DELEGATE HILDEBRAND: No.
 CHIEF CLERK GILBREATH: Hill.
 DELEGATE HILL: Yes.
 CHIEF CLERK GILBREATH: Hoffner.
 DELEGATE HOFFNER: No.
 CHIEF CLERK GILBREATH: Hoghaug.
 DELEGATE HOGHAUG: No.
 CHIEF CLERK GILBREATH: Hougen.
 DELEGATE HOUGEN: Yes.

CHIEF CLERK GILBREATH: Hubrig.
 DELEGATE HUBRIG: No.
 CHIEF CLERK GILBREATH: Huckle.
 DELEGATE HUCKLE: No.
 CHIEF CLERK GILBREATH: Jestrab.
 DELEGATE JESTRAB: No.
 CHIEF CLERK GILBREATH: Kelsch.
 DELEGATE KELSCH: Yes.
 CHIEF CLERK GILBREATH: Kessel.
 DELEGATE KESSEL: No.
 CHIEF CLERK GILBREATH: Ketchum.
 DELEGATE KETCHUM: Yes.
 CHIEF CLERK GILBREATH: Knudson.
 DELEGATE KNUDSON: Yes.
 CHIEF CLERK GILBREATH: Kretschmar.
 DELEGATE KRETSCHMAR: Yes.
 CHIEF CLERK GILBREATH: Kwako.
 DELEGATE KWAKO: Yes.
 CHIEF CLERK GILBREATH: Lamb.
 DELEGATE LAMB: No.
 CHIEF CLERK GILBREATH: Lander.
 DELEGATE LANDER: Yes.
 CHIEF CLERK GILBREATH: Larsen.
 DELEGATE LARSEN: No.
 CHIEF CLERK GILBREATH: Lerberg.
 DELEGATE LERBERG: No.
 CHIEF CLERK GILBREATH: Litten.
 DELEGATE LITTEN: No.
 CHIEF CLERK GILBREATH: Longmire.
 DELEGATE LONGMIRE: Yes.
 CHIEF CLERK GILBREATH: McElroy.
 DELEGATE McELROY: Yes.
 CHIEF CLERK GILBREATH: McIntyre.
 DELEGATE McINTYRE: No.
 CHIEF CLERK GILBREATH: Maxwell.
 DELEGATE MAXWELL: No.
 CHIEF CLERK GILBREATH: Meidinger.
 DELEGATE MEIDINGER: No.
 CHIEF CLERK GILBREATH: Miller.
 DELEGATE MILLER: Yes.
 CHIEF CLERK GILBREATH: Nething.
 DELEGATE NETHING: Pass. (Laughter)
 I vote "aye."
 CHIEF CLERK GILBREATH: Nicholas.
 DELEGATE NICHOLAS: Aye.
 CHIEF CLERK GILBREATH: O'Toole.
 DELEGATE O'TOOLE: Yes.
 CHIEF CLERK GILBREATH: Omdahl.
 DELEGATE OMDAHL: No.
 CHIEF CLERK GILBREATH: Paulson.
 DELEGATE PAULSON: No.

CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: No.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Yes.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Yes.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Yes.
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: No.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: No.
CHIEF CLERK GILBREATH: Rosendahl.
DELEGATE ROSENDAHL: No.
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: No.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: Here — yes.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SANSTEAD: Yes.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Yes.
CHIEF CLERK GILBREATH: Scheel.
DELEGATE SCHEEL: No.
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: No.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: No.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: No.
CHIEF CLERK GILBREATH: Solberg.
DELEGATE SOLBERG: No.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDREAL: No.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: Yes.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: No.
CHIEF CLERK GILBREATH: Thompson.
DELEGATE THOMPSON: Yes.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: Yes.
CHIEF CLERK GILBREATH: Tudor.
DELEGATE TUDOR: No.
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: No.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: No.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: No.
CHIEF CLERK GILBREATH: Wallin.

DELEGATE WALLIN: Yes.

CHIEF CLERK GILBREATH: Warner.

DELEGATE WARNER: Yes.

CHIEF CLERK GILBREATH: Wicks.

DELEGATE WICKS: No.

CHIEF CLERK GILBREATH: Wenstrom.

(No response.)

VICE PRESIDENT SAUGSTAD: The roll call discloses 38 "ayes," 59 "nays," one absent and not voting. Therefore, the amendment is lost.

We now have before us Alternate Proposal 4-3 in its original form.

Delegate Devine.

DELEGATE DEVINE: Mr. President: I have an amendment at the desk.

VICE PRESIDENT SAUGSTAD: There is an amendment at the desk.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-3:

On line 1 — on page 1, line 12, delete the word "Auditor,"

On page 1, line 13, delete the words "Superintendent of Public Instruction,"

Line 1 — page 1, line 15, delete the words "commissioner of labor".

DELEGATE DEVINE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Devine.

DELEGATE DEVINE: I would move the amendment.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE DECKER: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Decker.

DELEGATE DEVINE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Devine.

DELEGATE DEVINE: I think the amendment would clear up what generated a lot of debate and would just answer the question that Delegate Lander and I were just trying to speak to before.

VICE PRESIDENT SAUGSTAD: Is there any further discussion?

We have before us — Delegate Chase.

DELEGATE CHASE: Mr. Chairman, I don't wish a vote to be called on this too soon, because the implications are still here. The Auditor does not figure in the Executive Branch any longer. This particular Convention has assigned it to the Legislative Branch. The Superintendent of Public Instruction has been taken out and the education article has worked that over. So they do not figure in the Executive Branch of government. It's all right to take those out, but now you're leaving the rest of them in and only taking out the Commissioner of Agriculture — excuse me — the Commissioner of Labor. And I heard Delegate Berg talk awhile ago about how he wanted to elect everyone. Well, if he'll pay particular attention to the executive article, he'll see, if he wants them elected and his legislators want them elected, they will be elected; but the difference is they're statutory, and this is what Joe Byrne was talking about. They're statutory. You can change them. But if you lock them into the Constitution, such as this Proposal will do, even as amended, you cannot change them; they will be there. So I speak against the amendment, Mr. Chairman, even though it's an attempt at a compromise here.

VICE PRESIDENT SAUGSTAD: Delegate Decker has asked for the floor.

DELEGATE DECKER: Mr. Chairman and Fellow Delegates:

It looks like this is kind of a hot spot over here right now. (Laughter)

I agree with most of the people right now that our main body of the Constitution is what we want. That isn't the object of our discussion at this time. The object of our discussion is set-aside, and I feel that our primary object of set-aside is to confuse the objections that people will have to vote against the Constitution. Whether you call it lightning rods or whatever you call them, this is the reason for having set-asides. I think we should cut them down to the cleanest size we can on the

sections that aren't being changed and give the people a chance to vote on individual sections. People don't vote for things, generally, and those who vote against — if you have twenty percent against, this twenty percent against initiative referendum and twenty percent against something else, you've got about a hundred-and-twenty percent against the Constitution already, and the primary object of our set-asides, I believe, is things that are taken out of the Constitution, and this we can set aside and let the people have the individual choice whether they want that or not. I don't think we have to worry too much that we are going to diffuse it, and I'm really worried and want to get the main body passed.

DELEGATE VOGEL: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Vogel.

DELEGATE VOGEL: I think there wasn't a member of the Executive Functions Committee who wasn't fully aware of the sensitivity of any changes in the executive article from the very beginning. We were confronted by this chart which all of you received way back — do you remember? And our choice was: Do we keep on going with those little boxes — those little yellow boxes up at the top — the fourteen of them that were our problem, or do we try to do something about it? We tried to do something about it with a compromise that would have seven elected officers and which would allow the Legislature, if the public demanded, at a later date to change some of the appointed officers back to elected officers. We were very aware from the beginning that we had the choice of keeping the fourteen or of cutting down the ballot and trying to bring some order into it, and we chose this compromise program of allowing the Legislature to make changes, if this weren't satisfactory.

I think there's a great difference between this particular set-aside and the others, in that the others largely concern one section or one part of a constitution. You can vote for unicameral or the bicameral and still leave the legislative department intact. You can vote for the other set-aside, one way or the other, and still leave the essential articles attached and workable. But this particular lightning rod is the fact not to set aside, but to the article itself. In this fashion, it is different from the others. The question is not, as I think I said yesterday, shall we add four elected officials? The question is: Shall we have a new setup in our Executive Department or shall we go back to the one that we had when we came here, which, I think, most delegates by your vote indicated was not a satisfactory situation. In other words, shall we give up the idea of an executive reorganization? Shall we give up the idea of a responsible and responsive government in which the lines of authority are not as confused and as mixed up as they are today? And I think this is what makes this particular question somewhat different from the others; and, believe me, we were aware that this is the decision that we reached and that I think most of you agreed with in the original vote on the executive article. Thank you.

VICE PRESIDENT SAUGSTAD: Delegate Peterson.

DELEGATE PETERSON: I just want to make one comment.

It's surprising — this is just a set-aside, and it seems to me — I noticed this morning, and I notice again this afternoon, you're afraid of set-asides. Now, if you are that afraid of a set-aside, apparently you are not too sure of what you have put in the Constitution. Now this is not my feeling of a set-aside. As I said last night, I feel that this one is a sleeper, and I do feel that there are many people that do want to express their opinion on this. Now do you really think there are this many people in the State that are going to disregard what we have in the main body of the Constitution? Are you afraid to submit this to the people? You're not being realistic. This morning you talked about a set-aside, and then you proceeded to chop it into little bits until it turned into hamburger, and then you agreed to allow it to be set aside. That's not my idea of a set-aside. Put it — give them a choice, and they're going to have a choice, give them a choice. Let's not be so afraid of the work we have done.

VICE PRESIDENT SAUGSTAD: Delegate Devine had asked for the Chair — or for the floor.

DELEGATE DEVINE: Mr. President, I was wondering if we could speak to the amendment at this time and quickly take a vote on that. We'll soon see where we stand, because if the amendment fails, the thing — the whole thing will evaporate.

VICE PRESIDENT SAUGSTAD: Any further discussion? If not, we are on the motion of Delegate Devine to adopt the amendments which were read from the desk.

The motion then if you vote "aye," you're voting to adopt Delegate Devine's amendment. I'm about to put the motion. All of those in favor signify by saying "aye;" opposed "nay."

I believe the "noes" have it. But I think — I think the voting machine is working now. The Clerk will open the board and you may indicate your choice. If you vote "aye," you're voting for it. Saugstad votes "aye."

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the ballot.

The motion loses on a division vote — 55-39.

So now we are back to Alternate Proposal 4-3 in its original form.

Now, is there any further discussion?

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Just in response to Delegate Peterson's remarks prior to the last vote, I don't think this is a question of being afraid of set-asides. We aren't afraid of set-asides, but I don't think we should put things on the ballot on the side that we, ourselves, are not convinced are not going to be good for the State. I think that Mrs. Vogel pointed out the problem very clearly between this set-aside question and the other set-aside questions. I don't think it's a question of being afraid of set-asides.

VICE PRESIDENT SAUGSTAD: Delegate Chase has asked for the floor.

DELEGATE CHASE: May I ask what point of order we're at on this right now? Are we back to the original indefinite postponement?

VICE PRESIDENT SAUGSTAD: No. No, that — what — what we now have before us, Alternate Proposal 4-3 in its original form — in its original form as it came to the Ballot Committee, and I believe it's in your books — in the front part of your books.

DELEGATE CHASE: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Chase.

DELEGATE CHASE: Is a motion then in order that this Proposal 4-3 be indefinitely postponed?

VICE PRESIDENT SAUGSTAD: No. Unless there's further discussion, the Clerk will open the board and you will record your vote. Now, if you vote "aye," you're voting to adopt Alternate Proposal 4-3. If you vote "nay," you're voting to defeat Alternate Proposal 4-3.

All right. Delegate Miller.

DELEGATE MILLER: Are you saying, sir, that this — if we vote "aye," this is to set it as a side issue, as it is now?

VICE PRESIDENT SAUGSTAD: Yes, it would be a set-aside issue in the form that it is in your bill book.

DELEGATE MILLER: Thank you.

VICE PRESIDENT SAUGSTAD: All right. We are now then ready. Is there any more discussion? Hearing none, the Clerk will open the key and you may record your vote. Saugstad votes "nay."

Has everyone voted? Does anyone wish to change their vote? If not, the key will be closed and the Clerk will take the tally or take the record. This is a recorded vote.

The record discloses 22 "ayes," 73 "nays," three absent and not voting. Therefore, Alternate Proposal 4-3 has lost.

DELEGATE BUTLER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Butler.

DELEGATE BUTLER: Are we going to have a recess about this time?

VICE PRESIDENT SAUGSTAD: Yes. Are there any announcements? We'll be taking a short recess very shortly. Any announcements?

There will be a short meeting of the Calendar Committee in the President's office during the recess period, and this includes Chairmen Dawson and Unruh.

We will now declare a recess until 3:15.

(The Session recessed at 2:57 P.M. until 3:21 P.M., the same day.)

VICE PRESIDENT SAUGSTAD: Will the Convention please come to order?

We are on the seventh order of business — Reports of Select Committees.

The Chair will recognize Delegate Byrne.

DELEGATE BYRNE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Byrne.

DELEGATE BYRNE: I move that the Rules be suspended and that Committee Proposal 1-121 be introduced, that it not be referred to a committee, and be placed on the tenth order for first passage.

If I get a second, I'll explain it.

DELEGATE NETHING: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Nething. All right. Delegate Byrne.

DELEGATE BYRNE: Mr. President: This is the proposal dealing with the recommendations of the Coordination and Transition Committee, and we have completed at the present time, depending upon what further may come up for reconsideration, and so forth, our transition dates for a revised Constitution. The copy of the Proposal has been placed on each member's desk this morning, and after the Chief Clerk reads the Proposal, various members of the Committee have been assigned for explanation of the various sections, and I will await the reading of the Proposal by the Chief Clerk, Mr. President, and that's the motion.

DELEGATE NETHING: Second.

VICE PRESIDENT SAUGSTAD: We are on the motion of Delegate Byrne that the Rules be suspended and that the Report of his Transition Committee be placed on the tenth order for adoption, and the motion has been seconded.

Hearing no further discussion, the Chair will now place the motion, and the motion is to suspend the Rules and to adopt this Report.

I am about to place — put the motion. All in favor signify by saying "aye," opposed "nay." The motion is adopted.

Now Delegate Byrne has requested that No. 1-121 be read from the desk.

CHIEF CLERK GILBREATH: Committee Proposal No. 1-121, introduced by Committee on Coordination and Transition:

"BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That a new article to the constitution of the state of North Dakota be created, pertaining to a transition schedule.

"SECTION 1.) A new article to the constitution of the state of North Dakota is hereby created to read as follows:

"ARTICLE XIII

"TRANSITION SCHEDULE

"Section 1. SCHEDULE TO BE REMOVED AS EXECUTED.

"The following schedule provisions shall remain a part of this constitution only until their respective terms have been executed.

"On or before July 10 of each year the attorney general shall review the provisions of this schedule and shall certify to the secretary of state those that have been executed since the preceding review. Provisions so certified shall be removed from the schedule and no longer published as part of this constitution.

"Section 2. GENERAL TRANSITION.

"The rights and duties of all public bodies shall remain as if this constitution had not been adopted with the exception of such changes as are contained in this constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pur-

suant to this constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change has taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or laws enacted pursuant thereto.

"Section 3. PROSPECTIVE OPERATION OF NEW PROCEDURAL AND SUBSTANTIVE RIGHTS.

"Any procedural or substantive rights created for the first time by this constitution shall be prospective and not retroactive.

"Section 4. GENERAL EFFECTIVE DATE.

"Except as may be otherwise established by this schedule, the provisions of this constitution shall become effective on July 1, 1973, and the provisions of the constitution of 1889, as amended, shall be repealed, and of no further force and effect.

"Section 5. ACCELERATED EFFECTIVE DATE.

"1. The following provisions of the constitution of 1889 as amended shall be repealed, and of no further force and effect, on July 1, 1972:

"A. The third paragraph of section 216 of Article XIX as follows. 'Third: An industrial school and school for manual training or such other educational or charitable institution as the legislative assembly may provide at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.'

"B. Subsection 5 of section 1 of article 54 of the amendments as follows: '(5) The Normal and Industrial School, at Ellendale.'

"2. The following provisions of this constitution shall become effective on January 1, 1973:

"A. Section 5, 6, 7, 8, 9, 10, 11 and 14 of Article IV, Legislative Branch.

"B. Section 9 of Article V, Executive Branch.

"C. Section 6, 8 and 9 of Article X, Finance and Public Debt.

Section 6. DELAYED EFFECTIVE DATE.

"The provisions of section 22 of Article I, Declaration of Rights, shall become effective on July 1, 1976.

"Section 7. EXCEPTIONS AND PROVISOS.

"The provisions of Article V, Executive Branch, shall become effective as set out in this schedule, provided that all executive officials elected in 1972, shall complete the term of office for which they were elected. The legislative assembly shall by law provide for continuity in the transition from the system of executive government in operation prior to adoption of this constitution, to that now prescribed, in a way which will assure orderliness and an effective program of executive organization under the terms of this article.

"The provisions of Article VIII, Education, shall become effective as set out in this schedule, provided that the superintendent of public instruction elected in 1972 shall continue in office until the completion of his term. The board of public education shall not have the power to appoint an executive officer, until his term expires, unless a vacancy occurs after the board has been created.

"The provisions of Article IV, Legislative Branch, sections 5, 6, 7, 8, 9, 10, 11 and 14 shall become effective as set out in this schedule, provided that the lieutenant governor shall preside over the entire session of the legislative assembly beginning in January, 1973."

VICE PRESIDENT SAUGSTAD: Delegate Byrne.

DELEGATE BYRNE: Mr. President, I yield to Delegate Nething.

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

I believe that as you read through the schedule you will find most of the points self-explanatory; however, there may be some sections that you would like to have an explanation for, and the Committee will attempt to do that.

Section 1 talks about the schedule to be removed as executed, and you may

wonder, "Well, if we have the repealers, as we have talked about, why shouldn't they take care of it?" It is true that we do say here the effective date; however, there may be some sections where there is an overlapping and where the implementation of one section does not necessarily repeal that of another section.

So, to account for this or to govern this, we have placed Section 1 here and placed the responsibility with the Attorney General, so that he may review on the various occasions up to the last effective date which we have here — I believe it's July 1 of '76, and at that time, of course, it will be no problem, because it should all have been eliminated then; but that's the purpose of Section 1 — to make sure that he can advise the Secretary of State when this is done. This is, of course, important to the law profession, because it's got to be done someplace in a normal manner, and by the Attorney General's office notifying the Secretary of State, we will have given it that effect.

Section 2 is your General Transition Clause that might be called a boilerplate or a catch-all clause, but the purpose of it is to do just about what the — or exactly what the language says within it. We want it clear that the rights and duties of public bodies remain; that all laws, ordinances, regulations and rules not contrary to, remain in force, and the validity — we want to insure the validity of all public and private bonds, actions, suits, and so on. In addition, all officers filling any office by election or appointment will continue until their office has been abolished by the Constitution. So this is a phrase that we feel takes care of all these things that we can't see at the present time, but problems that may occur.

Section 3 provides that any of the procedural or substantive rights that are created in this Constitution are prospective and not retroactive, and any of these particular rights take effect and govern only in the future, not in the past.

Section 4 is the General Effective Date of the Constitution, and we feel the date that has been selected is a logical one. July 1 of '73 will permit the '73 session of the Legislature to act in the areas where we have told them they must act. We bring about the new things in the Constitution as quickly as possible thereafter. Now, it may well be that they will not have been able to complete everything that they have to do; however, we think the bulk of the work will be accomplished and that this is a good effective date, with the exception of the exclusions that we do have.

With the body's permission, I think the Committee would like to explain the entire Proposal before we receive your questions, and I, therefore, yield to Delegate Billey.

VICE PRESIDENT SAUGSTAD: Delegate Billey.

DELEGATE BILLEY: Mr. Chairman and Fellow — it doesn't seem to be working.

Mr. Chairman and Fellow Delegates:

Section 4, as Delegate Nothing has pointed out, is a General Effective Date, and in Section 5, we get into what is called an Accelerated Effective Date, and under paragraph 1, subsection A and subsection B, we are proposing that the repeal of the two sections of the Constitution referring to the construction of the Ellendale School be effective on July 1st of this year. It's an advance of one year. The main reason for requesting that these two sections be deleted on that date, if this Constitution is approved and these two sections are removed, it will prevent a question from being placed on the primary election ballot in September asking for removal of them. If we can accomplish it at this time, it will advance the date by two months. It will help the people in Ellendale in transferring this property from the State of North Dakota to the community of Ellendale and eventually on; and I would urge your support of it.

I yield to Delegate Sinner.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President: The effective date of January 1, 1973, for several sections of the new Constitution is an effort on the part of the coordinating committee to provide the next session of the Legislature the eighty days that we think that session, especially, will need to deal with the problems that the implementation of the new Constitution brings about.

You may wonder why we went to 1 January 1973 when the present Consti-

tution allows the Legislature to have its organizational session in December of 1972. It was the feeling of the Committee that in this year, with the amount of work that the Legislature must accomplish before the general effective date of 1 July 1973, that the Legislature may, in fact, want to use all or most of the eighty days that it is allotted for the coming biennium under the new Constitution. We, therefore, had thought that if the Legislature could organize in December and begin the work of introduction of bills, that this might be a real advantage to the Legislature. We, therefore, are suggesting that the old Constitution remain in effect until the 1st of January to allow them to have the organizational session.

If you want to follow along or look at some of the sections that are referred to, in the front of the proposal book, about the fourth one of the pink sections, is the legislative article in its present form, and in case questions come up that you may want to look at, that's where you'll find it.

The first section that we are proposing to have go into effect is Section 5, which deals with reorganization. Now, obviously, the reapportionment commission and its work will not take effect until before the 1974 elections; however, we felt that, for several reasons, we should put this section into effect so that the Legislature could pass the necessary laws, do the necessary funding, and so that the commission itself could begin its work. There's a good deal of statistical work necessary, in addition to the organizational work of the commission.

Section 6 is the section that provides that the Legislature shall provide the machinery for electing one-half of the members of the Legislature every two years. We felt that this section, too, needed to be dealt with by the Legislature in the coming session.

Section 7 is the section that provides for the eighty-day session.

Section 9 is the new enactment clause which the Committee felt was necessary for the new lengthened session of the Legislature.

Section 10 was the open-session section. There were a few members of the Committee that thought that the effective date of that section should be 1 July 1999. (Laughter) However, that opinion was not the consensus.

Section 11 is the section dealing with immunities, and we felt it appropriate for the Legislature to have that section in effect.

Section 14 is the section dealing with compensation. This will allow the next session of the Legislature to deal with the question of compensation for the first really official session of the new Constitution, which will really be two years later, and establish for that session a compensation that will be appropriate for the new forum.

Finally, the other section that I'm going to comment on is Section 9 of Article V — the Executive Branch — and that follows immediately after Legislative Branch in your book, and it is the veto section of the governor which the Committee felt should also be in effect for the new format of the Legislature.

I'll yield then to Delegate Burke.

VICE PRESIDENT SAUGSTAD: Delegate Burke.

DELEGATE BURKE: Mr. President. Sections 6, 8 and 9 of the Article X are the finance sections. Section 6 is the highway users fund. And this body made a slight change in this provision by saying, "The legislative assembly shall provide for the deduction of funds from these revenues for enforcement of highway safety, driver education, and tourist promotion and for administrative collection costs," and the transition committee believed that the Legislative Assembly meeting in January '73 should be in a position to exert this power.

Section 8 refers to the State debt provision, and we believe that, because of the possibility of institutional revenue bonds, the Legislature might wish to exercise the privilege under this provision of guaranteeing, and we believe that it should go into effect January 1, '73 to carry out the intent of the Finance and Taxation Committee so that the payment of any debt obligations would not be financed out of the property tax.

The next provision, 9, says the political subdivision debt. As you know, by the removal of personal property from the assessed valuation of property in a political subdivision, many school districts and cities are hurting because of a low

assessed valuation, and the present five percent in Section 9 was increased to eight percent, and because these political subdivisions will be required to have a new election to raise the debt limit, we believed that this should go into effect as early as possible to alleviate any hardships that school districts and other subdivisions are now encountering under the present debt limits.

I would now yield to Mr. Thompson — Delegate Thompson.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: Mr. President, we discussed Section 22, which, of course, is the one on governmental immunity, and we felt that there would have to be at least two sessions of the Legislature to cover this. The first one, of course, they undoubtedly will have to have a study of what areas are going to be responsible for negligence; and then, of course, they're going to have to have an insurance study to determine the premiums, and then they'll have to have another study to figure out how to pay for it, and then you have to give your political subdivisions time to determine a method of payment and, also, for that second area, back to July, we felt they had to get by their budget area, as most of their budgets are in in June. So we felt that we'd have to go to the July 1 of '76; and I yield to Delegate Hill.

DELEGATE HILL: Mr. President.

Section 7 is some exceptions to the effective date of July 1, 1973, and July 1, 1973 is the date that the executive article will go into effect, except that the officers of the Executive Branch elected in 1972 would complete the term of office for which they were elected.

We discussed briefly the idea of having the executive article not go into effect until 1977, in January, which is the date that the executive officers elected in 1972 leave office, but we felt that the problems that are caused by executive reorganization are such that the Legislature in 1973 and 4 and 5 and 6 should be continuously working on the executive reorganization and, simply, the duties of the current executive officer are not guaranteed by the Constitution; there may be some slight shifting of these duties prior to completion of the term of their office; but they will substantially have the same duties as they have now until they finish their term of office. But we feel, for the main part, the ideas set forth in the executive article should begin to be implemented as soon as possible, and that date is July 1, 1973.

I now yield to Delegate Billey.

VICE PRESIDENT SAUGSTAD: Delegate Billey.

DELEGATE BILLEY: Mr. Chairman. Fellow Delegates:

In the second paragraph of Section 7 we are referring to Article VIII, Education, and if you will recall Article VIII, we're calling for the creation of a new State Board of Public Education which shall have the power to appoint an executive officer. This executive officer will be the replacement for the Superintendent of Public Instruction, and I believe the Committee is recommending an orderly transition in this paragraph from the old system to the new system. You will note that we do make provision that, if the Superintendent of Public Instruction elected this year should, for some reason, fail to complete his term and there should be a vacancy, the Board could appoint someone after the Board has been created.

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

The last paragraph on Exceptions and Provisos is one we feel is pretty important. You will recall when we passed the executive article, that we removed the lieutenant governor as the presiding officer of the Senate. This is the authority in the current Constitution. Section 8 of the legislative article provides that the Senate and House shall elect its own members as presiding officer — one of its own — at the beginning of each session. To further complicate the situation, we are implementing the executive article on July 1 of '73, which, of course, repeals the fact that the lieutenant governor is the presiding officer and really implements Section 8 under the legislative section as of January 1, which says that the House and Senate shall elect their own presiding officer. So we have created

a conflict for ourselves and we have recommended that it be resolved by having the lieutenant governor preside over the first session.

Now, the net effect of this will be that — in maintaining the status quo, as far as his job is through the first session, and that as of July 1, when the executive section is implemented, that the governor will then also prescribe additional duties for him. It is our feeling that we must be fair to the individual who is running for that office and give him duties as all of the other state officials at the time they take office, which would be in early January of '73, and it is our recommendation to you that we let him preside over the first session, even though that first session under the new legislative proposal may run past July 1, at which time the governor will be prescribing additional duties for him.

On the matter of questions, it would be my thought, if you have any questions, if you will just direct them to the Committee, and there's various people on the Committee that represent different — that represent the substantive committees that might be able to expand further.

At this time I yield to Delegate Byrne.

VICE PRESIDENT SAUGSTAD: Delegate Byrne.

DELEGATE BYRNE: Mr. President: Just a word of explanation as to how the Committee proceeded. We contacted the chairman of each one of the substantive committees a few weeks ago and asked them to review the sections that they had considered in line with the thoughts or the problems that they thought may be faced in connection with the transition dates, and it is from those recommendations that we received from the several committees that we began our work and came up with the proposal as outlined here today.

VICE PRESIDENT SAUGSTAD: Delegate Hoghaug.

DELEGATE HOGHAUG: I have a question of somebody on the Committee.

On the sample ballot for the proposal, I'm assuming, for sake of argument, that the 18-year-olds should be declared adults for all purposes. If that proposal should pass, then does Section 4, the general effective date, take over, or is there a possibility of a question mark there?

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Mr. President and Delegate Hoghaug.

The effective date of that provision as far as 18-year-olds or any of the items in the Declaration of Rights — Bill of Rights — the effective date is July 1, 1973, with the exception of Section 22. There was no earlier acceleration date for that particular subject.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I have two questions of the Committee.

In Section 4, you state that the new Constitution shall become effective on July 1, 1973, and then you go on to say that the old Constitution shall be repealed. I presume you intend that to be the same date — July 1, 1973 — except where inconsistent.

DELEGATE NETHING: That's correct.

DELEGATE KELSCH: And the other question is down on subsection 2 or numeral 2 of Section 5. You state that all the provisions of this Constitution shall become effective on January 1 of '73. I wonder — at that particular time, our old Constitution will also still be in force because it would not go out until July of '73. I wonder if we shouldn't also say that any provisions of the old Constitution in conflict with these sections will not be — will be deemed repealed, so that there couldn't be a question of two constitutional provisions governing the same subject.

VICE PRESIDENT SAUGSTAD: Does anyone wish to answer that question? Delegate Sinner.

DELEGATE SINNER: Mr. President, I thought we dealt with that, unless it was overlooked. I know we talked about it. Is it in there? Anybody on the Committee remember? I suspect we did overlook that. Perhaps, Mr. Chairman or Mr. President, we can go on to the other questions and someone can get an amendment ready on that.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: Well, I'm wondering if the second sentence in Section 2, under General Transition, doesn't cover it, where it says, "All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this constitution." I wonder if that doesn't cover it.

VICE PRESIDENT SAUGSTAD: Are there any further questions? Delegate Hendrickson.

DELEGATE HENDRICKSON: Mr. Chairman: I'd like to know — I think perhaps I'd like to ask Delegate Sinner this, if I could: Did you think it at all necessary to put anything in in connection with Article IV of Section 2, terms of office which shall be changed, or with Section 1, in case there is a unicameral alternate? Where is he?

DELEGATE SINNER: Mr. President. The Committee felt that that eventuality would not provide a serious problem; that there would have to be some reasonable determination of the switch, but that the reapportionment commission could deal with that problem after the effective date of April — or of July 1, '73.

VICE PRESIDENT SAUGSTAD: Any further questions or discussion? Delegate Byrne.

DELEGATE BYRNE: If we can just be at ease for a moment, I believe Delegate Kelsch has got an amendment.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: I would move, and I'll send my hand-scribbled note down in a second — I would move that on Section 5, the paragraph entitled No. 2, before the colon in the first sentence, add the words "and provisions of the Constitution of 1889 which are in conflict with these sections shall be deemed repealed as of January 1, 1973" — before the colon, yeah.

VICE PRESIDENT SAUGSTAD: We'll wait then until this proposed amendment is typed.

Is there any further discussion? Delegate Dobson.

DELEGATE DOBSON: Mr. President: Not picking on the amendment, but just bringing up something to think about: If Section 9, for example, the legislative article, is going to go into effect on January 1st, we may have a little problem if the voters vote for a unicameral legislature, because, as I understand it, the effective date of the unicameral legislature would not be until July 1st; but you would have procedures in the Constitution going into effect on January 1st with the bicameral legislature in session.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: I went through those sections with one of the staff this morning and there are no serious problems that we can see. There are some cases where some maybe liberal interpretation of language would be necessary; but there's nothing of any consequence in there that I can see will present a problem. I think the staff attorney had the same feeling about that.

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I think in the unicameral draft, if that's adopted, that would be that Section 9 is put in. Of course, you've got a bicameral legislature, but do you think they could still operate under the proposal?

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: That was the question, I think, that Delegate Dobson raised, and that was what we reviewed this morning, and there's — I think you should maybe look at it before we adopt this and see whether you concur with our judgment. We could see no serious problem at all in that eventuality.

VICE PRESIDENT SAUGSTAD: The proposed amendment suggested by Delegate Kelsch will be read by the Chief Clerk.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-121:

Page 2, line 28, before the colon, insert the following:

“and provisions of the Constitution of 1889 which are in conflict with these sections shall be deemed repealed as of January 1, 1973”.

VICE PRESIDENT SAUGSTAD: Is there a second to this motion?

DELEGATE GRIFFIN: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Griffin.

Is there any further discussion on this proposed amendment?

DELEGATE UNRUH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I think it would be wise, Delegate Kelsch, if we inserted the words 1889 “as amended” as we have been doing all the way through. I so move the amendment to the amendment — after “the Constitution of 1889” we insert the words “as amended”.

VICE PRESIDENT SAUGSTAD: We have a further amendment offered by Delegate Unruh which would add the words, after “1889”, “as amended”, and the motion is seconded by Delegate Thompson, and this is an amendment to the amendment. I believe that, again, I shall repeat that this is an amendment to Delegate Kelsch’s proposed amendment to make it consistent, adding the words “as amended” after “1889”.

I shall now put that motion. If you vote “aye,” you vote to adopt the amendment to the amendment.

All those in favor signify by saying “aye;” those against, “no.” The “ayes” have it. The amendment is adopted — the amendment to the amendment is adopted.

Now we revert to the main motion as placed by Delegate Kelsch.

Is there any further discussion? Delegate Cart.

DELEGATE CART: Could we have the amendment as amended read now?

VICE PRESIDENT SAUGSTAD: Yes. The Clerk will read the amended — the amended proposed amendment.

CHIEF CLERK GILBREATH: Proposed amended amendment to Committee Proposal 1-121:

Page 2, line 28, before the colon, insert the following:

“And provisions of the Constitution of 1889 as amended which are in conflict with these sections shall be deemed repealed as of January 1, 1973.”

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, we’re on the motion of Delegate Kelsch to adopt the amendment which was just read from the desk.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: I wonder if you need to repeat the date. Wouldn’t it read better to say, “at this time”? Will Style and Drafting get it? Okay.

VICE PRESIDENT SAUGSTAD: Hearing no further discussion, we are now on the motion of Delegate Kelsch to adopt the amendment which was read from the desk.

I am now about to put the motion. All those in favor, signify by saying “aye;” opposed “nay.” The “ayes” have it. The motion carried. The amendment is adopted.

DELEGATE HOFFNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Delegate Dobson and Delegate Sinner were concerned a little while ago about should the unicameral go into effect, and I think possibly they should be thinking about a later date for effectiveness, so the Senators can readjust to normal life. (Laughter)

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I have two questions on the two alternates we have now adopted. One is unicameral. Do I contemplate that the Committee views that the Legislature of 1973 would be bicameral, regardless of the vote of the people on the unicameral question?

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President. That's correct.

DELEGATE KELSCH: Then I wonder if we shouldn't say that the unicameral provision will be effective in January 1974, if passed, because you'd have a bicameral legislature that could meet throughout the biennium of '73 — throughout the year — actually, '74 they could meet, and we have a constitutional revision that becomes effective in July '73, saying it should be uniform.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Good point!

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: The other question I have: If we say the Constitution comes into effect on July 1st, and I want to refer a measure passed by the Legislative Assembly, which is passed in April, would I use the old Constitution or the new Constitution?

VICE PRESIDENT SAUGSTAD: Anyone on the Committee wish to answer that question?

DELEGATE NETHING: Yes.

VICE PRESIDENT SAUGSTAD: Delegate Nothing.

DELEGATE NETHING: I understand the question, but what is the problem? You're thinking of the laws that are implemented by the '73 session?

DELEGATE KELSCH: Presently the Constitution provides for seven thousand signers to refer a measure. If the voters raise that two percent as a result of our alternate proposal on that issue, that will go into effect on July 1st. I suppose the old Constitution would still be effective to refer any measure passed by the '73 Legislature before July 1st. Is that right?

DELEGATE NETHING: That's correct. Now, Mr. President —

VICE PRESIDENT SAUGSTAD: Delegate Nothing.

DELEGATE NETHING: Delegate Kelsch, I kind of was confused by your question regarding the unicameral replacing the bicameral, and I'm wondering if the provision that we have on the top of page 2 whereby everyone retains their office until the office has been abolished or its successor selected wouldn't govern that. In other words, those of us, like we old Senators, as the young Representative Rundle likes to call me, if it's a unicameral body, why I presume I'm no longer a legislator. The Senate would be abolished and me with it.

DELEGATE KELSCH: Well, Mr. President —

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: I could be elected in the fall of '72 for a four-year term in the Senate, and I would only — I would only be able to serve two years, and I wonder if we shouldn't address ourselves to that; that those terms will just end, unless you think that applies when you say in one place they shall continue on with their term. How could they be serving?

DELEGATE PAULSON: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Paulson.

DELEGATE PAULSON: I think I can resolve that. There will be a reapportionment in either case, and I'm sure that the terms will expire at the end of two years and it will apply to '74, regardless of whether it's bicameral or unicameral.

DELEGATE RUNDLE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Well, to answer further to Delegate Kelsch, I think the Senators could serve as sergeants-at-arms. (Laughter)

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Before this humor overcomes me, I wanted to ask a further question — a serious question — on the latter part of the present Section 7. I think Delegate Kelsch's amendment took care well of Sections — of the sections mentioned in subsection 2 of Section 5, but, in Section 7, which will have some of these elected State officials that will be serving for four years from the time they're elected, beginning in 1973, and yet we — it seems to me we should have some type of amendment in that section, because part of thir term they will be serving without the old regulations of the Constitution, because they would have been repealed on July 1st. Now shouldn't we clarify that somewhere, too?

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

As we discussed the matter of transition, which was from the time that the new executive article comes into effect, and we still retained the elected officials, we felt that the language at the middle of line 6 on page 3, whereby we — we say that the Assembly shall provide for the continuity and transition from the system of executive government in operation prior to adopting this Constitution to that now prescribed. In a way, that will secure — that will assure orderliness and an effective program of executive organization under the terms, and we felt that this was the — this would cover it. We didn't know how strong we could be in our language. We have to give the Legislature some latitude to accomplish this. But we did feel that it is important for them to start working on this at their earliest opportunity, and this is the intention of that paragraph, so that somebody — if the Legislature doesn't say, "Well, I'm sorry, Mr. Insurance Commissioner," or whatever office it might be, "you're just going to draw your paycheck and not have anything to do." We, by putting this language in, wanted to direct the Legislature to see to it that it is orderly and provides for an effective executive performance. I don't know if it's strong enough that way, but that was our intent.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: Mr. President. I would like to refer once more to the concern about the event of a unicameral approval. In Section 7 of the legislative article, the last sentence provides that neither house may recess or adjourn for three days without the consent of the other. If the alternate were accepted, that sentence has been removed from Section 7 in the unicameral, because it's only one house, so it would not then, I assume, govern the 1973 Legislature. That might not be a problem. But with all of the things they have to do because of this Constitution, it might be a problem, and I'm just a little concerned about that.

Then, secondly, in Section 9, which goes through all the procedures as to what the House does and what the presiding officer does, et cetera, they may be minor things, but they do worry me a little bit in that respect.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President, I think that we could possibly construe some problems there, if we stretch the point; however, I think that all of the provisions of the one-house section — procedural section — can very easily be followed by the Legislature. As a matter of fact, the Legislature already does everything that is suggested in that section, and that's why I think that it's not a point that we should address ourselves to.

I also think that, in answer to the question that Delegate Kelsch raised about the effective date of July 1, 1973, that the language that Delegate Nething referred it does cover the question, because the reapportionment commission will be in effect and will be reapportioning the legislature for the 1974 election. It, therefore, will provide for the termination of those terms, if the one-house system is going into effect, without a doubt.

Now, the other — for the end of the '73 session, say they do — the Legislature does decide to split the session and meet in January, let's say, of 1974, the offices will be protected under the catch-all clause at the bottom of page 1 and the top of page 2.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Kelsch.

DELEGATE KELSCH: Mr. President, do I understand then, Delegate Sinner, that you do not think it is necessary for us to say that, say, Section 1 of the

alternate unicameral would not be effective until January 1, 1975? If we were to take that one out and give it that effective date, that might clear up the air as to what kind of a legislature you had.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President: I guess I don't object to that. In looking at it though, I wonder if there weren't others that would have to be changed. That's why I was questioning whether we should pursue it. But maybe that's the only one. I'm not sure.

DELEGATE NETHING: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: For the information of the Assembly, I should mention that there were not enough on the Committee that seemed to favor unicameralism so that we really dug into it on this basis, and the dialogue here has got to be handled by those that proposed it, because some of us have not given it that much thought.

VICE PRESIDENT SAUGSTAD: Delegate Rundle.

DELEGATE RUNDLE: Mr. President: For those of us here who may have had and have gained political ambitions, when is the five-dollar-a-day pay for legislators going to be raised, and how would it affect — the Legislature can't raise its own pay. If it's going to be unicameral, the last bicameral would probably set that pretty low. (Laughter)

VICE PRESIDENT SAUGSTAD: Delegate Nething.

DELEGATE NETHING: Well, Mr. President and Fellow Delegates:

We don't really know whether it's going to be raised or not, but if it is raised, the provision that permits the Legislature to raise it affecting the following assembly goes into effect on the 1st of January of '73; so that the next legislative session will have the opportunity to set the schedule for the next session.

VICE PRESIDENT SAUGSTAD: Delegate Solberg.

DELEGATE SOLBERG: Mr. President: I am very concerned about this hurried-up business of putting this Constitution into effect following the Legislature. It seems to me that the Legislature has a full slate of business to take care of under ordinary circumstances; it's got all of the work that the interim committees have done during the interim period; it has appropriations and all of the other general work to do. It seems to me that it takes them about thirty days in their session to get going, under ordinary circumstances, and I don't think we really visualize here the tremendous amount of work that the Legislature is going to have to do just to put these ordinary things in the new Constitution into effect, to be ready for July 1st of 1973. There are many things that they must look into. We have spent in committees and in Plenary Session since April putting this thing together. They are going to have to look at it and then put into effect the necessary vehicles and instruments to put it into effect and make it function. Now, it seems to me we're hurrying this thing terribly, and I wonder if they have given any thought — or the Committee did give some thought — serious thought — to the possibility of not just having it July 1, 1973, but making it, instead, January 1, 1974. I wonder if they looked at the legislative possibility, because with the turnover in the Legislature that may come in this next election, of 25, 30 seats in the House, no experience, no background in legislative procedure — maybe some turnovers in the Senate, and so on; they've got a tremendous job of organizing themselves to do the regular work of the Legislature that always has to be done, and then all of this extra that we give them now, and then the time allotment that they have to do it in. I wonder if the Committee gave thought to this point.

VICE PRESIDENT SAUGSTAD: Does anyone on that Committee wish to answer Delegate Solberg? Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

As one of the legislators on the Committee, I wish to advise the Assembly that, yes, we did talk about the possibility of the ability of the Legislature or inability to perform, and it was felt that, and Senator Butler, also, as a legislator on the Committee, felt the same way — that by implementing the new legislative article early, so that they receive the benefits of that — not only the flexibility

that's there, but, also, the number of days — and in spite of what Delegate Solberg has said, because it is true that the regular work load at times is very heavy, but we did consider, and we feel that by having this new legislative article available to them, that they can get the work done. Now, whether or not they get it all done and whether or not they come up with the exact answer during the first session, we don't know. But we must keep in mind that we have to also show some enthusiasm for the Constitution as we have prepared it, and I think we can, very easily. I certainly am very enthusiastic about it, and I think that, in selling this to the voters, that if we create enthusiasm in them, they are also going to want to have the benefits of it as soon as possible. And we talked about delaying them in some areas as much as four years, so the Legislature can have two whacks at it, so to speak; but we just think that we have arrived at the best date as far as the public is concerned. We think we're being fair to the Legislature. And assuming, of course, that many of you delegates will run for the Legislature, with the knowledge that you have established here about what the Constitution is going to require. I think the job will get done.

I don't know if I've given you a direct answer, but that's kind of the way I see it.

VICE PRESIDENT SAUGSTAD: I believe Delegate Sinner — Delegate Sinner, did you bring an amendment to the desk?

DELEGATE SINNER: Mr. President: There is an amendment at the desk.

VICE PRESIDENT SAUGSTAD: Delegate Sinner, do you move the —

DELEGATE SINNER: I'm sorry, Mr. President. I move the adoption.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE SOLBERG: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Solberg.

The Clerk will read the proposed amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-121:

On page 3, line 1, after the period, insert the following:

"Section 1 of Article IV of the Unicameral Proposal, as in Alternate Proposal 4-1, if adopted, shall become effective December 1, 1974."

DELEGATE DECKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: Mr. President, I wonder if this effective date shouldn't be in an alternate proposal, rather than at this point.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: I thought about that, but you'd have to — you'd have to again say just Section 1, because all of the other things — all the other language would have to go into effect if you're going to have the 80-day, and I just think this is probably a cleaner way to do it.

VICE PRESIDENT SAUGSTAD: We are on the motion of Delegate Sinner that Committee Proposal 1-121 be further amended. On line 1, page 3, after the period, that the new language would be inserted.

If there's no further discussion, I'll put the motion. If you vote, "aye," you're voting in favor of the adoption of this amendment.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I feel that Delegate Decker had a good point, because if we do — we will have to pull this out of here eventually after you fix up 4-1 properly. It will have to be on that particular ballot one way or the other, and it means you're just going to have to pull this amendment out of here and readopt it again as an amendment.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: No, I don't think it has to be in the other ballot. None

of the other dates are. And as far as pulling it out of this language, all of this language will self-destruct at the proper time.

DELEGATE LONGMIRE: Well, I think that whole language on unicameral will be self-destructive at the proper time, but I think — (laughter) — but I think this language in here will still be effective when we vote on this Constitution or vote on this alternate proposal, and I think you'll have to pull it out of here sometime before you vote on it. That was the point.

VICE PRESIDENT SAUGSTAD: Delegate Cart asked for the floor.

DELEGATE CART: Well, I'd like to address a question to Delegate Sinner.

If I got your amendment right, in the event the unicameral becomes effective, it will become effective December 1 of '74. Is that correct? Why shouldn't it become effective, say, on July 1, prior to the elections?

DELEGATE SINNER: Well — Mr. President. The effective terms of the existing legislators run up until December, and there are boards and commissions and study work that must go on, and I am assuming that the reapportionment commission will make the necessary arrangements for the election without the — without disrupting the effective work of the legislative process during those six months. That was the reason that I chose the date I did, which will conform almost exactly to the determination of the legislative terms under the old Constitution.

VICE PRESIDENT SAUGSTAD: Delegate Cart.

DELEGATE CART: Well, do you think this can become effective so that the election can be held for unicameral, if it doesn't become effective until December 1, when the elections will be held in November and December?

VICE PRESIDENT SAUGSTAD: Delegate Hill.

DELEGATE HILL: Well, my suggestion to Delegate Kelsch fifteen minutes ago was to make a July 1st effective date. I agree with Delegate Cart, I don't think the reapportionment committee or anyone else has the authority to establish a unicameral system when the Constitution in effect at that time calls for a bicameral legislature. At least I would hate to vote for the amendment until I was more certain. Perhaps someone else has an answer to that question. But I would think that the 80-day session will not have been completed by July 1st, and so we at least would have some specific language in there to indicate that the election shall be for a unicameral legislature, if, in effect, that provision is adopted as an alternate.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, I have no feeling. I want to do it right. I'm at a loss, really, to know which is the best procedure here. I think we better — pardon me?

Well, Delegate Nothing is suggesting that we put it in the alternate itself, and I — that's all right with me, if that's the best procedure.

VICE PRESIDENT SAUGSTAD: Delegate Sinner, are you then withdrawing your proposed amendment?

DELEGATE SINNER: Mr. President, I'd like to ask the Chairman of the Coordinating Committee what his feeling about that is. If he wishes it in here as part of the transition article, I'd be happy to leave it or withdraw — whatever he prefers.

VICE PRESIDENT SAUGSTAD: Delegate Byrne.

DELEGATE BYRNE: Well, I'd like to have you and Delegate Sinner and Delegate Kelsch satisfied as to the date that you thought this problem up, if it is a problem — if it should be in here or if it's better to have it in another section. Is there any objection to making it July 1st?

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I think July 1st might be a good date, but I do think it belongs in the transition. If the electorate wants to find out when things go into effect, that's where we want to look, and not in the alternate proposal.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl, I think, has asked for the floor.

DELEGATE OMDAHL: Mr. President, I move to amend the amendment to read, "July 1."

VICE PRESIDENT SAUGSTAD: All right. Is there a second to that amendment?

DELEGATE DOBSON: Second.

VICE PRESIDENT SAUGSTAD: Delegate Dobson has seconded Delegate Omdahl's amendment.

Omdahl has moved an amendment to the proposed amendment, and he would change the date to become — it shall become effective July 1, 1974. July instead of December.

Hearing no further discussion, we will — did you wish the floor, Delegate Omdahl?

DELEGATE OMDAHL: I've been counseled further, Mr. President. It seems to me that we should take some time on this thing and not be slapping things together with Johnson's adhesive tape here, and that this should be deferred, if we could defer action on this, until we get those dates straightened out. Five minutes now might save us six months of worry later on.

DELEGATE SINNER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: It was my thought on this that we should go ahead and amend it and then not take final action today, unless we have to, for some reason. Get it as good as we can now, and then we'll review it overnight and check these out.

VICE PRESIDENT SAUGSTAD: The Chair would like to ask Delegate Unruh, who is the Chairman of the Style and Drafting Committee, if — the Chair foresees some possible difficulties here in relation to having this examined by the Style and Drafting Committee. Delegate Unruh, would you have any statement to make?

DELEGATE UNRUH: Well, Mr. Chairman, if the amendments carry, I think we could look at the proposal then at our meeting tonight and get it in good form, and then, if there's some minor amendment tomorrow, why I'm sure we can have the floor check it as it goes through.

VICE PRESIDENT SAUGSTAD: We are now then on the — let's see. I think we're on Omdahl's amendment to the amendment as proposed. So Delegate Omdahl has moved that we delete "December 1" and insert in lieu thereof "July 1, 1974".

Does everyone understand the amendment to the amendment?

The Chair will then now put the question. If you're voting "aye," you're voting in favor of Omdahl's amendment, which is to change the date to July 1, 1974.

All those in favor, signify by saying "aye;" opposed "no." The "ayes" have it. The motion carried, and the amendment to the amendment has been adopted.

Now we revert to the amendment as proposed by Delegate Sinner.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Well, Mr. President, from the period of July 1 to December 1, 1974, there will be legislators working on interim committees and study committees of the LRC, and so forth. Now I assume there's nothing in this date that will interfere with their continuing to hold their term of office until December 1st. If there is, however, there would be a serious situation there because you'd have that period when you didn't have a legislature to do any study work for the coming session of the Legislature in '75.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: I'm wondering if the language on page 1 and 2, beginning with the very last word on page 1 and continuing at the top of page 2, where it says, "All officers", and so on, wouldn't cover that point and take care of the interim work of the legislators until their successors were qualified. Would it not?

DELEGATE LONGMIRE: Possibly.

VICE PRESIDENT SAUGSTAD: We are now on the amendment as proposed by Delegate Sinner.

If there's no further discussion — actually, except for the little few extra words that tell us where to go, it's the same amendment as was adopted when we adopted Omdahl's amendment. But, again, it changes the effective date and tells us where to put it — on page 3, line 1, after the period, and so on, of Section 1.

I am about to put the motion.

All in favor, signify by saying, "aye;" opposed "nay." The "ayes" have it and the motion is carried and the amendment is adopted.

Delegate Dobson.

DELEGATE DOBSON: I have a further amendment at the desk I would like to move at this time.

CHIEF CLERK GILBREATH: Proposed amendment to Committee Proposal 1-121:

On page 2, after line 33, insert the following:

"D. Article III, Powers Reserved to the People."

And renumber the lines accordingly.

VICE PRESIDENT SAUGSTAD: Is there a second?

DELEGATE BASSINGTHWAITE: Second.

VICE PRESIDENT SAUGSTAD: Delegate Bassingthwaite seconded the motion.

All right. Now, Delegate Dobson.

DELEGATE DOBSON: Mr. President: What this amendment would do, very simply, is move up the effective date of the people's article from July 1, '73 to January 1, '73, and I think that's when it should go into effect. If the people at the special election vote an increase in the number of signatures required to initiate or refer, I think they're going to expect that increase to take effect for the next legislative session. On the other hand, even if they vote to keep the present seven thousand and ten thousand, we should still put our new people's article into effect at an early date, because old Section 25 has so many holes in it. So, either way, I think it would be best to put "Article III, Powers Reserved to the People", in effect on January 1, '73 and resolve some problems.

VICE PRESIDENT SAUGSTAD: Any further discussion? Delegate Nething.

DELEGATE NETHING: Mr. President and Fellow Delegates:

The Committee did not consider this because the Committee that handled Article III did not recommend it to us, and I don't know — the things that were explained — the many ramifications — so the Committee just didn't touch it. So I suggest that anybody that has any comments make them now.

VICE PRESIDENT SAUGSTAD: Delegate Sinner.

DELEGATE SINNER: Mr. President. The only reason that the Legislative Functions Committee did not recommend this, and, as I recall, there were strong feelings about it, but was that the idea was that as many as possible of the provisions of the new Constitution should go into effect on a uniform date, and I have no objection to the motion, however. But that was the reason.

VICE PRESIDENT SAUGSTAD: Any further discussion? Hearing none, we're on the motion of Delegate Dobson that on page 2, following line 33, that the language which was read from the desk be inserted — Section 3, Article D., and so on.

I'm about to put the motion. If you vote "aye," you're voting to adopt the proposed amendment.

All those in favor, signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carried. The amendment is adopted.

Are there further amendments? Further discussion? Delegate Byrne.

DELEGATE BYRNE: If there are no further questions, Mr. Chairman, I move that Committee Proposal No. 1-121, as amended, be considered properly re-engrossed and placed on first reading and final passage.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE FALLGATTER: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Fallgatter. And we're now on the motion of Delegate Byrne that we suspend the Rules and consider Committee Proposal 1-121 be properly re-engrossed as amended and be placed on the calendar for final passage.

I will now put the vote. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carried

Now we have before us Committee Proposal 1-121 on the calendar ready for — or ready to be voted upon. Any further questions? If not, the key will be opened and you may cast your vote. Saugstad votes "aye."

Has everyone voted? Has everyone voted?

Pearce and Fiedler, how do you vote?

DELEGATE FIEDLER: I vote "aye."

DELEGATE PEARCE: I vote "aye."

CHIEF CLERK GILBREATH: Fiedler votes "aye." Pearce votes "aye."

DELEGATE MAXWELL: Maxwell votes "aye."

VICE PRESIDENT SAUGSTAD: Has everyone voted?

CHIEF CLERK GILBREATH: Would someone push Delegate Pearce's?

VICE PRESIDENT SAUGSTAD: Does anyone wish to change their vote? If not, the board is closed and the Clerk — Delegate Cart, how do you vote?

DELEGATE CART: "Aye."

VICE PRESIDENT STAUGSTAD: Cart votes "aye."

The board is closed and the Clerk will take the record. This is first passage.

The record shows 94 "ayes," no "nays," four absent and not voting. So Committee Proposal 1-121 has been passed.

DELEGATE DAWSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Dawson.

DELEGATE DAWSON: May we be on the twelfth order?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE DAWSON: I would like to move that Committee Proposals 1-31, 1-35, 1-141, 1-42, and 1-69 be returned from the Committee on Constitutional Ballot.

VICE PRESIDENT SAUGSTAD: Is there a second? Seconded by Delegate Erickson. You may proceed.

DELEGATE DAWSON: The reason for this, Mr. President and Delegates, is that these were referred to us by the Legislative Committee, and they all dealt with unicameral, and they have been taken up in the body of the unicameral alternate that we proposed, and I believe Delegate Hoffner will move for withdrawal.

VICE PRESIDENT SAUGSTAD: The motion of — we're on the motion of Delegate Dawson that our Committee Proposals 1-31, 1-35, 1-41 and 1-69 be — what was that? — be returned from the Committee on Constitutional Ballot to the House — or I mean to the Convention. And seconded by Delegate Erickson.

We're on the motion now of Delegate Dawson, and I'm about to put the motion. If you vote "aye," you vote to return these proposals to this Convention.

All those in favor, signify by saying "aye;" opposed "nay." The motion carried.

Now we have before us these committee proposals. Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I now ask the unanimous consent to withdraw Delegate — or Committee Proposals 1-31, 1-35, 1-41, 1-42, and 1-69.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner has asked for the unanimous consent to withdraw Committee Proposals 1-31, 1-35, 1-41, 1-42 and 1-69.

Is there a second to that?

DELEGATE FRITZELL: Second.

VICE PRESIDENT SAUGSTAD: Delegate Fritzell seconds the motion.

Now — no, this is just a request to withdraw. I'm sorry. Does anyone object? Is there any objection? Hearing none, permission is granted to withdraw.

Next we will have the Committee Report from Style and Drafting.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Alternate Proposal No. 4-1, has had the same under consideration and recommends that the same be amended; and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moved that the Report be adopted.

VICE PRESIDENT SAUGSTAD: Delegate Unruh, do you wish to have this follow the formal procedure or do you wish that we suspend the Rules.

DELEGATE UNRUH: Mr. Chairman, suspend the Rules for what purpose?

VICE PRESIDENT SAUGSTAD: To adopt the amendments. You see, under normal circumstances, this would go on the sixth order.

DELEGATE UNRUH: Yes, we'd better suspend the Rules, Mr. Chairman.

I move that the Rules be suspended and we consider this on the eleventh order.

VICE PRESIDENT SAUGSTAD: Delegate Unruh has moved that the Rules be suspended and that the Committee amendments be — as proposed by the Committee on Style and Drafting, be adopted.

I think I'm just going to call for a voice vote on this, because I think everyone understands what the situation is, even though we are suspending the Rules.

So we're on the motion of Delegate Unruh to suspend the Rules so that these amendments can be adopted.

I'm now going to put the motion. All those in favor, signify by saying "aye;" opposed "nay." The "ayes" have it and the Rules have been suspended, so that we now have under consideration the adoption of these amendments.

The Clerk will read the proposed amendments.

CHIEF CLERK GILBREATH: Proposed amendments to Alternate Proposal No. 4-1:

Do you have Alternate 4-1 in your book? It should be a blue one in the back of your book.

DELEGATE LANDER: We don't have the amendments, though — right.

DELEGATE HAUGEN: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen.

DELEGATE HAUGEN: It wouldn't happen to be this white one that's being amended?

CHIEF CLERK GILBREATH: Yes, the white one. Yes, yesterday's. It was amended.

Proposed amendments to the engrossed Alternate Proposal 4-1:

On page 2, line 3, delete the word "this" and insert in lieu thereof the word "the" and delete the words "shall be" and insert in lieu thereof the word "is".

On page 2, line 4, delete the word "chamber" and insert in lieu thereof the word "house"; delete the words "a minimum of" and insert in lieu thereof the words "not less than"; and after the word "members" delete the comma.

On page 3, line 34, delete the word "Every" and insert in lieu thereof the words "To be enacted or adopted, every" —

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: May I request that the Clerk refer to the sections as he reads the pages, and so forth? I don't think anybody corresponds down on this end.

VICE PRESIDENT SAUGSTAD: The difficulty is that the report at the desk does not contain this information. I wonder if Chairman Unruh could perhaps help clarify this problem.

DELEGATE UNRUH: Well, Mr. Chairman, it's a little hard to relate it from the amendments, I realize. If you'll go to your Proposal 5-12, that could be in the

pink sheets at the very front of your book, if you'd prefer — and it's easier to find — those are the engrossed Style and Drafting redrafts. At the very front of your book, 5-12, and there you see, under Section 1, referring to the legislative power of the State.

Now, the alternate proposal has not been presented in its engrossed form, so we're a little at a loss to relate to the pages. Now where, Mr. Clerk, can we relate to those?

CHIEF CLERK GILBREATH: I think I can fit in the articles. It's Article III, evidently, and then I can call the sections.

DELEGATE UNRUH: If you'd call the section on it, I think we could then relate it to 5-12 and see what we're doing, because all we're doing is converting from bicameral to unicameral and cleaning up the language, we think.

CHIEF CLERK GILBREATH: All right. The first amendment would be Article IV. It would be the first sentence then under the Section 1, under Legislative Assemblies, and they are saying delete the word "this" and insert in lieu thereof the word "the" and delete the words "shall be" and insert in lieu thereof the word "is".

And in the same Section 1, would delete the word "chamber" and insert in lieu thereof the word "house"; delete the words "a minimum of" and insert in lieu thereof the words "not less than"; and after the word "members", we're deleting the comma.

Then we're going over to Section 9, "Enactment of Laws." In the third paragraph, delete — delete the word "Every" and insert in lieu thereof the words "To be enacted or adopted, every" and after the word "bill" delete the word "and" and insert in lieu thereof the word "or."

Then, in the same paragraph, after the word "consideration", delete the word "before final passage" —

DELEGATE LANDER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lander.

DELEGATE LANDER: There were two "everys"; is it the first one or the second one, Mr. Clerk?"

CHIEF CLERK GILBREATH: It would be the first — the first one — the capitalized "Every". That would be the first one. Delete the first "Every" at the start of the paragraph, and then insert in lieu thereof "To be enacted or adopted, every".

And after the word "bill" delete the word "and" and insert in lieu thereof the word "or".

And further on in the second sentence, delete "before final passage" —

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I can read that sentence to the body under Section 9, "Enactment of Laws," in the third paragraph. It will read this way: "To be enacted every bill or resolution shall have a public hearing — to be enacted or adopted every bill or resolution shall have a public hearing and two considerations."

DELEGATE KWAKO: That's the second sentence.

CHIEF CLERK GILBREATH: Now we'll go to Section 6, "Executive Organization." This would be in the second paragraph. After the words "The legislative assembly" that would be in the second sentence in the second paragraph, under Section 6. After the words "legislative assembly", delete the period and the word "The," and insert in lieu thereof a comma and the word "which". And then delete the words "The legislative assembly".

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I can explain this one so it will help Roy, I think.

What we have done is put two sentences together, so it reads this way: ". . .

until change set forth in the executive order and submitted to the legislative assembly, which shall have thirty days to submit the order." And then down below, in Section 9, it would be exactly the same way with these two sentences together.

Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: Under Article XI, which is on page 9, we changed the section number from 7 to 11. This is on impeachment. The wrong section number was used. Then, down on the fourth line, we added the words "The legislative assembly shall have the power of impeachment by a vote of —

CHIEF CLERK GILBREATH: — "of a majority of the members elected."

DELEGATE UNRUH: Yeah.

CHIEF CLERK GILBREATH: Then further down under Section 7, on ballot form, they deleted —

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: We just put hyphens between the words "two-house" and "one-house."

CHIEF CLERK GILBREATH: They hyphenated the words "two-house" and "one-house" in Section 7.

VICE PRESIDENT SAUGSTAD: Delegate Unruh, do you care to comment any further on the amendments?

DELEGATE UNRUH: No.

VICE PRESIDENT SAUGSTAD: Then we're on the adoption of the Committee Report to adopt the amendments which have been read from the desk and from the floor. If there's no further discussion, I'm about to put the motion.

All — if you vote "aye," you're voting to adopt the amendments which have just been under discussion.

I am now about to put the motion. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it and the amendments have been adopted.

Now, Delegate Unruh, do you wish to move to —

DELEGATE UNRUH: Mr. Chairman, I now move that Alternate Proposal 4-1 as amended be placed on — the Rules be suspended and it be placed for final passage.

VICE PRESIDENT SAUGSTAD: And that it's properly re-engrossed.

Delegate Unruh moves that the Rules be suspended, that Delegate Proposal — I mean Alternate Proposal 4-1 be deemed properly re-engrossed as amended and be placed on the calendar on eleventh order.

Is there any further discussion? That motion was — yes, that will be for second reading. I need a second to that motion. Delegate Sullivan.

I am about to place the motion now of Delegate Unruh.

All of those in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carries. We now have before us Alternate Proposal 4-1 as amended and on the eleventh order for second passage.

Any further discussion? Hearing none — Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, a point of inquiry:

Are we passing this proposal now — or alternate proposal — in its final form, without doing anything further to the main body of the Constitution, or is this just Style and Drafting we're passing now?

VICE PRESIDENT SAUGSTAD: My understanding is it's only for style — for purposes of style and drafting. It has been passed once, It was passed once, and now what we're doing — this second passage is as relates only to style and drafting.

DELEGATE LONGMIRE: Thank you, sir.

VICE PRESIDENT SAUGSTAD: Hearing no further discussion, the board will be opened and you may record your vote. Saugstad votes "aye."

Does Wenstrom vote "aye"? Wenstrom votes "aye." Has everyone voted?

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The record indicates 80 "ayes," 9 "nays," nine absent and not voting. Therefore, Alternate Proposal 4-1 has been passed on second reading or second passage.

DELEGATE RUNDLE: Mr. President, did my vote show? It's so seldom I vote that way, I'd like to have it show.

VICE PRESIDENT SAUGSTAD: I'll ask.

DELEGATE RUNDLE: It didn't light up.

CHIEF CLERK GILBREATH: No. It shows absent and not voting.

DELEGATE RUNDLE: I voted "yea."

VICE PRESIDENT SAUGSTAD: I'm sorry, but — had you pushed the — had you pushed your switch, Delegate Rundle?

DELEGATE RUNDLE: Yes. And then I reached over and pushed the other guy's switch and my switch went off. (Laughter)

VICE PRESIDENT SAUGSTAD: Did you get the message? (Laughter)

Unless you would request a — that we vote over — it's too late to ask that at this point.

DELEGATE LONGMIRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: It's so seldom that Delegate Rundle votes green. I would like to request that we vote over, to give him that privilege.

DELEGATE OMDAHL: Second.

VICE PRESIDENT SAUGSTAD: Delegate Longmire, and seconded by Delegate Omdahl, has moved that we vote over. All in favor signify by saying "aye;" opposed "nay." The "ayes" have it. The board will be opened and we will cast our votes again. If you vote "aye," you're voting for. Saugstad votes "aye." Wenstrom votes "aye."

Has everyone voted? Does anyone wish to change their vote? If not, the board will be closed and the Clerk will take the record.

The record discloses 83 "ayes," 10 "nays," five absent and not voting. Therefore, Alternate Proposal 4-1 passed on second reading — second passage.

Are there any immediate announcements? We're about to take a short recess.

The Calendar Committee, including Delegates Dawson — Chairman Dawson and Unruh will meet in President Wenstrom's office. There's one announcement from the desk.

CHIEF CLERK GILBREATH: The State Treasurer's office will be open Wednesday from 8:30 to 12:00 Noon for the cashing of checks for the convenience of the delegates.

VICE PRESIDENT SAUGSTAD: We will now take a ten-minute recess.

(The Session recessed at 5:05 P.M. until 5:28 P.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order? The Convention will be in order.

The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I didn't hear your question. (Laughter)

PRESIDENT WENSTROM: I believe you had a motion relative to some numbers.

DELEGATE UNRUH: Yes. I gave it to Clerk Gilbreath. Please read it for me.

CHIEF CLERK GILBREATH: The Style and Drafting Committee recommends no further action on the following proposals for the reason that each proposal has now been incorporated in a Style and Drafting Redraft Proposal now passed by the Convention on second passage; that further reconsideration on amendment on any proposal passed on first reading be limited to consideration of said proposal as it is now incorporated in the Redraft Proposal passed on second reading.

That the proposals on which no further action shall be taken are as follows:

Committee Proposals Numbered 1-1, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-18, 1-19, 1-20, 1-23, 1-25, 1-26, 1-27, 1-28, 1-29, 1-30, 1-32, 1-33, 1-34, 1-36, 1-37, 1-38, 1-39, 1-40, 1-43, 1-44, 1-45, 1-46, 1-47, 1-48, 1-49, 1-53, 1-57, 1-58, 1-59, 1-60, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-68, 1-70, 1-71, 1-72, 1-73, 1-74, 1-75, 1-76, 1-77, 1-78, 1-79, 1-80, 1-82, 1-85, 1-87, 1-89, 1-91, 1-92, 1-96, 1-97, 1-98, 1-99, 1-100, 1-101, 1-102, 1-104, 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112, 1-113, 1-115, 1-116, 1-118, 1-119, 1-120, and Delegate Proposals Numbered 2-23 and 2-26.

PRESIDENT WENSTROM: Do we have a second.?

DELEGATE GEELAN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Geelan.

DELEGATE UNRUH: Mr. President, I attempted to say "Bingo!" but I don't think it would go too well this evening. (Laughter)

Mr. President and Delegates: This is a reworking of what we were attempting to do yesterday, where we used the words "indefinite postponement," and quite a bit of opposition was generated, and what we're doing now is not indefinitely postponing these — just recommending no further consideration be given to these numbers by the old proposal number and, hence, you will be referring to the Redraft 5-1, 2 through 15. That's the only thing when you go to amending those, will be the areas that you will refer to, rather than to the original committee proposals. It's a housecleaning resolution only, and it needs to be done.

PRESIDENT WENSTROM: Any further discussion?

The question is on the adoption of the motion as offered by Delegate Unruh and seconded by Delegate Geelan. Because of the nature of this particular question and in that we do now wish to have a complete record on what happened to these particular proposals and the numbers thereof, I'm going to ask that we have a recorded vote, so we'll tie it all together. So the Clerk will open the key. Delegate Hendrickson.

DELEGATE HENDRICKSON: Now is this the step we're taking to make all our proposals into one document?

PRESIDENT WENSTROM: This is — from here on in, any action that we take, we will be not referring to these committee proposal numbers; we will be referring to the number as it is now in the Redraft Proposals.

DELEGATE HENDRICKSON: I understand that; but is this our first step to make them all into one document, instead of having separate proposals before us?

PRESIDENT WENSTROM: No, I don't believe it is, Delegate Hendrickson. I think that step was taken several days ago when we first started to work. As we determined it at that time, the green sheets — remember? That came out of Style and Drafting, and at that time is the time that we started consolidating and coming out with the articles that we have been considering. So I think that was the time that we started in summary.

So the question is on the adoption of the motion as offered by Delegate Unruh.

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 96 "ayes," there were no "nays," and two delegates absent and not voting. So the vote on the motion as recommended by Delegate Unruh and seconded by Delegate Geelan has passed.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Delegates, in the very front of your books are the pink engrossed redrafts of what used to be the green sheets. Remember yesterday we mentioned that there were some coming in. We didn't know what color they were going to be. But they're now pink, and you will notice it starts with 5-1 and 5-2, and still in the margin on the left it indicates the committee proposal number, in case you get lost somewhere along the way. But these are the ones. If we're going to do any amending or reconsidering, and so on, these are the pages that you will be referring to. And we have one further amendment or motion.

CHIEF CLERK GILBREATH: The Style and Drafting Committee recommends that the Convention take no further action on the following proposals for the reason that each proposal, as passed on final reading, calls for repeal of a part of the present North Dakota Constitution, and all of these repealing proposals will be incorporated in a general repeal of the present North Dakota Constitution, which repeal will be effective should the new Constitution be adopted by the electors:

Committee Proposals Numbered 1-4, 1-22, 1-24, 1-50, 1-52, 1-54, 1-55, 1-56, 1-88, 1-93, 1-94, 1-95, and 1-103.

Delegate Unruh, Chairman.

Delegate Unruh moves that the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Report of the Committee on Style and Drafting. Do we have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

Is there any discussion? This now is the repealer sections that have gone through, and they are being — Delegate Sinner.

DELEGATE SINNER: Well, Mr. President, is it my understanding that there's an intent to combine all these into one proposal? Is that —

PRESIDENT WENSTROM: Into one repealer.

DELEGATE SINNER: Well, in the transition — according to the transition schedule that we just adopted, there is a sentence which reads: "Except as may be otherwise established by this schedule, the provisions of this Constitution shall become effective on July 1, 1973, and the provisions of the Constitution of 1889 as amended shall be repealed and of no further force and effect." And I wonder if that doesn't take care of it.

PRESIDENT WENSTROM: Well, it may, Delegate Sinner. However, we have these repealers dangling out here, that they are the result of being left out in the Committee in Style and Drafting when they were no longer incorporated into the redrafts. So, in order to take care of them and take them out of that Committee and put them in the permanent files of the Convention, why we felt that we had to have something to show what happened to all of the repealers. So that is really the purpose of this particular motion and, for the same reason that we had a roll call on the previous one, I would like to ask for a roll call on this — this repealer section, also. So, if there's no further discussion and no questions, the Clerk will open the key and you will record your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 96 "ayes," no "nays," two delegates absent and not voting. So the repealer sections have been removed on the motion offered by Delegate Unruh and seconded by Delegate Litten.

The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: Fellow Delegates: The Calendar Committee has had, I think, at least three meetings today, some of which have been rather lengthy, in trying to determine the schedule for our remaining time here. At the present time, it appears that this will be — or this is tentatively what we feel will be our schedule for our remaining time:

We are going to recess very shortly and come back again this evening to continue this day's work. Now, what remains to be done today and which must be completed today is any and all reconsiderations that involve any substantive changes. We know that there are a number of pending reconsiderations. Now, we have also another — we'll have to have some further discussion on Alternate Proposal 4-1. That will be the first order of business to be taken up following our reconvening after our recess, at which time we will have eaten. Following that, when we reconvene, the first order of business will be that. Following that then, there will be — the floor is going to be open for reconsideration.

Now, the reason for limiting reconsiderations, for making substantive changes today, and it must be handled today, is that this material then, if any changes are made, must go through the Style and Drafting Committee so they can prepare and

overlook — I mean that they can examine these for any changes and corrections, and then the entire document — the entire proposed new Constitution — must be properly engrossed before we leave at the end of our Plenary Session.

Now, in order to accomplish that rather difficult, actually Herculean, task, it appears that we will use tomorrow, Wednesday, as a recess day. We shall meet tomorrow morning, presumably at nine o'clock, for committee meetings. Each substantive committee will meet. Some of the substantive committees will perhaps have — the meetings probably will be rather brief. However, the Style and Drafting Committee, for one, and I believe that perhaps some of the other procedural committees, will have time to meet tomorrow; that is, they should have considerable time. Then, on Thursday, we plan to convene at about eight o'clock in the morning and we must complete our work before we leave here Thursday night. We must — and I again reiterate — we must have completed all of our work before we leave Thursday evening.

Now, because of the lengthy debate in which we could become involved on some of the reconsiderations, I am going to offer — I'm going to offer the following motion in order that we may have an orderly — that is, orderly consideration of these various motions to reconsider, and the motion that I am about to offer, and it is the one that is suggested by the Calendar Committee, is that following — now this does not refer to the discussion on Alternate Proposal 4-1, but upon the completion of our discussion of Alternate Proposal 4-1, that any motion on motions to reconsider, that the debate will be limited to three speakers on each side of the issue; that is, in other words, not more than six people will be able to talk on a subject — not more than three on each side — and the time limit of five minutes will be strictly enforced. And the reason for that, of course, is that we feel that it is necessary to do that so that everyone — or each motion to reconsider can be given a fair hearing.

So I will now, then, move that debate be limited to three — on motions to reconsider, that debate be limited to three speeches or three speakers on each side of the issue.

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Saugstad that we apply the limitation on debate as in Rule No. 27, with the stipulation that on all matters that come before the Convention from here on out, that the debate would be limited to three speakers on a side, who are limited to five minutes each.

Delegate Hoffner.

DELEGATE HOFFNER: Mr. President —

PRESIDENT WENSTROM: May I have a second?

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: Delegate Meidinger seconds. Now, Delegate Hoffner.

DELEGATE HOFFNER: Did Delegate Saugstad's motion include all motions, amendments and amendments to amendments? I think that's important that we include it.

DELEGATE SAUGSTAD: Yes. I believe it would be proper to include those other matters, yes. Thank you.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: Just a point of inquiry. I can see some problems in how we're going to decide who the three on each side are going to be, and I wonder if the Committee considered they are then limiting it to three speakers limiting the time that any one person may talk to, say, a minute or two minutes, which would allow more delegates to speak, if they wanted to, but cut down the words.

DELEGATE SAUGSTAD: Actually, the whole problem is to try to have some kind of limitation, so that when we could foresee that we might be tied up here for an interminable length of time, because, you see, some of the things that we have had before us, for instance today and other days, we will sometimes spend an hour, an hour-and-a-half, on one consideration or on one motion, and of course, because our time is so limited, it's just felt that we couldn't afford to take that much time.

Another way it could be put — the motion could be put and, actually, what we had in mind was that we were trying to limit the debate on one side of the issue to 15 minutes — that is, give each side 15 minutes, is really about what it — is what we are aiming to do.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, I have the same concern as Delegate Kelsch, and I wonder who — if you have an organized situation, this is fine; but for the people who are not aware of what may be reconsidered, it's a real problem. Who is going to decide if somebody jumps up to reconsider a proposal that represents a minority? They can carefully organize, and this is fine. Well, what about the majority of the Convention that is not aware of what's coming up? If we could decide right now what items are going to be reconsidered, then, fine; but if not, I am concerned.

DELEGATE SAUGSTAD: Actually, this was done as much for any reason to point up the problem and to acquaint you with the problem, and that we are trying to feel our way along here to find some solution to this problem, and I would have absolutely no objection to having a time limit, and perhaps, if I have the consent of my second, I will withdraw my original motion and place a time limit of 15 minutes, if that is more satisfactory — 15 minutes to each side — 15 minutes.

DELEGATE MEIDINGER: I consent.

PRESIDENT WENSTROM: Delegate Hartl.

DELEGATE HARTL: Well, Mr. President and Fellow Delegates: I can understand the time limit, but I, too, must join Delegates Kelsch and Devine. I question whether we, in allowing 15 minutes, are giving each individual delegate adequate time. I feel, personally, that I may want to speak 15 seconds or 30 seconds upon an issue, but I do want to speak. I do not want to be limited. I think I was sent down here to give my views for my constituents, and I believe in these closing hours that same viewpoint should be recognized for all 97 other delegates. For this reason, I would be content with a minute for each speaker — no more, no less — and the President possibly cutting it down from that point. But I do not think that we should limit it to three speakers on either side, nor do I think we should limit it to 15 minutes, unless we recognize the right of the individual delegate.

PRESIDENT WENSTROM: Any further discussion? Delegate Butler.

DELEGATE BUTLER: Is there a motion before the house?

PRESIDENT WENSTROM: There is a motion. Delegate Saugstad's motion is before the house.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I think I have a solution. You vote "no" on everything that comes up and you won't have a problem. (Applause)

DELEGATE HENDRICKSON: Mr. President.

PRESIDENT WENSTROM: Just a question from the Chair.

I wonder if that was 50 votes applauding. If that was 50 votes that applauded there, we have no problem. (Laughter)

Delegate Hendrickson.

DELEGATE HENDRICKSON: Is there any way we can have any indication of how many issues might be brought up for reconsideration before we adjourn? I realize they are going to move them and maybe they won't be reconsidered but is there any way we can have an idea what those —

PRESIDENT WENSTROM: The Chair can't answer your question. Delegate Devine.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I move an amendment that only those items which are announced at this time can be reconsidered this evening.

DELEGATE KWAKO: Second.

PRESIDENT WENSTROM: He moves an amendment to the motion as offered

by Delegate Saugstad; that only those motions that are to reconsider that have been announced as of this time can be discussed this evening. And do we have a second to that?

DELEGATE THOMPSON: Second.

PRESIDENT WENSTROM: It's seconded by Delegate Thompson.
Delegate Devine.

DELEGATE DEVINE: Excuse me, Mr. President. May I clarify that? Before that — before we recess. Before we would — in order — if I may rephrase the amendment, please.

PRESIDENT WENSTROM: Now you said "before we recess." Just so the Chair understands. You mean before we recess for dinner?

DELEGATE DEVINE: That's correct. I wanted to make my intent clear.

PRESIDENT WENSTROM: But you do also give the delegates to this Convention an opportunity now, in the event — if your amendment passes — that you give the Delegates to this Convention an opportunity to announce their intentions to reconsider?

DELEGATE DEVINE: Mr. President, that's exactly correct. I wasn't trying to cut it off in allowing Delegate Thompson's, but just so we know, when we go for dinner, what items will be reconsidered.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I believe that, by now, the message has gotten across; and so at this time, with the consent of my second, I shall withdraw my motion.

DELEGATE MEIDINGER: Consent.

PRESIDENT WENSTROM: Delegate Saugstad has requested permission to withdraw his motion. His second has concurred. So the motion will be withdrawn.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: Mr. President: Are we on the twelfth order?

DELEGATE THOMPSON: Point of order, Mr. President.

PRESIDENT WENSTROM: We have an error in our proceedings. We are on the twelfth order. We made an error in our proceedings when we let them take the base motion out. Delegate Devine, I'm going to recognize you for a motion.

DELEGATE DEVINE: Mr. President, I presume I would have to withdraw my amendment; but I could offer another motion after.

PRESIDENT WENSTROM: You may offer a motion.

DELEGATE DEVINE: Is my amendment withdrawn — on the motion — withdrawn at this point?

PRESIDENT WENSTROM: No. The Chair was in error in permitting him to withdraw his motion. So you make a motion right now, the way you'd like to have it.

DELEGATE THOMPSON: A point of order, sir.

DELEGATE SAUGSTAD: Well, the point of order — Delegate Devine, if you withdraw your amendment, and if I'm withdrawing my motion — is that it?

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Yes.

DELEGATE DEVINE: That's how I understand the situation, and as soon as the Chair recognizes that, I will make the motion.

PRESIDENT WENSTROM: All right. I will recognize that you withdraw your motion — or your amendment.

DELEGATE SAUGSTAD: And I withdraw my motion.

PRESIDENT WENSTROM: Now we're right back where we started.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Devine — Delegate Butler.

DELEGATE BUTLER: I would like to be on the twelfth order for a motion.

PRESIDENT WENSTROM: I believe, Delegate Butler, that I'm going to have to recognize Delegate Devine, because he had the floor prior to you, and I'm sorry, but that's what I'm going to have to do.

Delegate Devine.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I would move that before — than any items that are to be reconsidered this evening must be announced to the Convention before we adjourn for dinner or recess for dinner.

PRESIDENT WENSTROM: You move that any matters that are to be reconsidered this evening be announced to the Convention by the delegates prior to the time we recess for dinner. Do we have a second to that motion?

DELEGATE ENGSTROM: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engstrom.

Now, do we have some discussion? Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President, this is carrying the gag rule a little far, and perhaps you don't want to recess for dinner, because it might — we could be sports about this. It might take me half-an-hour to give you my list under this rule, and I shall so do, if I'm going to vote "yes" on this motion.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: On this rare occasion, I would like to join Delegate Rundle. I have a list of seven proposals that I thought I would like to see come back and make some technical-to-major amendments; but, frankly, I'd rather that we didn't reconsider anything, and I would rather not panic anybody by reading off my seven numbers, because if, as things go, we don't do any reconsidering or any major reconsidering, I'd just as soon not make anybody think that I'm going to consider the whole Constitution over again. So I certainly hope that the motion will be defeated.

PRESIDENT WENSTROM: The question before the Convention is on the motion as offered by Delegate Devine and seconded by Delegate Engstrom. If there's no further discussion, as many as are in favor of the motion will say "aye;" those opposed "no."

The "noes" have it. The motion lost.

The Chair will recognize Delegate Butler.

DELEGATE BUTLER: Mr. President.

PRESIDENT WENSTROM: Delegate Butler.

DELEGATE BUTLER: I would propose a change in Rule 36, that might probably help solve this problem a little.

I recognize that this is the twenty-ninth day, and the rule that I propose to change has not been abused too much today, but I can see that we might be here until three or four o'clock tomorrow morning, based on what we've talked about in the last few minutes. My motion is to delete the last sentence of Rule 36.

PRESIDENT WENSTROM: Delegate Butler moves an amendment to the Rules; that we delete the last line in Rule — the last two lines in Rule 36. Is that correct?

DELEGATE BUTLER: That is correct.

PRESIDENT WENSTROM: Do we have a second to the motion?

DELEGATE NETHING: Second.

PRESIDENT WENSTROM: Seconded by Delegate Nothing.

Now, any discussion?

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Butler, did you wish to speak on the motion?

DELEGATE BUTLER: Yes, I would like to comment: That this Rule was ex-

plained yesterday morning, I believe, by Mrs. Geelan or one of the other delegates, and it was put in for a specific purpose, as I see it, and tomorrow, on the twenty-ninth — or today, as the case might be, that we decided to work tonight on these reconsiderations, that we could be held here for any number of hours discussing items that we have already worked over satisfactorily and completely voted on them before and arrived at a conclusion that they would be in or out of the Constitution as they are. I also have a couple of reconsiderations I would like to bring up, but I am certainly willing to ask for a two-thirds vote in order to get the consideration of this delegation to have my reconsiderations put on the floor, and I hope at least 66 people here feel the same way as I do about it.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: Now, when this discussion first started, I think that Delegate Saugstad in all of the conditions had removed Alternate Proposal 4-1 from his consideration. Now I was wondering if Delegate Butler was intending to remove Alternate Proposal 4-1 from his two-thirds stipulation, or if we're going to have an alternate proposal on the legislative makeup — if we're going to take a two-thirds vote and remove the legislative branch — or the legislative article out of the main body of the Constitution so it can set on the side.

DELEGATE BUTLER: Article 4-1 that you're talking about is now before us as an approved alternate; is that correct?

DELEGATE AUBOL: I believe that is correct.

DELEGATE BUTLER: All right. Then, as far as I have made my motion, I intend that it should apply to any reconsiderations that come before this body.

DELEGATE AUBOL: Mr. President.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I —

PRESIDENT WENSTROM: Excuse me. Delegate Aubol, were you through?

DELEGATE AUBOL: I had one more question on this — in that area — and it seems to me that, as far as what you said yesterday, that we could not have the 4-1 on the ballot without first removing from the document the two-house legislative provision of the document —

PRESIDENT WENSTROM: That is correct.

DELEGATE AUBOL: We have not yet done that; is that right?

PRESIDENT WENSTROM: That is correct.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Mr. President, we voted this down yesterday — the same motion. There has been no warning. I do not have a long list of reconsiderations, or anything of the sort; but we turned this rule change down yesterday, and it seems to me it's unfair at this late moment to try to bring it back again, and I hope you resist the motion.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President, I would also urge you not to change the rules at this late date. I think we've gotten along well at this Convention. I think we're all willing to abide by the majority rule, and I don't think we'll have any problem. I think we have heard these things, and I hope we can just go along with the Rules as we have adopted them.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I, also, would like to ask that the Convention turn down the motion to delete the last line. If by Thursday morning at ten o'clock we want to take this last sentence off, I think the Convention will do so then.

PRESIDENT WENSTROM: There was someone else. Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: I've been haunted the past two days by the growing fear that the business still before this Convention could not be fitted into the time left, and I think now, this day before the last day, my fears have been proven well-founded.

Now, under the Rules, anything and everything can be reconsidered by a simple majority. It means that it's open season and every proposal that lost out or that was watered down could be brought up by its champion and every motion to reconsider debated over again, unless — unless we impose some rules upon ourselves to limit debate or to limit the number and the kind of motions that can be brought up for reconsideration, or — or, unless we use some discretion and some forbearance and some self-discipline.

Now, Mr. President, you haven't heard from me for several days, and I want to compliment myself. (Laughter and applause)

PRESIDENT WENSTROM: Excuse me. Let the record indicate the Delegate's to compliment himself. (Laughter)

DELEGATE MAXWELL: Thank you. Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: You haven't heard from me because I've been practicing self-discipline, because I knew I would need it during these last two days, because there are quite a few things that I would like to bring up for reconsideration. I'm going to try not to, and I hope that the rest will try to follow my example. (Applause)

PRESIDENT WENSTROM: Thank you, Delegate Maxwell. Delegate Aas.

DELEGATE AAS: Mr. President. Fellow Delegates:

I support this motion. Anything that needs to be brought back to the floor at this time should deserve a two-thirds vote to recall it. It seems to me we have gone far enough, and anything that comes back should be justified by that degree, and I would support the motion.

PRESIDENT WENSTROM: The question before the Convention is on the motion as offered by Delegate Butler.

Delegate Benson.

DELEGATE BENSON: A short question. Does this apply to 4-1?

PRESIDENT WENSTROM: I would rule that it applies to any motion to reconsider that comes up from here on out.

Delegate Hernet.

DELEGATE HERNETT: Mr. President, I'd like to point out that I don't think this motion of Delegate Butler's is the answer. We can spend just as much time arguing about the motion to reconsider. So this isn't going to solve it. I'd like to also point out that, so far as I know, all we have is four hours left tonight to do all of this here, and there isn't anyone who likes this two o'clock in the morning business when it's twelve o'clock, and we're spending a lot of time right now arguing this thing. I think we should solve it in a hurry.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the motion as offered by Delegate Butler that we strike the last two lines in Rule 36. Delegate Sinner.

DELEGATE SINNER: Mr. President, my concern, I'm sure, is very obvious, as it is the obvious concern of many others. On whom does the — I'll ask this of the Chair: On whom does the burden of clarifying the situation of the ballot question on the alternate proposals — and there are several that, I assume, have the same problem: On whom does that responsibility lie? Is the assumption of some of the delegates that these are now satisfactorily passed and on the ballot? Is that assumption incorrect and, if not, who should make the motions and what motions should be made? I think we need to clarify this before we vote on this.

PRESIDENT WENSTROM: You are requesting of me — Delegate Unruh, did you wish to answer?

DELEGATE UNRUH: Mr. President: The Style and Drafting Committee has not had a chance to go over all the alternates. We have done 4-1, as you recall. We have just amended it. And it is our intention to look at these other ballots and to put them in what we consider proper form. If you have some suggestions to make to us, we'll try to amend those down in Style and Drafting, rather than taking the time here on the floor. We intended to meet tonight, but we can't. We will probably have to meet all day tomorrow, and that's why I'm concerned that

we get all our business done on reconsideration tonight, up until twelve o'clock, because we will need all day tomorrow to put this thing together.

PRESIDENT WENSTROM: Does that answer your question, Delegate Sinner?

DELEGATE SINNER: No, Mr. President, it really doesn't.

PRESIDENT WENSTROM: Well, Delegate Sinner, then I suppose that I should — you should just take the bull by the horns — if you'll pardon the expression — and say that the decision on the question will ride with the presiding officer of the Convention. Then you heard the Chair expound — if I may term it — use that phraseology — either yesterday or the day before, rather to my opinion on the present status of 4-1, and until such time as I have had an opportunity to explain it to the Convention, it will just have to rest with me.

Now, remember that you do always have the opportunity or the privilege of appealing from the decision of the Chair. But that is my decision, and that is — I have the backup from the Secretary of State and from the Attorney General's office that that is correct. As I state it to the Convention from the floor, that that is correct and that is one of the things that must be done; however, may I say, further, that I have enough confidence in the delegates to this Convention that, when a matter on procedure comes up, if it requires 66 votes, if it requires 75 votes, that the delegates are going to give the votes so that this particular matter can be straightened out. I feel that that is no problem. But it's something that this Convention is going to have to wrestle with. It's something that we are going to have to do.

DELEGATE KELSCH: Mr. President, does this take a two-thirds vote?

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: This takes a two-thirds vote, does it not, to amend the Rule?

PRESIDENT WENSTROM: To amend the Rule? Yes, it takes a two-thirds vote.

The question before the Convention, again — Delegate Omdahl.

DELEGATE OMDAHL: Mr. President, I would like to, if there's any way we can do this, amend the Butler motion so that it will not apply to matters relating to alternate proposals.

PRESIDENT WENSTROM: Well, Delegate Omdahl, if you offer an amendment, why that's what the amendment will say.

Delegate Omdahl moves that this does — in the motion as adopted — as offered by Delegate Butler, it shall not apply to alternate proposals.

DELEGATE HAUGEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Haugen.

Now, do we have any questions on the amendment to the motion? Hearing none, as many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it and the amendment is adopted.

The question before the Convention is on the motion as offered by Delegate Butler and seconded by Delegate Nothing.

Delegate Lerberg.

DELEGATE LERBERG: Mr. President: Lest we get carried away, now that this is no longer a problem, I would like to point out to the Convention that I do have a matter to bring up which has had very little discussion here for reconsideration. I have not been on a delegate proposal, I have not been on a majority report, and I have not been on a minority report; and other than carrying committee bills, I've been very quiet at this Convention. I think we have gone on the assumption that the last two days, for some time now, we could reconsider our majority report, and I think it would be folly now to require this two-thirds vote.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on Delegate Butler's motion — I think you remember now — to suspend the last two lines in — no? Yes. I am correct — that we do dispense with the last two lines, except as amended, so that it does not apply to alternate proposals.

Those in favor of the motion will vote "aye" and those opposed will vote "nay." All those in favor of the motion — say, I better not do it that way. I better open the key on account of this taking a two-thirds vote.

Those in favor of adopting the amendment or the motion will vote "aye," those opposed will vote "nay."

The Clerk will open the key and you will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates 56 "ayes," 40 "nays," and two delegates absent and not voting. So the motion failed.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: While I may be incurring the wrath of my committee chairman on Style and Drafting, I have a later engagement that I can't get out of, and so I would like to move at this time that the Convention reconsider the action by which Alternate Proposal 4-2 was passed; and if I can get a second, I can explain it.

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: 4-2, Doctor?

DELEGATE TUDOR: Yes, Alternate Proposal 4-2 is concerning the gambling issue, and we passed it in an impossible form.

PRESIDENT WENSTROM: Delegate Tudor moves to reconsider the action whereby Alternate Proposal 4-2 was passed, and the motion has been seconded by Delegate Stanton.

DELEGATE TUDOR: I have an amendment at the desk, but should I explain my reasoning, Mr. President, or do you want to read it?

PRESIDENT WENSTROM: Would you read it? No. Delegate Tudor, the question now before the Convention is on the motion to reconsider, and you have a second; so I think you better tell why.

DELEGATE TUDOR: As I said, the Convention passed Alternate Proposal 4-2 in an impossible form. The Committee on Preamble, Bill of Rights and Suffrage deleted the first amendment from the old Constitution. The Convention originally went along and voted to stay with this deletion. It was later brought back in the form of an alternate proposal. However, the alternate proposal is not really an alternate proposal because the Committee on Constitutional Ballot didn't leave me any place to vote. The alternates are set out in such a way that I'm voting against all forms of gambling are prohibited or that the Legislative Assembly shall not authorize lotteries or gift enterprises, and I want this section deleted, and I'm sure a lot of people want it deleted, and I feel that we should — that this should be amended so that we either want lotteries and gift enterprises or we don't want lotteries and gift enterprises. The way it is listed now, we have no place to go. We have alternates which essentially mean the same thing.

PRESIDENT WENSTROM: Any further discussion?

The question is on the motion to reconsider Alternate Proposal 4-2 on the motion as offered by Delegate Tudor. If there's no further discussion, we will open the key and this will take 50 votes.

Those in favor of reconsideration will vote "aye" and those opposed will vote "nay."

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

DELEGATE TUDOR: Mr. President, there's an amendment at the desk.

PRESIDENT WENSTROM: The Clerk will read the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to Alternate Proposal 4-3:

In the engrossed proposal, delete everything after the resolving clause, and insert in lieu thereof the following:

"That the question as to whether the proposed constitution shall contain a pro-

vision relating to lotteries shall be submitted to the electorate as a separate issue on the Constitutional Convention Ballot.

"That a section be inserted in the proposed constitution providing that lotteries and gift enterprises shall be prohibited.

"SECTION 1. SEPARATE ISSUE.) The following provision is hereby created and shall be submitted to the electorate as a separate issue, and if approved, shall become a part of the proposed constitution:

"Section 28. LOTTERIES PROHIBITED.

"The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets.

"SECTION 2. BALLOT FORM.) The form of the ballot as pertains to the question set out in this proposal, and as it shall be submitted to the electorate as a separate issue, shall be as follows:

"Shall the 1972 proposed constitution contain the following provision:

"The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets."

A "yes" box and a "no" box.

And renumber the lines accordingly.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I believe that this is self-explanatory. I believe that the Alternate Proposal 4-2 as originally passed was impossible, because it did not give you anyplace to go. So it was not a real alternate. So I hope that you will pass this approved amendment which I'm now offering to you.

PRESIDENT WENSTROM: Any further discussion? Delegate Thompson.

DELEGATE THOMPSON: I think all of us that are deemed to be State's Attorneys in the Convention would agree with this amendment.

PRESIDENT WENSTROM: Any further discussion? Delegate Burke.

DELEGATE BURKE: Mr. President. I merely wish to make an inquiry, because, when I first saw this proposal before, I was wondering how they could put on the ballot something that we have decided to omit from the Constitution and, in effect, they are overruling our action, and I'm wondering whether we shouldn't have a motion to reconsider our action in removing this from the Constitution.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President: This illustrates one reason why it would have been well to have more knowledge of the proposals that were to be reconsidered. I agree that there is not a great deal of difference between the two sections as approved the other day; yet I very much prefer the first language in Proposal — Alternate Proposal 4-2. It is more simple. It's definite. And if we're going to vote "yes" or "no" on one of those sections when we come to approve the Constitution, I would very much prefer to vote "yes" on the first section — "All forms of gambling shall be prohibited unless the legislative assembly provides for the authorization or regulation of specific forms thereof."

So, Mr. President, in order to do what I want to do, I'm going to have to offer an amendment to Delegate Tudor's motion, that the question be on the first section, instead of the second section.

PRESIDENT WENSTROM: Delegate Haugen moves an amendment —

DELEGATE TUDOR: Mr. President, I'll second that amendment.

PRESIDENT WENSTROM: Delegate Tudor seconds the amendment.

Delegate Haugen, would you restate your request there for the benefit of the Clerk?

DELEGATE HAUGEN: In Delegate Tudor's proposal, I would substitute "All forms of gambling shall be prohibited unless the legislative assembly provides for the authorization and regulation of specific forms thereof." for the lang-

uage that Delegate Tudor quoted: "The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets."

DELEGATE BURBIDGE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Burbidge.

DELEGATE BURBIDGE: I can understand what would happen if a "Yes" vote prevailed on this; but suppose a "No" vote prevails? Does that mean that there is no prohibition for gambling and the Legislative Assembly has no right to regulate?

DELEGATE BAKER: Mr. President.

PRESIDENT WENSTROM: Delegate Baker.

DELEGATE BAKER: It was pointed out the other day that the language in the white sheet which was distributed on this question or reported in Committee — the language in the first question, the one on the top, amounts to the same thing as silence on the subject in the Constitution, because if the Constitution is silent on the subject, then the Legislative Assembly can provide for the authorization, and so on. So it amounts to the same thing as silence; and, as I have told you before, I don't really care what you do about this; but bear in mind that the reason for getting an alternate on the side in the first place was as a lightning rod or as a pop-off valve for what, I'm sure, is a deep interest by a substantial number of citizens of North Dakota in having a real question before them.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I'd like to answer Mr. Burbidge, if I may, and I think at the same time it will answer the statement just made by Mr. Baker. That first paragraph is not the same as not speaking. That first paragraph says that the Legislature must do something, if there is to be any gambling at all within the State. If we're silent, then they must take those things out that they don't want to authorize, and it forces them to do something. This one does not. And I think, in answer to — that that probably answers Mr. Burbidge at the same time.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I don't think that this is going to provide us with a responsible alternative either. If we go to that, "All forms of gambling shall be prohibited unless the legislative assembly provides for the authorization" — supposing somebody really believes in that second paragraph there, where the Legislative Assembly shall have no power to authorize lotteries, we're not giving people an option to vote "yes" or "no," really. We're saying "All forms of gambling shall be prohibited." If we put that in, it still says the Legislature can pass laws. If we vote "no" on that, then it's not in the Constitution; the Legislature can still pass laws.

PRESIDENT WENSTROM: Any further discussion? The question — Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, I would just like to re-emphasize what Delegate Baker said, and that's pretty much the feeling of our Committee in trying to come up with a way to put this to the people. We felt that, by our — our present acts were present on the matter, and that's why we had the two, a first saying we're not talking about lotteries or anything, and then the second choice is going back to the old Constitution. So we wrestled with this problem, and I think we came up with the right answer on it.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Haugen.

Will the Clerk read the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment to Alternate Proposal 4-2:

Following "Section 28." delete the following: "LOTTERIES PROHIBITED. The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift

enterprise tickets." and insert in lieu thereof the following: "GAMBLING PROHIBITED — EXCEPTION. All forms of gambling shall be prohibited unless the legislative assembly provides for the authorization and regulation of specific forms thereof."

PRESIDENT WENSTROM: Are you ready for the question? The question is on the adoption of the amendment as offered by Delegate Haugen. No further discussion?

Those in favor of its adoption will vote "aye;" those opposed will vote "nay." Those in favor of adopting the amendment will say "aye;" those opposed say "nay."

The "noes" have it. The amendment lost.

A division has been requested. That is a sufficient number.

Again, those in favor of the amendment will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates 48 "nays," 43 "ayes," and seven delegates absent and not voting. The amendment failed.

We're back on the motion to amend as offered by Delegate Tudor. The question: As many as are in favor of adopting the amendment will say "aye;" those opposed "no." The "ayes" have it. The amendment is adopted. The amendment is adopted.

Now, Delegate Tudor.

Delegate Tudor moves —

DELEGATE TUDOR: I'll move that this be engrossed and the Rules be suspended.

PRESIDENT WENSTROM: Delegate Tudor moves that the Rules be suspended, that Proposal 4-2 be deemed properly re-engrossed and placed on the tenth order for passage. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and Proposal 4-2 is before the Convention for final action. Any discussion?

Hearing none — Delegate Hartl.

DELEGATE HARTL: Mr. President, would it be my understanding that, if a majority voted "no," that this Alternate Proposal would then fail to be placed on the ballot?

PRESIDENT WENSTROM: It would be defeated. The only way it could come back would be to be reconsidered.

The question before the Convention is on the passage of Proposal 4-2. Do we have any further discussion?

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Now I'm getting a little confused on this — your decision on that last question. As I understand this, if we — our vote now is not on whether this should be an alternate ballot; is that true or not?

PRESIDENT WENSTROM: Well, you voted to reconsider your action whereby it was voted upon and placed on before, and that's back before the Convention in its original state and it's been amended.

The question before the Convention — Delegate Burke.

DELEGATE BURKE: Mr. President: I made an inquiry a short time ago. Now will this vote mean that we are also reconsidering our action by which we deleted this same language from the Constitution?

PRESIDENT WENSTROM: No, I don't believe we are, Delegate Burke.

The question then before the Convention is on the passage of Redraft Proposal No. 4-2.

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: I'm not clear on this at all. I wonder if I could find the answer from somebody. If we vote — if we vote down this particular motion or amendment — excuse me —

PRESIDENT WENSTROM: Well, Delegate McIntyre, we have already taken care of the amendment. We have adopted the amendment that Delegate Tudor offered.

DELEGATE McINTYRE: Well, what happens, Mr. President, if this vote is in the negative?

PRESIDENT WENSTROM: Well, I would say that the Proposal was gone, unless there would be a motion to reconsider.

DELEGATE HOFFNER: Mr. President.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: I move that any further action be delayed until after the dinner recess.

PRESIDENT WENSTROM: Delegate Hoffner moves that we delay action until after the dinner recess.

DELEGATE McELROY: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate McElroy.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "noes" have it and the motion lost.

The question before the Convention — there is not sufficient members standing for a division upon the question.

The question before the Convention is for passage of Delegate Proposal — or Alternate Proposal 4-2. Those in favor of its passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Delegate Nothing.

DELEGATE NOTHING: Still counting!

PRESIDENT WENSTROM: Any delegate wish to change his vote? Delegate Hoghaug, have you voted?

DELEGATE HOGHAUG: Yes.

PRESIDENT WENSTROM: The vote is closed.

Delegate Meidinger, did you wish to announce your vote?

DELEGATE MEIDINGER: No.

PRESIDENT WENSTROM: The roll call discloses 65 "ayes," 29 "nays," four delegates absent and not voting.

Alternate Proposal 4-2 has passed.

Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, may we be on the eighth order for a moment?

PRESIDENT WENSTROM: Without objection, we'll be on the eighth order.

DELEGATE MEIDINGER: The Committee on Education and Resources, and whatever else we have, will meet at ten o'clock tomorrow morning in G-1.

PRESIDENT WENSTROM: Delegate Saugstad, did you have anything further?

DELEGATE SAUGSTAD: No.

PRESIDENT WENSTROM: Delegate Hernet.

DELEGATE HERNETT: Well, as long as we're making those announcements, I'll announce Executive Functions will meet in our regular room at ten o'clock tomorrow morning.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: The Finance and Tax Committee will meet in the Blue Room at ten o'clock tomorrow morning.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: The Judiciary and Political Functions Committee will meet at its usual room at ten o'clock.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: Mr. President: The Bill of Rights Committee will meet at ten o'clock in the usual room, and I'll ask Vice Chairman Decker to preside at the Committee meeting.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: The Legislative Functions Committee will meet at ten o'clock.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman: The Public Information Committee will meet at ten o'clock in the hearing room.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Style and Drafting will meet tomorrow morning, Mr. President, at nine o'clock.

PRESIDENT WENSTROM: Fellow Delegates: Might I suggest that, although all substantive committees are meeting, that those of you that are members of the Committee on Public Information or of the Committee on Style and Drafting, that you do attend those two committees in preference to attending your regular committee assignments.

Delegate Saugstad.

DELEGATE SAUGSTAD: We'll now recess — I move that we recess until 8:00 P.M. sharp.

PRESIDENT WENSTROM: It's been moved that we recess — the Chair will declare a recess until 8:00 P.M. sharp.

(The Session recessed at 6:38 P.M. until 8:24 P.M., the same day.)

VICE PRESIDENT SAUGSTAD: Will the delegates please take their seats?

All right. We'll please come to order. Let's have it quiet. There's an announcement from the desk.

CHIEF CLERK GILBREATH: The Lua Cinton Horizon Club, Tenth Grade, from Fargo, and their Advisor, Mrs. Norman Schrader, are in the balcony today. (Applause)

VICE PRESIDENT SAUGSTAD: The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. Chairman: I now move that the Convention reconsider its action whereby it passed Style and Drafting Redraft No. 5-12, being Sections 1 through 14 of Article IV of the Legislative Article; that we reconsider our action by which we passed it, for the purposes only of ballot consideration with respect to the alternate proposal.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE SANSTEAD: Second.

VICE PRESIDENT SAUGSTAD: It's been seconded by Delegate Sanstead.

Delegate Baker.

DELEGATE BAKER: Mr. President, may I inquire if the motion then means that no consideration can be given to any amendment of Style and Drafting Redraft 5-12 or any part of it, if this motion is adopted in this form?

VICE PRESIDENT SAUGSTAD: I believe that that was in the motion — that it was not for the purpose of amending, and the purpose was stated for which the motion was made.

Is there any further discussion? Delegate Unruh.

DELEGATE UNRUH: Mr. Chairman: The purpose of this reconsideration is to enable the Style and Drafting Committee to put this into proper form so that we can offer it as an alternate, following the wishes of this body that the unicameral-bicameral be an alternate. We have been advised on good authority that it is necessary to lift this proposal — this Style and Drafting Redraft — bodily from where it sits in our presently-passed Constitution, and set it aside in order that it have proper ballot consideration by the voters; that if we don't do this, and we

leave it in the main body of the Constitution and have a choice on the part of the voters, those votes will not be given the proper weight, since they have to vote for the Constitution with the bicameral provision in it, and then, if they wish unicameral, they would have to vote for that separate, in effect nullifying their vote on the first item and giving their vote proper weight, and the Attorney General has so advised, and I would yield to President Wenstrom.

VICE PRESIDENT SAUGSTAD: Delegate Wenstrom.

DELEGATE WENSTROM: Thank you, Delegate Unruh.

Mr. President: This comment and this action that we are taking this evening is pretty much in line with my comments of a couple days ago, when I ruled that we would have to move to reconsider the action whereby the legislative section was placed in the draft of the Constitution. As Delegate Unruh has stated, we have taken this up with the Attorney General's office and we have taken it up with the Secretary of State, and they also tell us that it is impossible to be fair and have an alternate, unless the two alternates are side by side, and the purpose of an alternate is to give the voters an opportunity to express their choice on just which of the two styles or the two systems of the legislatures that they would prefer to have; that it is utterly impossible to give them that choice and have one section, the bicameral section, at this time, and in this case already placed in the document itself, and that is the situation that we find ourselves in now.

So there are so many things that could happen that would make it really difficult and very complicated in order to determine. On a close vote, maybe the Constitution would carry, and at the same time we'll say that the bicameral section was in the Constitution and it carried by a few thousand votes; at the same time down on the box on the side where the unicameral and the bicameral sections were being voted on separately, there the unicameral might have won. So then how would you decide? You see, it's a very, very difficult situation, and in order to avoid that and to give the voters an opportunity to express themselves on this important subject, really on whether they wish to have a bicameral or a unicameral system, and give them an opportunity to vote on this subject and do it fairly, we urge that we reconsider our action whereby this particular legislative section was placed in the Constitution as we have it before us at the present time. I urge a "yes" vote.

DELEGATE THOMPSON: Mr. President.

DELEGATE ENGELTER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Thompson, first, and then Baker, and then Engelter.

DELEGATE THOMPSON: Mr. President: I didn't realize that Delegate Om-dahl's justiciable right would have so much effect!

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President, I don't really feel that my question — maybe I didn't phrase it quite properly — has been answered quite clearly enough. The point that I'm getting at, I guess, is this:

I understand the purpose of taking out the whole of 5-12 — that is, Sections 1 through 14, inclusive — is that correct — the motion?

VICE PRESIDENT SAUGSTAD: Yes.

DELEGATE BAKER: — is for the purpose of giving it equal position upon the set-aside ballot with 4-1, the unicameral idea, and the unicameral matter that we have approved, I believe, contains no Section 2, 3, 4 — and maybe some more. Anyway, it's missing several of the sections which I assumed did not — were equally efficient either under the unicameral or bicameral system, and so I'm interested in knowing what the purpose is in getting all of this one and reconsidering it out of the main body of the proposed Constitution.

VICE PRESIDENT SAUGSTAD: Does anyone care to answer the questions raised by Delegate Baker?

DELEGATE KELSCH: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: We have a Style and Drafting — Style and Drafting

is already working on a preliminary draft that would actually have the complete legislative branch article provide for all those sections, Delegate Baker, and then a unicameral with all the same sections. The unicameral proposal — you're right — does not address itself to those sections, like Section 2, which are the same in both situations, but Style and Drafting would propose to submit to the Convention a complete article, legislative branch, for bicameral, first, and unicameral, second, with the Section 2 and the other sections that are the same in both — the ones that are identical.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Mr. President. Well, then do I assume that you want to take the whole of the executive section and the whole of the education section and everything else that's affected by the unicameral and do those all over again, too?

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: We have — we're in the process of preparing a new committee proposal which will encompass the legislative, the executive and, by reference only to these others, so that we don't need to receive everything. Where we only have one or two changes, such as in finance or taxation, where there's a Senate or a House reference, then we change to legislative assembly by reference to the line and page, and this report will be prepared completely so you have it right before you to show exactly how we handled it.

DELEGATE BAKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Baker.

DELEGATE BAKER: Then I take it what we'll have is a whole bunch of material here, including a lot of "by reference" material on the very last day of this Convention; is that correct?

DELEGATE UNRUH: Mr. Chairman. The only "by reference" material would be only, oh, maybe 10 or 12 references to the other articles, other than the executive and the legislative, and you'll be able to follow them because we'll key them into the positions in the measure, and the changes would be like saying where the Senate approves it will be where the Legislative Assembly approves. They're very minor and would be quite easy for you to follow, Mr. Baker.

DELEGATE BAKER: I have only one more observation, Mr. President. We surely are being led down the primrose path!

VICE PRESIDENT SAUGSTAD: Delegate Engelter, I believe, had asked for the floor.

DELEGATE ENGELTER: I think Delegate Baker posed the same question that I had with regard to this, so I hope it's legally possible to do what they're proposing.

VICE PRESIDENT SAUGSTAD: Delegate Decker had asked for the floor.

DELEGATE DECKER: Mr. President. Would Delegate Unruh yield to a question?

VICE PRESIDENT SAUGSTAD: Delegate Unruh, will you yield?

DELEGATE UNRUH: Sure.

DELEGATE DECKER: I was wondering — if you can do it by reference in those sections, why can't we do it by reference in the main body in the bicameral legislative part?

DELEGATE WENSTROM: Delegate Decker —

VICE PRESIDENT SAUGSTAD: Delegate Wenstrom.

DELEGATE WENSTROM: The reason that they gave me on why we could do this by reference, as far as changing from the word "Senate" to "Legislative Assembly," and where it makes reference in the draft, from "House of Representatives" to "Legislative Assembly," is because it is in the opinion of the Attorney General that in the event that this was passed without these amendments and without these corrections, that this would be in court and that there could hardly be any question but what the court would decide that it was the intent of the Convention that it would be the Legislative Assembly that made these specific — that made this — that should make the slight — the adoption of the — or the approval of the

appointees, and where it requires or makes reference in the impeachment procedures, and so forth, that that was very definitely the way the court would handle it. So that was the reason they said that we could do this by statement of intent or by placing an amendment in the document to be in effect in the event either the unicameral or the bicameral was passed by the voters.

DELEGATE DECKER: Thank you, Delegate Wenstrom. I realize that that's probably the reason, and I think the same reason would hold true then on leaving the bicameral in the main body.

DELEGATE WENSTROM: Delegate Decker, the big reason for the request to take it out of the main body is because, in leaving it in the main body as it is now, it would not be a fair opportunity. It would not be a fair alternate to have one already sandwiched into the Constitution, and then have the other one sitting off by the side. One would have two chances to win, and the other would have but one, and the people would not be getting an opportunity to express themselves on an alternate.

DELEGATE DECKER: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Decker.

DELEGATE DECKER: I feel that the people should be shown that we have a feeling for one over the other, and if we set them both aside, as we consider them to be equal, how will they know that we felt that one was better than the other? There will be no indication of our feeling in this body. People have been talking about we should take a stand and stick to it. In fact, I think one delegate mentioned, who isn't here now — so I probably shouldn't say it — that we should never vote for an alternate which we didn't believe should be passed. So — and under those conditions, unicameral shouldn't even be on as an alternate; but if it is an alternate, it should be an alternate; it shouldn't be an equal vote. It's an alternate to the majority opinion of this body.

VICE PRESIDENT SAUGSTAD: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President: First of all, I conceded that the unicameral should be an alternate, but, you know, I, for the life of me, can't understand why this body should take an Attorney General's opinion. Now, in the years that I've served in the Legislature, many times I've seen the Attorney General's opinion change within a matter of a few days.

Now we're saying — we're saying that the Attorney General's opinion will hold and the courts will uphold the Attorney General's opinion. Now, I'm not a lawyer, but I'm sure that every lawyer in here can point to a case where the Attorney General's opinion has not been upheld by the courts. Illinois did exactly what we were talking about doing in this Convention; they had one alternate — one in the main body and had one set-aside. Now, sure, it didn't pass, so there's no test case; but, nevertheless, they did it. Now Illinois, apparently, thought it was fair. I think that we're putting too much stock in the Attorney General's opinion.

Now, I think it would be safe to say that the Attorney General is probably for the bicameral; but, nevertheless, I really and sincerely think that we are really garbaging up everything by pulling it out and leaving a big hole in our Constitution and taking them both out and having them set aside. I think that we should go ahead, leave this in the main body and the unicameral as an alternate, and I'm sure, with the support there is, that this will be the best way to handle it.

VICE PRESIDENT SAUGSTAD: Delegate Roney, I believe.

DELEGATE RONEY: Mr. Chairman and Fellow Delegates:

I rise again to tell you that my stomach isn't in much better shape than it was yesterday but I don't care to regurgitate in front of the place because, after 29 — 28 and seven-eighths days — we have been trying to work on a constitution, and all of a sudden we lend a lot of importance to a little subterfuge of wondering how the people are going to vote on alternates. Why don't we go back again and think about those people that are going to vote on the Constitution that we are proposing, and give those people that want to vote on a constitution the right to vote on a whole constitution, and not a half, as I said before? I think maybe people are going to vote on this Constitution because you and I, as delegates, tell them to vote on this Constitution, and they're going to take those alternate proposals and

either ignore them or vote a negative vote, and I know on a couple of them, they can, because there's an either/or and they might let them go. But we're going to deny them the right to vote on one Constitution because we want to take something out of it and fill it full of holes. I couldn't agree more with anyone than I do with Delegate Hoffner when I say that when the Attorney General tells us what to do where we're drawing a new Constitution to provide some basis upon which he and his office must subsequently live, I think we're wrong. If we can't put this in a side or an alternate proposal without taking it out of the main body, then I say that the alternate proposal must fail. Unicameralism cannot be that important that we have to lose a whole body of the Constitution, and I know that the people that are advocating unicameralism have got a real thing going; but I tell you this: It's more important to have an entire document that a piecemeal thing. I urge you to vote that little red button and vote "no" against reconsideration.

DELEGATE DAWSON: Mr. President.

VICE PRESIDENT SAUGSTAD: Let's see. I think Delegate Nothing, and then Longmire, and Dawson. Delegate Nothing.

DELEGATE NOTHING: Fellow Delegates: The note I have in my book says that on the 14th of January we passed this by 68-to-27, and I happened to be one of the 68, and I — you want to pick that up, Kyle? We're not going to tell anybody what you did. (Laughter)

We happened to be one of the 27 — (Laughter)

Mr. President and Fellow Delegates: As I understood the President's ruling a couple of days ago was that we had to keep the bicameral in, and apparently now Delegate Wenstrom thinks that that decision was wrong and that we had to do this. Is that right?

DELEGATE WENSTROM: That is absolutely the reverse. I stated at that time that we were going to vote on the — if we were going to have a unicameral, then we had to take the bicameral out of voting — already out of the Convention, out of the Constitution as it was at that time; that we could not have one as an alternate and the other one set in the Constitution; that would not be fair, and so, for that reason, I ruled at that time that it would have to come out; that we'd have to move to reconsider and take it out and put them side by side. Remember, it was the delegates of this Convention that placed the unicameral on the ballot.

DELEGATE NOTHING: Thank you, Delegate Wenstrom. I, apparently, had misunderstood. It doesn't seem to me that we should get too much concerned as to the fact that you have one in the Constitution and then you have to turn around and vote for the other, because you have two votes, first of all.

Now, if you're going to worry about whether or not the Constitution is going to pass by, say, ten thousand votes, and then that the other is going to have a different amount — say unicameral — then it would appear to me that that person that voted for unicameral probably voted "no" in the first place; that he then said, "Well, I don't want the Constitution, but if I'm going to have it, then I want unicameral." Well, there's nothing wrong with that. I think that they've got two votes; they've got one for the Constitution and then they've got a chance to turn around and vote for unicameral or bicameral by voting for unicameral. And if that isn't clear — (laughter) — well, I'm not going to start over again, because it seems — keep in mind they've got two votes. They don't just have one vote, and they're not — by voting for one, they're not voting against unicameral; they can vote for the Constitution, yet they've got the privilege of voting for unicameral all by itself, if you leave it there, and when that's totaled up, then that's going to be the decision, and I think it's — I just can't see, personally, how 68 of us can favor bicameral and 27 can favor unicameral, and yet the people are supposed to think that there's an equal thing. It's not equal. It wasn't equal to start with, because the body felt that bicameral was the best.

VICE PRESIDENT SAUGSTAD: Delegate Longmire, and then Delegate Dawson.

DELEGATE LONGMIRE: Mr. President and Fellow Delegates:

I certainly have no opposition to letting the people vote on a unicameral and a bicameral, if it could be done without endangering the whole Constitution that we have passed it, and I think many of you have done as I have — have read the

engrossed white forms that we have passed here and have been extremely proud of them. I think we did even a better job when the Style and Drafting Committee got it in proper order when we read it as to how short it was, how simple it was stated, how it all tied together in the different articles and different sections in a logical sequence. But now it seems that all of that work, and in doing all of that, in order to get this one proposal on the way, some people say it has to be done legally, that we've got to tear this nice, neat document apart and let the people vote on not one constitution, but at least three constitutions, plus four different other measures, which is going to make a ballot so long that most people will get tired before they get to the end of it and probably even consider voting on some of these alternates.

Now, we don't have the same problem on the others that we have in this particular one, because when we do that, we bring out a substantial part of the logical-sequence document that we did pass here and we put it in. We have, first of all — then we vote on that part of the Constitution that is left after we take out all references to the bicameral system or to the Senate and House of the Legislature. Then we put that into a Constitution for them to vote on — another document — which is a long thing and will be confusing to people. Then we put it under that or above it, one or the other — all of these sections on the unicameral. So that's three they have to vote on to confuse them. And if we had — frankly, I would have been perfectly willing, after we got into some of these alternates, to just say that we don't have any; we'll let them vote a good, clean instrument here, "yes" or "no," and it would have been very easy from the public relations standpoint to go out and say, "Vote 'yes' — vote 'yes'" — just keep saying it until everybody had that in their minds. Now, we can't do that if we pull this out, and we're going to have a lot of people who will vote on this first part, saying that, "Do you vote 'yes' or 'no' on the new Constitution?" — when they're only voting on less than half of the Constitution, when they vote in that first — on that first place on the ballot that's provided for it. Many of them won't go any further to even consider some of these other measures that are on, because their main interest in coming there, and certainly the main interest of the majority of the people in coming there, was to vote on the Constitution. A lot of these side issues, they are not interested in; and so, as a result of that, we are not going to have the will and the voice of the big majority of our people who are voting on this Constitution.

Now, why should we endanger the work that we've all worked hard here for months in these committees — very diligently? I have never seen a group work harder and be more dedicated to their work in the time that we've had and in the deliberations that we've had here for the past 29 days. We are entitled to have a good shake at the whole Constitution; but if we endanger this by satisfying the whims of some people — a minority of this group, for instance — to put on a measure that's going to endanger all of the work that we've done, it could be the straw that breaks the camel's back and causes us to lose the whole thing. I just can't see the logic in going on through with tearing this thing apart in order to get that question issued. There's always time in the future to refer this to the people — this question — if there's so many people in the State that want a unicameral system.

For these reasons, ladies and gentlemen, I hope that this motion fails, and then we'll save the Style and Drafting a lot of work tomorrow, because they won't have to put this thing together again.

VICE PRESIDENT SAUGSTAD: The Chair will recognize Delegate Dawson and then Delegate Kelsch.

DELEGATE DAWSON: I agree with the idea of not taking all of this out of the present Constitution which we have passed, and I think that if this — if a "no" vote prevails on this, that we can amend the ballot form, which I will propose an amendment for it, and I have a letter from the Attorney General's office and I'll read just a couple of sentences of it.

"Your proposal actually proposes a substitution of one for the other with the further clarification that a majority of the votes on that question will prevail. Your proposal would eliminate the question of which vote will prevail. However, it is not a true direct alternative, but rather a substitution which may accomplish the same purpose."

VICE PRESIDENT SAUGSTAD: Delegate Kelsch.

DELEGATE KELSCH: Mr. President: I think part of the confusion — if you have the Illinois ballot — one of the delegates said that Illinois did not leave a hole. Well, that's not true. Illinois did the very thing that we're suggesting in this motion. If you've got the ballot, their proposal — their Constitution, on page 11, on the question of election or appointment of judges, and they say in Section 12: "If the electors approve proposition 2A providing for the election of supreme, appellate" — and so on — Section 12, Article VI, it came in the adoption schedule and it was inserted in this place and it goes on to say if they approve of this section, the other will come in, and so on. Now, the very thing which we are suggesting in this motion is just exactly what Illinois did. I think it's a question of giving the voters — and this is what the Attorney General has indicated — to give them a fair alternate on the question. If the delegates are concerned about the vote, I see no reason why we cannot state in the introduction to the Constitution the vote by which this body chose either the unicameral or the bicameral. They can also state the vote by which we picked the initiative and the referendum, because we have the very same problem in treating the initiative and the referendum. I think it's a question of — after all, we're simply submitting this to the voters. It will not be a complicated, long ballot. If you look at the Illinois, it's very simple. This material is carried in the adoption schedule. It's very simple. It's understandable. And I do think it gives the voters a clear choice, and that's what the Attorney General suggested to us.

VICE PRESIDENT SAUGSTAD: The Chair will next recognize Delegate McElroy: Following McElroy, Delegate Sinner.

DELEGATE McELROY: Mr. President, I trust the Chair will recognize that I'm not speaking to the issue, but neither has anyone else tonight! (Laughter)

Our whole philosophy on set-aside issues has been to provide a safety valve for those issues that might become emotional, and I have thoroughly approved of this; however, this particular issue is not in that category whatsoever. It's offering the voters an either/or choice, and I don't feel that I've been hired to come down here to provide a number of issues on which we couldn't make our own decision. We decided this issue on a two-to-one basis.

Now, I think it would be a good set-aside issue to try to get votes, but only if it can be on a "yes" or "no" basis — that is, this particular issue is set aside and could be phrased in such a way that it would replace something that's already been decided by the Convention. I don't agree with the Attorney General's or — I don't agree with some of the people's interpretations of the Attorney General's opinion. I think this could be done and be done legally, and on that basis I would favor it as a set-aside. If we have to take the bi — the bi — the two-house legislature out of the Constitution, then I would have to vote against that.

VICE PRESIDENT SAUGSTAD: The Chair will recognize Delegate Sinner next.

DELEGATE SINNER: Mr. President. Yes, this is a different proposal. Unlike the other proposals that were spawned in a spirit of negativism by groups who threatened this Convention in one form or another, this proposal was spawned by a group of people who ardently believe in constitutional revision and set out to work for that cause. Not one, I hope, and not once to the best of my knowledge has any member of the Citizens Committee for a One-House Legislature ever said that they will not support this Constitution if they do not have their way, and I do not say that now. I'd only ask that this group who believed in what we're trying to do here and will work one way or the other for the success of our labors, that they be given equal consideration with the negativists who have threatened what we do here. I have no great feeling for the exact expression of this question on the ballot; just so that — just so there is some fair way that the people can consider it — that's all.

VICE PRESIDENT SAUGSTAD: Next Delegate Hoghaug. Next will be Delegate Haugen.

DELEGATE HOGHAUG: Just briefly, it's been stated in our discussions time and time again — Delegate Longmire elaborated quite freely about how we should stand pat. We've done a wonderful job, but I don't think we trust in the

people, and if we just take a little lesson from history, history has proven that constitutions that are presented in total are defeated. So I think this is one avenue to get a positive approach to the problem — a “yes” vote on the whole Constitution.

DELEGATE McINTYRE: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Haugen next; then Delegate Lander.

DELEGATE HAUGEN: Mr. President: In discussing the motion to reconsider, of course it's impossible to stay away from the issues, and I would suppose that when we get through talking about reconsideration, we'll probably get down to the issue, also. Now I happened to be one of the 68 who voted for the bicameral legislature. But I'm also one of the 58 who signed the proposal — signed as sponsors of Proposal 1-4. I'm also one of the 59 who voted the other day to make unicameral an alternate proposal, and I think that I have a responsibility to people that I have talked to, including a couple — my two sons — to do what I can to see that they have a fair chance to vote on this question; that they have a chance that is not going to be confused by possible lawsuits and controversy, and the only way that I think we can do this is as the Attorney General says, and he's been quoted before, but this is what he says:

“In the final analysis, where the Legislature” — now I think he's a little confused there (laughter) — I still think his reasoning is good.

“In the final analysis, where the Legislature has authorized the submission of alternatives to the electorate, we must assume that the Legislature had in mind that the alternatives be set forth clearly and independently so that an elector can make a deliberate choice. Anything short of this would not afford the elector a direct alternative choice.

He concludes by saying:

“We are of the view that if the elector were provided a straightforward option on an alternative, it would be the least confusing and would be free of attack or criticism.”

And the only way we can afford that straightforward option is to set those issues out side by side.

Now, I still believe that I was right when I voted for that bicameral, and I'm not afraid of the unicameral people winning, but I do want to give them a fair chance, and I hope we approve this reconsideration.

VICE PRESIDENT SAUGSTAD: Delegate Lander, and then Delegate Rosendahl.

DELEGATE LANDER: Mr. President. Fellow Delegates:

Just to add to what Haugen says. He, very fortunately, gave the first half of my speech.

I would point out to you that the letter which Delegate Dawson quoted to you, which is argued as — it's the last page — if you read the second paragraph of that same letter, which he did not quote, it gives you as much support for the alternative position. That's the first — the first paragraph gives you support for the other position. I happen to feel that we have to have it as an alternative, and I urge that you vote — vote for reconsideration. I think we make a great deal about our sponsorship. I thought for awhile here we were talking about a child which we had produced; there was so much emotion going out about how our document was concerned. The people are not going to care about that. I think it's much more important that we give them something important to vote on.

VICE PRESIDENT SAUGSTAD: Delegate Rosendahl and then Delegate Kessel.

DELEGATE ROSENDAHL: Mr. Chairman, I think that we must, too have this on the ballot as an alternative, but I arose mostly to ask a question. Perhaps Delegate Unruh would answer my question.

If this were left as it is now, then would the unicameral vote have to be larger than the vote on the whole document in order to win?

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I can't answer that.

VICE PRESIDENT SAUGSTAD: Delegate Unruh says he's unable to answer that.

DELEGATE ROSENDAHL: Would anyone answer that question? I merely want to know if, in order for the unicameral to win out in this case, would the vote have to be larger than the vote on the whole document?

VICE PRESIDENT SAUGSTAD: Delegate Hill, can you answer that?

DELEGATE HILL: Mr. Chairman and Delegate Rosendahl:

It's my understanding the vote on the unicameral would not have to be larger than the whole document. We'd simply have to have more votes favoring substitution than there was favoring the bicameral alternative, and that might be true regardless of the number; but the Attorney General is merely saying that there might be some question about it, and I would like the delegates to understand the difference between an Attorney General's opinion and a letter from an Assistant Attorney General. What we have here is a letter from the Attorney General and a letter from an Assistant Attorney General. Now the Supreme Court, if it's signed by the Attorney General, they don't distinguish whether it's an opinion or a letter. But an opinion by the Attorney General, in capital letters at the top says, "Opinion." Neither of these are opinions in the true sense of the word. So I wouldn't really be concerned about what the letters say, because there's a split of opinion in the office, as is obvious, but I would think that the delegates should vote on this question insofar as what they think is the best method of not confusing the voter.

But in specific answer to Delegate Rosendahl's question, it is not the total vote on the Constitution that would determine the outcome of the unicameral or bicameral, but the vote on the substitute measure — the substitute question. If the substitute favors the unicameral, that would be inserted into the document. But the Attorney General has suggested someone might challenge that; but he says he thinks we can do that, in my opinion.

VICE PRESIDENT SAUGSTAD: Delegate Rosendahl.

DELEGATE ROSENDAHL: The only reason I asked that question is because, if this should be, then I can very well see the people who should be in favor of the bicameral system, going off and encouraging the people to vote for the document, and if you don't care to, why just don't monkey with that other one at all.

VICE PRESIDENT SAUGSTAD: Delegate Kessel, first.

DELEGATE KESSEL: Mr. Chairman and Fellow Delegates:

I rise to defend the Attorney General, more than anything else. We asked him for an opinion. In good conscience, he told us what he felt it was. I'm certain he doesn't give a whoop whether we have the unicameral or the bicameral. But we slapped him down right and left. So I want to go to our present Constitution. I recognize Section 202 says "Amendments," but I think this is what we're actually considering, and here's what our Constitution says:

"If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately."

I think this pretty much gives the directive to the Attorney General and to anybody else that wants to look at this open-mindedly.

Yesterday we had our delegates very nobly get up and state, "We want something to go to the people." But today, when they find that they are now being pushed in the corner, now we have to go to the great majority that voted originally for bicameral. I, too, am proud of the bicameral legislature. I'm so proud of it that I am willing to let it go to the people. If it's that good, they're going to vote for it anyway. So why hide behind these different crutches now and want to throw it out? Let's say either we don't want an alternate on this and throw it out completely, or give it to the people as they're entitled to. Anything that's good is worthwhile to present to them, and I feel that way about many of the other alternate proposals that we have.

VICE PRESIDENT SAUGSTAD: Delegate McIntyre, Stanton, Urdahl Pearce —
(laughter).

Delegate McIntyre.

DELEGATE McINTYRE: I'm overwhelmed!

I could only say this in regards to the question before us on reconsideration: That it appears that this method of placing both the unicameral and the bicameral

before the people of this State is the method of reconsideration. We are simply re-considering a mechanical operation. Now, even though I'm an advocate of unicameral, I worked just as hard in the Legislative Functions Committee on the bicameral form, and I'm proud of that too. My only point here is that the Convention has decided to include unicameral and bicameral as an alternate, and if we're doing this, we must offer it to the people of this State as a true, clear and fair alternate issue, and this is my reason for supporting reconsideration, because this is the method for supporting reconsideration, because this is the method that has been laid out not only by the Attorney General — and the question of an opinion is not the thing — it's the way to go about it — it's the clear, fair precise way of doing it. There's no danger here in losing the overall document. There's no confusion that the public will have. It's a simple and clear choice, and if we decide as we have decided that unicameral and bicameral are truly alternates, then we must offer it to the people in that spirit.

VICE PRESIDENT SAUGSTAD: Delegate Stanton.

DELEGATE STANTON: Mr. Chairman: Earlier today we heard the Executive Functions Committee people plead to let the Convention's majority report vote stand and not to endanger all the good work that they have done. I now make the same plea — that the same consideration be given to the majority of us — some 68 of us — who voted bicameral. I think it's only fair that we get the same consideration, and I would urge a "no" vote on reconsideration.

VICE PRESIDENT SAUGSTAD: Delegate Urdahl.

DELEGATE URDAHL: Mr. President, I yield to Delegate Thompson.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: I've been thinking like Delegate Pearce, I think trying to figure out how in the world this thing would work, and if the people were to use it, if you vote for it while it is within the document, that you can't be fair on the other side, and I think it's quite simple once it came to turning on a light in my great mind, that if the only requirement is that the majority of the votes cast on a side issue — or a majority of the votes cast for the total document requiring that each person must vote "yes" or "no" for the total document, that then the majority of the votes, percentage-wise, on a side issue would then carry the side issue in or out. I think that that would work. So that you say, for instance, that we had 70 votes for the total document and 36 of those people voted for the side issue, then the side issue would become a part of the total document. I believe that would work. But maybe I'm completely out of order. I don't know

VICE PRESIDENT SAUGSTAD: Delegate Pearce.

DELEGATE PEARCE: Mr. President, I know you'd get to me.

As usual with lawyers, I have been concerned about this problem for many weeks. When this matter is voted on in the new Constitution, we are still operating under the old Constitution, Section 25, which we think of usually as referring only to initiated and referred measures and as I'll point out, however, does refer to constitutional amendments, too and it realized that there could be a number of measures on the ballot and that they might conflict, and so Section 25 the next-to-the-last — the second-to-the-last — the penultimate paragraph, says: "If conflicting measures initiated by or referred to the electors shall be approved by a majority of the votes cast thereon, the one receiving the highest number of affirmative votes shall become the law."

Then you turn to Section 202, which relates particularly to amending the Constitution, and the last sentence of that says: "All provisions of the constitution relating to the submission and adoption of measures by initiative petition, and on referendum petition shall apply to the submission and adoption of amendments to the constitution of the state."

Now, whether we call this a new Constitution or not it's an amendment. Many of the proposals are changed only in wording, and we say there's no change in meaning or we're amending the Constitution. Now, to me, in answer to Delegate Rosendahl's question, I'm absolutely convinced, and I've been pondering this a long time, that if you should take a piece of paper and put on it, on the left-hand side, the constitutional package which has within it bicameral, and assume that a hundred thousand people voted "yes" and seventy-five thousand people voted "no," so it carried, and Alternate No. 1 was unicameral, I don't care how you phrase the ballot, so eighty thousand people voted "yes" for unicameral, and seventy thousand people voted "no."

Now, as between bicameral and unicameral between the two columns bicameral won by twenty thousand votes, because they voted for the constitution that had bicameral in it, and I cannot conceive of the Supreme Court taking any other viewpoint on it, in view of the constitutional provisions that I have just cited. If that's not a fact, then you're providing that somebody who votes for the whole can eliminate part of it by fewer votes than those who approved the whole, and I don't think that's possible. And even if it were not for the constitutional provisions that we have that will be in effect until we've determined what has passed, I think that the general principle, one-man vote — one vote or majority rule, or whatever you want to call it — that the proposal, and it is a solid, single proposal — you're not voting by sections on the package — if that has more votes than any package, then the extra package fails, and I have always felt that we were right back — I hate to mention that to the committee, but you can't have the Convention voting for a majority for bicameral and maintain that action and at the same time say, "Yes, but if people don't like what we did, we'll provide, somehow or other, that by even fewer votes than they adopt what we pass, we'll let that prevail." It can't be done.

Now I don't believe that any court would sustain a provision, however you might phrase it, in either the package or the alternate, that would give a minority the right to prevail as against the majority. And so, to me, and this was talked over earlier, of course, if you were going to have an alternate, if you want the people to have a choice and a set-aside, as it's come to be called, then set it aside. You can't set it aside with one — you can't swim, you know, with one foot on the shore. If you're going to have the bicameral foot in the Constitution, what choice is there for just one foot out on the side. And so you have to do like Illinois did — don't put anything in the Constitution either way. And you say, "we will not answer that question. We think this is very sensitive. We want the people to have a choice." So give them two sides. It's the only way we can handle a choice. You can't marry both of the girls, you know. You've got to choose one or the other. So, if the Convention still wishes to have an alternate, then vote "yes" to reconsider, set the bicameral up as a separate proposition, and so you vote A. bicameral. B. unicameral. But if you do not wish — if you want to stand by the position of a majority of about two-to-one that chose bicameral, then do like you've done on a hundred other propositions — make up your own mind and ask the people if they want to approve it. If you want to do that, vote "no." But then you should kill the alternate proposal, too.

VICE PRESIDENT SAUGSTAD: Delegate Hernet, and then Delegate Aubol.

DELEGATE HERNETT: Well, Mr. President, a couple things.

One thing I wanted to point out: We only have two hours and forty minutes left for all the reconsiderations that everybody has in their pockets.

Would Delegate Wenstrom yield to a question? I'll admit it's a little bit unusual, but he's sitting back here and he's a delegate.

DELEGATE WENSTROM: State your question.

DELEGATE HERNETT: I would like to know, Delegate Wenstrom — what he thinks will happen if we vote down the motion to reconsider our action and take this proposal out of the Constitution — what it will entail.

DELEGATE WENSTROM: Delegate Hernet and Fellow Delegates:

It's a real simple answer. If we fail to reconsider, and then we have no opportunity again, then this will be in the Constitution as it is right now. It would be in the package just the way it is. That's the story.

DELEGATE HERNETT: Thank you, Delegate Wenstrom. That's what I hoped you would say, because this is what I feel should happen. I was not one that signed any kind of an agreement that there were going to be two proposals on the ballot. I think that it was said — Delegate Pearce indicated this, too — we voted almost two-to-one for bicameral in the Constitution. That is where it is now, and I think this is exactly where it should stay. If something is going to happen here that there is going to be an alternate, which there is, and I don't care how — if the people are going to vote for the alternate and at some time in the future here the Supreme Court or somebody else says that this is not constitutional or — well, they can't say that, because this is the Constitution — but I'm not going to worry about that. I voted for the bicameral in the Constitution and that is just exactly where it is. I'm going to resist this motion to reconsider our action on it, and I hope it stays just where it is, and what happens from here on in, I'm not going to worry about it.

VICE PRESIDENT SAUGSTAD: Delegate Hougen.

DELEGATE HOUGEN: Yes. Mr. Chairman and Fellow Delegates:

We have some other alternate proposals that are going to require the same type of action that our Style and Drafting Chairman and our President Wenstrom have told us that we're going to have to do at this point. I, myself, am very uninterested, personally, in having referendum and initiative as a side proposal. I happen to think that what we have in the body of our Constitution is far better than what the alternate proposal is, and I think that this referendum-initiative measure carried by a much stronger margin than was the bicameral-unicameral carried. I did vote to go along with the initiative-referendum as a side issue because the delegates as a whole felt that this was one of the four or five side issues that we should have. I also went along with it because I consider it common courtesy to give other delegates in this auditorium a chance to express their ideas and to give the voters something that they feel is extremely important. I'm quite emotional on the bicameral-unicameral issue. I think it is by far the most important side issue that we have. There's no doubt in my mind that the unicameral would serve the voters of this state best; but I think that I would like to have common courtesy shown to me and the other fellows that feel strongly about unicameral. It's the same kind of common courtesy I'm going to give to Delegate Rundle and the other delegates that voted for these other alternate proposals. I can't conceive of this organization, by the methods that we have — the discussion in the last half-hour or hour, trying to deny us the opportunity to have this as a side issue in the way that our State's Attorney and other officials have told us it has to be. I just can't imagine it.

VICE PRESIDENT SAUGSTAD: Delegate Griffin had asked for the floor.

DELEGATE GRIFFIN: Mr. President, may I yield to Delegate Hill, please?

VICE PRESIDENT SAUGSTAD: Yes, you may.

DELEGATE HILL: Thank you, Mr. Chairman.

I merely wanted to say that I agree with Delegate Pearce, except that he pointed out, to start with, that if conflicting measures are approved, a conflict would be if Alternative A said, "Shall a unicameral be approved?" and Alternative B says, "Shall a bicameral be approved?" Then the one with the largest number of votes would be approved. But if we say, "Shall a unicameral be substituted for a bicameral?", that's not a conflict; that is simply a substitute and there is no conflict there, so we don't have to worry about which one receives the most number of votes.

Thank you.

VICE PRESIDENT SAUGSTAD: Delegate Benson.

DELEGATE BENSON: Mr. President: When this debate started, I thought the only question we were to discuss was the vehicle by which we were going to put these proposals on the ballot. I distinctly recall that we passed, by a vote of 59-to-39, or something like this, that we were going to have this as an alternate. Now our President or the Chairman of our Style and Drafting Committee has come before us and told us this is the procedure we should follow, and I don't really think the argument should be as to whether or not this is an alternate. We have decided that. We are now deciding on the vehicle, and I urge you to support the President.

VICE PRESIDENT SAUGSTAD: The question has been called. We are now on the motion of Delegate Unruh that we are moving to reconsider the redraft of Section 5-12 or Article IV, Sections 1-14, which is the legislative branch.

DELEGATE OMDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Omdahl.

DELEGATE OMDAHL: We might as well have a roll call vote, because we're going to have to have it anyway.

DELEGATE MEIDINGER: Second the motion.

VICE PRESIDENT SAUGSTAD: The motion has — yes. Were you asking for a recorded vote?

(Delegate Omdahl shook his head.)

VICE PRESIDENT SAUGSTAD: Just a division vote?

(Delegate Omdahl nodded.)

VICE PRESIDENT SAUGSTAD: All right. The Chair will certainly grant a division vote.

We are now ready for the main question —

DELEGATE WENSTROM: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Wenstrom.

DELEGATE WENSTROM: Just a point as to procedure. This is a motion to reconsider, and it will be a recorded vote, because it takes 50 votes, regardless. We're going to have to have 50 votes in order to pass this. So it must be. This is taking off a proposal that we have previously passed, so it must have 50 to be reconsidered.

VICE PRESIDENT SAUGSTAD: This will then be a recorded vote, and the proposition is that if you vote "aye," you are voting to reconsider that portion of the Constitution dealing with the Legislative Branch.

All right. The key — any further discussion?

The key will be opened and you may record your vote.

Saugstad votes "nay."

DELEGATE WENSTROM: Mr. President: Wenstrom votes "aye."

VICE PRESIDENT SAUGSTAD: Has everyone voted? Does anyone wish to change his vote? If not, the key will be closed and the Clerk will take the record.

The motion has carried — or I'll wait and announce the vote.

The motion to reconsider carries by 60 "ayes," 37 "nays," one absent and not voting.

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: I can't see around the camera.

Mr. Chairman, I now move that Style and Drafting Redraft No. 5-12 be referred to the Style and Drafting Committee and be placed in the adoption schedule where it will become Article XIV.

DELEGATE HENDRICKSON: Second.

VICE PRESIDENT SAUGSTAD: Seconded by Delegate Hendrickson.

The motion — we are now on the motion of Delegate Unruh that Sections 1-14, Article IV of the Redraft of 5-12 be referred to the Committee on Style and Drafting for adoption into the — what is that? — for the adoption schedule.

I shall now put the motion. If you vote "aye," you're voting to approve the motion offered by Delegate Unruh. All those in favor signify by saying "aye," opposed "nay." The "ayes" have it. The motion carried.

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: Delegate Unruh.

DELEGATE UNRUH: This is not exactly being flushed with victory, but I have another motion on the same thing.

I now move to reconsider our Convention action whereby Style and Drafting Redraft Proposal 5-1, being Sections 1 through 10 of Article III, was passed by this Convention, these sections dealing with the powers reserved to the people.

The purpose of this is to do identically the same thing, in order to accommodate the side issue.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE KELSCH: Second.

VICE PRESIDENT SAUGSTAD: Delegate Kelsch seconds the motion.

We are now on the motion of Delegate Unruh that this body reconsider its action by which it passed 5-1, Article III, Sections 1-10, inclusive.

Is there any discussion? Hearing none, I'll now put the motion. If you vote "aye," you're voting to reconsider.

Again, in view of the fact that this requires a minimum of 50 votes, the board — the Chief Clerk will open the key and you may record your vote — or indicate your vote. This is not a recorded vote; a division vote.

Saugstad votes "aye."

DELEGATE WENSTROM: Aye.

VICE PRESIDENT SAUGSTAD: Wenstrom votes "aye."

Has everyone voted? Does anyone wish to change their vote? If not, the key

will be closed and the Clerk will take the ballot.

The motion prevails on a vote of 70, I believe, to about 25. So now we have before us —

DELEGATE UNRUH: Mr. Chairman.

VICE PRESIDENT SAUGSTAD: — Article III, Sections 1 to 10. Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Redraft Proposal 5-1, being Article III, Sections 1 through 10, be referred to Style and Drafting Committee, and they be placed in the adoption schedule, which would be Article XIV.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE MAXWELL: Second.

VICE PRESIDENT SAUGSTAD: Delegate Maxwell seconds the motion. Is there any further discussion? Hearing none, we are on the motion of Delegate Unruh that the Style and Drafting Redraft of 5-1, or Article III, Sections 1 to 10, be referred to the Committee on Style and Drafting for the purpose of putting it into the adoption schedule.

If there's no discussion, I shall put the question. If you vote "aye," you're voting in favor of Unruh's motion.

All those in favor, signify by saying "aye;" opposed "nay." The "ayes" have it. The motion carries.

DELEGATE LERBERG: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Lerberg.

DELEGATE LERBERG: Is Mr. Unruh through with his motions?

DELEGATE UNRUH: Yes.

DELEGATE LERBERG: At this time I move to reconsider the action by which Section 11 of Article VII was passed on tenth order and is now incorporated in Redraft Proposal 5-7.

VICE PRESIDENT SAUGSTAD: Say, would you repeat that article and section number again, please?

DELEGATE LERBERG: Section 11, Article VII.

VICE PRESIDENT SAUGSTAD: Is there a second to that motion?

DELEGATE ENGSTROM: Second.

VICE PRESIDENT SAUGSTAD: It was seconded by Delegate Engstrom. All right. Delegate Lerberg.

DELEGATE LERBERG: This is a motion to reconsider, but as the delegates are aware, you have to speak to the motion in order for the delegates to know what they're reconsidering.

If you will turn to this — this particular section, I think it was just passed Thursday, and it was amended at that time. I'm sure that there's been a growing awareness of late in both our State and the country of the history and heritage of the Indian people and appreciation of the part they played in this country. However, this particular section, which, in committee it was my understanding was to say something to the Indian people, I think as it is now amended, it's a proposal which can only have a detrimental effect, both to these people and to the balance of the State of North Dakota. As amended, and even before being amended, this was a section which was not in the old Constitution. It's a section which is not necessary in the Constitution because the problem trying to be spoken to here can be handled adequately by legislation. I hesitate to quote the Attorney General any more in the body tonight, but I did spend some time with the Assistant Attorney General on this matter, and he advises that we haven't been able to define as yet quite where we're at in terms of sovereignty and other things in the 1889 Enabling Act, much less a new section in the Constitution, and he feels that this would be an unfortunate inclusion in the Constitution, and I submit that I do, too, and for this reason, I would move for reconsideration.

I will go a little more into detail — into a detailed explanation. I'm sure others will want to speak briefly to it at the time, if we can receive a favorable vote on reconsideration.

VICE PRESIDENT SAUGSTAD: Does anyone else wish to speak to this motion?

DELEGATE AUBOL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Aubol.

DELEGATE AUBOL: Would Delegate Lerberg yield to a question, please?

VICE PRESIDENT SAUGSTAD: Delegate Lerberg.

(Delegate Lerberg nodded.)

DELEGATE AUBOL: Is it your intention, if the reconsideration motion prevails, to strike the entire section — to only strike the amendment that was offered the other day, or to revert back to the original committee language as opposed to the Style and Drafting language?

DELEGATE LERBERG: Delegate Aubol, I do have a printed amendment at the desk, if this motion prevails. It's a very simple method. I would strike all of Section 11 and renumber accordingly.

DELEGATE GIPP: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Gipp.

DELEGATE GIPP: I think that the day that we considered this as it was presented by the Committee previously and was recommended to the Convention and was subsequently adopted — the other day we considered this on second order and did reconsider this section at that time, and by a vote of 82-to-6 — 82-to-10, I should say — it was amended in substance with the following words: “. . . without infringement on the sovereignty of the tribes.” And I believe Delegate Longmire adequately explained that amendment at that time. I don't think that we were playing any kind of games with the Convention or attempting to delude anyone at that time. I really don't see the reason to reconsider this particular section at this time. I see no great harm in what we have done in this body by adopting Section 11. I think, again, at that time we reconsidered this section as a separate issue by dividing the question and, again, as I said, it was voted 82-to-10. I can see little reason for reconsidering it at this time, and I'm not quite sure that I followed Delegate Lerberg's full explanation for advising on reconsideration. Thank you.

VICE PRESIDENT SAUGSTAD: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, I suppose we, in effect here, will be talking the merits of the section in one way or the other in discussing this particular motion, because obviously, if this motion passes, the next motion will be, as indicated, to strike the section entirely from the Constitution. Our Committee — the Judicial and Political Subdivisions Committee — gave a lot of consideration to this section before we ever adopted it. Delegate Gipp pointed out to our Committee at the time that he thought it would be some recognition to the Indian people to recognize the right that they then had — a right to enter into mutual agreements with the political subdivisions and the State for services, that would be mutually beneficial to both sides. And so we adopted it at that time. Then some of the other Indian people came in just last week, and they felt the way we stated it at that time, that it might leave some doubt as to infringement on the sovereignty of the Indian people. So we then put in this amendment as for reconsideration, and you passed it, as Delegate Gipp said.

Now, I think, if any of you will read those three lines of that section, all it says is that “State agencies or political subdivisions may enter into mutually beneficial service arrangements with Indian tribes without infringement on the sovereignty of the tribes.” And, frankly, I don't think it gives them any more right than they've been exercising anyway. But we of our Committee felt, at least, that it gave some recognition to rights that they had already been exercising prior to putting this into the Constitution.

Now, I can't see, for the life of me, any danger in any way of leaving this in the Constitution. On the other hand, I think it is something that does give some recognition to the Indian people in this Constitution, and certainly we want them to look on this Constitution favorably, also.

I might state, when we put this amendment in the other day, all of the fellows who were here representing the Turtle Mountain Reservation and others there from that area were very happy with it — very pleased — and felt they could go back and work hard for the adoption of this Constitution. Personally, at this time, I can see no reason — I think it would be better if we had never put it in, then we suddenly here, on our next-to-the-last day, that we jerk it out and say, “We do not recognize your sovereignty,” as we have to recognize it under the Enabling Act and the compact

that we made when we became a state. So, for those reasons, Mr. President, I hope the motion does not prevail.

VICE PRESIDENT SAUGSTAD: I believe Delegate Thompson asked for the floor.

DELEGATE THOMPSON: I have a great deal of apprehension in rising to speak about this. One of the finest things that ever happened to me is that I have a daughter-in-law who has a lot of Indian blood — probably as much as David. I also have one coming up who is German and one coming up who is Norwegian.

I think a compact reserves the sovereignty of the tribes. I'm afraid that what we're doing with this mutual service situation is creating a situation that none of us understands, and I don't want to do that to people who would be involved. The Indian people that were here the other day talking with not only David, but myself and Mr. Longmire about this thing, felt that we had two choices; one was to put in the words "without infringement on the sovereignty of tribes" and the other was not to speak to it at all. Rather than create a situation which none of us can understand at this time, because of the federal involvement in this situation, I urge you to accept Mr. Lerberg's amendment.

VICE PRESIDENT SAUGSTAD: Delegate Nicholas.

DELEGATE NICHOLAS: Mr. President: I represent a district with approximately eight thousand Indians, on the Turtle Mountain Reservation, and I was contacted about this about two weeks ago, and at that time they were in favor of having this section completely deleted. They came down here and somewhat of a compromise was made on this section and an addition was put into. But I feel and believe that they would still be much happier if the section was deleted entirely, and I would, therefore, support Delegate Lerberg's motion.

DELEGATE HARTL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Hartl.

DELEGATE HARTL: I rub elbows with Delegate Nicholas' district. With reference to those individuals who Delegate Longmire spoke of, I quote from one local publication which had an editorial on the front page, which I have at my desk and was submitted after these individuals talked with Delegate Thompson, Gipp, Longmire and others. I quote from this article:

"A meeting was held in Washington in an effort of enlarging the boundaries of the Turtle Mountain Reservation. Number two, there was an idea that was discussed which would bypass state planning or clearinghouses when dealing on Indian programs, and such activities would eliminate duplicate services and insure that state laws have no real jurisdiction on our reservations."

Now, I submit that the inclusion which I spoke against of the additional words "without infringement on the sovereignty of the tribes," was a compromise. A better compromise, I submit, at this time for all interested parties concerned is to reconsider, as requested by Delegate Lerberg, and subsequently to delete the entire section for a vote for approval of our proposed Constitution.

DELEGATE GIPP: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Gipp.

DELEGATE GIPP: I was hoping, of course, I wouldn't have to necessarily speak to so much of the substance of the issue, and if the matter was to be considered and I was going to address myself to that subject, but I cannot help but make some more comments, after listening to some of the remarks that I've heard.

I think it is very definitely true that we did add the words "without infringement on the sovereignty of the tribes" under the advisement of tribal representatives, and — and I took this into very serious consideration and I know that several of the other delegates did in recommending this to the Committee on Judicial Functions and Political Subdivisions. One of the men who addressed us and advised us to add this was the Chairman of the Board of the United Tribes of North Dakota Development Corporation. He felt that the tribes at large in this State would feel more than comfortable and more than happy to see this kind of amendment added, which we subsequently presented to the Convention.

So I do think that we had an adequate representative of the tribes and I do think that this gentleman — Mr. Goodhouse — does indeed speak for the tribes of this

State. It is his position and his prerogative to speak for the tribes along the substance of this — this matter.

Now, I also think that perhaps we might be somewhat sidetracked by some of the things that Delegate Hartl just addressed himself to — or brought to our attention — because if you read this section here, Section 11, on mutual services, I think you'll find that it does not mandate that any political subdivision or any agency of this State does contract — do contract with any particular tribe in this State. It does not mandate that any tribe or group of Indians who live on a reservation contract with a state agency or a state political subdivision. It is not a mandatory clause at all. It is, in a sense, a permissive clause, and it does allow for one particular kind of thing — a service or services that might be mutually beneficial to both given parties — an attempt at an approach to overcome some of the very things that we have discussed and have been thrown out here in some manner or way when we discussed sovereignty, when we discussed the problems of jurisdictional issues, both civil and criminal, and I think that this is one of the things that this Section 11, that mutual services, adequately points out — that groups of people can indeed proceed along lines of beginning cooperatively to proceed together in life. This is the essence of this kind of a statement, because we know the problems of sovereignty, of jurisdiction, of civil and criminal jurisdiction, and the different jurisdictions upon a tribal reservation and outside of a tribal reservation with respect to State jurisdiction; that indeed is a problem, and I believe that this section does address itself to this kind of thing; that these people can proceed along a mutually, perhaps, agreeable way of life with respect to police services, for example. I think that's a very good example.

The question of sovereignty then: It does go into this. That question of sovereignty over jurisdictional issues is one that will eventually perhaps be solved by the federal courts, of course, by litigation, by federal law, by opinions of the federal attorneys. These things then are going to be important. But this clause, at least, addresses itself to an approach that might be mutually beneficial to groups of people, and I think that is, again, one of the prime — prime approaches for this thing, and it has to be remembered that, because of the jurisdictional issues, because of the issues of sovereignty, no matter what the pros and cons are that this could be an essentially good, positive, enhancing clause.

Somebody mentioned that this might be a good legislative article. I don't necessarily agree with that. I don't agree with that at all because I think, again, this is again a statement of an attempt to work together in this State as life goes on, and I would address myself to the delegates of this Convention to remember this, and certainly, if it is your desire to reconsider it, then I shall address myself further to what I think are the merits of Section 11. But, in the meantime, I do not think it should be reconsidered.

VICE PRESIDENT SAUGSTAD: We're now on the main motion offered by Delegate Lerberg that we reconsider — this body reconsider its action on Section 11, Article VII.

DELEGATE URDAHL: Mr. President.

VICE PRESIDENT SAUGSTAD: Delegate Urdahl.

DELEGATE URDAHL: I yield to Delegate Thompson.

VICE PRESIDENT SAUGSTAD: Delegate Thompson.

DELEGATE THOMPSON: I think I'm as worried about this as David is. I can't subscribe to Delegate Hartl's theory on this. That article that he quoted from doesn't bother me at all. If the Federal Government is going to determine that this is going to happen in the State of North Dakota, and it has already in one case, in part, then it's going to happen. Well, what really worries me is that we're involving the treaties with the Indians and the compact with the United States with the State of North Dakota in a separate section that we're trying to stick into this Constitution, and instead of having just two fields to worry about, the courts are going to have three, and I really believe that this thing should be taken out and no mention made of it. I don't believe we have any problem about contracts, because the Indian nations are recognized as a sovereign nation. We have no civil jurisdiction over them, nor criminal, and so they have their own rights of contract with any other political subdivision of the State of North Dakota, and I think that the political subdivisions of the State of North Dakota can contract with them.

I'm very worried about the possibility of creating a situation that either the Indian nations don't want or we don't want by having this situation in our Constitution, and I urge you to support the reconsideration.

VICE PRESIDENT SAUGSTAD: We're now on the question of the reconsideration. Because this will require a minimum of 50 votes to reconsider, I'm going to ask that the Clerk open the key so that you may record your vote.

If you vote "aye," you're voting to reconsider.

The Clerk will open the key. Saugstad votes "nay."

Has everyone voted? Does anyone wish to change their vote?

The board will be closed and the Clerk will take the ballot.

The motion to reconsider failed by a vote of 44 "ayes," 47 "nays."

Are there any announcements? We're about to declare a short recess.

We'll declare a recess for ten minutes.

(The Session recessed at 9:57 P.M. until 10:18 P.M., the same day.)

PRESIDENT WENSTROM: The Convention will please be in order.

May we have order in the Convention?

The Chair will recognize Delegate Lerberg.

DELEGATE LERBERG: Mr. President, I rise to a point of personal privilege.

PRESIDENT WENSTROM: State your privilege.

DELEGATE LERBERG: Mr. President and Fellow Delegates:

This document that we are drafting is a good document, and no one has ever heard me say, nor will I now say it, that I will not support it; however, by your failure to reconsider and express our arguments on this section which is in it, which had very little debate the other day, you have really deprived four or five thousand non-Indian citizens of the State of North Dakota of a state. I have lived in a judicial no-man's land since March of 1970. The State has no civil jurisdiction in it. The State has withdrawn their Highway Patrolmen from the area. The State does not enforce traffic regulations within the area. A State District Judge has issued an injunction against the city officials of the City of New Town, which is in this area, from enforcing any City regulations or ordinances against Indian people. There are two cities, two small communities, and twenty organized townships in this area, almost a hundred percent made up of the patent land dating back to 1912. These people, for all intents and purposes, by the failure to allow a debate on this, are people in a no-man's land, without a state.

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I'm sure we can discuss the matter here all evening. It's a highly complex — it's a highly complex—

PRESIDENT WENSTROM: Delegate Gipp, we have no question before the Convention at this time. Would you like to rise on a personal privilege?

DELEGATE GIPP: Yes, Mr. President.

PRESIDENT WENSTROM: State your privilege.

DELEGATE GIPP: I certainly, if, indeed, it is the desire to reconsider this, I'm not going to stand in the way. There's some feeling that there are things that have been said with respect to this recent section that we voted on previously, but the matter of jurisdiction, the matter of sovereignty, again, is one of those things when we talk of the reservations — Indian reservations — is one that must be dealt with, and I think it is being dealt with in the courts, by federal opinions, and so forth.

Now, it is true about the statement that was said about a no-man's land. I think the point, when we talk about jurisdiction, the point to remember, when we talk about reservations, is that there is jurisdiction over — on reservations by State and civil authorities representing the State and its political subdivisions on reservations. There is jurisdiction over those non-Indians who live in these areas and there is another jurisdiction over those people who live on the reservation within the confines of the recognized areas of a reservation, under a federal reservation. I think that this recent section that we discussed, again, does not address itself to this problem. It does not set a precedent with respect to sovereignty or jurisdiction. It does provide for some ways in which groups of people may possibly, if they wish, pursue living

together, but it does not dictate it, and I do not think that this section discriminates against a non-Indian population. I just cannot believe that, and I hope that the allusion to that does not mislead you.

Thank you.

DELEGATE NICHOLAS: Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas.

DELEGATE NICHOLAS: I would like to know if I would be out of order if I move for reconsideration of this section again. I think Delegate Lerberg's comments warrant reconsideration.

PRESIDENT WENSTROM: Delegate Nicholas, the Rule provides that you can only reconsider once in one day.

DELEGATE NICHOLAS: Could I ask for a suspension of the Rules, Mr. President?

PRESIDENT WENSTROM: Yes, you may ask for a suspension of the Rules.

DELEGATE NICHOLAS: Then I'd like to move that we suspend the Rules and have — what procedure would I follow here, Mr. President?

PRESIDENT WENSTROM: You would move that we suspend the Rules — that the Rules be suspended and that we move to reconsider further action on whatever the number of the proposal was that we had before the Convention — 5-7.

DELEGATE NICHOLAS: Okay. I would like to so move, Mr. President.

PRESIDENT WENSTROM: Delegate Nicholas moves that the Rules be suspended and that we do reconsider further our action on —

DELEGATE NICHOLAS: This is Proposal No. 5-7, Section 11.

PRESIDENT WENSTROM: — on Redraft Proposal 5-7, Section 11, and the motion has been seconded by Delegate McElroy.

Is there any discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President: I'm not sure that this issue is going to be settled satisfactorily here tonight. Is there any way that this issue can be brought back to the Committee on Political Subdivisions tomorrow, so that Mr. Lerberg and others who are knowledgeable in this area can appear before the Committee and the Committee can give further consideration to this?

PRESIDENT WENSTROM: Delegate Aubol, I think the Convention can do anything it wishes; but the sand is running out in the glass, and unless you wish to pursue it further here, why — the question before the Convention is on the motion to reconsider as offered by Delegate Nicholas and seconded by Deleгат McElroy.

Delegate Sinner.

DELEGATE SINNER: I voted against the motion to reconsider, but I have reconsidered my position and I wish to urge a "yes" vote on the motion.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I did apologize to Delegate Lerberg for not taking some part in the previous discussion. This is a question that's extremely important to my people. I always fear the danger that it can be said of me that I'm — that I'm prejudiced in this, and I don't like to — I don't like to have people think that. But this is extremely important and I do hope that you will reconsider.

PRESIDENT WENSTROM: The question before the Convention is on the motion to suspend the Rules and to reconsider our action on Redraft Proposal 5-7.

Delegate Thompson.

DELEGATE THOMPSON: Mr. President: I don't want this thing to get blown out of proportion. I'm not sure that the innuendo relative to what "sovereign immunity" means in our State Constitution is getting through to you people. If we agree that there should be such an innuendo in the Constitution, we will put it in there. I, as an attorney, will welcome it in there, because it gives me one more defendant when we start bringing lawsuits trying to determine what "sovereign immunity" means. But if we're going to make the Indian people upset about this thing by taking it out, then I have to resist this second motion, and I spoke against taking it out the first time; but if we're going to make a big problem out of this, then I think we ought to leave it alone. We passed it once, and let her set.

PRESIDENT WENSTROM: Further discussion? Delegate Engelter.

DELEGATE ENGELTER: Mr. President. Fellow Delegates:

I was on the Committee on Judicial Functions and Political Subdivisions. In our Enabling Act, in Section 203, we dealt with jurisdiction. I think at one time — I can't remember the dates — this State had the opportunity to unilaterally take jurisdiction. The State failed to do that, and thereafter Congress acted again and it has made the question with regard to jurisdiction a three-party contract — the United States, the Indian tribes, and the State of North Dakota — and until Congress has done something in this area to change that law, there is nothing that we can do with regard to jurisdiction, and I think the question that we have before us now does not in any way affect the question of jurisdiction. The problem is in another section, and I don't think we should reconsider.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I think there has to be a little more said here. The Indian people have never recognized the authority of the State in any manner, shape or form, ever. They have always resisted it, and this is the reason the State has not ever forced its jurisdiction on them. At the present time, the way this is worded, we have said that you can enter into these mutually-beneficial agreements without infringement on the sovereignty of the tribes.

Now, I ask you how anybody — suppose the tribes want to make an agreement with a State or an agency of the State. I say by this section of the Constitution you prohibit them from even agreeing to it, because you say they cannot make this agreement if they infringe on their sovereignty, and I ask you if anybody can make an agreement without giving up something or without infringing on their personal sovereignty, and the same is true with this. It's an impossible phrase the way it's worded.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the motion by Delegate Nicholas that the Rules be suspended and we reconsider our action whereby we failed to bring 5-7 back to the floor of the Convention.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: I certainly hope that the Delegates to the Convention feel that we were not trying to cut off any debate in connection with this issue whatsoever, because even yet nothing has been said that affects — that this section affects in any way any problem of jurisdiction or otherwise, and if there are those who have some citation or some precedent that they can show that this is doing this thing, I certainly would have no objection to reconsideration. However, it seems to me that about all has been said that can be said on the subject, and if we keep reconsidering it without repeating our — I mean by going on repeating ourselves all the time, it seems that we'll never finish the work here, and for that reason, I'm going to vote against reconsideration.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: I move the previous question.

PRESIDENT WENSTROM: Delegate Saugstad moves the previous question. May I have five seconds? Delegate Kelsch, Delegate Geelan, Delegate Ketchum and Delegate Knudson.

The previous question has been moved. It takes a two-thirds vote.

The question before the — the question is: Shall the question be voted on immediately?

Those in favor of adopting it will say "aye;" those opposed "no."

The "ayes" have it and the previous question has been adopted.

The question now before the Convention is on the motion to suspend the Rules and to reconsider our action whereby we failed to reconsider Redraft 5-7.

Now this is going to take 66 votes. So the Clerk will open the key and you will indicate your preference.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: I wonder if there isn't a difference of opinion about the motion. I believe the motion was to reconsider.

PRESIDENT WENSTROM: The question is not on the — the 66 votes, Delegate Haugen, is not on the question to reconsider. The 66 is on the motion to suspend the Rules.

DELEGATE HAUGEN: Are we wrong in believing that we still are operating under that Rule that says in the last two days we could suspend the operation of the Rules by a majority vote?

PRESIDENT WENSTROM: Well, we have a Rule that says we can only reconsider once, and we have done that, and that failed. Now we are moving to reconsider a second time.

DELEGATE HAUGEN: We are still operating under the Rule that says on the last two days we can reconsider — or on the last two days we can suspend the Rules by a majority vote.

DELEGATE LANDER: Rule 37, the last —

DELEGATE PAULSON: Rule 36.

PRESIDENT WENSTROM: We can suspend them.

DELEGATE HAUGEN: Yes. The wording is to suspend the Rules by a majority vote on the last two days.

DELEGATE KELSCH: Page 46, Mr. President — 42. Pardon me. Page 42.

PRESIDENT WENSTROM: Page 42. You're correct. The Chair is in error. I'm sure glad I announced it.

Then it will require 50 votes and the Clerk will open the key and you will indicate your wishes. Those in favor of the motion will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The motion to reconsider has passed. There were 56 "ayes," 36 "nays," with six delegates absent. Redraft 5-7 is before the Convention.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Would I now be in order to move that Redraft 5-7, Section 11, be referred to the Committee on Judicial Functions and Political Subdivisions for consideration tomorrow morning and action on that issue on the last day of the Convention? I do not think whatever changes they make is going to make a substantive difference in the Style and Drafting's problem with the document.

PRESIDENT WENSTROM: It will be in order.

DELEGATE AUBOL: I so move.

DELEGATE THOMPSON: Second.

PRESIDENT WENSTROM: And it's been seconded by Delegate Thompson that Redraft No. 5-7 be re-referred to the Committee on —

DELEGATE AUBOL: Political Subdivisions.

PRESIDENT WENSTROM: — Political Subdivisions — Judiciary and Political Subdivisions. Now, the question —

DELEGATE PAULSON: Mr. Chairman, you haven't got any time for committee action. I don't want to start redrafting the Constitution on the final day of this Convention. I move to amend the motion that Redraft Proposal 5-7 be placed on the tenth order for further action.

DELEGATE MEIDINGER: Second.

PRESIDENT WENSTROM: Delegate Paulson moves to amend the motion so that Redraft 5-7 be placed on the tenth order for final action. And that was seconded by Delegate Meidinger. Now, is there any discussion?

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: I request a ruling on that. I think that's a substitute motion.

PRESIDENT WENSTROM: That is not a substitute motion. It's an amendment to the motion. He moved that it be referred to the Committee, and the substitute motion says that it be placed on tenth order for further action, and when it gets on tenth order, the amendments will remain right here on the floor.

The question is on the motion as offered by Delegate Paulson. Delegate Aubol.

DELEGATE AUBOL: Mr. President, may I speak just one more time on it? I think there are a lot of angles this thing can take, and we can handle them very well in the Committee, if people just will come down and talk about it, and I think we'll save an awful lot of time on the floor here tonight and we'll be able to discuss the thing in some logical manner if the Paulson amendment is defeated and my amendment carries and it's referred back to the Committee.

PRESIDENT WENSTROM: Any further discussion?

The question is on the amendment as offered by Delegate Paulson that the motion be amended and that this Proposal be placed on the tenth order for action here on the Convention floor.

If there's no further discussion, as many as are in favor of the motion to amend will say "aye;" those opposed "no." The Chair is in doubt.

We will open the key. Those in favor of the motion to amend will vote "yes." Those opposed will vote "nay."

The Clerk will open the key. You will indicate your choice.

Has every delegate voted? Does any delegate wish to change his vote?

DELEGATE KNUDSON: Knudson votes "aye."

PRESIDENT WENSTROM: Knudson votes "aye." The vote is closed.

The amendment is adopted; 51 "ayes," 43 "nays," and four absent.

We are now on the motion as offered by Delegate Aubol and as amended.

The question is to place the Proposal 5-7 on the tenth order. Those in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the motion is before us on tenth order.

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Are we ready for debate on the matter?

PRESIDENT WENSTROM: We are ready for debate.

DELEGATE LERBERG: I have an amendment at the desk. The amendment — will the Clerk read it?

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-7, Section 11:

Delete Section 11 of Article VII, shown on lines 22 through 25, inclusive, on page 3 of engrossed Redraft Proposal 5-7.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: Mr. President. I think — and renumber the lines?

CHIEF CLERK GILBREATH: Yes, and renumber accordingly.

DELEGATE LERBERG: I move the proposal.

PRESIDENT WENSTROM: May we have a second to the proposal?

DELEGATE FALLGATTER: Second.

PRESIDENT WENSTROM: Delegate Fallgatter. Delegate Lerberg.

DELEGATE LERBERG: I think this is probably the preferable situation in which to handle this. True, it could be sent back to the Committee, but as the Committee has already indicated, they have already discussed this at length. I think the sentence came out in the Committee Proposal and in deference to Delegate Gipp, who has been a very fine delegate at this Convention and who has come up with some very fine ideas, and I think the sentence came out in deference to him and his wishes, and I think it had very little opposition. Then, of course, when it was made known in public, apparently some of the Indian people, who Delegate Gipp indirectly

thought he was trying to help, opposed this sentence, which he thought was for their benefit, and so they came to the area and prevailed on the Chairman of the Committee to offer the amendment, which was offered, I believe, last Thursday, in the matter, adding the last few words to this section. Now I think the last few words, of course, were the straw that broke the camel's back in the matter; but on better analysis of the whole sentence, I think it's an unfortunate provision in the Constitution. I think Delegate Thompson really hit on the crux of the whole matter in that it throws in an unknown situation which is brand new. Delegate Longmire referred to cases on the subject. Obviously, there aren't any. Anybody who has had any experience with reservation law or law concerning things near the reservation is aware that it is probably the most tangled jungle of law that there is in existence today. In talking with the Attorney General — Assistant Attorney General on this matter, he advised that we're not even aware of the true situation as far as sovereignty is concerned, from the 1889 Enabling Act, and he very definitely felt this was throwing another situation into it. We have referred in the Constitution previously to these Enabling Acts, and obviously we cannot change anything in those Enabling Acts, and we refer back to them, so we cover the matter of the Indian problem there.

This is a brand new section in which the State acknowledges the sovereignty of the Indian tribes by making this statement. It's a new situation. The Indian tribes to my knowledge, have never recognized the sovereignty of the State, and I doubt that I will ever live to see them recognize the sovereignty of the State. And so here we are saying to a group of people, "We recognize your sovereignty, even though you have nothing but disdain for our sovereignty."

The Indian people look to the Federal Government, and the Federal Government pretty well has controlled the destiny of Indian law and the situation thereabout. Now the situation which I refer to came about through a ruling of the Solicitor General in March of 1970, in which he said that the 1912 — I believe I'm correct in this date — Homestead Act, which opened up parts of the Fort Berthold Reservation to homestead, opened them up to homestead and transfer of title, but, in effect, never moved the jurisdictional boundaries from the former situation. Now, as recently as 1962, the Assistant Commissioner of Indian Affairs, in Washington, gave just exactly the opposite opinion. So this matter has never really been resolved at that level. An organization in the area, composed of two moderate-sized cities, two small towns and 20 organized townships, banded together and organized an organization, of which I happen to be President, and Delegate Haugen also happens to be an officer. Because of the political situation involved, we were encouraged to go into Federal Court to test out this particular ruling before we could get any other relief from it. This was done in District Court, and the decision within the last two or three weeks has been handed down in Circuit Court reaffirming the situation of the Solicitor General — the opinion of the Solicitor General, and this is what brings up this situation.

Reservation law has grown up around reservations which have been predominantly populated by Indian people. Indian people have been wards of the Government and the Federal Government has dealt with them almost exclusively. I submit to you that non-Indian people cannot live and survive in an area subject to reservation law, and this is now what is happening in our area, and I think it would be particularly unfortunate in the State now if the nice new Constitution said, "We recognize the tribal sovereignty." I, no doubt, have to go to Washington yet this month to try to get some attention focused on this at the Federal level, and if I were to go to the Congressmen, who are political creatures, and say, "We desperately need some help in this area. We have to have this fictitious boundary line changed back to allow these non-Indian people who have lived in the area, many of them since 1912, '14, 1920, in that area, who operated on the basis — the Federal Government has operated on the basis that this was non-reservation area, and if I have to go and argue this case and they looked at our Constitution and said, "We recognize the sovereignty of the tribes," I could just as well pack up and go home again.

The clipping that Delegate Hartl referred to is just a situation that's developed in the last few weeks. It's a situation that's going to continue to develop. We have OEO attorneys in our area now, employed by the Federal Government, who have advised the Indian people in our area that they no longer owe any jurisdiction to the State, taxwise or any other wise. I submit to you that most of the Indian people are fine and honorable people, just like the delegates here. I have, in fact, the oldest employee and the highest paid female employee in my banking institution, an Indian

lady, and she's the finest banking employee I've ever had. I've lived among and with the — and gone to school with the Indian people all my life, and they're fine people, and the great majority of them wish to live with the white people, with the non-Indian people; they wish to be under the jurisdiction of the State. They wish to take their part. They wish to have their kids go to school and they wish to have jobs and operate just like you and I; but we've got a situation today where there's a small minority who wish to take advantage of everything that can be thrown their way, and these are the people that are stirring up these headlines and causing the problem; and if we continue to grant them situations of this kind, these problems are going to be — are going to be endless. The jurisdictional problem of the Indian area today in the front pages of the paper, the State Welfare Department is having a hearing that they're being accused by some of these same people that they're kidnapping the Indian children, putting them in foster homes. This matter of jurisdiction will be a non-ending thing, until the Federal Government finally decides that this situation has to be worked out.

Now, I don't know how many of you have read this clipping that Delegate Hartl has, but you say, "Well, this couldn't happen. They couldn't come out here and take some of the slams from the Reservation." I tell you, it has happened. In my town, we have 240 trust lots in my town, which were unsold as of 1933, and which, by Executive Order of the President of the United States, were taken away from the sale area by another order in 1963. After working on this problem for some 13 years, the local Tribal Council, the BIA, the City of Parshall and the Department of the Interior in Washington, D. C., agreed that approximately a third of these lots by a geographical area would be immediately again offered for sale; that approximately two-thirds of them would be restored to the Tribe as tribal property. Just about five or six years after this agreement was made by unilateral action, the local tribe petitioned that some of these lots which were to be put up for sale and become deeded property would again be restored to the tribe, and I say by unilateral action of the BIA and the Department of the Interior in Washington, this was done.

Now, to many of you delegates here, it is impossible for you to conceive of this happening in the present United States today, but I tell you it has happened, and I can document it to you, and this is why I feel so strongly about this section — because these non-Indian people that live in this area are, in effect — and we've made several contracts with State officials — we are, in effect, people without a State. We're paying taxes. We're doing the same thing as the rest of you people are. We have no — you might say non-existent Highway Patrol, because they — they do not know what the jurisdictional problem is. The Indian people cannot be taken into anything but tribal courts. The ordinances of the City of Parshall and New Town cannot now be enforced against Indian people, and this is just a — most of you here would be unable to imagine a fiction book as to the situation this thing is in, and that's why I urge you strongly to delete this section.

You have heard the argument many of the Indian people didn't like the first sentence, so there's no point in knocking off this amendment to it and leaving the first sentence, because the Indian people themselves don't like that, and I say the only answer to the thing is to leave it alone. Our old Constitution did not speak to it. We don't have any less problems if the new Constitution doesn't speak to it either. We'll have a great deal more problems if the new Constitution does speak to it.

PRESIDENT WENSTROM: Any further discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President. Fellow Delegates:

I would join Delegate Lerberg in once again asking your indulgence in considering the question to delete Section 11 for some of the following reasons:

Number one, Style and Drafting changed the original proposal as submitted by the Committee on Judicial Functions and Political Subdivisions. Our article as originally submitted was researched and discussed quite extensively. The Committee approved it on that basis. No research has been conducted upon the Style and Drafting changes to determine what, if any, merit or demerit may be given to the changes that Committee made. Time could not allow for this. Time did not allow for this. Time also did not allow for research of the amendment which we have found ourselves most directly in conflict with — that of "sovereignty of the tribes." We know that certain members individually and as members of the Indian Nation of our own State requested of certain members of our delegation that the amendment infringing on sovereignty be placed in this document or, in the alternative, that the entire docu-

ment known as Section 11 be deleted. I ask that, for the benefit of all parties concerned, since we are unaware of the entire consequences of the Article as we now have it, that we vote to delete all of Section 11 for the benefit of the Individual Indian Nations, the individual parties on those reservations, and the people involved off of the reservations. I ask this both as a delegate, as a former trial judge for the Bureau of Indian Affairs, Department of Interior, and my practice on the Indian reservation, and as a U. S. Magistrate who is involved directly in the sovereignty of these Indian Nations and the rules and regulations of the United States.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I guess I don't have all of his qualifications. I feel somewhat like our present Supreme Court. I agree, but I can't agree for the same reason. The way this thing came out of the Committee originally, I thought, "Fine," it isn't going to affect anything except the rights that the Indian people already have. But when we start speaking of the sovereignty of the Indian Nation in our Constitution, we're creating a problem that we don't understand. Our Attorney General of the State of North Dakota has agreed that he doesn't understand, and I'm sure that the public isn't going to understand, nor are the Indian Nations, when they start thinking about it. As an example, you know if you're aware of any of the jurisdiction — and this seems to be part of it here — that you can't sue the Indian Nation in State Court, nor can you sue the Indian that lives on the reservation in State Court. If we are creating a situation now, we're doing a disservice to the Indian Nation and to the Indian people, because they have that added protection, then I think they should keep it.

PRESIDENT WENSTROM: Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Well, Mr. President, I am familiar with that area that Delegate Lerberg referred to as a "no-man's land." However, I do not — I did not have objections to the original Committee language, as Delegate Thompson just mentioned. I did have exception to the Style and Drafting changes that were made. I don't feel that we, in our Committee, really discussed the importance of the Style and Drafting's — the changes of Style and Drafting, as Delegate Hartl has pointed out, and I certainly have strong reservations about — not "strong reservations" — but strong reservations about the amendment — about the amendment as offered from the floor. Now, I personally feel confident that the original Committee Proposal as contained in Committee Proposal 1-12, Section 11, was acceptable and is still acceptable.

Now, I have an amendment at the desk, and I'm not sure that the top wording is proper; however, I would move to amend the Lerberg amendment with the amendment that is at the desk.

PRESIDENT WENSTROM: You offer an amendment to the amendment.

CHIEF CLERK GILBREATH: Proposed amendment to the amendment:

Instead of deleting lines 22 through 25, inclusive, delete lines 23 through 25, inclusive, and insert in lieu thereof the following:

"The right to enter into mutually beneficial service arrangements between the Indian tribes and state agencies or political subdivisions of the state shall be recognized."

PRESIDENT WENSTROM: Do we have a second to the proposed amendment to the amendment?

DELEGATE BASSINGTHWAITE: Second.

PRESIDENT WENSTROM: Delegate Bassingthwaite seconded.

DELEGATE AUBOL: Mr. President.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: That is the original language that was found in Committee Proposal 1-12, and it's in the Proposal Book. I think that most of the question that has arisen on this issue is over the difference of the language without infringing on the sovereignty of the tribes. I am against taking out any references to mutual services, and I do think that this amendment will solve the problem.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: During the discussion that we had with the Chairman of the Indian Tribes of the State of North Dakota, he said, "If you're going to speak to this at all, you must include the words "without interfering with the sovereignty of the Indian nation," and he said that if we did not put those words in that section or did not speak to it at all, then he was going to resist the Constitution. Now, this is another threat; but what he was trying to do at that point was to either — and I think his choice was to take this section out completely; but if we don't take it out completely, then we must add these other words. Well, now this man was asked to come down here by a representative living here in Bismarck who had made no study of this situation, nor had Mr. Goodhouse had a chance to make a study of this situation. And I tell you, it's a can of worms. I resist this amendment. I think we should defeat the whole thing.

PRESIDENT WENSTOM: Any further discussion?

The question before the Convention is on the amendment to the amendment as offered by Delegate Aubol. Will the Clerk read the amendment again — the amendment to the amendment?

CHIEF CLERK GILBREATH: Proposed amendment to the amendment:

Do not delete lines 22 through 25, inclusive, but delete lines 23 through 25, inclusive, and insert in lieu thereof the following:

"The right to enter into mutually beneficial service arrangements between the Indian tribes and state agencies or political subdivisions of the state shall be recognized."

And renumber the lines accordingly.

PRESIDENT WENSTROM: Are you ready for the question? The question is on the amendment to the amendment. Those in favor of adopting the amendment will say "aye;" those opposed will say "nay." Those in favor of adopting the amendment will say "aye;" those opposed "no." The "noes" have it. The amendment failed. We are back on the amendment as offered by Delegate Lerberg. Is there any further discussion?

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: Mr. President, again I address myself to Section 11. I think that much of what has been said here again addresses itself to an issue with respect to jurisdiction and the sovereignty of tribes, too; but I think that, again, that it's addressed to the part of the problem that I think that this section does not address itself to, in essence. Section 11, as you read it now, does not dictate the outcome of jurisdictional issues. It does not dictate sovereignty of the State or the sovereignty of the tribes. I think that much of what Delegate Lerberg says is true with respect to jurisdictional issues, but it is not the essence of Section 11. The issue of sovereignty, the issue of jurisdictional matters, is one again that I think we have to talk about with respect to treaty relationships, to Federal legislation, to Federal opinions and court rulings, and that is the direct issue that Delegate Lerberg is talking about when he talks about the territorial boundaries of Fort Berthold, when he talks about the sales tax business and what not. That, my friends, does not have anything to do with mutual agreements. We're talking about the jurisdictional issue, and those issues will be settled in a Federal Court at this point in time. And what's going to happen 30 years from now and how we approach those things, whether they will be Federal issues, is not my — I'm not a soothsayer. But we are talking about an approach with respect to mutual services — mutual services by entities, if they so desire. I can only emphasize that point.

Let me give you an example. The State of South Dakota has much the same kind of jurisdictional problem. The State of South Dakota and one reservation, called the Pine Ridge Sioux Reservation, or the Ogalala Sioux Reservation, are presently engaged in a cooperative meeting in settling the sales tax issue. This perhaps is a good example of a mutual way to approach a problem, which may be mutually beneficial.

Now, this clause here says, "without infringing on the sovereignty of the tribes — of the Indian tribes." Now I say to you that that question speaks directly to the previous part of this section. It does not dictate the future sovereignty of all forms — or the sovereignty of all forms of jurisdiction in the future. It speaks to mutual agreements, agreements that these groups might very well see eye-to-eye upon.

That may be one of the problems that we have up in the Fort Berthold area. We just don't want to really — we're so worried about some of these jurisdictional issues that at this point it is difficult for some of the groups to get together and say, "Here is how we can cooperate with respect to police protection." Now I say that this article — this section merely points out that fact — that this can be done by groups; that approach can be taken. But it does not dictate anybody's sovereignty. It does not infringe upon any political subdivision. The issue of any kind of infringement upon any kind of political subdivision or any tribe whatever, again is one that will be settled outside of this section. That will be settled, again, by the courts in a court opinion, et cetera, because this — I think you're being side-tracked on this thing. I don't think that this section offers what Delegate Lerberg says it does. Thank you.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President, I've heard the talking and it scares me to death. But I do think we're making a mistake if we put this in — if we put this section back in the Constitution. Actually, it has reached the point now where it doesn't — it doesn't do what it says it's going to do, because you cannot have mutually-beneficial service arrangements without some yielding to sovereignty. I believe there could be an example that Delegate Gipp used — police jurisdiction. We cannot have that on the reservation in our part — we can't have that in our area because, again, the Indian tribes refuse to give up any sovereignty. We can't have it. We had a school on our reservation. I helped start that school ten years ago and it's been a good school. It's worked wonderfully well, and now — of course, this is something we can't control — the Bureau of Indian Affairs has adopted a policy that the Indians shall control their own jurisdiction — their own schools, their own civil services. We have no objection to this, but it's going to, of course, mean the ruin of the school, because the white people cannot accept a school system in which they contribute funds and have no jurisdiction. In other words, taxation without representation. I do think that this section does not mean — does not mean anything, and it would surely be so good to many of us, if it could be deleted from the Constitution.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President: I'm not going to say anything much more, except to endorse everything that Delegate Gipp has said in connection with this. I feel we have a smokescreen that has been laid here about conditions that have nothing whatsoever to do with this little simple provision that Delegate Gipp offered into this proposal. I do not think it has anything whatsoever to do with jurisdiction or these problems that we have. For that reason, I hope that we leave this section in the Constitution that's been so important to him in this Convention.

PRESIDENT WENSTROM: Anything further on the question?

DELEGATE LERBERG: Mr. President.

PRESIDENT WENSTROM: Delegate Lerberg.

DELEGATE LERBERG: I submit this is not a smokescreen, and the only way this matter of jurisdiction is going to be solved, and it is important, is for the Federal Government and the Indians to get away from this treaty bit and decide that the Indians are a part of the United States, they're subject to all the rights and privileges, they have all the benefits, and they're citizens, just like you and I, and if we put in our Constitution a provision recognizing their sovereignty, even when the Federal Government finally comes to their senses, we're going to have to amend our Constitution before we can do anything on the State level, and this matter is long overdue, and I think this is just a return to a hundred-year-old situation, and it is not a smokescreen and, if you people — as I say, you can't believe it until you've lived through it.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Lerberg.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: I would like to speak to Delegate Haugen's statement, if that's permissible.

I can't believe that he's going to have taxation without representation, because if the tribe and the BIA take over that school, he's going to have no budget to pay tax on; and so, therefore, it should be removed from the tax assessment.

DELEGATE HAUGEN: Mr. President.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Yes, Delegate Thompson is right. We're not going to have taxation without representation because we're going to dissolve ourselves from that school and it's going to be a bad situation for our white students and it's going to be a bad situation for the Indian students.

PRESIDENT WENSTROM: Delegate Aubol.

DELEGATE AUBOL: Mr. President: Once again, this issue continues to hinge around the amendment that was offered on the floor the other day that has to do with sovereignty. I can't for the life of me figure out why we can't somehow remove that amendment and still keep in this a simple statement about mutually-beneficial agreements, and it pains me no end to have to vote for deletion of this section; but if we can't get that final amendment that was offered the other day out, I'm afraid there are just too many questions that we have that are not answered.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate Lerberg. Any further discussion?

Hearing none, as many as are in favor of adopting the amendment will vote "aye," and those opposed will vote "nay."

As many as are in favor of adopting the amendment will say "aye;" those opposed will say "nay." The "ayes" have it and the amendment is adopted.

Delegate Lerberg.

DELEGATE LERBERG: Is this the proper place for the motion that the Rules be suspended and this be deemed re-engrossed and put on the calendar for first passage?

PRESIDENT WENSTROM: Delegate Lerberg moves that the Rules be suspended, that it be deemed properly re-engrossed and placed on the calendar for first passage as amended.

I hear someone calling!

DELEGATE GIPP: Mr. President.

PRESIDENT WENSTROM: Delegate Gipp.

DELEGATE GIPP: I was going to ask for a division. Is it too late to request it?

PRESIDENT WENSTROM: Oh, we'll grant a division.

The question is requesting a division. Will five delegates stand? That is sufficient.

Those in favor of adopting the amendment will vote "aye;" those opposed will vote "nay." The Clerk will open the key and you will indicate your preference.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

The tally indicates 55 "ayes," 39 "nays," and four delegates absent and not voting.

Now Delegate Lerberg moves that the Rules be suspended, that Redraft Proposal No. 5-7, Section 11, be deemed properly re-engrossed and placed on the head of the calendar for passage. Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, the amendment eliminated Section 11.

PRESIDENT WENSTROM: I agree wholeheartedly; however, we are going to have to dispose of this and get it back to the Committee on Style and Drafting, and I don't know how it's going to do it.

DELEGATE UNRUH: We don't want it, Mr. President.

(Laughter)

PRESIDENT WENSTROM: I don't believe it's a question of choice. I believe it's a question of rule. And the Rule requires — this isn't the bad part. As soon as you pass this, you're going to have to move it to the eleventh order of business in order not to have to bring to back again on the day after tomorrow for third action. So the question before the Convention is on the first passage on the tenth order of Redraft No. 5-7 as amended.

Those in favor of adopting will vote "aye;" those opposed will vote "no."

The Clerk will open the key and you will record your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 63 "ayes," 32 "nays," and three delegates absent and not voting. Redraft No. 5-7, Section 11, has passed.

Delegate Lerberg moves that the Rules be suspended, that Redraft No. 5-7 be deemed properly re-engrossed and placed on the eleventh order for passage. Do I have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the proposal is again before the Convention on eleventh order.

The question is on the second passage, and those in favor will vote "aye;" opposed will vote "nay." The Clerk will open the key and you will indicate your vote.

Does any delegates wish to change his vote?

Has every delegate voted? The vote is closed.

The roll call discloses 69 "ayes," 25 "nays," four delegates absent and not voting. Redraft No. 5-7 has been passed and is referred to the Committee on Style and Drafting.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: Mr. President, at this time I would like to make a motion we suspend the Rules and consider the action by which Section 22 of Article I was passed on the tenth order and as now incorporated in Redraft Proposal 5-9, only for the purpose of amending on page 4, line 18.

PRESIDENT WENSTROM: Delegate Decker, would you repeat those numbers again?

DELEGATE DECKER: 5-9, page 4, line 18.

PRESIDENT WENSTROM: Delegate Decker moves that the Rules be suspended, that we reconsider our action on Redraft No. 5-9 in the section — on page 4, line 18. Do we have a second?

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: Do we have a second to the motion? Seconded by Delegate Omdahl.

DELEGATE DECKER: Mr. President, the motion is included only for the purpose of amending page 4. If you would include that in the motion.

PRESIDENT WENSTROM: I have it written down here. Maybe I didn't repeat it. Now, do we have some discussion?

DELEGATE DECKER: Mr. President and Fellow Delegates:

Someplace — I think it was today — it seems like last week, it was so long ago — somebody referred to the Attorney General and some higher meeting, and we had a communication from the person who tells the Attorney General what to do. Judge Erickstad sent a communique and was talking to some of the people today about this proposal, and I have an amendment which is on the desk and also the delegates have it, and it would add two words to this proposal, and when it's read, I would like to move to amend with these two words, only.

PRESIDENT WENSTROM: The question is on the proposal to reconsider the action.

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: Mr. President, in the engrossed one, is it not line 20, rather than line 18 now?

CHIEF CLERK GILBREATH: Line 20.

PRESIDENT WENSTROM: Line 20?

CHIEF CLERK GILBREATH: Line 20 in the engrossed proposal.

DELEGATE DECKER: I must have looked at the wrong color.

Mr. President, I would like to change my motion then to state line 20. I guess I was working off the wrong color.

PRESIDENT WENSTROM: Did the delegates hear the change in the proposed amendment? It's on line 20, rather than on line 18, as previously stated.

Any further discussion on the motion to reconsider?

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: I suppose I should go a little further. I believe the thinking of the judge was that it should also include "willful" — or "intentional" was the wording, and we used "intentional" when we wrote up the amendment, because we thought that more people would understand "intentional" than "willful," and I believe that they felt there were some cases where it could be willful and the Court would then not be able to consider negligence, and if you were looking at the Section 22, I believe you can understand what we're talking about.

DELEGATE THOMPSON: Mr. President.

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Will Delegate Decker yield to a question, please?

PRESIDENT WENSTROM: Will Delegate Decker yield to a question?

DELEGATE DECKER: Yes.

DELEGATE THOMPSON: Did Judge Erickstad also say that a willful shooting by a policeman wouldn't be covered under those words?

DELEGATE DECKER: My communication from the higher court was second-hand. I would like to refer that to Delegate Saugstad.

DELEGATE SAUGSTAD: There was no discussion about that type of an incident. He did point out, however, that a party that was injured — the injured party would be injured just as severely if it were intentional or willful as an injury would be as a result of negligence, and if only negligence is included in here, it would possibly preclude a recovery under — if the circumstances were such that it had been either a willful or an intentional injury.

DELEGATE THOMPSON: Well, Mr. President —

PRESIDENT WENSTROM: Delegate Thompson.

DELEGATE THOMPSON: Apparently I'm going to have to disagree with the North Dakota Supreme Court's request. I think this is very dangerous. I can see where you wouldn't dare have any police protection at all, and I don't believe that Judge Erickstad is going to outlive all of us, and, therefore, going to be able to protect us in this kind of a request. This is fallacious, as far as I'm concerned.

DELEGATE NETHING: Mr. President.

PRESIDENT WENSTROM: The Chair will recognize Delegate Devine.

DELEGATE DEVINE: Mr. President. Will Delegate Saugstad yield to another question?

DELEGATE SAUGSTAD: Yes.

DELEGATE DEVINE: Does this amendment include injuries done by administrative acts, such as actions by city commissions or zoning boards or school boards, or something like that?

DELEGATE SAUGSTAD: No. In the discussion that I held with the Judge, it went something like this: That he pointed out that there can be injuries where someone willfully or intentionally does something, and that, as distinguished from just negligence, and that he felt that if we were to make provision to allow for recovery under negligence, we should likewise make provision to recover under intentional or willful injury.

DELEGATE DEVINE: Mr. President.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: I join with Delegate Thompson. I'm scared to death of this proposed amendment and would urge a vote against reconsideration. I think we're opening up a can of worms that may be new and unknown to our State.

PRESIDENT WENSTROM: Delegate Nothing.

DELEGATE NETHING: Mr. President. Fellow Delegates:

I wasn't really red hot on this section to start with, and I'm getting very cool in a hurry. There's one thing to provide for recovery for negligence that is brought

about by governmental agencies, which, of course, is brought about by the people involved. However, a willful act by an individual acting in the name of a political subdivision still under this language would hold that political subdivision to the same liability; but it has no control over the situation at all. We're talking — another difference is the fact that a willful act that one person causes to another gives that injured person recourse against the person causing the injury. It's different with a negligent situation. I think — gosh, we talk about our police departments, our fire departments, your garbage departments, your street departments; there's an awful lot of people involved that any one of those persons could commit a willful act and that political subdivision would be responsible. I think that — I think it's a bad amendment. I don't think we should adopt it.

PRESIDENT WENSTROM: Any further discussion? Delegate Fritzell.

DELEGATE FRITZELL: Mr. President, I'm going to resign from the Grand Forks Park Board tomorrow if this goes in the Constitution. (Laughter)

PRESIDENT WENSTROM: Any further discussion? The question — Delegate Kessel.

Originally, this section went into the Constitution sort of to get the municipalities ready for these accidents that are occurring, and so forth, and it seems funny that when we finally adopt something and give in, that all of a sudden another matter creeps into it so completely different from the original, and I certainly urge the defeat of this.

PRESIDENT WENSTROM: The question before the Convention is on — Delegate Burke.

DELEGATE BURKE: Mr. President, I think, if we called up Delegate Pearce, I believe, with myself, we'd all be in agreement as to the defeat of this.

(Laughter)

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the amendment as offered by Delegate — yes, it's a motion to reconsider, as offered by Delegate Decker. No further discussion?

The key will be opened and you will indicate your vote. Those in favor of reconsideration will vote "aye" and those opposed will vote "nay."

DELEGATE CART: Cart votes "no."

CHIEF CLERK GILBREATH: Delegate Cart votes "no."

PRESIDENT WENSTROM: Has every delegate voted? Any delegate wish to change his vote?

DELEGATE BERG: Berg votes "no."

CHIEF CLERK GILBREATH: Berg votes "no."

PRESIDENT WENSTROM: The vote is closed. The roll call indicates — or I should say the tally indicates 17 "yes," seven absent, and 74 "nays." So the amendment failed — or the motion to reconsider failed.

Delegate Omdahl.

DELEGATE OMDAHL: May we be on a — I'd like to rise to a point of personal privilege.

DELEGATE OMDAHL: Since I missed explaining the vote on that — when we voted on Section 11 on Mutual Services. A couple of times during this Convention the lawyers have really used us for a football field, and I don't know how many of you have been aware of it, but we certainly were — spent two hours talking about nothing when we were talking about Mutual Services, and I didn't know which way to vote, because my vote didn't mean anything either way we went. The provision does not involve the problems of jurisdiction, or anything like that; and so all it says is "may." And so it didn't make any difference if it was in the Constitution or not because if it was out of the Constitution, the Legislature could still provide for it, because they wouldn't be prohibited from doing it. And so if any of you are feeling bad over how you might have voted when we took this out — you know, if you voted one way or another, you haven't lost anything, or you haven't gained anything.

DELEGATE SIMONSON: Mr. President.

PRESIDENT WENSTROM: Delegate Simonson.

DELEGATE SIMONSON: I should certainly like to agree with Delegate Omdahl. It has entered my mind while the conversation was going on that I've only now fully realized the message in that TV commercial where the fellow is sitting on the edge of the bed saying, "I ate the whole thing." (Laughter)

PRESIDENT WENSTROM: Fellow Delegates, I believe it's more fun to have stories like that. Maybe that's what we should do.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Are you clear for a motion, sir?

PRESIDENT WENSTROM: You are — or we are.

DELEGATE MILLER: I move to reconsider the action by which Section 5 of Article XI was passed on the tenth order and is now incorporated in the Redraft Proposal 5-15.

PRESIDENT WENSTROM: Delegate Miller moves to reconsider the action whereby Section 5, Article XI, has now been incorporated in the Redraft No. 5-15, and was passed. Do we have a second?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton.

DELEGATE MILLER: Mr. President.

PRESIDENT WENSTROM: Delegate Miller.

DELEGATE MILLER: Out of my high respect for Delegate Fritzell, you don't know how bad I hate to do this, but I feel very strongly that we must take some further action on this. The big reason is not because I was opposed to it before, but because, through conversation in the days that have followed since we took this action, there have been so many delegates that have talked to me and talked among themselves that they now realize the full implications of this second paragraph. There's no point in going into all of the arguments. We had those the other day. This is done merely to give those delegates who wish to have another look at this thing an opportunity to revote.

PRESIDENT WENSTROM: Delegate Fritzell.

DELEGATE FRITZELL: Being my name was mentioned, Mr. President: I'm not going to argue. Those who argue — I would not argue. We are debating reconsideration here and democracy can't function without a majority, and all I want to do is remind you that we came out of Committee after many days with a minority and majority report. You defeated the minority report with the majority, after deliberation and debate. It then went back — came back on the floor, amendment was made; you defeated that amendment by a majority. Now I ask you please not to reconsider this, because then the democratic process, I think, probably will run down the barrel. But if you do decide to reconsider, defeat and reconsider Section 2, it wouldn't be long before you'll have the Federal Government doing it for you. So it depends on how you want it done.

PRESIDENT WENSTROM: Any further discussion? Delegate Thompson.

DELEGATE THOMPSON: I'm going to support Mrs. Fritzell on this. You people are missing the words after the third comma — "subject to reasonable limitation and regulation as the legislative assembly may provide by law," and if that doesn't mean that those of you who are responsible in government cannot protect yourself, I can't figure out what in the world it does mean.

DELEGATE OMDAHL: Mr. President.

PRESIDENT WENSTROM: Delegate Omdahl.

DELEGATE OMDAHL: I hope that this reconsideration does not succeed. I think one of the things that's going to make this Constitution widely accepted is the fact that in some areas it sort of strikes out into some new ground, and I think we have done a pretty fair job of drafting a document that's more relevant to the problems of the 1970's and the 1980's than the document we had before.

One of the reasons it is this kind of a document is that it addresses itself to some of the current problems that confront society, and I think environment is one of those very important problems, and I would have to say, generally speaking, that Section 5, in total, is a relatively weak approach to environment and environmental problems.

We talk about having a document that excites and interests the younger people. It was quite interesting to me to find that in a poll of freshmen coming into the University, that when they were asked to list what they thought was the most important problem facing the younger generation, they did not list the war in Vietnam, they did not list crime and drugs, but what they listed was the environment, and environment is the subject in which they're vitally interested, because they

know that for the next 50 or 60 years, that the condition of their environment is going to very seriously jeopardized, and unless they take care of the world and the environment, they might not be here or their children might not be here after that. I think this is just a token offer in Section 5 to say that we are in favor of suits, and so forth, and then we add “, as provided by reasonable regulation of the Legislature,” and I think this is the least that we can do to meet a problem that is serious in our society today, and not only is it a problem that those of us who are older should be very concerned about, but it is a problem in which the young people are very concerned, and I’m sure that they will work for a document, just because we address ourselves to this problem.

PRESIDENT WENSTROM: The Chair will recognize Delegate Burke.

DELEGATE BURKE: Mr. President. Fellow Delegates:

I’ve been striving to emulate the admirable restraint of Delegate Maxwell, but I find I have lost control and have to get up on this matter.

I voted against this matter on its initial passage, and I am voting against reconsideration at this time. I see by the Bismarck paper tonight that a group of environmentalists are meeting in Bismarck and they have praised the State’s constitutional delegates for passage of strong environmental measures. There’s a group of seven people on their board of directors, and I imagine they’re all married, so there goes fourteen votes for the Constitution. (Laughter)

So I would suggest that you get in touch with this environmentalist group before they end their meeting, so that they may change their opinion on this passage, and I don’t think at this late stage we should change our action on this matter.

PRESIDENT WENSTROM: The Chair will recognize Delegate Kelsch.

DELEGATE KELSCH: Mr. President. You are urged because I think we’ve been all talking around the halls as to — or guessing at the specter of frivolous suits being brought by excited environmentalists, and remember we are giving the power to regulate a class action. The Legislature can require that, if we are afraid that frivolous suits be brought, that the party bringing the suit would pay the costs of defense. The Legislature could provide that the suit will be brought for injunctive relief only to correct a bad situation, rather than for damages; because, after all, a person is bringing the action for all the people alleged to be affected by the alleged detrimental environmental activity. So I really think we shouldn’t allow our imaginations to run away with us. I think we trust our courts in all kinds of affairs. I think that our courts will be sensible. They’re not going to allow the rights of the property owner or of the man in business — his rights to be trampled on foolishly, and I think we can trust them, and I urge you not to reconsider this.

PRESIDENT WENSTROM: Delegate McElroy.

DELEGATE McELROY: Well, it’s tough for a hambone to follow an oration like Delegate Omdahl’s here. It’s also very difficult to argue against Section 2 without sounding like an anti-environmentalist. However, I feel very strongly that Section 2 is the wrong approach. I think it takes the responsibility away from the Legislature and passes the buck to the individual citizen for enforcement.

Now, we heard Delegate Pearce the other day talk about lawsuits and how they’ve — how they will end up with conflicting and different interpretations of the law, and I don’t think that’s what we want. I think that we want — we all want our environment to be protected and preserved and improved. But the proper way to do this is for the Legislature to appropriate funds for enforcement, funds for investigation into — or research into proper standards, and do it in a sensible way. I just don’t feel that Section 2 is going to be — is going to attract anyone, except some of the more rabid people, and we’ve had some experience with them in our community, and there is nothing sensible at all about the way they try to solve things.

PRESIDENT WENSTROM: The Chair will recognize Delegate Larsen.

DELEGATE LARSEN: Mr. Chairman. Fellow Delegates:

I supported this amendment from its very beginning. I feel very strongly that it’s a good amendment, and after listening to Delegate Knudson regarding the condition of our coal fields that will be here in the future, and also the arguments that have been presented regarding this matter, I feel very strongly that we should not reconsider; so I urge the reconsideration to be defeated.

PRESIDENT WENSTROM: Any further discussion? Delegate Hartl.

DELEGATE HARTL: Mr. President. Reference has been made to the legislators — that the legislation in the portion of this second paragraph, after the comma, can restrict us by reasonable limitation and regulation. I'm not against environment. What concerns me is what is a reasonable limitation of a legislative assembly. I am not afraid of our legislators or the legislation they would produce. I'm afraid of we, the people. At what point does our court system determine that by interpretation of this paragraph as we have it submitted in this document at this time, that the restriction of the legislation by this portion, of the paragraph after the comma is a violation of the, quote, citizen persons, unquote, individual right to a clean and healthy environment. Once we have through the court system eroded the legislative ability of our legislators to properly protect we, the poor citizen, then my city is subject to suit for the foul odor its environmentally-approved sewage lagoon allows to float down Main Street, my city is subject to suit for the noxious floating waters that engineers are now telling us are not clean and strained after 15 feet of sub-surface drainage in my landfill dump. Yes, as Delegate — one of the delegates stated, we do have an environmentalist committee in Bismarck at this time. Again quoting from the article in the paper: "One of the environmentalists was said to state at this time that agricultural pollution is the most harmful for the State. Bismarck has the highest air pollution in the State." Surprising? It's pretty clear up here on the hill.

However, going on to finish the article, the individual states — or one of the other individuals states that "Farmers in summer fallowing acres leave land open to wind erosion and cause dust pollution in the air." At what point do we have a reasonable limitation by the Legislature against a farmer to protect each individual citizen in his right to a healthful environment? I urge the defeat of paragraph 2 and your support of the motion to delete it.

PRESIDENT WENSTROM: Any further discussion? Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. Chairman. I've been opposed to this all along, and I was determined I wasn't going to do anything about it; but, due to the fact it's been brought up, I think there's many, many aspects along this line that have never been brought into the open, and I'm just going to mention them, and then I'm going to sit down. I'm not going to oppose it or be for it, but I wonder if you have thought about what trouble this is going to perhaps cause within a lot of your local grain elevators in the country. Right today we are faced with putting in equipment in our elevator which is costing us in the neighborhood of 25-to-50 thousand dollars. Now this is simply to take care of the dust from that elevator so it doesn't drift over our city, so we won't be sued for dirtying somebody's wash on their line. Now this is one thing. Has anyone ever given any thought to the pollution that is being brought into the State of North Dakota through international waters? It's been brought out many times in this — in regards to this, that Lake Metigoshe, for instance, and this is just a small area, about the 700 cabins that we have at Lake Metigoshe. But how about the 100 cabins that are resting on the lake shore in Canada. What are we going to do about those cabins polluting the lake? We can't do anything, in my judgment. How about the water that comes into North Dakota from Wyoming, Montana, and on into the State, and it would not be long until that water will be spread completely over the State of North Dakota through Garrison Diversion. How about some of these things? And, as Delegate Hartl has brought out, the pollution of the air — odors from our city lagoons. I think there's many, many things that have never been brought to light in regards to this — to this situation.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: Mr. President, my word is not great, but I did suggest to Delegate Fritzell that she bring a book on environment and that she may need it. She could filibuster for 15 minutes, if this is the last time to consider it.

But I'm serious. I don't think you can be for environment and want to delete any part of Section 5 of our environmental article — of our environment section. I urge you to defeat this.

PRESIDENT WENSTROM: Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, I hadn't planned to get into this, but when you talk about farmers, it sounds like the Legislature. You know the farmers want this. The farmers are the best environmentalists in the State of North Dakota. They have been planting trees and saving soil for years, and they should not complain about this. And if an elevator is spreading dust over the city, it should be checked, too. I hope you don't reconsider it.

PRESIDENT WENSTROM: Delegate Devine.

DELEGATE DEVINE: Mr. President, I'll try to keep mine short.

I served on the Committee and I remained silent every other time this was brought to the floor; but I do want to point out what Delegate Thompson and Delegate Kelsch both mentioned — that that provision that the Legislative Assembly shall provide — I guess I lost it — “reasonable limitation” — was a compromise within the Committee to answer most of the questions that were being raised on the floor.

The second thing I hope everybody finds and — looks at their hands and finds a big red thumb and starts to use it.

PRESIDENT WENSTROM: The Chair will recognize Delegate Cart.

DELEGATE CART: Mr. President: I was just wondering, if we leave this law in the book as it is and it becomes — or in the Constitution and it becomes part of the Constitution, and we had another situation like we had from 1930 to 1940, if someone would bring a suit against Almighty God because of the pollution!

PRESIDENT WENSTROM: The Chair will recognize Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I would like to sort of answer Delegate Kelsch about the Legislature.

I oppose this section. I have all the way through. And I maintain you shouldn't put too much confidence in what the Legislature might call “reasonable,” because Delegate Kelsch is one of the most persuasive lobbyists that I know of. He won every argument last session and he'd have it fixed so you couldn't even have beans at a country picnic, if you wanted. (Laughter)

PRESIDENT WENSTROM: Delegate Poulson.

DELEGATE POULSON: Mr. Chairman and Fellow Delegates:

PRESIDENT WENSTROM: May we have order in the Convention? We're running out of time.

DELEGATE POULSON: I have about one minute, or less.

Twice this Convention sincerely voted in the interest of health, and this is what we're talking about. Twice this Convention endorsed the doctrine of reasonableness, and twice this Convention was not panicked by the thought of a stampede to the courthouse steps. For my own part, I've supported this environmental provision from its very beginning — at least since it's gotten on the floor; and, once again, I'll reiterate what I said before: This is a reasonable environmental section in our proposed Constitution, and, thank goodness, it's a North Dakota Constitution and not the Federal Government barking down our throat.

PRESIDENT WENSTROM: Any further discussion? Delegate Rude.

DELEGATE RUDE: Mr. President —

PRESIDENT WENSTROM: Delegate Rude, your mike isn't working.

DELEGATE RUDE: Mr. President, I'd like to yield my time to Mr. Rosendahl.

PRESIDENT WENSTROM: Delegate Rosendahl.

DELEGATE ROSENDAHL: Mr. President, I only wanted to answer Delegate Hoffner's question or his comment that the elevators are being forced to do that now from the Food and Drug Administration, but only — I mean only that they be given time to do this. This is a lot of expense, and if they're going to make them suffer a couple of lawsuits in between, it's going to be rough.

PRESIDENT WENSTROM: The question before the Convention is on the — Delegate Nothing.

DELEGATE NOTHING: Mr. President, just a couple of comments.

First of all, I think we should realize that what we are doing is locking into the Constitution a class action, and we're not giving the Legislature that decision. If this is what you prefer, then you should vote against this motion. However, there's a couple of things that bother me, and I think Delegate Burke brought up something that really bothers me about the people that we are exposing to this class action. He indicated that, because we may take this out of this particular provision, fourteen people are going to vote against it. Well, why in the world would fourteen people vote against something when it doesn't change the status one way or the other, unless they're going to exercise, in my opinion, bad judgment?

Secondly, regarding the matter of farmers, before the last session, a fellow came up to me in Jamestown and he said, "We've got to do something about farmers that summer fallow." I said, "That's a way of life in North Dakota." And he said, "I don't care." He said, "there's dirt blowing against my house that was just painted, and I want to sue somebody." This is the kind of thing we're talking about with a class action, and this is what we are exposing ourselves to. If you subscribe to it, then I suppose we better beat down this motion. I'm going to vote for it because I think a class action in the hands of the wrong people with the wrong temperament can really cause problems for the people that are the citizens — the law-abiding people that understand that other people have to live, too.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: We have less than eight minutes to finish our work on this, so I would suggest that we —or I'll move the previous question again.

PRESIDENT WENSTROM: Delegate Saugstad moves the previous question. Delegate Chase, Devine, Geelan, Lander and Maxwell are the seconds.

The previous question has been moved. So the question is: Shall we vote immediately on the question?

Those in favor will vote "aye;" those opposed will vote "nay." Those in favor of adopting the previous question will vote "aye;" those opposed "no." The "ayes" have it and the question before us is on the motion as offered by Delegate Miller relative to reconsideration of Section 5 of Redraft 5-15.

The question, again: Those in favor of reconsideration will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will indicate your choice.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

(Delegate Miller waved a white handkerchief attached to a ruler, which evoked laughter.)

DELEGATE FRITZELL: Mr. President.

PRESIDENT WENSTROM: May we have order?

The tally indicates 31 "ayes," 61 "nays," and six delegates absent and not voting. And someone dropped his watch again over in that section! (Laughter)

Delegate Fritzell.

DELEGATE FRITZELL: I've been asked to explain my vote. I have a little verse here that I thought you might enjoy.

"The objective of all dedicated employees should be to thoroughly analyze all situations, anticipate all problems prior to their occurrence, have answers for these problems, and move swiftly to solve problems when called upon. However, when you're up to your ass in alligators, it is difficult to remind yourself that your initial objective was to drain the swamp!" (Laughter)

DELEGATE MILLER: Mr. President, I move that be put in the record.

(Laughter)

PRESIDENT WENSTROM: It is now five minutes to midnight. I believe we've had a fruitful session, and an enjoyable session. Delegate Hartl.

DELEGATE HARTL: Mr. President: Aware of that ever-present alligator, I am still going to scramble from my chair here, and if the floor is open for a motion, I would move at this time that we reconsider the action by which Section 6 of Article XI was passed on the tenth order and is now incorporated in Redraft Proposal 5-15.

PRESIDENT WENSTROM: Delegate Hartl, I think we have a situation here where we've got four minutes before we have to cease for today, and I doubt we can try that.

The question is — would you give me the numbers again, Delegate Hartl?

DELEGATE HARTL: It is Section 6 of Article XI, Redraft Proposal 5-15. That was Delegate O'Toole's ombudsman.

PRESIDENT WENSTROM: It's been moved that we reconsider our action whereby Section 6 of Redraft No. 5-15 was passed.

Do we have a second? Seconded by Delegate McElroy.

Is there any discussion?

DELEGATE BAKER: Mr. President, I move the previous question.

PRESIDENT WENSTROM: The previous question has been moved, and Delegate Aubol, Delegate Berg, Delegate Aas, Delegate Christensen and Delegate Engelter are seconds.

The question is: Shall we vote on the question immediately?

DELEGATE THOMPSON: Mr. President, I understand it's not debatable.

PRESIDENT WENSTROM: It's not debatable.

DELEGATE THOMPSON: However, I move to adjourn, which takes precedence.

PRESIDENT WENSTROM: I think we better continue with what we're doing.

The previous question has been moved, and those in favor of the previous question to vote immediately will vote "aye," those opposed "no."

The question before the Convention then is on the motion to reconsider, and the Clerk will open the key. Those voting "aye" are for reconsideration; those voting "nay" are opposed.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

71 "nays" and 23 "ayes," and four delegates absent and not voting.

The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: I move that we now adjourn until 8:00 A.M., February 17th.

PRESIDENT WENSTROM: Delegate Saugstad moves that we do now adjourn until 8:00 A.M. on February 17th. Do I have a second?

DELEGATE MAXWELL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Maxwell.

DELEGATE PAULSON: May I remind Public Information at 11:00 A.M. tomorrow?

PRESIDENT WENSTROM: Those in favor of adopting the motion to adjourn say "aye," opposed "no." The "ayes" have it and the Convention will be adjourned until 8:00 A.M. on February 17th.

(The Plenary Session adjourned at 11:59 P.M., Tuesday, February 15, 1972, until 8:00 A.M., Thursday, February 17, 1972.)

VOLUME XXX

(February 17, 1972)

MORNING SESSION

(The thirtieth day of the Plenary Session commenced at 8:44 A.M., Thursday, February 17, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

Our Chaplain for this morning is Warren K. Johnson, Pastor of the First Lutheran Church of Bismarck.

REV. WARREN K. JOHNSON: Let us pray.

God of creation and Lord of us all, bless our efforts as we engage in the art of writing a document under which we must all live. Help us to exercise true statesmanship.

May we sense the sacred trust we have been given by the governed.

May the Constitution as completed reflect the high ideals and the just causes we know to be right and honorable.

Bless our people as they seek to live harmoniously under this written code. May the judgment of history that rests upon these efforts be:

It was well done by good and faithful servants.

To this end we pray God's blessing upon us all. Amen.

PRESIDENT WENSTROM: We'll be on the third order of business — Roll Call.

The Clerk will open the key. You will indicate your presence.

Has every delegate indicated his presence? The key is closed.

The roll call discloses 94 present, four delegates absent. A quorum is declared.

We'll be on the fourth order of business — Approval of the Journal.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the 14th day of February, 1972, and recommends the same be corrected as follows:

On page 472, following line 41, insert the following: "The Resolution was adopted."

On 472, delete lines 51 and 52, and insert in lieu thereof:

"On page 2, line 1, after the word 'any' insert the following words: 'full time'.

On page 474, in line 11, following the word 'Section' insert the numeral '8'.

On page 479, line 17, delete 'One house legislature (Unicameral)' and insert in lieu thereof 'Two house legislature (Bicameral)'.

On page 479, line 18, delete "Two house legislature (Bicameral) and insert in lieu thereof 'One house legislature (Unicameral)'.

On page 489, line 18, delete 'and' and insert in lieu thereof 'as'.

On page 472, following line 41 — page 510, line 24, before the word 'Style' insert the following: 'Section 11 of Article VII as now in'.

Page 511, line 7, before the word 'Style' insert the following: 'Section 11 of Article VII as now in'.

Page 512, line 19, before the name 'Baker' insert the word 'Delegate'."

And when so corrected, recommends the same be approved.

Delegate Simonson, Chairman.

Delegate Dobson moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Revision and Correction of the Journal.

Are there any questions?

Hearing none, as many as are in favor of the motion to adopt will say "aye," opposed "no." The "ayes" have it. The report is adopted.

Delegate Rosendahl.

DELEGATE ROSENDAHL: Did my key and Delegate Rude's register "present"?

CHIEF CLERK GILBREATH: Yes.

PRESIDENT WENSTROM: Okay. Thank you.

We'll be on the twelfth order of business — Motions and Resolutions.

CHIEF CLERK GILBREATH: Resolution No. P, introduced by Committee on Resolutions:

A resolution urging the Secretary of State to employ boldface or italicized type in the preparation of the official ballot for the proposed 1972 Constitution.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Mr. President, could I get the letter number of that again, please?

CHIEF CLERK GILBREATH: P. Resolution P.

DELEGATE SCHEEL: I move that the Rules be suspended and that Resolution P be read in its entirety, not be referred to committee, and be placed before the Convention for final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended, that Resolution P be not printed as a resolution, but that it be printed in the Journal, that it not be referred to Committee, that it be read from the desk and placed on tenth order for passage.

The Clerk will read it.

CHIEF CLERK GILBREATH: "RESOLUTION No. P.

"Introduced by Committee on Resolutions.

"A resolution urging the secretary of state to employ boldface or italicized type in the preparation of the official ballot for the proposed 1972 constitution.

"WHEREAS, delegates to the Constitutional Convention of the state of North Dakota are concerned that the official ballot on the proposed 1972 constitution sets forth the proposition in an easily understandable form; and

"WHEREAS, they also recognize that a clear and attractive presentation of the propositions is essential to ready comprehension by the electors; and

"WHEREAS, it is universally acknowledged that boldfacing and italicizing of the printed word help to attract attention to language so treated; and,

"WHEREAS, the Convention is aware of the important role performed by the secretary of state in the preparation and distribution of the official ballot to be used at the special election on April 28 of this year,

"NOW, THEREFORE, BE IT RESOLVED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF NORTH DAKOTA:

"That the secretary of state be respectfully requested to prepare in boldface type on the official ballot the main question of approval or rejection of the proposed 1972 constitution, and that he be similarly requested to prepare, either in boldfaced or italicized type, those sections of the proposed 1972 constitution, appearing in the Adoption Schedule, for which there are differing alternate sections.

"BE IT FURTHER RESOLVED, that an enrolled copy of this resolution be delivered to the secretary of state by the close of the Constitutional Convention."

PRESIDENT WENSTROM: You have heard the reading of the Resolution. Do we have a second?

DELEGATE JESTRAB: Second.

PRESIDENT WENSTROM: Seconded by Delegate Jestrab. Is there any discussion?

The question is on the adoption of the Resolution. Hearing no discussion — Delegate Pearce.

DELEGATE PEARCE: Mr. President. I wonder if it would be possible to delay action on this for just a short time, until we can examine the statutes relating to the manner of setting type. I am not sure that the Secretary of State has control of that. It's far more important, in my opinion, to specify the type

size than it is to specify boldface or italics, and I have some doubts as to whether a solid matter set in italics is as legible as the ordinary Roman type, and I hesitate to put in on the Committee a resolution like this, but I would request that we delay for as much as an hour, or something to that effect, so we could examine the statutes to see whether the Secretary of State has any control over the matter.

PRESIDENT WENSTROM: Well, Delegate Pearce, would you move that we delay action — further action on Resolution P until eleven o'clock?

DELEGATE PEARCE: I do so move, Mr. President.

DELEGATE RONEY: Second.

PRESIDENT WENSTROM: Delegate Pearce moves that we delay further action on Resolution P until eleven o'clock today. That motion was seconded by Delegate Roney.

Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and we will pick this up again for consideration as near eleven o'clock as possible.

We will be on the seventh order of business — Reports of Select Committees.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting, to whom was referred Committee Proposal No. 1-121, has had the same under consideration and recommends that the same be amended, and when so amended, recommends the same do pass.

Delegate Unruh, Chairman.

Delegate Unruh moves that the Report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Style and Drafting. Is there any discussion? Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it. The Committee Report on Proposal No. 1-121 has been adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: We have some amendments on 1-121, and I'd like to move that they be read.

PRESIDENT WENSTROM: Delegate Unruh, would you move the amendments and we will read them?

DELEGATE UNRUH: I so move.

PRESIDENT WENSTROM: Delegate Unruh moves the adoption of the amendments to 1-121.

CHIEF CLERK GILBREATH: The proposed amendments to 1-121 are as follows:

On page 1, line 18, after the word "adopted" insert a comma.

On page 1, line 19, delete the word "laws" and insert in lieu thereof the word "statutes".

On page 1, line 19, after the word "ordinances," insert the words "administrative rules and".

On page 1, line 20, delete the words "rules of court" and insert in lieu thereof "court rules".

On page 2, line 28, after the numerals "1973" insert a comma.

On page 3, line 5, delete the words "Proposal 4-1" and insert in lieu thereof "Proposition 1B".

And renumber the lines accordingly.

PRESIDENT WENSTROM: You have heard the reading of the amendments. Do we have a second?

DELEGATE TUDOR: Second.

PRESIDENT WENSTROM: Seconded by Delegate Tudor.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I'd be happy to explain the amendments, if anybody has any questions; but I'm not going to din your ears unless it's necessary.

PRESIDENT WENSTROM: The question is on the adoption of the amendments on Committee Proposal 1-121 as offered by the Committee on Style and Drafting. Those in favor of adopting the amendments will say "aye;" those opposed will say "nay."

Those in favor of adopting the amendments will say "aye;" opposed "nay." The "ayes" have it and the amendments are adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that the Rules be suspended and that Committee Proposal 1-121, otherwise known as Article 13, now be considered properly engrossed and placed on the eleventh order for final passage.

PRESIDENT WENSTROM: Delegate Unruh moves that the Rules be suspended, that Committee Proposal No. 1-121 be deemed properly re-engrossed, and that it be placed on the eleventh order for passage.

Do I have a second to that motion?

DELEGATE KNUDSON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Knudson. Is there any discussion? Hearing none, those in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and the proposal is before the Convention for passage.

Is there any question? Any discussion?

The question before the Convention is on the passage — the second passage of Proposal No. 1-121 as amended. Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your vote.

Has every delegate voted?

DELEGATE SINNER: Sinner votes "aye."

PRESIDENT WENSTROM: Does any delegate wish to change his vote? The vote is closed.

The roll call disclosed 92 "ayes," no "nays," six delegates absent and not voting. Committee Proposal 1-121 has passed eleventh order.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting moves that the Rules be suspended and that Style and Drafting Proposal No. 5-16 be introduced, such Proposal being a redraft of Style and Drafting Redraft Proposals Numbered 5-1 and 5-12 and Alternate Proposals 4-1, 4-2, 4-4 and 4-7.

Further, that this Redraft Proposal not be referred to a committee, but be placed on eleventh order for second reading and passage, and be subject to debate and amendment only as to style and drafting alterations.

Delegate Unruh, Chairman.

Delegate Unruh moved that the Report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Style and Drafting on Redraft Proposal No. 5-16.

Is there any discussion? Hearing none, as many as are in favor of adopting the Report will say "aye;" opposed "no." The "ayes" have it and the Proposal No. 5-16 is on the eleventh order for consideration.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Delegates, you have on your desks this rather bulky Proposal 5-16. It's called Article XIV and it's the Adoption Schedule and Ballot, and in this we have included the alternate proposals on style of ballot. This will be the fourteenth article. You will notice that we have called the first alternate proposition to 5-16 Alternate Proposition 1A. We used that alternate proposition throughout to be uniform. We had several other words in mind, but we changed all of this to come back to this particular phrase. You will notice

we have set out the section on Legislative Assembly in capitals so that it's a little more — has more stand-out. Then we repeat all of the legislation which is affected by bicameral or unicameral, and all the measures — parts of the measures which are affected by the four alternate propositions. It's quite a lengthy thing. I'm not going to go into it in detail. You'll notice that on the very back two pages we have what the Style and Drafting Committee feels should be a ballot proposition. This is on the very last two pages, with instructions and suggested wording. We realize that the Secretary of State has final authority in these matters, so we hope that he will accept these suggestions and later on, if the resolution meets with the satisfaction of Delegate Pearce, why we'll have some further suggestions for him. But it may not look exactly like this by the time it's submitted to the voters. At any rate, if you'll notice that on the first page of the ballot we have the main proposition, and we used that word "proposition" throughout, instead of "measure." The main proposition, "yes" and "no," and the first alternate proposition is the unicameral-bicameral. We had discussed Delegate Hoffner's idea of putting in there "house" and "senate" as a little more understandable, but I feel that the words "Two-house legislature" is understandable by the average voter, and our committee felt the same way. On the second page of the ballot is set forth — the first one is initiative and referendum. Of course on the ballot itself, when it's printed, it will be a lot smaller than this. When you use a typewriter, you spread out kind of all over the page. At any rate, you'll notice the wording for 2A, the two percent, and we put in the words "about 12,350" so we can give them some relationship to the population without putting in "as per the 1960 U. S. Census" or something like that. We didn't state the population, but we did work it out on the basis of what it is, very closely. Four percent of the population, 27,700. 25 sponsors and so forth. And down below, in 2B, the more familiar amounts of signatures as we now have in our present constitution.

Alternate Proposition 3, about the eighteen-year-old votes, is simple, and on 4 — these last three we can only put "yes" and "no" as we have.

If there are any further questions, I or someone on my Committee will be glad to answer them.

PRESIDENT WENSTROM: Are there any questions? Delegate Baker.

DELEGATE BAKER: Mr. President, I'm very unhappy about this, as I think you all know, because I feel that a good-natured majority of this Convention has been shamefully taken advantage of. I don't think the sponsors of this idea had any notion of the kind of a morass they were getting into when they began, but I think they must realize by this time what an unfortunate thing this is, and I'm thinking that those of the good-natured majority who were good-natured enough to join in the initial effort to make this an alternate proposition in the first place, by this time may have come to their senses and decided that the thing to do is not have an alternate on this subject, and that's what I should guess.

Now, you see, there are about three hundred words on every page of this, and it isn't until page 10, or some six thousand words, until you get into the real trouble. That's when you start referring to other sections of the main body of the Constitution by — and amending by reference. So the serious-minded voter who has to consider whether or not to cast a vote on this then has, after having spent half-an-hour or so reading what it says in the two alternate proposals to begin with, then he has to begin to jump back and forth to the main body and to this and to begin thinking about what the implications are when you make changes in other sections, in the executive branch, and in the education branch, in the finance and public debt sections, in the general provisions, and, boy, this gets to be something else again! I can just imagine how much fun the people who are dead set against making any change at all in the Constitution — in other words, defeating the whole idea — can have with that one.

Just for a brief example: You know what vast new authority we have given to the Legislature in many sections, but particularly in the field of finance, the authority to levy an unlimited tax with a super-majority of both houses the way it stands in the main body, or the way it stood in the main body, but have only one assembly under the unicameral provision. What line of thinking is this going to open up in the minds of people who are seriously concerned about this matter of the level of taxation of which there are more than a few, and in the unlimited

authority for the Legislature, by a super-majority of both houses in the one case, to establish and maintain a public debt; in the unlimited authority by a simple majority of the Legislature, two houses or one house, to exempt property from taxation?

Now I'm sure it doesn't take very long for you to realize what a large amount of concern can be produced when you are considering these matters, let alone the dozens of other significant changes in the authority of the Legislature over our way of life that we have given in this Constitution. So I say that this is a dangerous thing to have on the ballot at all from any standpoint, even if you say, "Well, this is a set-aside and they can easily vote one way or the other on that one and that will take some of the — attract some of the lightning from the proposition that was in the main body," and so on. Consider the very serious effect that this may have on some of the major changes that we have proposed in the main body of the Constitution, which, of course, are not touched on in this particular article or any of the ballot forms.

The last two propositions that are set forth here are simple. They're simple and easy to understand, and the initiative and referral and constitutional amendment and recall sections, while they are lengthy, will take, I guess, some thousand words or thereabouts apiece on the ballot, are relatively simple, at least from the standpoint of this reference business that I'm talking about. They take some reading, but are fairly-easy to understand, I would say, compared with the tangled mess that you get into when you try to figure out just exactly what would happen under one set of provisions or the other to the whole Constitution, and it is for this reason that I urge the majority of this Convention to take a second thought on it now, and even though it may be temporarily embarrassing to back off from a good-natured commitment that you made at the time when the picture wasn't fully clear, the thing to do, I believe, at this time is to vote "no" on this proposition and put the Style and Drafting Committee back to work on putting the bicameral section in the main body and abandoning the effort to establish any side issue on bicameral and unicameral.

PRESIDENT WENSTROM: Is there any further discussion?

DELEGATE LANDER: Mr. President.

PRESIDENT WENSTROM: Delegate Lander.

DELEGATE LANDER: I would suggest that at this particular point a "no" vote on this proposition is meaningless. If there are efforts which somebody wishes to make for reconsideration that should be taken, fine. All we've got here is what Style and Drafting has done with what we did, and I think they did an excellent job. That's the only question before the house apparently.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Mr. President. I would like to point out one thing for the delegates. If you will notice on page 1, where we get down to Alternate Proposition 1A, you will notice the bold type and you'll notice some of the sections — Section 3 is not in bold type. Section 4 is not in bold type. Section 5 is in bold type. The reason between the varying — between the bold type and the not bold type is, for example, Section 1, in the bicameral is different than the unicameral, so that any elector reading this will know as he goes through the legislative article for bicameral, which is Proposition 1A, as he sees the bold type, he will know that 1A — Section 1 of 1B of unicameral will be different, and where the small type appears, the sections are identical in both the unicameral and bicameral. As far as the length, we've been taking out the whole legislative article and setting it in this schedule. It's true we are repeating it twice, so we are adding length; but remember we are not putting it in the main document, so it isn't as bulky as it may first seem. It's not repeated a second time because you don't have these words in the main document.

There's been a comment on page 10, where we did some amending by reference to the other articles, which would be, for example, the executive branch and the education and financing debt. These are — true, these are amended by reference, but they're merely mechanical things. All they do is wherever the words — where you had "each house," you just change it to "single house." So there's mechanical amendments by reference.

PRESIDENT WENSTROM: Any further discussion? Delegate Hoffner.

DELEGATE HOFFNER: Did the Committee consider the form that Delegate Kelsch has suggested? Since it's so long, has the Committee considered that after each section they would identify it as a single chamber or two-chamber, so that the people reading this in the voting booth — in the voting booth or somewhere along the campaign, would know — wouldn't get lost in these sections, rather than just the bold type, or whatever the difference is on the changes?

DELEGATE KELSCH: Do I understand your question to be — after Alternate Proposition 1A, we'd add the words "two-house legislature"?

DELEGATE HOFFNER: Yes, and all the sections that deal with the sections in the two-house, so the people do not get lost, and also which deal with one-house — identify each of those sections after each section that this deals with one house.

DELEGATE KELSCH: Well, the Alternate Proposition 1A, which, if you will refer to your ballot, of course is the bicameral or two-house legislature. All of the language — that's the complete Article No. IV, Legislative Branch, dealing with a two-house legislature, and a "yes" vote — majority vote on 1A would put all this language, which is a complete article, as the legislative branch. If the majority votes for 1B, that would plug in the full legislative branch and, as you notice at the heading on line — I think 9 of the first page, we state that the alternate proposal — propositions approved by a majority of the electors constituting the majority shall become part of the 1972 Constitution upon adoption, and alternate propositions rejected by a majority of the electors voting thereon shall not become a part of the 1972 Constitution. And then we go on to say, "This Article shall not be published as a part of the Constitution after adoption." If the rest of it is not accepted by the voters, it would just be rejected and not printed. But I suppose we could, if you want — it's possible to add "one house" or "two-house legislature" right after the words "Alternate Proposition 1A, if there's any feeling on the part of the delegates. We talked about that possibility, but I know we didn't feel it apparently was necessary. But I'm sure we have no objection if you felt that it would further flag the electors that this whole 1A deals just with a two-house legislature and 1B deals just with a one-house legislature.

DELEGATE HOFFNER: Mr. President, what I meant is: Say you turn to page 2 of this and say in Section 5, "Reapportionment" — you see, after the people go through this whole document, that they keep reinserting, so they may re — now we understand this well — that it deals with the bicameral; but maybe as they read through that, since it's so long, when they come to Section 5, it may be a good idea to, after "Reapportionment," indicate that this deals with the two-house, and when you get to the document on the single chamber, each section should maybe be identified as a one-house or two-house, being that the document is so long.

PRESIDENT WENSTROM: Any further discussion? Delegate Cart.

DELEGATE CART: Well, Mr. President, speaking for myself as an individual and as one member of the Style and Drafting Committee, I have had the feeling that we had a technical job to do and we had to prepare a ballot in accordance with the opinion rendered by the Attorney General's office on having this so prepared that there was no preference shown to either one of these proposals that are under discussion. Personally, I was against having any of these alternate proposals, but I was in the minority on that, and if we are going to follow through and have a ballot that is — that shows no preference to either one of these subjects, I don't know how otherwise we're going to do it.

PRESIDENT WENSTROM: Any further discussion? Delegate Burke.

DELEGATE BURKE: Mr. President. I feel somewhat like I did many years ago when my mother came to me with sulphur and molasses and said, "Now, Robert, this will — this is disagreeable to swallow, but it will make you feel good in the long run." And that is my impression of the ballot. I have no criticism of Style and Drafting, and I am certainly prepared, even though it tastes rather badly, I am certainly prepared to go out and give this my best shot.

However, I was wondering if Style and Drafting can consider showing that this Convention has favored Alternate Proposal 1 and Alternate Proposal 2, or both. Maybe this would offend the justiciable element that Delegate Omdahl

talked about. But, in fairness to this Convention, could it be shown in some manner that this Convention did favor bicameral and did favor the Alternate 2A?

DELEGATE DOBSON: Mr. President.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: We did consider that — like putting an asterisk by the one that the Convention had adopted, and then a footnote of some sort, indicating that this was the Convention majority choice. We didn't take action on it because we felt it would possibly be having an influence on the voter, and we decided to leave that matter up to the body. It's a question that the Secretary of State might reject, too. I don't know, but it is an open question at this time.

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I would like to second Delegate Unruh's thoughts. In fact, I brought this up to the meeting, that this should be done — but I am — I realize that this has to be treated in a fair manner, and I'm satisfied that the Committee did a good, thorough job by this procedure.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I would like to comment briefly on those remarks. The Committee felt that it could not make any attempt to rig the ballot, but the two-house proponents will have a slight advantage on the ballot because, as you can see, the two-house option is listed as 1A, so that would be on the top.

PRESIDENT WENSTROM: Any further discussion? Hearing none, the question before the Convention — Delegate Decker.

DELEGATE DECKER: Mr. President, I have an amendment being typed at the desk. I would move the amendment and have it read, and while they're finishing —

CHIEF CLERK GILBREATH: On page 6 — where? What line did you want to amend?

DELEGATE DECKER: Line 8. While it's being typed, all I'm doing is indicating, after Alternate Proposal 1B, that it is unicameral, one-house, and bicameral, two-house, as the alternate amendment calls for. That's on the description on page 6 and on page 1. The reason I'm doing that the people may not get back to the Proposition 1A. I think we should keep the identification all the way through so they know what they're reading, and when they come to Alternate 1B, they will realize that it's different at that time.

CHIEF CLERK GILBREATH: Proposed amendment to Redraft Proposal 5-16:

On page 1, line 15, after the underlined "1A" insert the following: "Bicameral (Two-house)".

On page 6 — page 6, line 8, after the underlined "1B" insert the following: "Unicameral (One-house)".

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do we have a second?

DELEGATE HOFFNER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hoffner. Delegate Decker.

DELEGATE DECKER: Mr. President, I think the amendment is self-explanatory and it's just for clarification.

PRESIDENT WENSTROM: Any further discussion? Delegate Aubol.

DELEGATE AUBOL: Mr. President. I have no objection to the amendment, except that it is different than the form that they used on the ballot proposed by the Committee on Style and Drafting. I think on the next-to-the-last page you will see that they identify these things by saying "Two-house legislature" and then, in parentheses, they say "bicameral". Now the amendment before us is just turned around the opposite way. I'm wondering — perhaps Style and Drafting takes care of that now.

DELEGATE KELSCH: Mr. President. I wonder, so we won't have to go back to Style and Drafting, if Delegate Decker would like the usual way the words appear on the ballot.

DELEGATE DECKER: Mr. President, I would like to move to change my amendment to have the identical words as they appear on the ballot. Then Style and Drafting won't have to change it. It just reverses the "one-house (Unicameral)" and puts it in a different order.

PRESIDENT WENSTROM: Delegate Decker, there seems to be some confusion here someplace.

DELEGATE DECKER: Mr. President.

PRESIDENT WENSTROM: Delegate Decker.

DELEGATE DECKER: I believe, if you look at the ballot on the back, it will — and compare it with our amendment, you can see what it is. You just reverse the two.

CHIEF CLERK GILBREATH: I see. Okay.

The proposed amendment would now read:

On page 1, line 15, after the underlined "1A" insert the following: "Two-house legislature (Bicameral)".

On page 6, line 8, after the "1B" underlined, insert the following: "One-house legislature (Unicameral)".

DELEGATE DECKER: Right.

PRESIDENT WENSTROM: The question is on the adoption of the amendment as offered by Delegate Decker and seconded by Delegate Hoffner.

Is there any further discussion? Hearing none, the question is on the adoption of the amendment.

Those in favor of its adoption will say "aye," those opposed say "no." The "ayes" have it and the amendments are adopted.

DELEGATE RONEY: Mr. President.

PRESIDENT WENSTROM: Delegate Roney.

DELEGATE RONEY: I know that during the Convention that we have talked about many remote possibilities. I arise, first, to ease your fears. I propose to vote in favor of the Style and Drafting report and in favor of the Constitution. But there is a possibility that this could end in a tie, and if the ballot on the Alternate Proposal IA and IB were to end in a tie, we would not have a constitution, and you might say it's so remote, let's not think about it. But it is possible, and we would have — since we have taken out parts of the Constitution and put it in Alternate Proposals IA and IB, neither one of them would be inserted. I wonder — has the Committee considered such a thing? I know that this is perhaps the first time that I know of or can remember that it's going to require the voter, when he goes to the poll, to vote at least twice to get a complete constitution. He must vote on the main body and he must vote on the alternate proposal of the one-house or two-house legislature. It is not necessary that he vote on the initiative and referendum to make a complete constitution. So he must vote twice. Would it be worth it to insert — I'm not going to do it, but I only want to know if you talked about it — if you thought it was necessary to insert something in the case of a tie?

PRESIDENT WENSTROM: Anyone wish to comment? Delegate Unruh.

DELEGATE UNRUH: After a recount, maybe! (Laughter)

Mr. President, we could insert language somewhere in between lines 9 and 14 on this area, but I haven't thought of the words. If the Convention feels that we should do this, why we'll take it down and reconsider it. It's a very remote possibility, but it is a possibility, however remote. So I think I would like the advice of the Convention as to whether this is necessary.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE McINTYRE: Mr. President.

PRESIDENT WENSTROM: Delegate McIntyre.

DELEGATE McINTYRE: If it would help out to place it in writing here this

morning, I'd be willing to change my vote, if that happened.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of the amendment. Oh, we did that!

Delegate Unruh, would you move to deem this properly engrossed?

DELEGATE UNRUH: I was waiting to see if anybody had any ideas.

DELEGATE ENGELTER: Mr. President.

PRESIDENT WENSTROM: Delegate Engelter.

DELEGATE ENGELTER: I'm just wondering. I'm sure there have been many measures referred to the people before, and they have never come up with anything with regard to ties, and the possibility of a tie is so remote and so far-removed that I don't think we really have to concern ourselves with it.

DELEGATE CART: Mr. President.

PRESIDENT WENSTROM: Delegate Cart.

DELEGATE CART: Mr. President, in response to what Delegate Engelter mentions, there is a provision in our initiative and referendum that, if you have, say, two laws and they overlap, the one receiving the highest vote prevails. There is nothing in there, of course, about a tie. And so, in that case, the issue would have to be determined by lot, or something of that nature, under judicial supervision. This situation has never arisen in the State's longtime history.

PRESIDENT WENSTROM: Anything further? Delegate Unruh.

DELEGATE UNRUH: Mr. President: I now move that Style and Drafting Proposal No. 5-16, otherwise known as Article XIV, be considered properly re-engrossed and placed on the calendar for final passage.

PRESIDENT WENSTROM: Delegate Unruh moves that Style and Drafting Proposal No. 5-16 be deemed properly re-engrossed, that it be placed for passage. Do we have a second?

DELEGATE ENGSTROM: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engstrom.

Is there any further discussion? Delegate Rundle.

DELEGATE RUNDLE: Mr. President, I should know, but I'd like to ask this: The last page, concerning the initiative and referendum, is that included in your motion you just made?

DELEGATE UNRUH: Yes.

DELEGATE RUNDLE: Well, now I would like to ask why, as long as the Committee took it upon itself to put figures in, in the first paragraph, 2A, why it didn't use the exact figures by the last census, and if you didn't want to use the exact figures, why he didn't add a couple of hundred or so, instead of deducting a few. The 12,350 signatures is not correct and the proponents of the percentage system wanted to stay with the percentage so badly it surprises me somewhat that they now want to have it in figures. But if they're going to have it in figures, to make it look close to the other one, then the figures should be as exact as possible.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: I, for one, felt we shouldn't put any figures in there; but we thought we were being fair with the voter to indicate what approximately two percent would be.

Delegate Rundle, do you have a more accurate figure? I thought we were about as close as we could get without being fractioned.

PRESIDENT WENSTROM: The question before the Convention is on Delegate Unruh's motion that the Rules be suspended, that Style and Drafting Proposal No. 5-16 be deemed properly re-engrossed, and that it be placed on the eleventh order for passage. Delegate Rundle.

DELEGATE RUNDLE: Mr. President, while my educated seatmate checks my figures — is that right? — the figure isn't a big item, but why it always has to be

on the other fellow's side — 12,350 is the figure they use — two percent — and it should be 12,355. (Laughter)

PRESIDENT WENSTROM: The question before the Convention — the question before the Convention is on Delegate Unruh's motion. I think you're aware of it. It was repeated twice, and those in favor of deeming this properly re-engrossed and suspending the Rules, will vote "aye." Those opposed will vote "nay." As many as are in favor of the motion will say "aye;" those opposed say "nay."

The "ayes" have it and Style and Drafting Proposal No. 5-16 is before the Convention for passage — second passage.

Any further discussion? Hearing none, those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will indicate your vote.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 83 "ayes," 8 "nays," seven delegates absent and not voting. Redraft No. 5-16 has passed the second time.

We will be on the eighth order of business — Announcements.

CHIEF CLERK GILBREATH: All travel vouchers should be turned in on the final day of the Plenary Session. Receipts for lodging must be attached and show lodging from February 1st through February 17th. If a receipt for the entire session is being submitted at this time, it must show lodging from January 2nd or 3rd through February 17th. Trips made to the home residence must be shown, even though you may have already received the four allotted trips or are not claiming any mileage. Be sure to show the time of arrival at home and the time of departure from home.

Friday, February 18th, will be allowed as a travel day. Show this trip and the approximate time of expected arrival at home.

Delegate Jestrab has eight students from the tenth grade, Fargo High School Horizon Club, and their adviser, Mrs. Norm Schroeder, in the gallery today.

PRESIDENT WENSTROM: Will the students please rise? (Applause)

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: I believe that Delegate Maxwell has this group from Fargo.

DELEGATE MAXWELL: Well — Mr. President.

PRESIDENT WENSTROM: Delegate Maxwell.

DELEGATE MAXWELL: This is a group that I acted as professional adviser to on one phase of their work last year, so I do have a very close association with them.

Thank you, Delegate Tudor.

PRESIDENT WENSTROM: And thank you, Delegate Maxwell.

DELEGATE JESTRAB: Mr. President.

PRESIDENT WENSTROM: Delegate Jestrab.

DELEGATE JESTRAB: I think — Mr. President, I think perhaps my name got on there because I got some material for them. I did not send that note to the desk, but I'm happy to claim them, if I may.

DELEGATE MEIDINGER: Mr. President.

PRESIDENT WENSTROM: Delegate Meidinger.

DELEGATE MEIDINGER: Is it your thought that you might be recessing soon?

PRESIDENT WENSTROM: No. I believe we have another procedural committee report here right now, Delegate Meidinger.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting recommends that the Convention take no further action on Alternate Proposals Numbered 4-1, 4-2, 4-4 and 4-7 for the reason that each alternate

proposal has now been incorporated into Style and Drafting Redraft Proposal No. 5-16.

Also, no further action be taken on Style and Drafting Redraft Proposals Numbered 5-1 and 5-12 for the reason that they have now been incorporated into Style and Drafting Redraft Proposal No. 5-16.

Delegate Unruh, Chairman.

Delegate Unruh moves the report be adopted.

PRESIDENT WENSTROM: The question is on the adoption of the Committee Report of the Committee on Style and Drafting.

Do we have a second?

DELEGATE CART: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Cart. Is there any discussion? Hearing none, the question is on the adoption of the Committee Report.

As many as are in favor of its adoption will say "aye;" those opposed "no." The "ayes" have it. The report is adopted.

We'll be back on the eighth order of business for announcements.

CHIEF CLERK GILBREATH: Delegate Huckle wishes to share with each one of us the message of the song entitled "Welcome to North Dakota" and to emphasize that each one of us can do much to welcome and encourage others to come and stay.

PRESIDENT WENSTROM: May I, on behalf of the Convention, say thank you to Delegate Huckle for his contribution and his gift to each of the delegates here. (Applause)

While we're on the eighth order of business, the Chair wishes to make an announcement.

I would like to appoint a committee — an executive committee to our Public Information Committee, and to that Committee, I would like to name Delegates Paulson — that's John Paulson — Dobson, McIntyre, Diehl, Omdahl and Birkeland.

Now, Delegate Meidinger.

DELEGATE MEIDINGER: Mr. President, the Committee on Education will meet in G-1 immediately upon recess.

PRESIDENT WENSTROM: The Chair will now declare the Convention in recess, subject to the call of the Chair.

Did you have something, Delegate Pearce?

(Delegate Pearce shook his head.)

PRESIDENT WENSTROM: We will be recessed, subject to the call of the Chair.

(The Session recessed at 9:47 A.M. until 10:29 A.M., the same day.)

PRESIDENT WENSTROM: Will the Convention please come to order?

We will be on the twelfth order of business — Motions and Resolutions.

CHIEF CLERK GILBREATH: Resolution No. Q, introduced by Committee on Resolutions:

A resolution vesting the president of the Constitutional Convention with the authority to perform all necessary acts relative to the Convention after its adjournment.

PRESIDENT WENSTROM: The Chair will recognize Delegate Scheel.

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended, that Resolution Q be read in its entirety, that it not be referred to committee, not be printed as a proposal, and be placed on final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended, that Resolution Q be not printed as a proposal, that it not be referred to a committee, that it be read in its entirety and that it be placed on the calendar for passage.

Do we have a second? It's not needed. The Clerk will read the Proposal.

CHIEF CLERK GILBREATH: Resolution Q, introduced by Committee on Resolutions.

"A resolution vesting the president of the Constitutional Convention with the authority to perform all necessary acts relative to the Convention after its adjournment.

"WHEREAS, the North Dakota Constitutional Convention of 1972 is now engaged in preparing a proposed constitution for submission to the electors of the state at a special election to be called in a manner provided in the Convention's enabling act; and

"WHEREAS, the Convention is required by such enabling act to complete its work and to adjourn no later than the seventeenth day of February, 1972; and

"WHEREAS, there will remain a number of tasks to be performed after the adjournment of the Convention, among others, informing the public of the provisions of the proposed document submitted to them for ratification, preparation of materials for delegate appearances on behalf of the proposed document, and the preparation of Convention materials of historical value for deposit with the State Historical Society; and

"WHEREAS, in order to complete such work it will be necessary that the president of the Convention have the authority to act in an official capacity and to maintain a staff and direct them in the completion of the Convention's affairs after the date of adjournment of the Convention; and

"WHEREAS, it will be necessary that the president of the Convention be authorized to sign all necessary vouchers for payment of expenses incurred by the Convention;

"NOW, THEREFORE, BE IT RESOLVED BY THE CONSTITUTIONAL CONVENTION OF THE STATE OF NORTH DAKOTA OF 1972:

"THAT the president of the Convention is hereby authorized to function in an official capacity after the adjournment of the Convention, and may maintain such staff and perform such acts as he deems are necessary to satisfactorily complete the work of the Convention.

"BE IT FURTHER RESOLVED that the president of the Convention is authorized to sign all necessary vouchers for payment of expenses incurred after the adjournment of the convention."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: Would you recognize Delegate Pearce, please?

PRESIDENT WENSTROM: I will recognize Delegate Scheel — or Delegate Pearce. May I have a second to this proposal?

DELEGATE STANTON: Second.

PRESIDENT WENSTROM: Seconded by Delegate Stanton. Delegate Pearce.

DELEGATE PEARCE: Mr. President: In considering this Resolution, I would call your attention to the sheets that were placed on your desks this morning — the single sheets with the figures. The Budget Committee met in sort of relays yesterday. You will recall that last April a Budget Committee of this Convention set out a tentative budget, which is printed in the Journal of that preliminary organizational session. At that time we were doing a good deal of guessing. The budget balance sheet, which I trust you have in your hand, was as of yesterday.

The first column, called "Expenditures," is not necessarily, however, as of yesterday. There are many vouchers. There are many accrued items that are not in yet, and of course, for one thing, nobody has earned today's pay yet, and things of that nature. Obviously, it will be necessary to continue staff at a reduced level, of course. So the second column — the first column "Expenditures," has actually been paid out through the Department of Accounts and Purchases.

The second column, entitled "Anticipated Expenditures," is our best guess based on percentages of what has been spent in going over what has been spent and the work that will be necessary to do, and I'll admit that we have not been too stingy on those items and that it's possible that all of that money will not be spent.

The third column is the items as they were budgeted last April, and as you can see, we didn't do too badly, congratulating ourselves. You will note at the lower right-hand corner that we add the Anticipated Housing and Urban Development Grant Reimbursement. You will notice that's \$30,400.00, and I'm sure you have all heard the figure \$44,000.00. As with many gifts, after you look them in the mouth, they're not quite as sound as they first looked, and there are a few teeth missing in this one. We did not get simply \$44,000.00. We are reimbursed two-thirds of what we have spent for certain types of items, not in a blanket sum. Because of the type of expenditures that we are entitled to reimbursement for on the basis of two-thirds from them and one-third from us, our best estimate is that we will recoup from those grants \$30,400.00. We can't get any more because there isn't any more that we can spend for the items that they will reimburse us for.

You will notice that that is an add item and brings it to \$187,900.00. You will notice that we have a \$32,000.00 contingency fund because of the fact that we haven't paid our bills in cash per days as we were unable to do so, and because of the necessity to estimate anticipated expenditures, and since we are fallible — at least the Committee is, whether the Convention is or not — we thought, and because after today when we adjourn we will no longer be in existence and we can't do anything about it, that we had better have a contingency fund. Hopefully, our anticipated expenditures column will be sufficient, and if it is and we don't have to spend the contingency fund, that would be added to the bottom column.

The Public Information Committee has submitted a budget to us, and questions on that you can direct to that Committee and not to me, of \$89,900.00, and we rounded that off at \$90,000.00. I must, unfortunately, ask you to correct the sheet that you have in front of you. A clerical error left off the fees and the cost of preparing the verbatim transcript of this Convention, so you should put a figure of \$10,500.00 at the bottom and subtract it from the \$65,900.00. The item "Anticipated Balance to be returned to General Fund" should then be \$55,400.00, plus what may be saved from the contingency fund of \$32,000.00, if we saved at all. We would then have \$82,400.00 and any amounts which we may have overestimated in column 2.

I am not in a position to make a motion at this time, but immediately following your action on the motion on Resolution Q — Resolution Q — as before the Convention, the reason for my talking now is so that you will know some of the things that Frank will have to do, because he will have to be the chief voucher-signing and disbursing agent for the necessary funds. I thought you ought to know what some of his duties would be before you voted. After you have acted, hopefully favorably, on Resolution Q, I would then move that the Convention adopt this new budget and that the President approve vouchers within the budget items as this new budget is adopted.

Now I realize you may have many, many questions, some of which we can answer, but that's the reason I put this on your desk early this morning — was so that you could look at it and we wouldn't have to spend too much time discussing it.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention is on the adoption of Resolution Q. No discussion? In the event that this Resolution is adopted, it does speak specifically to the expenditures of funds, and because of that reason, we have had a policy of having a roll call vote whenever we have been engaged in the expenditure of funds. So, for that reason, if there is no further discussion, we will open the key and you will record your vote. Those in favor of Resolution Q will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will indicate your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

The roll call discloses 95 "ayes" and three "nays" or no "nays," and three delegates absent and not voting. So Resolution Q has passed.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

Delegate Pearce: I now move that the Convention adopt and approve the revised budget as appears on the sheet entitled "Budget Balance Sheet," with the addition of the \$10,500.00 as I asked you to note as an expenditure — an anticipated expenditure for the verbatim transcript.

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Delegate Pearce moves that the budget sheet as presented to the Convention, with that \$10,500.00 additional expenditure at the bottom right-hand corner of \$55,400.00 —

DELEGATE PEARCE: Mr. President, with the consent of my second, could I request that it be printed in the Journal?

DELEGATE LITTEN: Yes.

PRESIDENT WENSTROM: And the motion for adoption of this Budget Report has been seconded by Delegate Litten.

Now, are there any questions? Hearing none, again I think it would be a good idea to use the roll call. Those in favor of adopting this new budget will vote "aye" and those opposed will vote "nay."

The Clerk will open the key and you will indicate your choice.

Has every delegate voted? Any delegate wish to change his vote? The vote is closed.

Roll call discloses 92 "ayes," no "nays," six delegates absent and not voting. So the new budget has been adopted.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Did that include my sort of amendment that it be printed in the Journal?

PRESIDENT WENSTROM: Yes, it did include it.

DELEGATE PEARCE: Thank you.

PRESIDENT WENSTROM: We'll be on the twelfth order, without objection. Again, the resolutions.

Delegate Scheel is off the floor. We have a resolution here. Delegate Scheel, I think we have a resolution — another resolution.

CHIEF CLERK GILBREATH: Resolution No. R, introduced by Committee on Resolutions.

"A resolution expressing the gratitude of the Convention to the State Library Commission and its employees for the many services rendered to the delegates, committees and staff."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I would move that the Rules be suspended, that Resolution R be read in its entirety, that it not be printed as a proposal, not be referred to committee, and placed on final passage.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended, that Resolution R be not referred to a committee, that it be printed in the Journal, that it be placed — that it be read in its entirety, and that it be placed on the calendar for final passage.

The Clerk will read the Resolution.

CHIEF CLERK GILBREATH: Resolution No. R, introduced by Committee on Resolutions:

"A resolution expressing the gratitude of the Convention to the State Library Commission and its employees for the many services rendered to the delegates, committees and staff.

"WHEREAS, the State Library Commission has been most cooperative during both the interim and plenary session in providing individual delegates with historical material on the North Dakota constitution of 1889, which appeared in various newspaper articles; and

"WHEREAS, the State Library Commission built up a large collection of books, pamphlets, documents, research papers and other materials on state constitutions in general and made this all available to the staff of this Convention as well as to the committees and delegates; and

"WHEREAS, these services added greatly to the success of the delegates in drafting the document which is the proposed constitution of 1972;

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the North Dakota Constitutional Convention express its appreciation to the State Library Commission and its employees for all the services rendered to the delegates, committees and staff of the Convention, during both the interim and plenary session.

"BE IT FURTHER RESOLVED, that a copy of the resolution be forwarded to the State Library Commission at Bismarck, North Dakota."

PRESIDENT WENSTROM: You have heard the reading of the Resolution. Now may I have a second?

DELEGATE BINEK: Second.

PRESIDENT WENSTROM; Seconded by Delegate Binek.

Any discussion? Hearing none, the question is on the adoption of Resolution R. Those in favor will vote "aye;" those opposed will vote "nay."

Those in favor of the adoption of the Resolution R will say "aye;" those opposed say "no." The "ayes" have it and the Resolution is adopted.

Fellow Delegates, I think you recall that earlier this morning we postponed consideration of a resolution to a time certain, which was eleven o'clock, and now we have that before us, and I'm going to ask for unanimous consent of the Convention to consider that Resolution at this time.

Is there any objection? Hearing none, then we will have that Resolution before us.

The Chair will recognize Delegate Pearce, and the Resolution was Resolution P.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: It grieves me somewhat to have taken issue with any proposed resolution of the Resolutions Committee; however, as I heard the Resolution, it called for — as I understood it — the legal publication of the Constitution which is required by statute to be in either bold print or italics type, and as a long-time old handset amateur printer, I was concerned about several things, in addition to the legal problems. I do not believe that solid-set italics type is very easy to read, and you read very little of it if you're not accustomed to reading it: Many of the letters are, as you know, of course, in different form than ordinary Roman type, and while a word or a line italicized serves to call attention, simply because it's different from the surrounding type, if it's all in italics, it loses its feature effect.

Bold type means that the face of the type is heavier than ordinary or light type, and there is thus more ink to the page. If you would pick up your Journal and look at the ordinary pages of the Journal, you will notice that it is printed in ordinary light Roman type, which is eight point in size, meaning eight points up and down, and there are approximately — well, it's a printer's measure and it has little relation to inches. If you would look at page 495, you will notice that most of that page is printed in boldface. That is also eight-point type. If you turn the page, at 496, that is also bold, and then when you get over to page 499, you see it turns into bold, and on page 500 you see what bold looks like in indented paragraphs.

Now, there is actually less white space, which is very important in the legibility of typography around each letter than there is in lightface. If everything is printed in bold, in my opinion, it suffers in legibility.

Now, the legal problems are: All we could do is request the Secretary of State, in any event, because under the provisions of 16-06-03, which provides for

the ballot form, the Secretary of State has the choice of asking for it in either six or eight-point type.

Now, six-point type is approximately one-quarter less in size than the eight-point size. If you have a newspaper — and I frequently see that delegates have newspapers — and if you find a legal notice or a want ad, that is printed in so-called agate type, which is five-and-a-half points on its face on a six-point slug, and it's small. However, if we should request the Secretary of State to print it in larger type, such as eight-point, then we have increased the cost to the counties who have to stand this by about 25-to-30 percent, since Section 46-05-03 fixes the fees for printing legal notices, of which this is one, and the cost for non-pariel type, which at this point is 16 for non-counted line and 6 for insert, or 12 cents for counted line for every eight-point type. How those ancient terms got into our modern statutes, I don't know. The statute also requires that it be printed in columns and the columns are narrow, usually not over 13 picas in width, which is approximately the size of the column the **Fargo Forum** uses, and most of the newspapers in the State, and I do feel, with all due respect to the Resolutions Committee and the Committee on Style and Drafting, whose fine hand, I understand was involved, I do believe that we would be inserting ourselves into something that we have no real legal authority in; that if we were going to do something like this, we should require larger type, rather than boldface or italic. If we do so, we'd add to the burden of cost.

Now, this is the legal notice that is required. It has nothing to do with the ninety thousand dollars that we just agreed to spend on a report and related information, and it is our hope — I know of all of this, and the intention of the Public Information Committee that a much more legible, readable insert will be published, so the people will read that; where, otherwise I'm afraid they will not read it. So, therefore, in the interests of all of us, I would hope that the Resolution did not pass.

PRESIDENT WENSTROM: Any further discussion relative to Resolution P? Delegate Unruh.

DELEGATE UNRUH: Speaking on behalf of the Style and Drafting Committee, who really laid this on Delegate Scheel somewhat unknowingly, we have no objection to it being withdrawn, with the explanation that Delegate Pearce has made, and I would now move that the — I better let you make that motion.

PRESIDENT WENSTROM: You wish to withdraw the motion?

DELEGATE UNRUH: I move that the Resolution be withdrawn.

PRESIDENT WENSTROM: Delegate Unruh requests unanimous consent of the Convention to withdraw the Resolution P. Delegate Dobson.

DELEGATE DOBSON: Mr. President: This resolution addresses itself to the official ballot and not to legal notices. Now, my question of Delegate Pearce is this: If on the official ballot, which is printed in eight-point, we provide for the boldfaced paragraph to set out the differences, would, in the legal notices which are printed in your five, five-and-a-half-point — would you have to use the bold in the legal notices, also?

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: If I may answer Delegate Dobson's question.

There are different provisions in the statute for the ballot than there are for the actual text of initiated or referred measures or constitutional amendments. The Secretary of State already has the option of printing certain parts of the ballot — the ballot title — in boldface type, and that, of course, is not nearly as long. My only answer to that would be that I still think that we ought to leave it to the Secretary of State who governs that which we really can't amend.

PRESIDENT WENSTROM: Any further discussion? The question is on Delegate Unruh's request for unanimous consent of the Convention to withdraw Resolution P. Hearing no objection, your request is granted.

The Chair will recognize Delegate Byrne.

DELEGATE BYRNE: Mr. President.

PRESIDENT WENSTROM: Delegate Byrne.

DELEGATE BYRNE: A short time ago, the widow of the late State Senator William R. Reichert of Stark County, wrote to me after reviewing some of the personal files of Senator Reichert. Among these items was the Convention badge of his grandfather, William Ray, who was a delegate to the 1889 North Dakota Constitutional Convention.

Mrs. Reichert asked me to present the badge to the officers of this 1972 Constitutional Convention and that it become a part of the permanent records of this Convention. I hereby submit it to you.

This should be of particular interest to the delegates because of the major role played by Senator Reichert on behalf of the constitutional revision. One of the few times in the history of the North Dakota Senate, Senator Reichert, a member of the minority, was elected Chairman by the majority to head the Committee on Constitutional Revision. We should pay a late tribute to him for the part he played in developing interest in the field of constitutional reform.

Mr. President, I move my remarks be printed in the Journal, and I hereby present the badge to you.

DELEGATE OMDAHL: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Byrne and seconded by Delegate Omdahl that the remarks as stated by Delegate Byrne be printed in the Journal.

Those in favor of the motion will say "aye;" those opposed "no." The "ayes" have it and Delegate Byrne's remarks will be printed in the Journal.

Thank you very, very much, Delegate Byrne.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: In this connection, I feel there possibly should be another resolution, or at least more names should be included. The late William Ray Reichert has two brothers, Donald — Larry Reichert and Dr. Donald Reichert in Dickinson, practicing, and there's another grandson of Frank Ray — Francis Ray — who lives in Dickinson. There are two sisters who are out of the State, and their grandfather, William Ray, was not only a member of the first Convention; he was a railroad construction foreman of Irish descent and the story is that the town of Ray was named after him. Because it wasn't too big a town, they named them after famous people, and they got to the construction superintendent for the town of Ray. Be that as it may, I got all the information and took it to a newspaper and asked that it be given publicity, because it was a beautiful story, and the editor of this particular newspaper apparently didn't think so, so it was too bad we missed it. It will be out after the Convention. So there are some relatives, besides, and I don't know how to proceed exactly, but either this resolution — I believe the other relatives' names should be included one way or another, because there are only two people — two families —

PRESIDENT WENSTROM: Delegate Rundle, pardon the interruption; however, this was not a resolution. This was a statement — a statement made by Delegate Byrne, and it was asked that his remarks be printed in the Journal; so, if you would like, you can send copies of the Journal to these people and in that fashion they will also know that former Senator Reichert did receive recognition and that this badge did come to this Constitutional Convention to be stored with the historical documents.

DELEGATE RUNDLE: Well, Mr. President, would there be time — I think, if I can get together with Delegate Byrne and have him make a little further statement or have this statement for the record —

PRESIDENT WENSTROM: I don't believe that we should do that. I think, Delegate Rundle, that in the event that you have some information that you want to read into the Journal, I think you should prepare a statement and follow the statement of Delegate Byrne.

Do we have anything further at the desk?

We will be on the seventh order of business.

CHIEF CLERK GILBREATH: Mr. President: Your Committee on Style and Drafting herewith presents for your favorable consideration the final draft of the proposed 1972 Constitution, which reads as follows: (pause) (Laughter)

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Unless there is some objection, I'm going to move that the reading of the final draft be suspended or be —

PRESIDENT WENSTROM: — be dispensed.

DELEGATE UNRUH: Be dispensed with.

PRESIDENT WENSTROM: Delegate Unruh moves that, unless there is objection, that the reading of the final draft be dispensed with. Do we have a second?

DELEGATE SOLBERG: Second.

PRESIDENT WENSTROM: Seconded by Delegate Solberg. Is there any further discussion?

The motion is to dispense with the reading of the final draft of the document.

As many as are in favor of dispensing with the reading will say "aye;" those opposed "no." The "ayes" have it and, Roy, you got out of a big job!

(Laughter)

The question before the Convention is on the adoption of the Committee Report. The motion that we do not read the document was merely to dispense with the reading of it at that particular point.

So the question now before the Convention is on the adoption of the Committee Report. So we would then — if we adopt this report, then we move this document before the Convention. So, if there's no further discussion, the question before the Convention is on the adoption of the Committee Report from Styling and Drafting.

Those in favor will vote "aye;" those opposed will vote "nay."

Those in favor of adopting the Committee Report will vote "aye;" those opposed say "nay."

The "ayes" have it and the report is adopted. The big document is now before the Convention.

DELEGATE UNRUH: Mr. President. Behind the news camera.

PRESIDENT WENSTROM: This has become, Fellow Delegates, quite a chore here to play peek-a-boo with Delegate Unruh; but you are now recognized, Delegate Unruh.

DELEGATE UNRUH: Mr. President: Is this the proper time to inform the delegates on the stylistic amendments that we made to the final draft?

PRESIDENT WENSTROM: I think that would be in order.

DELEGATE UNRUH: Now, rather than referring to the final draft, I'm going to direct your attention to your engrossed articles in the very front of your book, and inform you of some stylistic changes which we made yesterday. The first is to the executive branch article, which is Redraft 5-13. On page 3, having to do with the State Planning Council, Section 7 — no, I'm wrong — it's Section 8, "Powers and Duties," down on line 25, where it says, "He may require information in writing from all executive officers," it was called to our attention yesterday that we had omitted the word "official." Now, you may recall that I explained to the floor some weeks ago, I think, that we were using the phrase "official" to describe any elected official and the word "officer" to describe an appointed position. So Style and Drafting feels that the addition of the words "officials and" at the end of the sentence in line — at the end of line 25 is a proper and necessary amendment in order to put the Governor in a position for requiring information in writing from both appointive and executive — appointive and elective officials. This was our intention. We overlooked this and the substantive committee overlooked it. It was called to our attention by members of that Committee yesterday, and after working on it, we felt that it was a worthy amendment, and we now move that the words "officials and" be inserted at the end of line 25.

PRESIDENT WENSTROM: Delegate Unruh, on what page was that?

DELEGATE UNRUH: It would be on page 3 of the engrossed Proposal No. 5-13, on line 25. There's no point trying to relate it to the final draft, because the lines are not numbered.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: To show the wording as it would appear in the amendment, you look at page 7 of the final constitutional draft and I think you'll find it on about — about the thirteenth — twelfth or thirteenth line. "He may require information in writing from all executive officials and officers concerning the performance of their respective duties." "Officials and" are the additional words.

PRESIDENT WENSTROM: Delegate Unruh, are you working from the pink sheet now?

DELEGATE UNRUH: Yes. The reason, Mr. President, I preferred to mention it, is that we have not moved yet to incorporate these in the final draft, and it does give a page and line to work from, and I thought it would help the desk force.

CHIEF CLERK GILBREATH: On line 25, page 3?

DELEGATE UNRUH: Page 3, line 25 of 5-13.

CHIEF CLERK GILBREATH: What do you want in?

DELEGATE UNRUH: I want to add the words "officials and" after the word "executive."

PRESIDENT WENSTROM: Delegate Unruh moves an amendment to 5-13: On page 3, on line 25, that after the word "executive" you insert the words "and officials". The Chair will recognize Delegate Cart.

DELEGATE CART: Well, Mr. President, I'd like to direct this question to Delegate Unruh:

Does that addition go after "executive" or after the word "all"?

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I want it to read "He may require information in writing from all executive officials and officers". So if we add "officials and" after the word "executive" it should be correct.

PRESIDENT WENSTROM: You have heard the amendment as offered by Delegate Unruh to Redraft 5-13. Any question?

Those in favor of adopting the amendment will say "aye;" those opposed "no."

The "ayes" have it. The amendment is adopted.

The Chair will recognize Delegate Unruh.

DELEGATE UNRUH: Mr. Chairman: We have made a few amendments on the finance and tax article; that is, Redraft 5-2, Article X. The amendments are two — the first is to Section 8. On page 7, line 8, delete the first word "the" — I'll give you all the amendments at once, if you would like. Okay? Good.

In Section 9, under "Political Subdivisions," "the".

On line 18, after the word "electors" and before the comma, insert the words "voting thereon" — "voting thereon".

The next amendment is on line 26 of Section 9. After the word "indebtedness" insert these words: "for which its full faith and credit and taxing power are pledged". Got that?

The last amendment is on line 30 of that same Section 9. Delete the second word "debt" and insert "obligation".

PRESIDENT WENSTROM: You have heard the reading of the proposed amendment. Do we have a second?

DELEGATE SONDRAL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sondreal. Delegate Jes-trab.

DELEGATE JESTRAB: May I ask, Mr. President: Chairman Unruh, did you forget a word in line 4 on page 3?

DELEGATE UNRUH: Mr. President?

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: The Committee later, at the advice of the Finance and Tax Committee, decided to delete that amendment, so I didn't read it.

PRESIDENT WENSTROM: Delegate Haugen.

DELEGATE HAUGEN: Mr. President, these suggested amendments came to us from the gentleman from Minneapolis, who we almost made an honorary delegate here awhile ago, and whose firm passes upon any proposed indebtedness of the State or subdivisions. The Committee agrees that they probably should be — that they should be in this section, and we urge their approval.

PRESIDENT WENSTROM: Any further discussion?

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: Might I inquire of Delegate Unruh?

The first amendment that you gave, did you say on line 2 delete the "the"?

DELEGATE UNRUH: On line 8.

PRESIDENT WENSTROM: Any further discussion? Are there any further questions?

The question before the Convention is on the adoption of the amendments to Redraft of No. 5-2, Article X, as offered by the Committee on Style and Drafting. No further discussion?

Those in favor of adopting the amendments will vote "aye;" those opposed will vote "nay."

As many as are in favor of adopting the amendments will say "aye;" those opposed "nay." The "ayes" have it. The amendments are adopted.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Redraft Proposals 5-2 and 5-13 be deemed properly re-engrossed and placed on the calendar.

PRESIDENT WENSTROM: Delegate Unruh moves that the Rules be suspended and Redraft Proposals 5-2 and 5-13 be deemed properly re-engrossed and placed on the calendar for second passage.

Is there any discussion?

Hearing none, as many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the Redrafts are now before the Convention for final passage as amended.

Now, is there any further discussion?

The question — the question before the Convention is on the passage — the second passage of Redraft No. 5-2 as amended.

No further discussion? Those in favor will vote "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your vote.

Fellow Delegates, we're going to have to back up just a second here. We are going to have to have a motion to reconsider our action, and then we will have to vote on these. We will have to reconsider our action whereby 5-2 and 5-13 were passed.

So Delegate Unruh moves that we do reconsider our action whereby 5-2 and 5-13 be passed. Do I have a second?

DELEGATE LONGMIRE: Second.

PRESIDENT WENSTROM: It's been seconded by Delegate Longmire.

Is there any discussion? This will call for a roll call vote. Those in favor of reconsidering will vote "aye." Those opposed will vote "nay."

The key will be opened and you will record your vote. Those in favor will vote "aye." The question is on the motion to reconsider. Has every delegate

indicated his vote? Does any delegate wish to change his vote? Hearing none, the vote is closed.

The tally indicates 92 "ayes" and 2 "nays" and four delegates absent and not voting. So the motion to reconsider has passed.

Now we have the question on the passage of Redraft Proposal No. 5-2 and 5-13 as amended.

Is there any discussion on that?

No one has asked for a separation on it, so we may just as well vote on both.

DELEGATE HOGHAUG: Mr. President.

PRESIDENT WENSTROM: Delegate Hoghaug.

DELEGATE HOGHAUG: Mr. President, may we separate the vote, please?

PRESIDENT WENSTROM: Yes. A division has been requested. The question then will be on Redraft Proposal No. 5-2. Those in favor of its adoption will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will indicate your vote.

Has every delegate voted? Does any delegate wish to change his vote? The vote is closed.

Roll call discloses 91 "ayes," 3 "nays," four delegates absent and not voting. Redraft Proposal 5-2 has passed.

Next for consideration is Redraft Proposal No. 5-13. Is there any discussion?

Hearing none, those in favor of its passage will vote "aye;" those opposed will vote "nay."

The Clerk will open the key and you will indicate your vote.

Has every delegate voted? Any delegate wish to change his vote?

The vote is closed. Roll call discloses 94 "ayes," there were no "nays," there were four delegates absent and not voting. Redraft No. 5-13 has passed.

Delegate Unruh.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I now move that Style and Drafting Redraft Proposals No. 5-2, 5-3, 5-4, 5-5, 5-7, 5-8, 5-9, 5-10, 5-13, 5-14, 5-15, 5-16 and Committee Proposal No. 1-121 be recommended for no further action, since these have now been incorporated in the final draft of the Constitution.

PRESIDENT WENSTROM: Delegate Unruh moved that the proposals numbered 5-2, 5-3, 5-4, 5-5, 5-7, 5-8, 5-9, 5-10, 5-13, 5-14, 5-15 and 5-16 and Committee Proposal No. 1-121 be given no further consideration in that they have been incorporated in the main document. Now, do I have a second to that motion?

DELEGATE ENGELTER: Second.

PRESIDENT WENSTROM: Seconded by Delegate Engelter.

The Chair will recognize Delegate Dobson.

DELEGATE DOBSON: Will Delegate Unruh yield to a question?

DELEGATE UNRUH: Yes.

DELEGATE DOBSON: I think we made a change on 5-12, Section 11, "Immunities," which has been incorporated into the main body, and we haven't considered that yet.

Well, Mr. President —

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Right now, the last sentence of the Section 11, "Immunities," in the legislative article, Redraft Proposal 5-12, reads: "For words used in any speech or debate in the legislative assembly" — and I thought we were going to change that to read "For words used in any speech or debate in legislative proceedings."

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: That is correct. I had overlooked that. I did not have my committee report available. Does the desk have that amendment? You don't, do you?

CHIEF CLERK GILBREATH: No. You moved you take no further action on 4-4, 4-7 and 5-12 for the reason that they have been incorporated in Style and Drafting Proposal 5-16 containing the adoption schedule and ballot, and we have passed 5-16.

DELEGATE UNRUH: Mr. President, we did not call the question on my motion yet, had we?

PRESIDENT WENSTROM: On this?

DELEGATE UNRUH: All right.

PRESIDENT WENSTROM: No.

DELEGATE UNRUH: All right. Delegate Dobson, do you have those words? I don't have them.

PRESIDENT WENSTROM: Delegate Dobson, which Redraft Proposal is it?

DELEGATE DOBSON: Mr. President, it's Redraft Proposal 5-12, Article IV, the Legislative Branch, and on your pink sheet, it would be page 5, on line 5. The word "the" should be deleted, and on line 6 the word "assembly" should be deleted and the word "proceedings" should be inserted in lieu thereof.

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: I find that we have already made the change in the final draft, and the words are properly already encased in that document, so there's no need to further amend.

DELEGATE KELSCH: Mr. President.

PRESIDENT WENSTROM: Delegate Kelsch.

DELEGATE KELSCH: What we did — I'd like to explain it, although when we passed 5-16 this morning, these words, for example, on page 5 of 5-16 — the words are the way we wanted to amend it. So I don't know that it would be necessary to go back to the old 5-12.

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: I stand corrected, Mr. President. This matter was taken care of when we passed Redraft Proposal 5-16.

PRESIDENT WENSTROM: Thank you. Then, Delegate Dobson — Delegate Dobson — Delegate Dobson. Then this would be in order?

(Delegate Dobson nodded.)

PRESIDENT WENSTROM: This was reported to the procedural committee and is in the report that is before the Convention for adoption — that which was offered by Delegate Dobson and was seconded by Delegate Engelter. I think the Convention is aware of the numbers. So, unless the Convention wishes that they be again stated, the Chair will not read the numbers again.

Those in favor of the adoption will vote "aye;" those opposed will vote "nay." All in favor of adopting the Committee Report will say "aye;" those opposed "nay." The "ayes" have it. The report is adopted.

Is there anything further at the desk?

Fellow Delegates, I believe that we are caught up at the moment, as far as we can go, and unless there is something to consider under the eighth order — Delegate Devine.

DELEGATE DEVINE: Mr. President, there will be a very brief meeting of the Education Committee in the regular hearing room immediately following the recess.

PRESIDENT WENSTROM: Thank you. Delegate Hoffner.

DELEGATE HOFFNER: Mr. President, there'll be a very short meeting of the Legislative Functions Committee in the Large Hearing Room, and straighten out your ties; you're going to have your pictures taken.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman, there will be a very short meeting of the Executive Committee on Public Relations in the Large Hearing Room as soon as the Executive Functions gets out of there.

PRESIDENT WENSTROM: Delegate Unruh — or Delegate Hernet.

DELEGATE HERNETT: Mr. President: As you know, I'd like to make a few remarks. I've asked that my remarks be printed in the Journal.

PRESIDENT WENSTROM: Are these on personal privilege, Delegate Hernet?

DELEGATE HERNETT: Yes, you could call it that.

PRESIDENT WENSTROM: State your privilege.

DELEGATE HERNETT: Mr. President:

As you know, I have been a committee chairman in this Convention and am proud of the work my committee did and the long hours they spent, but I am sure I can speak for all of the committee chairmen and all of the delegates when I express my thanks and admiration to the members of the Style and Drafting Committee chaired by Delegate Unruh.

When the session started, I think I, and others, had no real conception of the work Style and Drafting would have to do. As the session progressed, I began to see the tremendous responsibilities they were charged with. When they completed their Style and Drafting redrafts which were submitted to the committees, I was amazed at the few changes that the committees found it necessary to make.

Certainly no other group of people worked longer and with more scrupulous concern than did the members of that Committee. In addition to their own committee functions, they spent endless hours these last two weeks working weekends, including Sundays, recess days and evenings, perfecting the work of the Convention. The patience they demonstrated in hearing every request and attempting a solution to every problem within the scope of their assignment was highly commendable. Even when their drafts were presented to the floor and changes were made by the Convention — changes that were not always good — they never complained, but patiently went back to their work. And, Mr. President, I would like to express the thanks of the Convention to this Committee.

PRESIDENT WENSTROM: Thank you, Delegate Hernet.

(Standing applause)

DELEGATE UNRUH: Mr. President.

PRESIDENT WENSTROM: Delegate Unruh.

DELEGATE UNRUH: Thank you very kindly for those gracious words, Delegate Hernet.

Speaking on behalf of my Committee, I can say that we enjoyed our work in a rather unique sort of way (laughter). I suppose we should incorporate as "Nitpickers Associated," or something like that. But it was kind of fun. We like to deal with words and thoughts. We had some marvelous help. We had all kinds of points of view — some were divergent, some were moderate, some were conservative — as to the use of the English language and an occasional Latin word thrown in.

I'd like the members of my Committee to stand, so they may be recognized, and I want to thank them for all the fine help they gave me.

PRESIDENT WENSTROM: Will the delegates who are members of the Committee on Style and Drafting please stand? (Applause)

The remarks of Delegate Hernet will be printed in the Journal.

Is there anything further to come before the Convention?

DELEGATE TUDOR: Mr. President.

PRESIDENT WENSTROM: Delegate Tudor.

DELEGATE TUDOR: In that my wife, June, is present today, I feel I should make a speech.

My heart is full and I choke with emotion over a gift which I received from the other members of the Preamble, Bill of Rights and Suffrage Committee.

Starting last summer, at each coffee break I requested that a chocolate-covered doughnut be given to me or I would not be able to perform my duties. The chocolate-covered doughnuts never appeared; however, I now believe that the Committee ganged up on me, because today they left me a package of chocolate-

covered doughnuts. And so I want to acknowledge these, and these — I will not touch these. They will be put in the shrine in my home wherein also reposes an autographed baseball by Mickey Mantle and a letter from Casey Stengel.

(Laughter and Applause)

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Let's see. What's the order for introductions?

PRESIDENT WENSTROM: For introductions? The eighth order.

DELEGATE RUNDLE: In the Plenary Session, I get forgetful.

It wouldn't do, passing up introducing a former legislator in his own right — Gilman Peterson, from New England. He's sitting beside my wife, incidentally, which is how come I noticed him. And, further, I would suggest that he is the head of the household in the Peterson family.

(Laughter and Applause)

PRESIDENT WENSTROM: Will Representative Peterson come to the rail and be recognized by the Convention?. This way you'll get recognized twice. Representative Peterson.

(Applause)

Anything further under the eighth order?

Delegate Cart.

DELEGATE CART: Mr. President: Maybe this is a little out of order, but being one of the delegates that's had the opportunity to observe humanity probably the longest, I would like to make a few remarks about our staff.

You know, when we gathered for our first preliminary meeting out at Mary College in December of 1970, a number of people were brought in, no doubt with great talent, and so forth, and we proceeded on from there. But we selected our own staff from our own people of North Dakota, and I think that was one of the wisest things we ever did. We have had one of the best staffs I have ever seen assembled in a long period of time. They have worked diligently. They know the State and all of its people. And I think the real credit for a lot of work that's come out of this Convention should be given to this excellent staff that was recruited right here in North Dakota. I know one of them is — I could almost claim as my boy. I never had a boy of my own, but I know Roy Gilbreath used to be over at the house, because he and my daughter went through the Bismarck school system together. But this staff has performed an excellent and an outstanding service. I don't think we could have got better talent had we searched the nation for it.

Thank you.

(Applause)

PRESIDENT WENSTROM: Are there a number of staff members in the room? If there are, will they approach the rail? I mean all our staff people. Approach the rail and be recognized. This Convention will recognize these staff people.

(Standing Applause)

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I would like to ask or move that the remarks of Delegate Cart be printed in the Journal. This doesn't cost as much as these figures, you know.

PRESIDENT WENSTROM: The request will be granted.

If there is nothing further under the eighth order, the Chair will declare a recess until 1:15.

(The Session recessed at 11:43 A.M., until 1:15 P.M., the same day.)

AFTERNOON SESSION

(The Plenary Session continued at 1:30 P.M., Thursday, February 17, 1972, as follows:)

PRESIDENT WENSTROM: Will the Convention please come to order?

The Convention will please come to order.

The Chair will recognize Delegate Litten.

DELEGATE LITTEN: Mr. President. I rise on a point of personal privilege.

PRESIDENT WENSTROM: State your privilege.

DELEGATE LITTEN: Mr. President and Fellow Delegates: I request that you recognize certain delegates for the purpose of making presentations at this time.

I would first ask, Mr. President, that you recognize Delegate Pearce, that you allow not only him, but also Mrs. Wenstrom, the privilege of the rostrum, and that his remarks be printed in the Journal.

PRESIDENT WENSTROM: The Chair will recognize Delegate Pearce.

DELEGATE PEARCE: Mr. President, I will approach the rostrum directly. (Delegate Pearce escorted Mrs. Frank Wenstrom to the rostrum. Standing applause)

DELEGATE PEARCE: Mr. President, Mrs. Wenstrom, and Fellow Delegates:

By pledging my life, I have obtained from the Secretary of State the Journal of the 1889 Convention, and I found that on the next-to-the-last day — on Friday, August 16, 1889 — the following resolution was introduced:

“WHEREAS, The Hon. F. B. Fancher, President of this Convention, has in his trying position as our presiding officer, a situation of great delicacy and responsibility, acquitted himself with uniform courtesy, eminent fairness and infinite patience; and

“WHEREAS, It is an honored and beautiful custom on the final adjournment of deliberative assemblies of this character to donate by resolution to honored and respected presiding officers, the chair they have occupied and the gavel they have wielded; therefore, be it

“RESOLVED, That as a token of our respect and confidence, we hereby order that the Chair he has so honorably filled and the gavel he has so ably and impartially wielded, be and is hereby presented to Hon. F. B. Fancher, President of the Constitutional Convention of North Dakota, assembled at Bismarck July 4, 1889.”

With great diligence, I pursued the possibility of giving the President his chair. I discovered the Convention doesn't own it, has no title, and under no possibility can we give you the chair, Frank. However, at the opening of this Convention, there were two gavels made, I understand, at the State Industrial School — the School for the Deaf — excuse me. This was the gavel which has inscribed on it, “Constitutional Convention, State of North Dakota, 1971-1972” and was used at the opening of this Convention. While Frank already had possession of it, I find no document giving him title. Therefore, the first thing I want to do is, on behalf of the Convention, to present to you, President Wenstrom, this gavel as a symbol of the authority you have heretofore wielded.

PRESIDENT WENSTROM: Thank you.

(Applause)

DELEGATE PEARCE: Sit down. I'm not through.

Now, I hope you've attended carefully the language I read from the 1889 Journal. The same language would be appropriate here. Frank has occupied this position with great delicacy and responsibility. Clearly no one could have acquitted himself with greater uniform courtesy, eminent fairness and infinite patience, and I could think of no new words to express any better what I think we all feel. The manner in which the Chairman has presided has, I think, contributed a great deal to the success of this Convention.

I suppose you notice that this is the first time I have been up here since the Convention started, despite my exalted position of Vice President, and I want the Convention to know that it was not Frank's fault that I have not been sitting up here. It's my fault. He on many occasions has pressured me to come up here, and up to this point I have successfully resisted.

Since we couldn't give Frank the chair, we did want Frank to have something permanent to express our appreciation; and so the delegates have prepared, and I wish to present to you, Frank, this plaque in the shape, as you can see, of the State of North Dakota. “North Dakota Constitutional Convention 1972.” The Great Seal of the State. “Frank A. Wenstrom, President.” And engraved on the bottom is “In appreciation for your skillful leadership, patience, dignity, and high sense of purpose shown throughout the building of a new Constitution for this great state from ninety-seven grateful delegates.”

Thank you, Frank.

(Standing applause)

PRESIDENT WENSTROM: Thank you. Thank you so very, very much, Vice President Pearce and Fellow Delegates.

I believe I know something about what Mark Anthony felt when he said in that Shakespearean play "Julius Caesar" — when he said at the grave of Brutus, "I must pause" — my heart is involved in this — "I must pause until my heart comes back to me."

This is a tremendous experience.

I believe I would be quite without character if I were not deeply touched by the many acts of good will that the delegates to this Convention have shown to me and expressed to me personally. Your many kind words which have been said to me, especially on this particular occasion, cause me to blush with embarrassment. I could not, without vanity, assume that I've merited such praise. I cannot deny, however, that I have tried to discharge my duties as your President to the best of my ability. I can only thank you delegates for your help that I have enjoyed and for your belief that I have made some approach to the ideal of a good president. I am profoundly grateful to the 97 delegates who helped me serve this Convention.

Thank you so very, very much.

(Applause)

Fellow Delegates — excuse me, delegates.

As Bill stated to you, I have tried on numerous occasions to get Bill to come up and preside. The privilege of presiding at a Constitutional Convention is not something that happens every day, and I was real happy that Bill told you that I had tried to get him to preside.

The other thing that has happened today that I have also tried to do before, and I have always failed, is to get my wife to come up to the rostrum and sit with me. That I have not been able to do. So, Bill, in spite of the fact that I have not been able to get you to preside at a session, you were able to do this. I had seen in the press some days ago that it was very evident, after that one time I stopped the Convention to read a special announcement that my wife wished to make — it is very evident just who runs the Wenstrom household.

(Vice President Pearce escorted Mrs. Wenstrom from the rostrum. Standing applause.)

PRESIDENT WENSTROM: The Chair will recognize Delegate Litten.

DELEGATE LITTEN: Mr. President and Fellow Delegates:

I now ask that you recognize Delegate Saugstad and ask that his remarks be printed in the Journal.

PRESIDENT WENSTROM: The Chair will recognize Delegate Saugstad.

DELEGATE SAUGSTAD: President Wenstrom: I have been asked to present to the various chairmen of the various committees that have functioned throughout our Plenary Session, and, also, staff — the key staff members — I have been asked to present Certificates of Commendation. I would like to begin by saying that I believe that we have had what I think is exceptional and unusual participation by each and every delegate. We have had, I feel, the utmost cooperation from everyone. We have had tremendous response from our staff. I think we have had good direction from the Executive Director, his Assistant, and the professional staff. We have had, I think, an excellent and a marvelous staff all the way from top to bottom, and it is impossible for us to single out and mention — make special mention of various individuals for the many wonderful things that each and every one of them have done. I, for one, am extremely proud, as, I'm sure, are all the delegates — I am extremely proud of our entire staff. So, as I read off the names, a page will pick up the merit — or the Certificate of Commendation, and the name of the individual receiving it is imprinted on this and the office which the individual held, and as I read off these names, a page will deliver these to the various individuals. Upon the completion of the delivery of all of these commendations of merit, I will suggest then that we rise and give a standing ovation to these people.

The first is to William R. Pearce, our First Vice President.

Next is to Lois Vogel, our Secretary.

Next is to Donnell Haugen, Chairman of the Committee on Finance and Taxation.

Next, to S. F. Hoffner, Chairman of the Committee on Legislative Functions.

Next, to Ralph Maxwell, Chairman of the Committee on Preamble, Bill of Rights and Suffrage.

The next one is to Gail Hernet, Chairman of the Committee on Executive Functions.

Next, to Roland Meidinger, Chairman of the Committee on Education, Resources and Public Lands.

The next one is to George Longmire, Chairman, Committee on Judicial Functions and Political Subdivisions.

Next is to George Unruh, Chairman of the Committee on Style and Drafting.

The next is to John D. Paulson, Co-chairman of the Committee on Public Information.

Next is to Richard Dobson, Co-chairman, Committee on Public Information.

The next is to Agnes Geelan, Chairman, Committee on Rules.

Next is to James R. Dawson, Chairman, Committee on Ballot.

Next is Joseph Byrne, Chairman of the Committee on Coordination and Transition.

Next, Ailsa Simonson, Chairman of the Committee on Revision and Correction of the Journal.

Next is to C. Warner Litten, Chairman of the Committee on Employment.

Next is John Decker, Chairman of the Committee on Photography.

The next is to LeRoy Erickson, Chairman of the Committee on Enrolling and Engrossing. This one says "Engrossing."

The foregoing Commendations of Merit are signed by the forty — no, the 97 delegates. The following Commendations of Merit are to the staff members, and it says "From all the Delegates."

The first is to Dean Bard, our Executive Director.

The next is to David Peterson, the Assistant Executive Director.

The next is to Roy Gilbreath, Chief Clerk.

The next is Leo Leidholm, Assistant Chief Clerk.

The next is to J. Vernon Asheim, Proposal Clerk.

The next is to our ever-faithful and smiling Barbara King, Desk Reporter.

The next is to Michael H. Keedy, Committee Counsel.

The next is to Dwight S. Cuffee, Committee Counsel.

There is one which has not been prepared, but which I just hand a piece of paper in token, so that he knows that he has one coming, and that's to Fred Scheel, Chairman of the Resolutions Committee. He was too modest to have one made for himself.

Now, Fellow Delegates, let's all rise and give a standing ovation to these people. I think they more than merit it. (Standing applause)

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: I would like you to now recognize Delegate Scheel and move that his remarks be printed in the Journal.

PRESIDENT WENSTROM: The Chair will recognize Delegate Scheel.

DELEGATE SCHEEL: Mr. President:

I think a few of you will hark back to the days 25 years ago when we were allowing the "Ninety-Day Wonders" to be put out in this country. They called them second lieutenants at that time. But here assembled — and I am among them — are "Sixty-Day Wonders," and I think we've ripened awful fast, and of course there are a lot of old sergeants and old veterans and old colonels in this, too, but I think the man to whom I'm about to present this Certificate of Commendation deserves a little bit of special mention, because I know I heard it from the mouths of others, and certainly it was my experience, that he presented and gave

more confidence to a lot of delegates when we came in here in that organizing session, during the work that ensued and during the interim. Secondly, he was a friend, I know, to delegates here. I've heard from a lot of different people and I know I personally experienced it. My wife got a letter telling how I was doing — what I ought to be doing down here, instead of telling what I hadn't ought to be doing, which was reassuring to her, I think.

Third, he has been Chairman of our Calendar Committee, and I think you can see just exactly how well this thing is working out. All during these days, starting when we first heard the symposium at Mary College, we were told we just couldn't do it in that amount of time, and then each committee would come out here to Bismarck and it would be either a rainy day or sunshiny day, but the remarks were always the same — "You just can't do it in that amount of time." The other day he showed me the calendar. It looked to me like it had been written by a Monday morning quarterback — everything worked out just beautifully.

The third thing: Of course he has been Acting President of this organization at times, relieving Frank Wenstrom.

The fourth thing — and I think we've got a little extra time — and I'd just like to recite this. But when I was in the Service, I lived in a quonset hut, and each night the enemy would come down over the island and you could hear the sirens starting at the north end of the island, coming all the way down the island, and the anti-aircraft guns would go off one after the other, but you never really thought too much about it. But one day, unbeknownst to us, during the day they moved an antiaircraft gun — a 90 mm. gun — right in next to the quonset. And so we heard them all start down the line like this, and when that one went off right next to the quonset hut, there wasn't a fellow in there that wasn't on his belly in just an instant. And I think the first time when I heard the first "no" vote come out of my compatriot delegate here on the right, I didn't really know what happened. It just took us six inches off the chair, because he made up for twenty-five around here that didn't know exactly which way they wanted to vote, because he and Roy Gilbreath have got the voices we just heard here to undo us all.

But I think, lastly, that his constituents in Minot and around Minot can be mighty proud of the man they sent down here and became our Second Vice President. With that, I'll present this to you, Stanley Saugstad.

(Standing applause)

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates, I would now ask that you now recognize Executive Director, Dean Bard, who has a presentation that he would like to make on behalf of a number of people.

PRESIDENT WENSTROM: The Chair will recognize Dean Bard.

EXECUTIVE DIRECTOR DEAN BARD: Mr. President:

It is a great pleasure for me to be permitted to make this presentation, because, as staffers, we usually don't get to participate in things to this extent, and I'm real pleased to be permitted to do this.

During all the time that your staff has been associated with the Convention and with President Wenstrom, it's been a real pleasure to have served here.

Now, President Wenstrom and myself and the rest of our staff have not always at all times agreed on how things should be done, and this, I guess, is as it should be. In each case when we've had disagreements, your President has listened patiently to us and he has always given our words the weight that we felt should be given to them. On occasion, we've had to work long hours to complete some of the Convention's work; but with your President watching over us and helping us and with the understanding we've received from him, it has made our labors much lighter.

He has truly been a wonderful person to work for and we will miss the association after the special election is over.

Now, talking about the special election, brings me, I guess, to the point of

our presentation and this token of appreciation that we, as the professional staff, have had prepared for your President. I want to say just a word about it:

First of all, it's inscribed "To President Wenstrom from your staff.

"Dean Bard
David Peterson
Michael Keedy
Dwight Cuffe
Arnie Gilje
Mary Alice Simonson
Barbara Benish
Mary Lee
Jane Thoemke
Marian Ehli
Donna Heisler"

The inscription is very simple. Now, we've gone just a step further and we have had put on the back a mock constitutional ballot, and on that ballot, which reads "Shall the Proposed Constitution of 1972 be approved?" We have anticipated the voters' reaction to the constitutional product that you, President Wenstrom, and your fellow delegates have prepared, and we have marked that ballot box "Yes," and we think, Mr. President, that this is a fitting memento of this occasion, and we are confident that it will reflect the wishes of the electors as they vote on the product that you have built.

Thank you.

(Applause)

PRESIDENT WENSTROM: May I again say a word of appreciation to my friends on the staff along with the people who again make it so difficult for me to talk. I sincerely appreciate this — another beautiful memento of one of the most wonderful experiences in my life — that of serving in this Constitutional Convention.

DELEGATE LITTEN: Mr. President.

PRESIDENT WENSTROM: Delegate Litten.

DELEGATE LITTEN: Fellow Delegates, now that that brings us to the end of our brief program, as far as the day's activities are concerned, I believe that I am inclined, after hearing the presentations and the discussions that have gone on here in the last 15-20 minutes, that I would like to move that, as a final tribute to the good work of this Convention, that all of us once again applaud the contribution that has been made in building this great document, not only by the officers and by the key committee people and by the key personnel who have been recognized here this afternoon, but just as importantly by every single delegate and by each one of our employees who Elmer Cart spoke so eloquently about this morning. We've appreciated the opportunity as employees and as delegates to participate in this magnificent experience.

Thank you very much.

PRESIDENT WENSTROM: Thank you so very, very much, Delegate Litten, and to all who have participated in this especially nice and fitting program.

What is the next business to come before the Convention?

DELEGATE PETERSON: Mr. President.

PRESIDENT WENSTROM: Delegate Peterson.

DELEGATE PETERSON: I think there's one more announcement or expression of gratitude, and that is to our John Q. Public of the North Dakota Constitutional Convention. We have had a gentleman who has attended every committee meeting of the Education Committee throughout the summer and fall and who has worked diligently and been very interested, and we have said many times that we have felt that we need the public participation; and, therefore, our Committee, for fun and because we truly feel he deserved it, we prepared a resolution and presented it to him for framing, signed by all of the members of the Committee — the Education Committee — and it will be presented to R. J. Sailer.

(Applause)

PRESIDENT WENSTROM: We'll be on the twelfth order of business.

DELEGATE SAUGSTAD: Mr. President.

PRESIDENT WENSTROM: Delegate Saugstad.

DELEGATE SAUGSTAD: It has been called to my attention that one of these merits of commendation we overlooked, and that was to Arnie Gilje, our Director of — let's see — what is his official title?

PRESIDENT WENSTROM: Public Information.

DELEGATE SAUGSTAD: Public Information — yes. And he should have been included. And at this time I want to say a "thank you" to Arnie for a job well done. (Applause)

DELEGATE DAWSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dawson.

DELEGATE DAWSON: There's one other group of people that I think we should express our appreciation to for their diligence in attending meetings and for the publication of their news letter that they got out from time to time, and that is the League of Women Voters. (Applause)

PRESIDENT WENSTROM: We will be on the twelfth order of business — Motions and Resolutions.

CHIEF CLERK GILBREATH: Resolution No. O, introduced by Committee on Resolutions:

"A resolution expressing the gratitude of all the delegates to the employees of the Convention who have contributed so much to its success, and to making it an enjoyable experience."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I would move that the Rules be suspended, that Resolution O be read in its entirety, that it be not referred to a committee, that it not be printed as a proposal, that it be printed in the Journal and placed on the agenda for final action.

PRESIDENT WENSTROM: Delegate Scheel moves that the Rules be suspended, that Resolution O not be referred to a committee, but that it be printed in the Journal, that it not be printed as a resolution, that it be placed on the Convention calendar for final passage.

Do I have a second?

DELEGATE LITTEN: Second.

PRESIDENT WENSTROM: Seconded by Delegate Litten.

The Clerk will read the Resolution.

CHIEF CLERK GILBREATH: Resolution No. O, introduced by Committee on Resolutions:

"A resolution expressing the gratitude of all the delegates to the employees of the Convention who have contributed so much to its success, and to making it an enjoyable experience:

"WHEREAS, the North Dakota Constitutional Convention has been meeting in plenary session since January 3, 1972; and

"WHEREAS, during the plenary session these employees have contributed their time and effort far beyond that required of them in their unselfish devotion to the cause of constitutional revision by the exceptional performance of their duties; and

WHEREAS, these same persons have exhibited such willingness in their duties as do cheer the heart, and the girls such adornment as to delight the eye, day by day,

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the Convention express its appreciation to the following for their outstanding performances, conducted in such a pleasant spirit:

Debbie Erickson

Frieda Borth
Dorothy Litchfield
Carolyn Sette
Louise Ebert
Karen Sando
Marie Skjod
Bernice Herner
Cecil Crandell
Harry Iszler
Ed Garvin
Ruth Guthrie
Olger Sandven
Terry Olson
Shelly Mushik
Keith Harrison
Hazel Ludemann
Larry Dorrheim
Florence Nemer
Lois J. Scherr
Gertrude Learn
Meg Rausch
Lela Knudsen
LeRoy Rolshoven
Ferd Hetterle
Vonnie Wold
Clara Wendt
Palmer Rustan
Marjorie Cleveland
Wanda Froelich
Avis Hagen
Marjorie Trangsrud
Gladys Derrick
Al Bradley
Tom Tharalson
JoAnn Owens

"BE IT FURTHER RESOLVED, that the clerk be instructed to forward an enrolled copy of this resolution to each of those named."

PRESIDENT WENSTROM: You have heard the reading of the Resolution. The question — the question before the Convention is on the adoption of Resolution O.

As many as are in favor of adopting the Resolution will say "aye;" opposed "no." The "ayes" have it. Resolution O is adopted.

CHIEF CLERK GILBREATH: Resolution No. S, introduced by Committee on Resolutions.

"A resolution expressing the gratitude of all the delegates of the North Dakota Constitutional Convention for the efforts of the staff of the Convention has expended to make the work of each delegate to the Convention most pleasant and to make the Convention most successful."

DELEGATE SCHEEL: Mr. President.

PRESIDENT WENSTROM: Delegate Scheel.

DELEGATE SCHEEL: I move that the Rules be suspended and that Resolution S be read in its entirety, that it not be printed as a proposal, not be referred to committee, that it be printed in the Journal and placed on final passage.

PRESIDENT WENSTROM: Is this Resolution S?

DELEGATE SCHEEL: Yes.

PRESIDENT WENSTROM: Delegate Scheel moves that Resolution S not be referred to committee, that it be printed in the Journal, that it not be printed as a proposal, but that it be placed before the Convention for final passage.

Do I have a second?

PRESIDENT WENSTROM: Seconded by Delegate Sanstead.

As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it and Resolution S is before the Convention.

CHIEF CLERK GILBREATH: Resolution S, introduced by Committee on Resolutions:

"A resolution expressing the gratitude of all the delegates of the North Dakota Constitutional Convention for the efforts the staff of the Convention has expended to make the work of each delegate to the Convention most pleasant and to make the Convention most successful.

"WHEREAS, the North Dakota Constitutional Convention met in organizational session in April of 1971; and

"WHEREAS, shortly after this date a staff was employed as directed by the Convention; and

"WHEREAS, the Convention met in substantive committees during the months of June, August, September, October and November of 1971; and

"WHEREAS, the Convention has been meeting in plenary session since January 3, 1972; and

"WHEREAS, during all this time the staff of the Convention has performed its duties in a most admirable fashion; and

"WHEREAS, the secretaries on the Executive Director's staff have maintained a courteous, cheerful attitude while performing duties far beyond those normally required of employees by continually preparing excellent work in a short period of time; and

"WHEREAS, these secretaries have most generously given of their services when the same was required and did so most cheerfully and efficiently; and

"WHEREAS, these secretaries have been and are of most pleasing demeanor as well as being pleasing to behold; and

"WHEREAS, the Constitutional Convention has, through a program entered into with the University of North Dakota School of Law, sponsored an internship program utilizing the services of three law students of superior academic qualifications and abilities; and

"WHEREAS, the contribution by these interns has been considerable and the results of their efforts of substantial aid to the delegates,

"NOW, THEREFORE, BE IT RESOLVED BY THE NORTH DAKOTA CONSTITUTIONAL CONVENTION:

"That the gratitude of the Convention be expressed to the interns and the secretarial staff of the Executive Director's office for their generous contributions to the cause of constitutional revision.

"BE IT FURTHER RESOLVED, that the clerk of the convention be instructed to forward an enrolled copy of this resolution to the following:

Roderic Schuster, Intern

Eric DeRycke, Intern

John Dwyer, Intern

Mary Alice Simonson, Receptionist Secretary

Jane R. Thoemke, Secretary

Marian Ehli, Secretary

Mary Lee, Secretary

Barbara Benish, Secretary

Donna Heisler, Secretary"

PRESIDENT WENSTROM: You have heard the reading of the Resolution.

Delegate Scheel.

DELEGATE SCHEEL: Mr. President, to show our appreciation for the work that all these people have done — some of them are present and some of them are not — but I would like to see a rising vote of unanimous consideration, applause and gratitude for all these employees.

PRESIDENT WENSTROM: Would the employees approach the rail?

(Standing applause)

We are approaching the time when we will have the ceremony on the signing of the document.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: Well, Mr. President, with all the nice remarks, I want to promise the Chief Clerk, the Assistant Chief Clerk and Barbara that I'll never expunge again.

(Laughter and applause)

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: Does the Chair plan to call for a vote prior to the signing?

PRESIDENT WENSTROM: Pardon?

DELEGATE DOBSON: Does the Chair plan to call for any vote prior to the signing?

PRESIDENT WENSTROM: The Chair does not intend to call for a vote, unless it is requested by the delegates. We have, in my opinion, complied with the Rules of the Convention; however, if the Convention would like to vote on the entire document, it would be fine with me.

Delegate Dobson.

DELEGATE DOBSON: Mr. President: Therefore, I move that the Rules be suspended and that the Convention proceed to vote viva voce by roll call on this recorded question — by recorded vote on this question.

PRESIDENT WENSTROM: Delegate Dobson moves that the delegates vote — now you fill it in.

DELEGATE DOBSON: By voice; but I couldn't say it the way you did.

PRESIDENT WENSTROM: — by voice on the roll call on the final adoption of the Constitution.

Do I have a second?

DELEGATE HILL: Second.

PRESIDENT WENSTROM: Seconded by Delegate Hill.

Is there further discussion?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: Delegate Dobson.

DELEGATE DOBSON: It is my intent that the question be: Shall the proposed 1972 Constitution be adopted?

PRESIDENT WENSTROM: The question would be: "Shall the proposed 1972 Constitution be adopted?"

Delegate Rundle.

DELEGATE RUNDLE: I would ask that this motion be defeated. We're going out of here all full of love for our neighbors and we've had all this lovely ceremony this afternoon, and it's a shame to spoil it now. A couple weeks may make quite a difference, after people get a chance to study this and digest it, and I, for one — and I am usually not afraid of voting — I am not afraid of voting today, but I think it would be well if we just signed it. Everyone here has worked hard and everyone here is entitled to his opinion, and I think this is a very unwise move. I would plead with you to let it go at this. Give it time to settle a little and just go home. I hope the motion is defeated.

PRESIDENT WENSTROM: The Chair will recognize Delegate Hill.

DELEGATE HILL: Mr. President and Fellow Delegates.

I would support the motion of Delegate Dobson. We've had a lively ballgame here since the Convention opened, and I think it's only fair to the public that we flash the final score on the board, so — many people have seen many motions lose and win. They're not sure what the delegates think of their own proposal as a package. If we don't take a final vote on it, how do we answer the critic who will later say that the delegates were afraid to vote on their own product? I don't think a "yes" vote means that we are saying we have any perfect document here; in fact, far from it; but I think what we have to say is that we think this document is better than the old Constitution, because this is, in effect, what we're voting on, and if we do not recommend this document to the public, I think we have lost a major step in securing the kind of support we need for passage.

I would certainly urge a "yes" vote on this motion.

PRESIDENT WENSTROM: The Chair will recognize Delegate Stanton.

DELEGATE STANTON: Well, I'm a little confused about what document we're talking about. We have definitely pulled the bicameral section out of the Constitution yesterday. We have a whole bunch of alternates attached to this, and I really don't know what I'm voting on. If I say "yes," am I voting that I think bicameral should be approved, that unicameral should be approved and that all the alternates should be approved? I really don't understand. The ballgame here is just about over and it's going to go out into the State. On April 28th we will all be able to cast that final ballot that really means something. If I'm forced to vote today, I'm afraid I'm going to be forced into a corner and I'm going to be forced to vote "no," because I really don't know what I'm voting on. We don't have a clearcut, concise document.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: May I refer again to my borrowed Journal?

On Saturday night, August 17th, '89, the same question came up. They did take the "ayes" and "nays" on Mr. Miller's motion to adopt the Constitution. 40 of the 75 delegates voted "aye," 23 voted "nay," and 12 apparently evaded the issue by being absent and not voting. So, out of 75, 40 voted "aye." I do not consider it a part of this Constitutional Convention's business to vote again. We have, by one vote or another, adopted every section. Some we have, in a sense now, evaded by saying, "We will not determine that issue. We will submit that to the people as alternates."

I agree with Delegate Stanton on that point. It would be my feeling that the proper motion for this Convention to now make and vote upon is that this document which we have put together be now certified to the Secretary of State, as provided by the law under which we meet, and that it then be submitted to the people for their approval or disapproval.

PRESIDENT WENSTROM: The question before the Convention is on the motion as offered by Delegate Dobson.

Delegate Dobson.

DELEGATE DOBSON: Mr. President: I made this motion because it's my belief that the overwhelming majority of delegates to this Convention not only want to vote for this Constitution; they want to enthusiastically vote for it. This vote will be taken under a suspension of the Rules. Therefore, I believe, if anyone hasn't made up their mind yet, they can vote "present." As far as the alternates go, a "yes" vote, for example, would assume that the alternates that we favored would prevail ultimately.

PRESIDENT WENSTROM: Any further discussion?

The question before the Convention — Delegate Pearce.

DELEGATE PEARCE: No. Thank you.

PRESIDENT WENSTROM: The question before the Convention is on the adoption of the motion as offered by Delegate Dobson that we have — I'm sorry — that we — the question is: Shall the 1972 Constitution be adopted?

No further discussion?

As many as are in favor of the motion will say "aye;" those opposed "no."

I believe the "ayes" have it. The "ayes" have it.

So we will proceed to vote on the question —

DELEGATE STANTON: Division.

DELEGATE RUNDLE: Division, Mr. President.

PRESIDENT WENSTROM: If you wish a division, you surely may have it. This is a sufficient number.

The question, again, before the Convention: Shall the 1972 Constitution be adopted?

DELEGATE DOBSON: Mr. President.

PRESIDENT WENSTROM: That's what he stated, I believe.

DELEGATE DOBSON: Mr. President, my motion is that we proceed by recorded roll call to call the vote on that question.

PRESIDENT WENSTROM: Yes: But the question, though, was as I stated — that it be adopted. That's the question on the — that's what we're going to vote on.

DELEGATE DOBSON: Mr. President: If I understand, that's what we will vote on if the pending motion prevails.

PRESIDENT WENSTROM: That's right. But my question is — am I in error as to the type of a vote you want? I understood you to say that that is the vote — whether we were going to vote on it — that shall the 1972 Constitution be adopted? That's the question that they're going to vote on in the event that they vote.

DELEGATE DOBSON: Yes, sir.

PRESIDENT WENSTROM: Then the question is whether we vote or we do not vote.

So those in favor of voting will say "aye;" those opposed will vote "nay."

The Clerk will open the key. You will indicate your vote.

Has every delegate voted? Does any delegate wish to change? The vote is closed.

The tally indicates 69 "ayes" and 26 "nays," with three delegates absent and not voting. So we will proceed with the roll. And the question, again: Shall the 1972 Constitution be adopted?

CHIEF CLERK GILBREATH: Aas.

DELEGATE AAS: Yes.

CHIEF CLERK GILBREATH: Aubol.

DELEGATE AUBOL: Yes.

CHIEF CLERK GILBREATH: Baker.

(no response.)

CHIEF CLERK GILBREATH: Bassingthwaite.

DELEGATE BASSINGTHWAITE: Yes.

CHIEF CLERK GILBREATH: Bender.

DELEGATE BENDER: Yes.

CHIEF CLERK GILBREATH: Benson.

DELEGATE BENSON: Yes.

CHIEF CLERK GILBREATH: Benz.

(No response.)

CHIEF CLERK GILBREATH: Berg.

DELEGATE BERG: Yes.

CHIEF CLERK GILBREATH: Billey.

DELEGATE BILLEY: Yes.

CHIEF CLERK GILBREATH: Binek.

DELEGATE BINEK: Yes.
CHIEF CLERK GILBREATH: Birkeland.
DELEGATE BIRKELAND: Yes.
CHIEF CLERK GILBREATH: Brakke.
DELEGATE BRAKKE: Yes.
CHIEF CLERK GILBREATH: Burbidge.
DELEGATE BURBIDGE: Yes.
CHIEF CLERK GILBREATH: Burke.
DELEGATE BURKE: Yes.
CHIEF CLERK GILBREATH: Butler.
(No response.)
CHIEF CLERK GILBREATH: Byrne.
DELEGATE BYRNE: Yes.
CHIEF CLERK GILBREATH: Cart.
DELEGATE CART: Mr. President.
PRESIDENT WENSTROM: Delegate Cart.
DELEGATE CART: May I explain my vote?
PRESIDENT WENSTROM: After we are through with the roll call, Delegate Cart.
DELEGATE CART: No.
CHIEF CLERK GILBREATH: Chase.
DELEGATE CHASE: Yes.
CHIEF CLERK GILBREATH: Christensen.
DELEGATE CHRISTENSEN: Yes.
CHIEF CLERK GILBREATH: Daniels.
DELEGATE DANIELS: Yes.
CHIEF CLERK GILBREATH: Dawson.
DELEGATE DAWSON: Yes.
CHIEF CLERK GILBREATH: Decker.
DELEGATE DECKER: Yes.
CHIEF CLERK GILBREATH: Devine.
DELEGATE DEVINE: Yes.
CHIEF CLERK GILBREATH: Dobson.
DELEGATE DOBSON: Yes.
CHIEF CLERK GILBREATH: Engelter.
DELEGATE ENGELTER: Yes.
CHIEF CLERK ENGSTROM: Engstrom.
DELEGATE ENGSTROM: Yes.
CHIEF CLERK GILBREATH: Erickson.
DELEGATE ERICKSON: Yes.
CHIEF CLERK GILBREATH: Fallgatter.
DELEGATE FALLGATTER: Yes.
CHIEF CLERK GILBREATH: Fiedler.
DELEGATE FIEDLER: Yes.
CHIEF CLERK GILBREATH: Fritzell.
DELEGATE FRITZELL: Yes.
CHIEF CLERK GILBREATH: Geelan.
DELEGATE GEELAN: Yes.
CHIEF CLERK GILBREATH: Gipp.
DELEGATE GIPP: Yes.
CHIEF CLERK GILBREATH: Griffin.

DELEGATE GRIFFIN: Yes.
CHIEF CLERK GILBREATH: Hardmeyer.
DELEGATE HARDMEYER: Yes.
CHIEF CLERK GILBREATH: Hartl.
DELEGATE HARTL: Yes.
CHIEF CLERK GILBREATH: Haugen.
DELEGATE HAUGEN: Yes.
CHIEF CLERK GILBREATH: Hendrickson.
DELEGATE HENDRICKSON: Yes.
CHIEF CLERK GILBREATH: Hernett.
DELEGATE HERNETT: Yes.
CHIEF CLERK GILBREATH: Hildebrand.
DELEGATE HILDEBRAND: Yes.
CHIEF CLERK GILBREATH: Hill.
DELEGATE HILL: Aye.
CHIEF CLERK GILBREATH: Hoffner.
DELEGATE HOFFNER: Aye.
CHIEF CLERK GILBREATH: Hoghaug.
DELEGATE HOGHAUG: Yes.
CHIEF CLERK GILBREATH: Hougen.
DELEGATE HOUGEN: Yes.
CHIEF CLERK GILBREATH: Hubrig.
DELEGATE HUBRIG: No.
CHIEF CLERK GILBREATH: Huckle.
DELEGATE HUCKLE: Yes.
CHIEF CLERK GILBREATH: Jestrab.
DELEGATE JESTRAB: Yes.
CHIEF CLERK GILBREATH: Kelsch.
DELEGATE KELSCH: Yes.
CHIEF CLERK GILBREATH: Kessel.
DELEGATE KESSEL: Yes.
CHIEF CLERK GILBREATH: Ketchum.
DELEGATE KETCHUM: Yes.
CHIEF CLERK GILBREATH: Knudson.
DELEGATE KNUDSON: Yes.
CHIEF CLERK GILBREATH: Kretschmar.
DELEGATE KRETSCHMAR: Yes.
CHIEF CLERK GILBREATH: Kwako.
DELEGATE KWAKO: Yes.
CHIEF CLERK GILBREATH: Lamb.
DELEGATE LAMB: Yes.
CHIEF CLERK GILBREATH: Lander.
DELEGATE LANDER: Yes.
CHIEF CLERK GILBREATH: Larsen.
DELEGATE LARSEN: Yes.
CHIEF CLERK GILBREATH: Lerberg.
DELEGATE LERBERG: Yes.
CHIEF CLERK GILBREATH: Litten.
DELEGATE LITTEN: Yes.
CHIEF CLERK GILBREATH: Longmire.
DELEGATE LONGMIRE: Yes.

CHIEF CLERK GILBREATH: McElroy.
DELEGATE McELROY: Yes.
CHIEF CLERK GILBREATH: McIntyre.
DELEGATE McINTYRE: Yes.
CHIEF CLERK GILBREATH: Maxwell.
DELEGATE MAXWELL: Yes.
CHIEF CLERK GILBREATH: Meidinger.
DELEGATE MEIDINGER: Yes.
CHIEF CLERK GILBREATH: Miller.
DELEGATE MILLER: Yes.
CHIEF CLERK GILBREATH: Nothing.
DELEGATE NOTHING: Yes.
CHIEF CLERK GILBREATH: Nicholas.
DELEGATE NICHOLAS: Yes.
CHIEF CLERK GILBREATH: O'Toole.
DELEGATE O'TOOLE: Yes.
CHIEF CLERK GILBREATH: Omdahl.
DELEGATE OMDAHL: Yes.
CHIEF CLERK GILBREATH: Paulson.
DELEGATE PAULSON: Yes.
CHIEF CLERK GILBREATH: Pearce.
DELEGATE PEARCE: Yes.
CHIEF CLERK GILBREATH: Peters.
DELEGATE PETERS: Yes.
CHIEF CLERK GILBREATH: Peterson.
DELEGATE PETERSON: Yes.
CHIEF CLERK GILBREATH: Poulson.
DELEGATE POULSON: Yes.
CHIEF CLERK GILBREATH: Quam.
DELEGATE QUAM: Yes.
CHIEF CLERK GILBREATH: Roney.
DELEGATE RONEY: Yes.
CHIEF CLERK GILBREATH: Rosendahl.
DELEGATE ROSENDAHL: Yes.
CHIEF CLERK GILBREATH: Rude.
DELEGATE RUDE: Yes.
CHIEF CLERK GILBREATH: Rundle.
DELEGATE RUNDLE: No.
CHIEF CLERK GILBREATH: Sanstead.
DELEGATE SANSTEAD: Yes.
CHIEF CLERK GILBREATH: Saugstad.
DELEGATE SAUGSTAD: Yes.
CHIEF CLERK GILBREATH: Scheel.
DELEGATE SCHEEL: Yes.
CHIEF CLERK GILBREATH: Schmit.
DELEGATE SCHMIT: Yes.
CHIEF CLERK GILBREATH: Simonson.
DELEGATE SIMONSON: Yes.
CHIEF CLERK GILBREATH: Sinner.
DELEGATE SINNER: Yes.
CHIEF CLERK GILBREATH: Solberg.

DELEGATE SOLBERG: Yes.
CHIEF CLERK GILBREATH: Sondreal.
DELEGATE SONDRREAL: Yes.
CHIEF CLERK GILBREATH: Stanton.
DELEGATE STANTON: No.
CHIEF CLERK GILBREATH: Sullivan.
DELEGATE SULLIVAN: Yes.
CHIEF CLERK GILBREATH: Thompson.
DELEGATE THOMPSON: Yes.
CHIEF CLERK GILBREATH: Trenbeath.
DELEGATE TRENBEATH: Yes.
CHIEF CLERK GILBREATH: Tudor.
DELEGATE TUDOR: Yes.
CHIEF CLERK GILBREATH: Unruh.
DELEGATE UNRUH: Yes.
CHIEF CLERK GILBREATH: Urdahl.
DELEGATE URDAHL: Yes.
CHIEF CLERK GILBREATH: Vogel.
DELEGATE VOGEL: Yes.
CHIEF CLERK GILBREATH: Wallin.
DELEGATE WALLIN: Yes.
CHIEF CLERK GILBREATH: Warner.
DELEGATE WARNER: Yes.
CHIEF CLERK GILBREATH: Wicks.
DELEGATE WICKS: Yes.
CHIEF CLERK GILBREATH: Wenstrom.
PRESIDENT WENSTROM: Yes.

The roll discloses 91 "ayes" — now is this four absent or four "noes"?

CHIEF CLERK GILBREATH: Four "nays."

PRESIDENT WENSTROM: Four "nays," with three delegates absent.

Now, Delegate Cart.

DELEGATE CART: Mr. President:

I voted "no" because I have serious doubt about the wisdom in two divisions of the new Constitution that have been approved. I feel that the Executive Branch and the Legislative Branch have been removed substantially farther from the general public.

PRESIDENT WENSTROM: Delegate Hubrig.

DELEGATE HUBRIG: Mr. Chairman:

I want to take this opportunity to explain my vote of "no." I had no alternative but to vote "no," as I truthfully feel that I couldn't have went back to my people and said to them, "Vote for the Constitution," that I, myself, could not believe in, and I want one thing understood: I have no animosity against anyone who voted against what I thought should have been voted for. This is probably one of the hardest jobs I've had to do for a long time — is to come here and have to vote "no." But I did. I want to be honest with my people. I am sure that the people that sent me here will understand the position that I am in, and I pray, "God, grant me the serenity to accept the things I cannot change, the courage to change the things I can."

And with that, I would like to have my remarks in the Journal, if at all possible.

PRESIDENT WENSTROM: It's customary to place the remarks of explaining votes in the Journal.

DELEGATE RUNDLE: Mr. President.

PRESIDENT WENSTROM: Delegate Rundle.

DELEGATE RUNDLE: I, also, would like to explain my vote.

No hard feelings whatsoever. I intended all the way through to tell the people in my district to whom I owe my entire allegiance that there are many, many good things in this document: There are some that I do not like, and I am going to tell them you — I'm going to vote — they know now how I voted. I'm going to tell them to vote as they please. I'm not going to knock it. I'm not going to hurt it.

On the other hand, I would like you to know I didn't want to vote on it, but I stayed here and voted. At my age, I could have had a good alibi to have ducked out.

PRESIDENT WENSTROM: Delegate Stanton.

DELEGATE STANTON: Mr. President:

I don't apologize for my vote. I simply want to explain it.

I voted "no" because I thought it was a very unnecessary motion. We're all pretty aware that this Constitution is not a complete document yet. There is a lot of good in it and there's some in it that is not so good, and it is for the people of North Dakota to make the ultimate decision.

PRESIDENT WENSTROM: Any further discussion? Delegate Dobson.

DELEGATE DOBSON; May I explain my vote?

PRESIDENT WENSTROM: Yes, Delegate Dobson.

DELEGATE DOBSON: Mr. President:

The delegates to North Dakota's 1889 Constitutional Convention wrote a good Constitution for their times. But times have changed greatly in the last 82½ years and the people have recognized that North Dakota needs a new Constitution. This Convention is proposing to the people the 1972 Constitution.

This is a constitution that honors the past, provides for the present and looks to the future.

It is a constitution that has been shorn of obsolete and redundant provisions, statutory detail and surplus verbiage.

It is a constitution that provides for sweeping away the complex and expensive spider web of bureaucracy that now burdens state government and replacing it with a governmental structure that will be responsive, efficient and economical.

It is a constitution that preserves — and, in many cases, expands — every right guaranteed to the people under the old document.

It is a constitution that is progressive and innovative, comparatively brief, easy to read and easy to understand.

It is, in sum, a constitution that will place North Dakota at the forefront in the rank of states, a constitution that will serve, in many respects, as a model for other states to emulate, a constitution that every North Dakotan can proudly claim as his own.

Therefore, I voted "yes."

PRESIDENT WENSTROM; Delegate Paulson.

DELEGATE PAULSON: Mr. Chairman.

PRESIDENT WENSTROM: Delegate Paulson.

DELEGATE PAULSON: I don't have to explain my vote. I'm highly enthusiastic about everything this Convention has done, and I think the resounding 91-to-4 vote in favor of the Constitution gives the Public Information Committee a sound foundation from which to launch its information campaign for the public; and as the first part of that campaign, I would request that this Convention instruct the staff to order ten thousand copies of the new Constitution from the type that will be in today's Journal, so that there will be an immediate supply on hand for public distribution on request, and that ten copies of the new Constitution be mailed to every delegate.

PRESIDENT WENSTROM; Was that a motion, Delegate Paulson?

DELEGATE PAULSON: Yes.

PRESIDENT WENSTROM: And I believe the figure you stated was ten thousand?

(Delegate Paulson nodded.)

PRESIDENT WENSTROM: It's been moved by Delegate Paulson, and seconded by Delegate McIntyre, that the staff order the printing of ten thousand copies of the new document and that ten copies of the document be mailed to each delegate.

The motion has been seconded.

Any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and the staff will carry out the assignment.

Delegate Pearce.

DELEGATE PEARCE: Mr. President, may I explain my "yes" vote?

PRESIDENT WENSTROM: You may explain your vote.

DELEGATE PEARCE: You might have noticed that it sounded a little weak. I voted "yes" because a "no" vote would have been misinterpreted. I did not feel that the question that we voted on was a proper one. I do not feel that the vote of 93 adopted the Constitution. I thought all that we could do was submit what we have done. My real vote is on the various proposals as recorded in the Journal. My "yes" vote was because I felt that we had to send it out to the people for their ultimate adoption or rejection.

PRESIDENT WENSTROM: Any further discussion?

Hearing none — now, Delegate Pearce, you suggested a motion a few moments ago on the matter of signing or certifying the document. I would accept that motion at this time.

DELEGATE PEARCE: Mr. President.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: I do now move that the officers of the Convention be directed, in the presence of this Convention, to sign and execute a Certification of the document we have now put together, which will ultimately then be forwarded to the Secretary of State for submission to the people; and that as a part of that ceremony, each of the delegates may be invited to come to your desk and also sign the printed document — the final document.

DELEGATE RONEY: Second.

PRESIDENT WENSTROM: It's been moved by Delegate Pearce and seconded by Delegate Roney that the officers of the Convention do now certify to the Secretary of State the document as it has been passed by the Convention, and that following the signing, that the other delegates to this Convention be privileged to also sign the document.

Do we have — yes, we have a second.

As many as are in — any discussion?

As many as are in favor of the motion will say "aye;" opposed "no." The "ayes" have it and I will ask that the officers come to the desk.

(Chief Clerk Gilbreath called the names of the respective officers, each of whom then signed the 1972 Constitution, followed by signing thereof by the respective delegates whose names appear thereon.)

PRESIDENT WENSTROM: Will the Convention please come to order?

The Convention will please be in order.

Delegate Saugstad.

DELEGATE SAUGSTAD: Mr. President: I move that the absent delegates be excused.

PRESIDENT WENSTROM: Delegate Saugstad moves that the absent delegates be excused. Do we have a second?

DELEGATE SANSTEAD: Second.

PRESIDENT WENSTROM: Seconded by Delegate Sanstead.

As many as are in favor of the motion will say "aye;" opposed "no."

The "ayes" have it.

For a little while, we'll be on the — we will be on the eighth order of business.
Delegate O'Toole.

DELEGATE O'TOOLE: Mr. Chairman.

PRESIDENT WENSTROM: Delegate O'Toole.

DELEGATE O'TOOLE: I, like Delegate Maxwell, can congratulate myself quite well, I think, in restraining myself on the floor. I had much trouble in the committees. But there's one thing that still bothers me very greatly about this Constitution, and it's on page 17, Section 3, under the "Great Seal," and it's the fourth line down, and it's where the Indian on horseback is pursuing a buffalo toward the setting sun; and after our exhibit today of this beautiful document, I really believe that should be the rising sun.

PRESIDENT WENSTROM: Thank you very much, Delegate O'Toole.

Fellow Delegates: One of the things that I think we should do — I think we've had a wonderful convention, and I think we've had the most well-developed set of rules for this Convention of any that I have been privileged to read, and I have read many of them, believe me. But I do think that, now that this Convention is grinding to a close, that it would be well if each of the delegates would sit down and think this thing out and then say to yourself or ask a question: Just what would I do if I were to start a new convention tomorrow? Just what would I do? How would I proceed in the event that you were called on to do this, in order that you could do a better job? I think that this is — really, this has been a terrific undertaking, but there could be some things that some of the delegates feel could have been better, and I know that in these United States there are going to be many constitutional conventions held, and I know that, because of the fact that ours ran only 30 days, and everyone said it just couldn't be done, and the fact that we did do it, there's going to be a demand on North Dakota for information on how we did do this. And so then I think it would be only fair or better for these other people if we delegates would sit down and ask ourselves that question: How would I do it? What could we do to improve it? And send this information in, and maybe we could make a footnote in the back of the rule book on our experiences, and then the reaction from our own delegates at the close of the Convention. If you do that, I'm sure that many people and many states would profit by the experience we've had here.

I would like to comment briefly, and I first want to say that it is not my purpose at this hour to weary you with a long speech. It would be a poor reward to you in return for the great honor you have shown me by electing me your President of this Constitutional Convention, and in that capacity making it my privilege to serve as your presiding officer.

I do wish to express to you, the delegates to this Convention, my sincere appreciation for the continuous cooperation and assistance which you have given me while I served as your President. Your support has not been passive or mere approval; it has been spontaneous, active and enthusiastic. I think it is worthy of note that no delegate has ever failed to accept a committee appointment or other assignment when asked to do so by your President. As you delegates are aware, these assignments have not always been classified as easy.

Your unbelievable attendance record at committee meetings during the interim, as well as here at the Convention itself, is written upon the pages of history for all to see, a true indication of your dedication and determination to carry through to completion our task of redrafting a constitution for the State of North Dakota. You have not avoided your responsibilities. I have stated many times, both privately and publicly, of my high regard for the delegates, my colleagues, to this Convention. By electing you as delegates to this Constitutional Convention, our citizens have definitely reaffirmed my faith in our elective system.

A special thank you to my fellow officers of this Convention for their many acts of kindness, consideration and courtesies, for those that have granted not only to me, but to all our delegates, our visitors, and to the public at large. You have given freely of your time and your talents.

The chairman and vice chairman of all our committees associated with this Convention have thoroughly demonstrated their abilities for leadership. They

have shown great industry in their work and eloquence in the meeting room. Their most important quality, however, has been their absolute fairness. This I am aware of because of my personal observations and from the reports given me by our citizens who have attended their meetings.

As for our professional staff, our general Convention staff and our desk force — no organization could have a more loyal and hard-working crew. Their devotion to the work of the Convention and to the delegates individually, as well as collectively, has been a major factor in our successful operation and to the many accomplishments of this Constitutional Convention. We wish for all our — may I call them “assistants”? — to know that their work in our behalf is sincerely appreciated. Their good work will not be in vain.

You, the delegates to this Constitutional Convention, are a grand group of men and women. You are a group of which all North Dakotans can be justly proud. To you I owe my affection, my gratitude, my respect.

On August 17th of 1889 — the last day of the first Constitutional Convention — Delegate Stevens presented the president an appropriate gift. President Frederick Bartlett Fancher responded as follows:

“Gentlemen of the Convention:” — you will note there were no ladies in that Convention — “Like the pilgrim of the olden times, who having journeyed to many countries, gathering wisdom and knowledge by the way, ascends at last the summit of the east hill, and bending on his staff surveys afar the highest place of all — so have we, after a long, interesting and varied experience, reached the end of our labors and behold, gleaming into light, that Jerusalem of our souls — a completed constitution.”

By coincidence — that was the end of the quote.

By coincidence, today, February 17, 1972, we are finishing the work of this Constitutional Convention — 82 years and six months to the day later.

We have come to the closing moments of this Constitutional Convention. It falls to the President to say the last words of farewell.

May I begin by again expressing to you the deepest appreciation of which I am capable for the trust you have placed in me. I can only say I have tried to justify your trust. Our Convention has been a fruitful one. I honestly and sincerely believe that we can all return to our homes secure in the knowledge that our mission has been accomplished; a job well done.

And may I close this Convention with words which in many languages, in many forms, in many religions, have brought comfort and strength: “May the peace of God, which passeth all understanding, be with us and remain with us always.”

I have been advised that all the business of this Constitutional Convention has been cared for. The only function remaining is to entertain and put a motion that this Constitutional Convention do now adjourn.

The Chair will recognize Delegate Cart.

DELEGATE LONGMIRE: Mr. President.

PRESIDENT WENSTROM: Delegate Longmire.

DELEGATE LONGMIRE: Mr. President, before you recognize Delegate Cart, may I offer a motion that the President’s final remarks be printed in the Journal?

DELEGATE DOBSON: Second.

PRESIDENT WENSTROM: It’s been moved and seconded that the remarks of the President be placed in the Journal. I’ll put the motion:

As many as are in favor of the motion will say “aye;” opposed “no.” The “ayes” have it and they will be put in the Journal.

One little announcement at the desk.

CHIEF CLERK GILBREATH: According to the Highway Department, there is no travel east. Highway Interstate 94 is blocked between Windsor and Cleveland. Visibility is zero. The plows are working, but it is filling in as fast as the plows go through.

PRESIDENT WENSTROM: Delegate Pearce.

DELEGATE PEARCE: Mr. President: An announcement to the delegates.

Included in the budget this morning — we hope that we have sufficient funds so that every delegate might be furnished with a copy of the verbatim record that's been taken here. That will be all of the debates.

Now, it wouldn't be essentially as you might like it. It may be mimeographed. But within the funds available, we hope to make that available, including the corrected Journal when it is written.

PRESIDENT WENSTROM: Thank you, Delegate Pearce.

The Chair will recognize Delegate Cart, the senior member of this Constitutional Convention.

DELEGATE CART: Mr. President: Before making the motion that I am about to make, I want to say this to the Delegates:

I've taken part in many proceedings over a long period of time, and I don't think that there's ever been any that would equal this one in the conduct of the proceedings and the ability of each and every delegate to voice their opinion and express themselves and place whatever ideas they may have had before the Convention.

Now, Mr. President, I'm going to move that this Convention do now adjourn sine die.

PRESIDENT WENSTROM: Delegate Cart moves that this Convention be now adjourned sine die.

The Chair will recognize Delegate Gipp as the youngest member of this Convention. Delegate Gipp.

DELEGATE GIPP: Mr. President: I rise to second the motion to adjourn the Constitutional Convention of 1972.

PRESIDENT WENSTROM: Delegate Gipp moves to second the motion to adjourn sine die.

Those in favor of the motion will say "aye," those opposed "no." The "ayes" have it. I now declare this successful, this useful and most-interesting Constitutional Convention closed.

(The Plenary Session of the 1972 Constitutional Convention was concluded at 3:38 P.M., Thursday, February 17, 1972.)

APPENDIX A
CONSTITUTION OF THE STATE OF NORTH DAKOTA
**Adopted on the seventeenth day of February, one thousand nine hundred seventy-two,
by the Second Constitutional Convention at the State Capitol in the City of Bismarck.**

PREAMBLE

We, the people of North Dakota, grateful to Almighty God and desiring to secure the blessings of civil and religious liberty for ourselves and our posterity, do ordain and establish this constitution.

**ARTICLE I
DECLARATION OF RIGHTS**

Section 1. INALIENABLE RIGHTS.

All people are endowed with certain inalienable rights; among these are life, liberty and the pursuit of health and happiness.

Section 2. PURPOSE OF GOVERNMENT.

All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

Section 3. RELIGIOUS FREEDOM.

The free exercise of religious belief and worship shall be forever guaranteed in this state.

Section 4. FREEDOM OF SPEECH.

Freedom of the press and of all individuals to write, speak and publish their opinions on all subjects is guaranteed, and each must be responsible for the abuse of these freedoms.

Section 5. FREEDOM TO ASSEMBLE.

The right of the people peaceably to assemble and to petition or address the government shall never be abridged.

Section 6. SEARCHES AND SEIZURES.

All people have the right to be secure in their persons, houses, papers and other possessions against unreasonable search, seizure, invasion of privacy or unreasonable interception of communications by artificial sensory device. No warrant shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Section 7. TRIAL BY JURY.

The right of trial by jury shall be secured to all and shall remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases.

Section 8. OPEN COURTS.

Courts shall be open to all, and every person shall have remedy by due process of law for any injury to his lands, goods, person, privacy or reputation. Right and justice shall be administered without denial or delay.

Section 9. RIGHT TO KEEP ARMS.

The right of the citizens to keep arms for self defense, lawful hunting, recreational use and other lawful purposes shall not be abridged, but nothing herein shall be held to permit the unlawful carrying of concealed weapons.

Section 10. INDICTMENT OR INFORMATION.

No person shall be proceeded against for a felony other than by indictment or information, except in cases arising in the military forces. In misdemeanor cases, offenses may be prosecuted by indictment, information or complaint. The legislative assembly may change, regulate or abolish the grand jury system.

Section 11. SPEEDY TRIAL.

In criminal prosecutions in any court whatever, the party accused shall have

the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Section 12. BAIL.

All persons shall be bailable. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are imprisoned.

Section 13. NO DEATH PENALTY.

Death shall not be prescribed as a penalty for any crime.

Section 14. TREASON.

Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

Section 15. HABEAS CORPUS.

The privilege of release from unlawful detention or unlawful imprisonment shall not be suspended unless, in case of rebellion or invasion, the public safety may require.

Section 16. UNLAWFUL ACTS.

No bill of attainder, ex post facto law or law impairing the obligations of contracts shall ever be enacted.

Section 17. RIGHTS OF DEBTORS.

The legislative assembly shall provide for the protection of the rights of debtors and shall provide that homesteads of heads of families or single persons and reasonable amounts and kinds of their personal property, as defined by law, shall be exempt from a forced sale. This section shall not be construed to prevent liens against a homestead for labor done and materials furnished for its improvement, in such manner as may be provided by law.

Section 18. NO IMPRISONMENT FOR DEBT.

No person shall be imprisoned for debt.

Section 19. GRANTING PRIVILEGES OR IMMUNITIES.

No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

Section 20. UNIFORM OPERATION OF LAWS.

All laws of a general nature shall have a uniform operation.

Section 21. EMINENT DOMAIN.

Private property shall not be taken or damaged for necessary public use without protecting the rights of the owner and without just compensation having first been made to the owner for all damages.

However, the legislative assembly may provide by law for the taking of property for right-of-way purposes for transportation, communication, and transmission of power for public service, by depositing estimated just compensation for all damages into court for the owner. The legislative assembly shall provide the procedure and fix the time limit for determination of damages, necessity and public use in such cases.

Section 22. SUITS AGAINST THE STATE.

Suits may be brought against the state and its political subdivisions for negligent injury to a person or his property, but the legislative assembly may provide for reasonable limitations.

Section 23. NONDISCRIMINATION IN ACCOMMODATIONS.

All persons are entitled to the full and equal enjoyment of the goods, ser-

vices, privileges, advantages and facilities of any public accommodation without discrimination based on race, sex, color, religion or national origin.

Section 24. **SERVICEMEN AND SERVICEWOMEN.**

The people of North Dakota declare that North Dakota servicemen and servicewomen may be given special considerations as determined by the legislative assembly.

Section 25. **NONDISCRIMINATION IN EMPLOYMENT.**

There shall be no discrimination against a qualified natural person's right to practice a trade or profession or a citizen's right to obtain or hold employment because of race, color, sex, creed, or membership or nonmembership in a trade, labor or professional organization.

Section 26. **CIVIL POWER SUPREME.**

The military shall be subordinate to the civil power.

Section 27. **SUPREME LAW.**

The Constitution of the United States is the supreme law of the land.

Section 28. **RIGHTS RETAINED.**

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

**ARTICLE II
ELECTIVE FRANCHISE**

Section 1. **ELECTIONS, VOTER QUALIFICATIONS.**

The general election of the state shall be held biennially as provided by law.

Every citizen of the United States, who has attained the age of eighteen years and who has been a resident of the state six months, of the county ninety days and of the precinct thirty days preceding an election, shall be a qualified elector. When an elector moves within the state he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct. The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence. No elector shall lose his residency for voting eligibility solely by reason of his absence from the state.

The legislative assembly shall provide by law for secrecy in voting, for absentee voting, for administration of elections and for the nomination of candidates.

Section 2. **VOTER DISQUALIFICATIONS.**

No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote; nor shall any person be qualified to vote if he is confined in a correctional institution or jail, or while under sentence for a crime punishable by confinement exceeding one year.

Section 3. **FAIR ELECTORAL SYSTEM.**

Every candidate for public office shall have a justiciable right to an electoral system that is not prejudicial to his candidacy.

**ARTICLE III
POWERS RESERVED TO THE PEOPLE**

If the electors approve alternate proposition 2A, then Alternate Proposition 2A of the Adoption Schedule containing Article III, Powers Reserved to the People, shall be placed in this constitution as Article III.

If the electors approve alternate proposition 2B, then Alternate Proposition 2B of the Adoption Schedule containing Article III, Powers Reserved to the People, shall be placed in this constitution as Article III.

**ARTICLE IV
LEGISLATIVE BRANCH**

If the electors approve alternate proposition 1A, then Alternate Proposition 1A of the Adoption Schedule containing Article IV, Legislative Branch, shall be placed in this constitution as Article IV.

If the electors approve alternate proposition 1B, then Alternate Proposition 1B of the Adoption Schedule containing Article IV, Legislative Branch, shall be placed in this constitution as Article IV.

ARTICLE V EXECUTIVE BRANCH

Section 1. EXECUTIVE OFFICIALS AND OFFICERS.

The elected state officials shall be the governor, lieutenant governor, secretary of state, attorney general and three public service commissioners.

The governor and lieutenant governor shall be elected on a joint ballot. Each vote cast for a candidate for governor shall be deemed cast also for the candidate for lieutenant governor nominated jointly with him.

The chief executives of the principal departments, other than those elected or those chosen in a manner otherwise provided for in this constitution, shall be appointed by the governor and shall serve at his pleasure. They shall be confirmed or rejected by the senate upon a recorded vote of a majority of the members elected. Any nomination not confirmed or rejected by the senate within twenty session days after being received shall be deemed confirmed.

The legislative assembly may periodically review the principal executive departments and may by law change and prescribe the manner of selecting those chief executive officers appointed by the governor under the provisions of this article.

Section 2. ELECTIONS AND TERMS OF EXECUTIVE OFFICIALS.

The elected state officials shall be chosen by the electors at a time designated by the legislative assembly, and shall serve until their successors are duly qualified. Terms of office shall be four years, except that terms of the public service commissioners shall be six years, so arranged that one of them is elected every two years.

If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

Section 3. QUALIFICATIONS.

To be eligible to hold an elective office established by this article, a person must be an elector of this state, at least twenty-one years old, and must have been a resident of this state for the two years preceding his election. The attorney general must be licensed to practice law in this state.

Section 4. COMPENSATION.

The compensation of elected officials shall be as provided by law, but shall not be diminished during the term for which they were elected.

Section 5. PLACE OF HOLDING OFFICE.

Elected state officials and the chief executive officers of the principal departments shall hold office at the seat of government.

Section 6. EXECUTIVE ORGANIZATION.

The legislative assembly shall allocate the executive power among not more than fifteen principal state departments, which shall be organized along broad functional lines. The executive power of each department shall be vested in one person unless otherwise provided by this constitution or by law. The legislative assembly shall prescribe the duties of and periodically reorganize the executive departments, provided any reorganization or change in duties shall not affect the organization and powers granted to the boards of education in this constitution.

The governor may, for more effective administration, make changes in the statutory allocation of functions, powers and duties among and within the executive departments, other than those headed by constitutionally elective officials. Any change shall be set forth in an executive order and submitted to both houses of the legislative assembly on the same day. The legislative assembly shall have thirty session days to disapprove the order. If not disapproved by a majority of the members elected to either house, the order shall have the force of law when filed with the secretary of state or on a later date specified therein.

Section 7. STATE PLANNING COUNCIL.

The chief executives of the principal state departments shall constitute the state planning council. The governor shall be chairman of the council and the lieutenant governor shall be vice chairman. The council shall prepare a comprehensive state plan based on the comprehensive plan for each department.

Section 8. POWERS AND DUTIES OF THE GOVERNOR.

The governor is the chief executive of the state. He shall have the responsibility to see that the state's business is well administered, and that its laws are faithfully executed.

He shall present the comprehensive state plan, and his own recommendations, to the legislative assembly at the beginning of each session and at any other time he chooses.

He may call special sessions of the legislative assembly.

He may require information in writing from all executive officials and officers concerning the performance of their respective duties.

He shall prescribe the duties of the lieutenant governor.

He is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and he may mobilize them to execute the laws and to maintain order.

He may grant reprieves, commutations and pardons. He may delegate this power in a manner provided by law.

He may supervise business with the United States and other states.

Section 9. GOVERNOR — VETO POWER.

Every bill passed by the legislative assembly shall be presented to the governor for his signature. If the governor signs the bill it shall become law.

The governor may veto a bill passed by the legislative assembly. He may veto or reduce items in an appropriation bill. Portions of the bill not vetoed or reduced shall become law.

The governor shall return for reconsideration any vetoed item or bill, with a statement of his objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it shall immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill shall become law. An item reduced in amount shall follow the same procedure as a vetoed item or bill, except that it shall be restored to its original amount if passed by a majority of the members elected to each house. If a reduced item is not restored, it shall become law in the reduced amount.

While the legislative assembly is in session, a bill shall become law if the governor neither signs nor vetoes it within five days, Sundays excepted, after its delivery to him. If the legislative assembly is not in session, a bill shall become law if the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him.

Section 10. VACANCIES.

The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office which is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes he shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate shall again be nominated for that office at the same session, nor shall he be appointed to that office during a recess or adjournment of the senate.

Section 11. GUBERNATORIAL SUCCESSION.

In the event of a vacancy, the order of succession to the office of governor shall be the elected lieutenant governor and thereafter as provided by law.

If the governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the powers and duties of

the governor shall devolve upon the official next in line of succession for the remainder of the term, or until the governor is acquitted or his disability removed.

If the governor-elect dies, resigns, or fails to qualify, the lieutenant governor-elect shall succeed to the office of governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect shall serve as acting governor, and he shall succeed to the office of governor, if the governor-elect does not assume his office within six months after the beginning of the term.

The legislative assembly shall by law specify by whom and by what procedures the ability of the governor, or anyone acting as governor, to serve or to resume office may be questioned and determined. The supreme court shall have original, exclusive and final jurisdiction to determine absence and disability of the governor or governor-elect, and to determine the existence of a vacancy in the office of governor and all questions concerning succession to the office or to its powers and duties.

ARTICLE VI JUDICIAL BRANCH

Section 1. JUDICIAL POWER.

The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court and other courts as may be provided by law.

Section 2. SUPREME COURT JURISDICTION.

The supreme court shall be the highest court of the state. It shall have appellate jurisdiction and the authority to issue, hear, determine and enforce such writs as are necessary to the proper exercise of its jurisdiction. The supreme court shall consist of five justices, one of whom shall be designated chief justice as provided by law. The supreme court shall make rules for the governing of, and prescribe procedures for, all courts. The chief justice shall exercise general superintending control over all courts.

Section 3. UNCONSTITUTIONALITY.

No legislative enactment of the state shall be declared unconstitutional unless at least four of the supreme court justices so decide.

Section 4. SUPREME COURT DECISIONS.

When a judgment or order is reversed, modified or confirmed by the supreme court, the reasons shall be concisely stated in writing, signed by the justices concurring, filed in the office of the clerk of the supreme court and preserved with a record of the case. Any justice dissenting may give the reason for his dissent in writing over his signature.

Section 5. APPEALS.

Appeals shall be allowed from decisions of lower courts to the supreme court under procedures as may be provided by law or by rule of court.

Section 6. ELECTION AND TERMS OF JUSTICES.

The justices of the supreme court shall be chosen by the electors of the state for ten-year terms, so arranged that one justice is elected every two years. They shall hold office until their successors are duly qualified and shall receive compensation as provided by law.

Section 7. DISTRICT COURT JURISDICTION.

The district court shall have original jurisdiction of all justiciable causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the supreme court. The district court shall have authority to issue such writs as are necessary to the proper exercise of its jurisdiction.

Section 8. ELECTION AND TERMS OF DISTRICT COURT JUDGES.

The state shall be divided into judicial districts by order of the supreme court. In each district one or more judges shall be chosen by the electors of the district to be served. The term of office shall be six years. They shall hold office until their successors are duly qualified and receive compensation as provided by law.

Section 9. QUALIFICATIONS.

Supreme court justices and district court judges shall be citizens of the United States and residents of this state, shall be admitted to the bar in this state, and shall possess any additional qualifications prescribed by law. Judges of other courts shall be selected for such terms and shall have such qualifications as may be prescribed by law.

Section 10. RESTRICTIONS.

No supreme court justice or district court judge shall engage in the practice of law or hold any public office, elective or appointive, not judicial in nature.

Section 11. DISQUALIFICATIONS.

When any justice or judge is interested in any way in a pending cause or is unable to sit in court because he is physically or mentally incapacitated, the supreme court shall assign a judge, or retired justice or judge, to hear the cause.

Section 12. REMOVAL.

The legislative assembly shall establish by law a procedure for removal of justices and judges for misconduct in office or inability to perform the duties of office, whether willful or because of physical or mental disability or incompetency. Except for impeachment proceedings, the supreme court shall have original, exclusive and final jurisdiction in judicial removal proceedings. A supreme court justice being proceeded against shall be disqualified from acting in the proceedings, and a district court judge selected by the remaining justices shall act in his stead.

Section 13. RETIREMENT.

The legislative assembly may provide by law for the retirement of supreme court justices, district court judges and judges of other courts.

Section 14. VACANCIES.

A judicial nominating committee shall be established by law. Any vacancy in the office of supreme court justice or district court judge shall be filled by appointment by the governor from a list of candidates nominated by the committee, unless the governor calls a special election to fill the vacancy for the remainder of the term. An appointment shall continue until the next general election, when the office shall be filled by election for the remainder of the term.

Section 15. CONFIRMATION.

If no candidate other than the incumbent supreme court justice or district court judge has been nominated for that office, the ballot at the general election shall contain the question: "Shall (name of justice or judge) be retained in the office of (supreme court justice or district court judge?" Unless a majority of votes cast on the question are affirmative, the office shall be deemed vacant at the end of the term and shall be filled as provided in this article.

SECTION VII POLITICAL SUBDIVISIONS

Section 1. PURPOSE.

The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum duplication of functions.

Section 2. POLITICAL SUBDIVISIONS.

The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

Section 3. COUNTIES.

The several counties of the State of North Dakota as they now exist are hereby declared to be counties of the State of North Dakota.

Section 4. COUNTY SEATS.

The legislative assembly shall provide by law for relocating county seats within counties, but it shall have no power to remove the county seat of any county.

Section 5. BOUNDARIES.

Methods and standards by which all or any portion of a county or counties may be annexed, merged, consolidated, reclassified or dissolved shall be provided by law. No portion of any county or counties shall be annexed, merged, con-

solidated or dissolved unless a majority of the electors of each affected county voting on the question so approve.

Section 6. HOME RULE.

The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities. No home rule charter shall become operative in any county or city until submitted to the electors thereof and approved by a majority of those voting thereon. In granting home rule powers to cities, the legislative assembly shall not be restricted by city debt limitations contained in this constitution.

Section 7. OPTIONAL FORMS.

The legislative assembly shall also provide by law for optional forms of government for counties, but no optional form of government shall become operative in any county until submitted to the electors thereof at a special or general election, and approved by a majority of those voting thereon.

Until one of the optional forms of county government is adopted by any county, the fiscal affairs of the county shall be transacted by a board of county commissioners as provided by law.

Section 8. COUNTY SERVICES.

Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services and any other governmental services or functions as may be provided by law.

All elective county offices or any combinations thereof as they now exist shall continue to be elective county offices with four-year terms; however, any such county office or offices may be eliminated either by adoption of a home rule charter, or at a county-wide referendum by a majority of the electors voting on the question.

A referendum on elimination of county offices shall be provided for by law, and shall be mandatory in each county at the first statewide election held not less than two years after the effective date of this constitution and at least every ten years thereafter.

Whenever an office is eliminated, the county governing board may provide for any service rendered by that office.

Section 9. REFERENDUM.

Questions on the form of government to be adopted by any county or on the elimination of county offices may be placed upon a referendum ballot either by a two-thirds vote of the members of the county governing board or by a petition of electors of the county equal in number to fifteen percent of the votes cast in the county for the office of governor at the preceding general election, or as otherwise provided by law.

Section 10. SERVICE AGREEMENTS.

Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may transfer to the county in which it is located any of its powers or functions unless prohibited by law or home rule charter, and may in like manner revoke the transfer.

Section 11. UTILITY FRANCHISES.

The power of the governing board of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly.

**ARTICLE VIII
EDUCATION**

Section 1. PUBLIC EDUCATION.

The legislative assembly shall provide for a uniform system of free public education.

The legislative assembly shall take other steps necessary to prevent illiteracy and to provide for special education and vocational education.

Schools and institutions so established shall be free from sectarian control. No

money raised for support of public schools of the state shall be appropriated to or used for support of any sectarian school.

Section 2. BOARD OF PUBLIC EDUCATION.

The state board of public education shall supervise a uniform system of elementary and secondary public education. The board shall perform other duties as provided by law.

The board shall consist of nine members, with staggered seven-year terms, appointed by the governor and confirmed by the senate in a manner provided by law.

The board shall appoint an executive officer, whose term and duties shall be prescribed by the board.

Section 3. BOARD OF HIGHER EDUCATION.

The state board of higher education shall have full power, responsibility and authority to supervise, operate and control state institutions of higher learning. The board shall perform other duties as provided by law.

The legislative assembly may authorize tuition, fees and service charges to assist in financing state institutions of higher learning.

The board shall consist of nine members, with staggered seven-year terms, appointed by the governor and confirmed by the senate in a manner provided by law.

The board shall control the expenditure of all funds belonging to and appropriated to state institutions of higher learning and shall present a single unified budget request to the legislative assembly. Appropriations for all the institutions and for the board shall be contained in one legislative measure. The legislative assembly shall not reduce appropriations by the amount of any gift.

The budget and appropriation measure for the agricultural experiment stations and their substations and the cooperative extension divisions may be separate from that of the state educational institutions.

The board shall have the power to delegate to its employees details of administration of the institutions under its control.

The board shall appoint an executive officer, whose term and duties shall be prescribed by the board.

Section 4. OPEN MEETINGS.

All meetings of the board of public education and the board of higher education shall be open and public unless a person whose rights are being considered requests that the meeting be closed.

ARTICLE IX TRUST LANDS

Section 1. PUBLIC SCHOOL TRUST.

All lands granted by the United States for the support of elementary and secondary public schools of the state, and the proceeds from the sale of those lands, the proceeds of property that falls to the state by escheat and all other property acquired for the schools, except gifts and donations otherwise appropriated or qualified, shall be and remain a perpetual trust fund for the maintenance of the elementary and secondary public schools of the state.

The principal of this fund shall be retained and devoted to the trust purpose. The interest and income of this fund shall be used and applied each year for the benefit of the elementary and secondary public schools, apportioned as provided by law.

Section 2. INSTITUTIONAL TRUSTS.

All lands granted by the United States for the support of educational or other public institutions of the state, and the proceeds from the sale of those lands, shall be and remain a perpetual trust fund for the maintenance of each institution, and may be commingled with similar funds for the same institution only, in a manner provided by law. The public institutions which received lands by the enabling act of Congress approved on February 22, 1889, shall retain such lands, but the trust fund of any institution which the state ceases to operate shall be apportioned

among other educational or public institutions within the provisions of the enabling act.

The principal of these funds shall be retained and devoted to the trust purpose. The interest and income of each institutional trust fund held by the state shall be appropriated by the legislative assembly to the exclusive use of the institution to which the fund was allocated.

Section 3. SALE OR LEASE.

The legislative assembly shall provide for the sale or lease at public auction of all properties held by the state in the school or other institutional trust funds, except that lands needed for public use may be sold at public sale for their fair market value. No interest in trust lands may be created by adverse possession or by occupation in the nature of adverse possession. In the sale of trust lands, the minerals, including but not limited to oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ore and colloidal or other clays, shall be reserved and excepted to the state. Leases may be executed by the state for the extraction and sale of such materials in the manner and upon conditions which the legislative assembly may provide. The proceeds of all sales and mineral leases shall be credited to the trust fund from which the property was removed for sale purposes. Any trust lands may be exchanged for lands of the United States, or of the State of North Dakota or its political subdivisions, as provided by law.

Section 4. PROTECTION.

The legislative assembly shall provide for the investment, safekeeping, transfer and disbursement of these trust funds.

ARTICLE X FINANCE AND PUBLIC DEBT

Section 1. RAISING OF REVENUES.

The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year. By a two-thirds vote of the members elected to each house, the legislative assembly may provide for an annual property tax based on value, for state purposes, for no longer than two years unless reenacted.

Section 2. NO SURRENDER OF TAX POWER.

Except as provided in this constitution, the power of taxation shall never be surrendered or suspended by any grant or contract to which the state, any political subdivision or any public agency is a party.

Section 3. LEGAL BASIS FOR TAXES.

No tax shall be levied except in pursuance of law. Every law imposing a tax shall state distinctly the object of the tax, to which only it shall be applied. Notwithstanding any provision of this constitution, taxes imposed on income or measured by income may be defined, measured and imposed by reference to the provisions of the laws of the United States as they may be or may become effective at any time, and the state laws may prescribe exceptions or modifications to any such provisions.

Section 4. PROPERTY ASSESSMENT.

All taxable property, except as provided in this section, shall be taxed or assessed in the taxing district in which it is situated as provided by law. While used for its intended purposes and unless otherwise provided by law, the property of railroad and public and private utilities, except property of highway common carriers, shall be taxed or assessed by a state board of equalization or its successor.

Section 5. TAX UNIFORMITY AND EXEMPTIONS.

Taxes shall be uniform upon the same class of property, including franchises, within the territorial limits of the authority levying the tax. The legislative assembly may by law define and exempt any or all classes of property. Property used exclusively for school, religious, cemetery, charitable or other public purposes shall be exempt from taxation. All taxes and exemptions in force when this constitution is adopted shall remain in force until otherwise provided by law.

Section 6. HIGHWAY FUND.

Revenue derived from excise and license taxation on gasoline, fuel and other energy sources, used to propel vehicles on public highways, and revenue derived from vehicle registration and license taxes imposed for the use of public highways, shall be used solely for payment of obligations incurred for construction, reconstruction, repair, operation and maintenance of public highways; except the legislative assembly shall provide for the deduction of funds from these revenues for enforcement of highway safety, driver education and tourist promotion, and for administrative and collection costs.

Section 7. STATE MONEYS.

Except as otherwise provided by this constitution or by law, all state moneys from whatever source derived shall be paid over monthly into the state treasury by the person responsible for the moneys and shall be deposited to the credit of the state, and shall be paid out and disbursed only as provided by law.

Section 8. STATE DEBT.

The state may issue debt obligations and guarantee the payment of such obligations and interest thereon. These debt obligations shall be payable from a source other than a statewide property tax based on value, but the full faith and credit and taxing powers of the state may be pledged for the payment of these obligations if the primary source of revenue is not sufficient for that purpose.

Each issue and guarantee of debt obligations, for which the full faith and credit and taxing powers of the state are pledged, shall require approval by a three-fifths vote of the members elected to each house of the legislative assembly.

Except as otherwise provided in this constitution, any tax levied or other provision made to retire a debt obligation shall be irrevocable until the debt is paid.

Section 9. POLITICAL SUBDIVISION DEBT.

Any political subdivision may incur indebtedness not to exceed eight percent of the assessed value of the taxable property therein. By a sixty percent vote of the electors voting thereon, the debt limit may be increased an additional seven percent of the assessed value. The debt limits in this section shall not apply to obligations primarily payable from sources other than property taxes whether or not the full faith and credit and taxing power of the issuer is also pledged for the payment of the obligation and interest thereon. For purposes of this section "assessed value" shall be determined by methods or factors established by law.

Any political subdivision incurring indebtedness for which its full faith and credit and taxing power are pledged shall, at or before the time the debt is incurred, provide for an annual tax sufficient to pay the principal and interest thereon, and all laws or ordinances providing for the payment of the principal and interest of any debt shall be irrevocable until the obligation is paid.

Section 10. PUBLIC BUSINESS.

As provided by law the state or any of its political subdivisions, or any combination thereof, may undertake any business or enterprise, but only for the purpose of providing public services. Unless otherwise provided by law, any form of business or enterprise in operation when this constitution is adopted may be continued. Neither the state nor any political subdivision shall otherwise loan or give its credit to or in aid of any individual association or corporation except as otherwise authorized in this constitution, and except for reasonable support of the indigent and for payment of adjusted compensation for veterans of the armed services as may be provided by law; nor shall the state or any of its political subdivisions subscribe to or become the owner of capital stock in any private association or corporation.

ARTICLE XI GENERAL PROVISIONS

Section 1. NAME.

The name of this state is "North Dakota."

Section 2. BOUNDARY.

The state of North Dakota shall consist of all the territory included within the following boundary. Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same;

thence southward up the main channel of the Red River of the North and the Bois de Sioux River to a point where the Bois de Sioux River intersects the seventh standard parallel north (approximately forty-five degrees fifty-six minutes north latitude); thence westward along said parallel to a point where it intersects twenty-seven degrees of longitude west of Washington, D. C. (approximately one hundred four degrees three minutes west longitude); thence northward on said longitude to a point where it intersects the forty-ninth degree of north latitude; thence eastward along said latitude to the place of beginning. The boundary on the ground is more exactly defined by astronomical measurements at points on the boundary and surveys between boundary markers.

Section 3. GREAT SEAL.

The following described seal is declared to be the Great Seal of the State of North Dakota: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left, a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half-circle of forty-two stars, surrounded by the motto "Liberty and Union Now and Forever, One and Inseparable"; the words "Great Seal" at the top; the words "State of North Dakota" at the bottom; "October 1st" on the left and "1889" on the right. The seal shall be two and one-half inches in diameter.

Section 4. STATE CAPITAL.

The seat of government of the State of North Dakota shall be at the city of Bismarck in the county of Burleigh.

Section 5. ENVIRONMENT.

The public policy of the state and the duty of each person is to conserve, develop and utilize natural resources and public lands in order to provide a pleasant and healthful environment for the benefit of present and future generations. The legislative assembly shall provide by law for the implementation and enforcement of this policy.

Each person has the right to a healthful environment and may enforce this right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as the legislative assembly may provide by law.

Section 6. OMBUDSMAN.

The legislative assembly shall provide by law for an independent governmental agency to receive complaints against state agencies, officials and officers from aggrieved persons, to investigate and, in cases of justified complaints, to offer recommendations for remedy.

Section 7. CORPORATIONS.

The legislative assembly shall provide by general laws for the organization of all corporations. No charter of incorporation shall be granted, modified or amended by special law, except in the case of municipal corporations or other corporations under the control of the state.

Section 8. WATERS.

All surface and subsurface water shall forever remain the property of the people and be subject to appropriation for beneficial uses as provided by law.

Section 9. OATH OR AFFIRMATION.

All elected officials, before they assume the duties of their respective offices, shall take and subscribe the following oath or affirmation: "I do solemnly (swear) (affirm) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of _____ according to the best of my ability, (so help me God) (under pains and penalties of perjury)." No other oath or declaration shall be required as a qualification for any office or public trust.

Section 10. CODE OF ETHICS.

A code of ethics for all nonjudicial state officials, officers, legislators and state employees, prohibiting conflict between public duty and private interest, shall be prescribed by law.

Section 11. IMPEACHMENT.

All judicial officials elected to represent more than one political subdivision and all elected state officials shall be subject to impeachment for crimes, corrupt conduct, malfeasance, or for continuing willful failure to perform the duties of office. The house of representatives shall have the sole power of impeachment by vote of a majority of the elected representatives. The senate shall have the sole power of trial in impeachment cases. A two-thirds vote of the elected senators shall be required for conviction.

No official shall exercise the duties of his office after he has been impeached and before his acquittal. No person shall be tried on impeachment before he has been served with a copy of the charge at least twenty days previous to the day set for trial. No person shall be liable to impeachment twice for the same offense.

Section 12. REMOVAL FROM OFFICE.

All elected officials and appointed officers of the state and its political subdivisions, other than judicial officials, shall be subject to removal from office, as provided by law, for crimes, corrupt conduct, malfeasance, or because of chronic and continuing inability or willful failure to perform the duties of office.

The supreme court shall have original, exclusive and final jurisdiction of proceedings for removal of elected state officials and chief executive officers as provided by law.

Section 13. MILITARY FORCES.

The legislative assembly shall provide by law for establishment of the state's military forces.

ARTICLE XII COMPACT WITH THE UNITED STATES

Section 1. RELIGIOUS SENTIMENT.

Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Section 2. COMPACT.

All other provisions of the enabling act of Congress approved on February 22, 1889, 25 United States Statutes at Large 676, Chapter 180, and Section 203 of Article XVI of the North Dakota Constitution of 1889 as amended, are hereby continued in full force and effect as though fully herein recited and shall continue to be irrevocable without the consent of the United States and the people of this state.

Section 3. MILITARY RESERVATIONS.

Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the President of the United States; provided, civil and criminal legal process of this state shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States and over crimes not committed within the limits of such reservations. The legislative assembly may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by act of Congress.

Section 4. LAND GRANTS.

Section 205 of Article XVI of the North Dakota Constitution of 1889, relating to land grants, is hereby continued in full force and effect as though fully herein recited.

ARTICLE XIII TRANSITION SCHEDULE

Section 1. SCHEDULE TO BE REMOVED AS EXECUTED.

The following schedule provisions shall remain a part of this constitution only until their respective terms have been executed. On or before July 10 of each year the attorney general shall review the provisions of this schedule and shall

certify to the secretary of state those that have been executed since the preceding review. Provisions so certified shall be removed from the schedule and no longer published as part of this constitution.

Section 2. GENERAL TRANSITION.

The rights and duties of all public bodies shall remain as if this constitution had not been adopted, with the exception of such changes as are contained in this constitution. All statutes, ordinances, administrative rules and regulations, and court rules not contrary to, or inconsistent with, the provisions of this constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or laws enacted pursuant thereto.

Section 3. PROSPECTIVE OPERATION OF NEW PROCEDURAL AND SUBSTANTIVE RIGHTS.

Any procedural and substantive rights created for the first time by this constitution shall be prospective and not retroactive.

Section 4. GENERAL EFFECTIVE DATE.

Except as may be otherwise established by this schedule, the provisions of this constitution shall become effective on July 1, 1973, and the provisions of the constitution of 1889, as amended, shall be repealed, and of no further force and effect.

Section 5. ACCELERATED EFFECTIVE DATE.

1. The following provisions of the constitution of 1889 as amended shall be repealed, and of no further force and effect, on July 1, 1972:
 - A. The third paragraph of section 216 of Article XIX as follows:

“Third: An industrial school and school for manual training or such other educational or charitable institution as the legislative assembly may provide at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.”
 - B. Subsection 5 of section 1 of article 54 of the amendments as follows:

“(5) The Normal and Industrial School, at Ellendale.”
2. The following provisions of this constitution shall become effective on January 1, 1973, and provisions of the Constitution of 1889 as amended which are in conflict with these sections shall be deemed repealed as of January 1, 1973:
 - A. Sections 5, 6, 7, 8, 9, 10, 11 and 14 of Article IV, Legislative Branch.
 - B. Section 9 of Article V, Executive Branch.
 - C. Sections 6, 8 and 9 of Article X, Finance and Public Debt.
 - D. Article III, Powers Reserved to the People.

Section 6. DELAYED EFFECTIVE DATE.

The provisions of section 22 of Article I, Declaration of Rights, shall become effective on July 1, 1976. Section 1 of Article IV of the Unicameral Proposal, as in Alternate Proposition 1B, if adopted, shall become effective July 1, 1974.

Section 7. EXCEPTIONS AND PROVISOS.

The provisions of Article V, Executive Branch, shall become effective as set out in this schedule, provided that all executive officials elected in 1972, shall complete the term of office for which they were elected. The legislative assembly shall by law provide for continuity in the transition from the system of executive government in operation prior to adoption of this constitution, to that now prescribed, in a way which will assure orderliness and an effective program of executive organization under the terms of this article.

The provisions of Article VIII, Education, shall become effective as set out in this schedule, provided that the superintendent of public instruction elected in 1972 shall continue in office until the completion of his term. The board of public education shall not have the power to appoint an executive officer, until his term expires, unless a vacancy occurs after the board has been created.

The provisions of Article VI, Legislative Branch, sections 5, 6, 7, 8, 9, 10, 11

and 14 shall become effective as set out in this schedule, provided that the lieutenant governor shall preside over the senate for the entire session of the legislative assembly beginning in January, 1973.

ARTICLE XIV ADOPTION SCHEDULE AND BALLOT

This article contains the text of the alternate propositions and the ballot form.

The alternate propositions approved by a majority of the electors voting separately thereon shall become a part of the 1972 constitution upon adoption. Alternate propositions rejected by a majority of the electors voting thereon shall not become a part of the 1972 constitution. This article shall not be published as a part of the constitution after adoption.

ALTERNATE PROPOSITION 1A. Two-house legislature (Bicameral)

If the electors approve alternate proposition 1A and also approve the proposed constitution of 1972 then the following shall comprise Article IV, Legislative Branch:

Section 1. LEGISLATIVE ASSEMBLY.

The legislative power of the state is vested in a legislature consisting of a senate, composed of not more than forty-nine members, and a house of representatives, composed of not more than ninety-eight members, which jointly are designated as the Legislative Assembly of the State of North Dakota.

Section 2. TERMS OF OFFICE.

Members of the legislative assembly shall be elected for terms of four years.

Section 3. QUALIFICATIONS.

Each person elected to the legislative assembly must be, on the day of his election, an elector in the district from which he is chosen.

Section 4. RESTRICTIONS.

While serving in the legislative assembly, no member may hold any full-time elective state or political subdivision office nor any full-time appointive state office established by this constitution or designated by law. During the term for which he was elected, no legislator shall be appointed to any full-time office which has been created, or for which the compensation has been increased, by the legislative assembly during that term.

Section 5. REAPPORTIONMENT.

A legislative reapportionment commission, consisting of electors appointed by the district judges in a number and manner as shall be established by the district judges, shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The commission shall guarantee, as nearly as practicable, that every voter is equal to every other voter in the state in the casting of ballots for legislative candidates. One senator and at least two representatives shall be apportioned to each senatorial district and be elected at large or from subdistricts thereof. The commission may combine two senatorial districts and provide for the election of senators at large and representatives at large or from subdistricts thereof.

The commission shall prescribe its own procedures. Upon agreement by a majority of its members, the commission shall file its reapportionment plan with the secretary of state, and it shall become effective sixty days after the date of filing; provided, the supreme court, in the exercise of original jurisdiction, may review any plan adopted by the commission. If the plan fails to meet state or federal constitutional requirements, the court shall direct the commission to revise the plan within a stated time.

Commission members shall be appointed following adoption of this constitution and immediately following the 1980 general election and every ten years thereafter. No member of the legislative assembly shall be eligible, during his term of office, for appointment to the commission. Commission members shall serve until each reapportionment plan becomes finally effective, and shall be compensated as provided by law. Vacancies shall be filled in the same manner as for original appointment.

Section 6. LEGISLATIVE ELECTIONS.

The legislative assembly shall establish by law a procedure whereby one-half of the members of each house, as nearly as practicable, are elected biennially.

Section 7. SESSIONS.

The terms of legislators shall begin on the first Tuesday after the third day of January following their election. The legislative assembly shall meet to organize on the same day and may meet in plenary session no more than eighty natural days during the biennium. The days need not be consecutive, and meetings for the purpose of impeachment or on call of the governor shall not count against the eighty-day limitation. The legislative assembly may authorize its committees to meet at any time during the biennium. Neither house may recess or adjourn for more than three days without consent of the other.

Section 8. PROCEDURES.

The senate and the house of representatives shall each elect one of its members presiding officer at the beginning of each regular session.

A majority of the members elected to each house shall constitute a quorum. A smaller number may adjourn from day to day and may compel attendance of absent members in a manner, and under a penalty, as may be provided by law.

Each house is the judge of the qualifications of its members, but election contests shall be subject exclusively to judicial review as provided by law. If two or more candidates for the same office receive an equal and highest number of votes, the secretary of state shall choose one of them by lot.

Each house shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, either house may expel a member.

Section 9. ENACTMENT OF LAWS.

Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those present. No bill shall become a law except by a recorded vote of a majority of the members elected to each house.

No law shall be enacted except by a bill passed by both houses, and no bill shall be so amended on its passage through either house as to change its general subject matter. No bill shall embrace more than one subject, which shall be expressed in its title; but a law violating this provision shall be invalidated only to the extent the subject is not so expressed.

Every bill shall be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill shall be amended, extended or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once on the journal.

Every law enacted by the legislative assembly shall take effect on July first after its filing with the secretary of state or ninety days after its filing, whichever comes later, or on a subsequent date if specified in the law; unless, by a separate vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the act. An emergency measure shall take effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly shall take effect on a date specified in the act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws shall be enacted, nor shall the legislative assembly indirectly enact special or local laws by the partial repeal of a general law, but laws repealing local or special laws may be enacted.

Section 10. OPEN SESSIONS.

All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, shall be open and public.

Section 11. IMMUNITIES.

Members of the legislative assembly shall be immune from arrest during their attendance at the sessions, and in going to or returning from the same, except in cases of felony or breach of the peace. For words used in any speech or debate in legislative proceedings, they shall not be questioned in any other place.

Section 12. CONSTITUTIONAL AMENDMENTS, CONVENTIONS.

Any constitutional amendment may be proposed by the legislative assembly and, if agreed upon by a recorded vote of three-fifths of the members elected to each house, it shall be submitted to the electors at the next general election. If a majority of votes cast thereon are affirmative, the amendment shall be effective thirty days after the election.

The legislative assembly may by law submit to the electors the question: "Shall a constitutional convention be called?" If the question has not been submitted once in any thirty-year period, the secretary of state shall place it on the ballot at the next general election. If a majority of votes cast thereon are affirmative, the legislative assembly shall provide for the election of delegates and the holding of the convention.

Section 13. AUDITOR GENERAL.

The legislative assembly shall provide for the appointment of an auditor general. He shall audit the receipt, expenditure and use of public funds, as provided by law, and shall be responsible to the legislative assembly in the performance of those duties.

Section 14. COMPENSATION.

Each member of the legislative assembly shall receive a salary and expense allowances as provided by law, but no increase in the amounts thereof shall apply to the legislative assembly which enacts the increase.

ALTERNATE PROPOSITION 1B. One-house legislature (Unicameral)

If the electors approve alternate proposition 1B and also approve the proposed constitution of 1972 then the following shall comprise Article IV, Legislative Branch:

Section 1. LEGISLATIVE ASSEMBLY.

The legislative power of the state is vested in a single house, composed of no fewer than ninety-nine members, and designated as the Legislative Assembly of the State of North Dakota.

Section 2. TERMS OF OFFICE.

Members of the legislative assembly shall be elected for terms of four years.

Section 3. QUALIFICATIONS.

Each person elected to the legislative assembly must be, on the day of his election, an elector in the district from which he is chosen.

Section 4. RESTRICTIONS.

While serving in the legislative assembly, no member may hold any full-time elective state or political subdivision office nor any full-time appointive state office established by this constitution or designated by law. During the term for which he was elected, no legislator shall be appointed to any full-time office which has been created, or for which the compensation has been increased, by the legislative assembly during that term.

Section 5. REAPPORTIONMENT.

A legislative reapportionment commission, consisting of electors appointed by the district judges in a number and manner as shall be established by the district judges, shall fix the number of legislators and divide the state into legislative districts of compact and contiguous territory. No district shall elect more than four legislators, and the commission shall guarantee, as nearly as practicable, that every voter is equal to every other voter in the state in the casting of ballots for legislative candidates.

The commission shall prescribe its own procedures. Upon agreement by a majority of its members, the commission shall file its reapportionment plan with

the secretary of state, and it shall become effective sixty days after the date of filing; provided, the supreme court, in the exercise of original jurisdiction, may review any plan adopted by the commission. If the plan fails to meet state or federal constitutional requirements, the court shall direct the commission to revise the plan within a stated time.

Commission members shall be appointed following adoption of this constitution and immediately following the 1980 general election and every ten years thereafter. No member of the legislative assembly shall be eligible, during his term of office, for appointment to the commission. Commission members shall serve until each reapportionment plan becomes finally effective, and shall be compensated as provided by law. Vacancies shall be filled in the same manner as for original appointment.

Section 6. LEGISLATIVE ELECTIONS.

The legislative assembly shall establish by law a procedure whereby one-half of the legislators, as nearly as practicable, are elected biennially.

Section 7. SESSIONS.

The terms of legislators shall begin on the first Tuesday after the third day of January following their election. The legislative assembly shall meet to organize on the same day and may meet in plenary session no more than eighty natural days during the biennium. The days need not be consecutive, and meetings for the purpose of impeachment or on call of the governor shall not count against the eighty-day limitation. The legislative assembly may authorize its committees to meet at any time during the biennium.

Section 8. PROCEDURES.

The legislative assembly shall elect one of its members presiding officer at the beginning of each regular session.

A majority of the members elected to the legislative assembly shall constitute a quorum. A smaller number may adjourn from day to day and may compel attendance of absent members in a manner, and under a penalty, as may be provided by law.

The legislative assembly is the judge of the qualifications of its members, but election contests shall be subject exclusively to judicial review as provided by law. If two or more candidates for the same office receive an equal and highest number of votes, the secretary of state shall choose one of them by lot.

The legislative assembly shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, it may expel a member.

Section 9. ENACTMENT OF LAWS.

The legislative assembly shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those present. No bill shall become a law except by a recorded vote of a majority of the elected members.

No bill shall embrace more than one subject, which shall be expressed in its title; but a law violating this provision shall be invalidated only to the extent the subject is not so expressed.

Every bill and resolution shall be read by title when introduced, and a printed copy thereof provided for each member. To be enacted or adopted, every bill or resolution shall have a public hearing and two considerations.

No bill shall be amended, extended or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once on the journal.

Every law enacted by the legislative assembly shall take effect on July first after its filing with the secretary of state or ninety days after its filing, whichever comes later, or on a subsequent date if specified in the law; unless, by a separate vote of two-thirds of the members elected, the legislative assembly declares it an emergency measure and includes the declaration in the act. An emergency measure shall take effect upon its filing with the secretary of state or on a date specified

in the measure. Every law enacted by a special session of the legislative assembly shall take effect on a date specified in the act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws shall be enacted, nor shall the legislative assembly indirectly enact special or local laws by the partial repeal of a general law, but laws repealing local or special laws may be enacted.

Section 10. OPEN SESSIONS.

All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, shall be open and public.

Section 11. IMMUNITIES.

Members of the legislative assembly shall be immune from arrest during their attendance at the sessions, and in going to or returning from the same, except in cases of felony or breach of the peace. For words used in any speech or debate in legislative proceedings, they shall not be questioned in any other place.

Section 12. CONSTITUTIONAL AMENDMENTS, CONVENTIONS.

Any constitutional amendment may be proposed by the legislative assembly and if agreed upon by a recorded vote of three-fifths of the elected members, it shall be submitted to the electors at the next general election. If a majority of votes cast thereon are affirmative, the amendment shall be effective thirty days after the election.

The legislative assembly may by law submit to the electors the question: "Shall a constitutional convention be called?" If the question has not been submitted once in any thirty-year period, the secretary of state shall place it on the ballot at the next general election. If a majority of votes cast thereon are affirmative, the legislative assembly shall provide for the election of delegates and the holding of the convention.

Section 13. AUDITOR GENERAL.

The legislative assembly shall provide for the appointment of an auditor general. He shall audit the receipt, expenditure and use of public funds, as provided by law, and shall be responsible to the legislative assembly in the performance of those duties.

Section 14. COMPENSATION.

Each member of the legislative assembly shall receive a salary and expense allowances as provided by law, but no increase in the amounts thereof shall apply to the legislative assembly which enacts the increase.

ALTERNATE PROPOSITION 1B CONTINUED.

If the electors approve alternate proposition 1B then the following changes shall be made in the following articles and sections of the constitution prior to promulgation and publication.

Article III — Powers Reserved to the People.

Section 8.

The words "to each house" shall be deleted.

Article V — Executive Branch.

Section 1.

The word "senate" appearing twice in the third paragraph shall be deleted and the words "legislative assembly" shall be substituted therefor.

Section 2.

The words "in joint session" shall be deleted from the second paragraph.

Section 6.

The second paragraph shall be deleted and the following paragraph shall be substituted therefor:

"The governor may, for more effective administration, make changes in the statutory allocation of funds, powers and duties among and within the executive departments, other than those headed by constitutionally elective officials. Any changes shall be set forth in an executive order and sub-

mitted to the legislative assembly, which shall have thirty session days to disapprove the order. If not disapproved by a majority of the elected members, the order shall have the force of law when filed with the secretary of state or on a later date specified therein.”

Section 9.

The first four sentences of paragraph three shall be deleted and the following shall be substituted therefor: “The governor shall return for reconsideration any vetoed item or bill, with a statement of his objections, to the legislative assembly, which shall immediately enter the governor’s objections upon its journal. If, by a recorded vote of two-thirds of its elected members, the legislative assembly passes a vetoed item or bill, it shall become law.”

The words “to each house” shall be deleted from the fifth sentence of paragraph three.

Section 10.

The second sentence shall be deleted and the following shall be substituted therefor: “If, while the legislative assembly is recessed or adjourned, a vacancy occurs in any office which is filled by appointment with confirmation by the legislative assembly, the governor shall make a temporary appointment to the office.”

The word “senate” shall be deleted from the third sentence and the words “legislative assembly” shall be substituted therefor.

The fourth sentence shall be deleted and the following shall be substituted therefor: “Except on request of the legislative assembly, no nominee rejected shall again be nominated for that office at the same session, nor shall he be appointed to that office during a recess or adjournment of the legislative assembly.”

Article VIII — Education.

Section 2 and 3

The word “senate” appearing in the second paragraph of section 2 and in the third paragraph of section 3 shall be deleted and the words “legislative assembly” shall be substituted therefor.

Article X — Finance and Public Debt.

Section 1.

The words “members elected to each house” shall be deleted and the words “elected members” shall be substituted therefor.

Section 8.

The words “each house of” shall be deleted from the second paragraph.

Article XI — General Provisions.

Section 11.

The second, third and fourth sentence of paragraph one shall be deleted and the following shall be substituted therefor: “The legislative assembly shall have the power to impeachment by a vote of a majority of the members elected, but a vote of two-thirds of the members elected shall be required for conviction.”

ALTERNATE PROPOSITION 2A.

If the electors approve alternate proposition 2A and also approve the proposed constitution of 1972 then Article III, Powers Reserved to the People will provide as follows:

Section 1. POWERS RESERVED.

Notwithstanding any other provision in this constitution, the people reserve these powers: to propose and enact laws by the initiative, including the call for a constitutional convention; to approve or reject legislative acts, or parts thereof, by the referendum; to propose and adopt constitutional amendments by the initiative; and to recall certain elected officials. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict or impair these powers.

Section 2. PETITION.

A petition to initiate or to refer a measure shall be presented to the secretary of state for approval as to form. A request for approval shall be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom shall be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

Section 3. CIRCULATION.

The petition shall be circulated only by electors. They shall swear thereon that the electors who have signed the petition did so in their presence. Each elector signing a petition shall also write in the date of signing and his post office address. No law shall be enacted limiting the number of copies of a petition. The copies shall become part of the original petition when filed.

Section 4. SIGNATURE REQUIREMENT.

The petition may be submitted to the secretary of state if signed by electors equal in number to two percent of the resident population of the state at the last federal decennial census.

Section 5. SUBMISSION.

An initiative petition shall be submitted not less than ninety days before the general election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at a general election or at a special election called by the governor.

Section 6. CERTIFICATION.

The secretary of state shall determine the validity and sufficiency of the signatures. If he finds irregularities, he shall notify the sponsoring committee and allow twenty days for corrections, but this time shall not be used for the addition of signatures. If the secretary of state finds a petition valid and sufficient, he shall certify it and prepare a ballot containing the full text of the measure and a ballot title summarizing the measure. If he finds a referendum petition insufficient, the suspension of the measure shall end and it shall not be referred.

Section 7. JUDICIAL REVIEW.

All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. If his decision is being reviewed at the time the ballot is prepared, he shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.

Section 8. ENACTMENT.

If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Section 9. INITIATED CONSTITUTIONAL AMENDMENT.

A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to four percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. All other provisions relating to initiative measures apply hereto.

Section 10. RECALL.

Any elected nonjudicial official of the state, of any county or of any legis-

lative or county commissioner district shall be subject to recall by petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county or district in which the official is to be recalled.

The petition shall be filed with the official with whom a petition for nomination to the office in question is filed, who shall call a special election if he finds the petition valid and sufficient. No elector may remove his name from a recall petition.

The name of the official to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. When the election results have been officially declared, the candidate receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject twice to recall during the term for which he was elected.

ALTERNATE PROPOSITION 2B.

If the electors approve alternate proposition 2B and also approve the proposed constitution of 1972 then Article III, Powers Reserved to the People will provide as follows:

Section 1. POWERS RESERVED.

Notwithstanding any other provision of this constitution, the people reserve these powers: to propose and enact laws by the initiative, including the call for a constitutional convention; to approve or reject legislative acts, or parts thereof, by the referendum; to propose and adopt constitutional amendments by the initiative; and to recall certain elected officials. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict or impair these powers.

Section 2. PETITION.

A petition to initiate or to refer a measure shall be sponsored by at least five electors, who shall represent and act for the petitioners as the sponsoring committee. No law shall prohibit any person from giving or receiving compensation for circulating a petition, nor interfere with freedom in securing signatures.

Section 3. CIRCULATION.

The petition shall be circulated only by electors. They shall swear thereon that the electors who have signed the petition did so in their presence. Each elector signing a petition shall also write in the date of signing and his post office address. No law shall be enacted limiting the number of copies of a petition. The copies shall become part of the original petition when filed.

Section 4. SIGNATURE REQUIREMENT.

The petition may be submitted to the secretary of state if signed by ten thousand electors in the case of an initiated measure and seven thousand electors in the case of a referred measure.

Section 5. SUBMISSION.

An initiative petition shall be submitted not less than ninety days before the general election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at a general election or at a special election called by the governor.

Section 6. CERTIFICATION.

The secretary of state shall determine the validity and sufficiency of the signatures. If he finds irregularities, he shall notify the sponsoring committee and allow twenty days for corrections, but this time shall not be used for the addition of signatures. If the secretary of state finds a petition valid and sufficient, he shall certify it and prepare a ballot containing the full text of the measure and a ballot title summarizing the measure. If he finds a referendum petition insufficient, the suspension of the measure shall end and it shall not be referred.

Section 7. JUDICIAL REVIEW.

All decisions of the secretary of state in the petition process are subject to review by the supreme court in the exercise of original jurisdiction. If his decision is being reviewed at the time the ballot is prepared, he shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.

Section 8. ENACTMENT.

If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Section 9. INITIATED CONSTITUTIONAL AMENDMENT.

A constitutional amendment may be proposed by initiative petition. If signed by twenty thousand electors, the petition may be submitted to the secretary of state. All other provisions relating to initiative measures apply hereto.

Section 10. RECALL.

Any elected nonjudicial official of the state, of any county or of any legislative or county commissioner district shall be subject to recall by petition of electors equal in number to twenty-five percent of those who voted at the preceding general election for the office of governor in the state, county or district in which the official is to be recalled.

The petition shall be filed with the official with whom a petition for nomination to the office in question is filed, who shall call a special election if he finds the petition valid and sufficient. No elector may remove his name from a recall petition.

The name of the official to be recalled shall be placed on the ballot unless he resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. When the election results have been officially declared, the candidates receiving the highest number of votes shall be deemed elected for the remainder of the term. No official shall be subject twice to recall during the term for which he was elected.

ALTERNATE PROPOSITION 3.

If the electors approve alternate proposition 3 and also approve the proposed constitution of 1972 then the following changes shall be made in the following article of the constitution prior to promulgation and publication:

Another section shall be added to Article I with the following wording:

"Section 28. ADULTS.

Persons eighteen years of age or older are declared to be adults for all purposes."

Section 28 relating to "Rights Retained" shall be renumbered section 29.

ALTERNATE PROPOSITION 4.

If the electors approve alternate proposition 4 and also approve the proposed constitution of 1972 then the following change shall be made in the following article of the constitution prior to promulgation and publication:

Another section shall be added to Article XI with the following wording:

"Section 14. LOTTERIES.

The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall enact laws to prohibit the sale of lottery or gift enterprise tickets."

APPENDIX B

OFFICIAL ABSTRACT OF VOTES CAST AT THE SPECIAL ELECTION HELD APRIL 28, 1972

1972 CONSTITUTION AND ITS ALTERNATE PROPOSITIONS

COUNTY	PRECINCTS	TOTAL VOTES CAST	MAIN PROPOSITION		ALTERNATE PROPOSITION No. 1		ALTERNATE PROPOSITION No. 2		ALTERNATE PROPOSITION No. 3 - 18 years of age or older declared to be adults for all purposes.		ALTERNATE PROPOSITION No. 4 Legislative Assembly shall have no power to authorize lotteries or gift enterprises, etc.		
			Yes	No	1A	1B	2A	2B	Yes	No	Yes	No	
Adams	14	1207	491	705	726	368	557	465	539	610	498	620	
Barnes	52	4818	2029	2783	2943	1530	2482	1748	1888	2754	2007	2439	
Benson	48	2748	904	1813	1935	596	1127	1196	914	1714	1110	1446	
Billing	13	431	88	340	281	126	160	215	142	272	204	198	
Boffineau	25	3517	1133	2374	2362	821	1494	1481	995	2364	1378	1847	
Bowman	14	1113	291	817	805	231	453	529	431	634	503	524	
Burke	19	1756	302	1448	1209	345	559	867	450	1204	704	875	
Burleigh	65	12832	4959	7737	7392	4104	5496	5310	5620	6759	5124	7012	
Cass	98	18754	9656	8793	10587	6192	10032	6407	7478	10344	7450	10077	
Cavalier	56	2816	833	1966	1956	585	1132	1215	1075	1568	1106	1424	
Dickey	15	2033	675	1349	1380	520	897	873	618	1320	822	1061	
Divide	25	1464	434	1026	1037	290	563	658	335	1050	547	773	
Dunn	25	1474	341	1128	909	409	567	692	456	950	673	703	
Eddy	22	1405	514	881	935	387	639	605	416	945	542	791	
Emmons	33	2098	655	1437	1078	849	667	1166	930	1110	669	1315	
Foster	24	1461	729	632	944	405	790	493	522	889	566	816	
Golden Valley	11	802	198	600	519	186	309	337	318	425	283	419	
Grand Forks	68	12161	6555	5502	6635	4350	6086	4061	6276	5290	4540	6778	
Grant	17	1539	291	1240	979	418	501	825	468	1019	651	812	
Griggs	25	1465	578	880	944	400	684	561	487	909	656	706	
Heffinger	13	1638	447	1187	1080	433	634	798	588	984	692	850	
Kidder	15	1221	327	889	763	364	418	633	368	811	528	614	
LaMoure	39	2403	1076	1298	1545	698	1150	918	716	1600	1050	1201	
Logan	31	1364	384	971	778	468	532	637	423	884	458	825	
McHenry	68	3397	762	2618	2252	831	1290	1572	993	2259	1384	1800	
McIntosh	23	1907	482	1408	1047	630	671	893	454	1388	547	1276	
McKenzie	41	2010	570	1430	1364	411	798	816	603	1274	757	1047	
McLean	42	3740	1156	2574	2551	915	1504	1786	1105	2501	1456	2079	
Mercer	15	2087	504	1574	1199	623	707	1013	593	1392	714	1226	
Morton	57	6072	1726	4334	3447	2059	2326	2926	2529	3312	2221	3510	
Mountrail	57	2602	836	1756	1871	527	1061	1186	681	1843	1057	1351	
Nelson	35	2263	947	1299	1506	537	1052	833	785	1325	755	1317	
Oliver	8	727	139	588	444	222	262	363	227	480	272	415	
Pembina	42	2851	1076	1751	1918	692	1279	1104	1165	1536	1143	1468	
Pierce	17	1981	543	1424	1327	479	785	913	508	1402	638	1212	
Ramsey	53	3943	1605	2318	2776	863	1917	1503	1618	2169	1504	2165	
Ransom	15	1974	855	1109	1218	588	892	754	723	1144	817	989	
Renshaw	12	1467	411	1048	1073	283	611	657	441	960	620	742	
Renville	54	4975	2266	2659	3146	1413	2372	1879	1896	2787	2196	2378	
Richland	15	1891	464	1413	1259	416	762	804	687	1100	682	1030	
Rolette	27	1899	819	1064	1244	485	863	692	715	1088	719	1005	
Sargent	32	1339	238	1094	960	300	501	673	254	1059	640	649	
Sheridan	8	464	206	255	298	125	209	199	218	233	168	262	
Sioux	9	483	82	401	363	100	194	233	182	281	244	211	
Slope	12	5120	1591	3461	3028	1628	2222	2245	1950	2918	2010	2835	
Stark	25	1433	500	927	1009	337	648	611	334	1051	672	669	
Steele	72	5940	2560	3283	3595	1798	2860	2227	2245	3433	2389	3189	
Stutsman	37	1652	564	1088	1241	293	748	658	571	1000	601	929	
Towner	37	3410	1195	2187	2354	797	1625	1272	916	2358	1496	1651	
Trail	56	4214	1939	2258	2835	1055	1951	1635	1646	2406	1560	2376	
Walsh	81	12632	3856	8668	8507	2907	5150	5451	4486	7473	4709	7089	
Ward	47	2861	676	2177	1992	663	1107	1373	680	2056	1231	1460	
Wells	72	5351	1615	3681	3600	1165	2289	2101	1565	3514	2185	2681	
Williams													
TOTAL		1836	173205	64073	107643	109146	48217	76585	71062	63223	102151	68148	93137

COMMITTEE PROPOSAL INDEX

Committee Proposal No. 1-1

Incorporated into Style and Drafting Proposal No. 5-8

Committee Proposal No. 1-1. Be it resolved by the North Dakota Constitutional Convention that the Preamble of the constitution of the state of North Dakota be amended.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 20

Reported back:

Do Pass, 102

Motion to return Proposal to the Convention failed, 158, 161

Floor Amendments:

119 Not adopted, 125

First Passage, 126

Referred to Committee on Style and Drafting, 132

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-2

Committee Proposal No. 1-2. Be it resolved by the North Dakota Constitutional Convention that article I, sections 1 through 24, of the constitution of the state of North Dakota, pertaining to the Declaration of Rights, be repealed; and that a new article to the constitution of the state of North Dakota, pertaining to a Declaration of Rights, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 20

Reported back: Indefinitely postponed, 102

Committee Proposal No. 1-3

Committee Proposal No. 1-3. Be it resolved by the North Dakota Constitutional Convention that section 208, pertaining to debtors' rights; section 209, pertaining to child labor; section 212, pertaining to blacklists; and section 213, pertaining to women's rights to property, of article XVII of the constitution of the state of North Dakota be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 20-21

Reported back: Indefinitely postponed, 196

Committee Proposal No. 1-4

Committee Proposal No. 1-4. Be it resolved by the North Dakota Constitutional Convention that article 1 of the amendments to the constitution of the state of North Dakota be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 21

Reported back:

Do pass, 115

First reading, 142

First passage:

146 Ayes, 64; nays, 33; absent, 1

Reported back (Style and Drafting)

Not amended, 1303

Referred to Committee on Style and Drafting, 173

Motion to return Proposal to floor of Convention defeated, 208

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adopted, 1351

Repeal Proposal: No further action, 1695

Committee Proposal No. 1-5

Committee Proposal No. 1-5. Be it resolved by the North Dakota Constitutional Convention that the first paragraph of section 203 of article XVI of the constitution of the state of North Dakota pertaining to the Compact with the United States, be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 21

Reported back: Indefinitely postponed, 196

Committee Proposal No. 1-6

Committee Proposal No. 1-6. Be it resolved by the North Dakota Constitutional Convention that article V, sections 121 through 129, of the constitution of the state of North Dakota, pertaining to the Elective Franchise, be repealed; and that a new article to the constitution of the state of North Dakota, pertaining to the Elective Franchise, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 21

Reported back: Indefinitely postponed, 197

Committee Proposal No. 1-7

Committee Proposal No. 1-7. Be it resolved by the North Dakota Constitutional Convention that sections 25 through 70, inclusive, sections 194 through 201, inclusive, section 202, section 211 and articles 51 and 75 of the amendments to the constitution of the State of North Dakota be repealed; and that a new article II to the constitution of the state of North Dakota be created, all pertaining to the legislative branch of state government.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 71

Withdrawn, 107

Committee Proposal No. 1-8

Committee Proposal No. 1-8. Be it resolved by the North Dakota Constitutional Convention that section 25, section 202, and article 33 of the amendments to the constitution of the state of North Dakota be repealed; and that a new article to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 21

Withdrawn, 688

Committee Proposal No. 1-9

Committee Proposal No. 1-9. Be it resolved by the North Dakota Constitutional Convention that article III, sections 72 through 84 of the constitution of the state of North Dakota be repealed; and that a new article to the constitution of the state of North Dakota be created, both of which pertain to the executive branch of state government.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 21

Reported back: Indefinitely postponed, 667

Committee Proposal No. 1-10

Incorporated into Style and Drafting Redraft Proposal 5-15

Committee Proposal No. 1-10. Be it resolved by the North Dakota Constitutional Convention that article XIII, sections 188 through 193 of the constitution of the state of North Dakota be repealed; and that a new article to the constitution of the state of North Dakota be created; all of which pertain to the state militia.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 21-22

Reported back:

Amended, 118

Amendments adopted, 142

First passage:

180 Ayes, 94; nays, 2; absent, 2

Referred to Committee on Executive Functions, 180

Referred to Committee on Style and Drafting, 184

No further action, 1694

Committee Proposal No. 1-11

Incorporated into Style and Drafting Redraft Proposal No. 5-3

Committee Proposal No. 1-11. Be it resolved by the North Dakota Constitutional Convention that sections 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, and 120 of the constitution of the state of North Dakota be repealed; and that article IV of the constitution of the state of North Dakota be created; all of which pertain to the judicial branch of government.

Introduced by Committee on Judicial Functions and Political Subdivisions and referred to Committee on Judicial Functions and Political Subdivisions, 22

Re-referred to Committee on Judicial Functions and Political Subdivisions, 469
Reported back:

Divided Report — Majority, to amend, 269, 388

Minority, to Amend, 271, 388

Committee report laid over one day, 388

Committee report laid over to a time certain, 392

To be considered in a special manner, 533-534

Minority report failed on division vote, 636

Floor amendments:

637 Withdrawn, 644

644 Not adopted, 647

651 Not adopted, 652

653-654 Adopted, 657

657 Amendment to amendment, Adopted, 657

657-658 Not adopted on division vote, 660

Rules suspended, properly engrossed, placed on first passage, 636

Motion to lay over one day failed, 640

Rules suspended, properly re-engrossed, placed on first passage, failed on division vote, 661

First passage:

693 Ayes, 72; nays, 22; absent, 4

No further action, 1694

Committee Proposal No. 1-12

Incorporated into Style and Drafting Redraft Proposal No. 5-7

Committee Proposal No. 1-12. Be it resolved by the North Dakota Constitutional Convention that sections 130, 150, 166, 167, 168, 169, 170, 172 and 173 of the constitution of the state of North Dakota be repealed; and that article XII of the constitution of the state of North Dakota be created; all of which pertain to political subdivisions.

Introduced by Committee on Judicial Functions and Political Subdivisions and referred to Committee on Judicial Functions and Political Subdivisions, 22

Reported back:

Amended, 568

Amendments adopted, 616

Floor amendments:

1069 Adopted, 1070

1073 Not adopted, 1076

1076 Adopted, 1078

1081 Amendment question divided, 1085

Changing majority to 55 percent not adopted, 1086

Remainder of Amendment not adopted, 1086

Rules suspended, properly re-engrossed, placed on first passage, 1087

First passage:

1087 Ayes, 94; nays, 2; absent, 2

No further action, 1694

Committee Proposal No. 1-13

Incorporated into Style and Drafting Redraft Proposal, 5-14

Committee Proposal No. 1-13. Be it resolved by the North Dakota Constitutional Convention that sections 203, 204, and 205 of the constitution of the state of North Dakota be repealed; and that article XIII of the constitution of the state of North Dakota be created; all of which pertain to the compact with the United States.

Introduced by Committee on Judicial Functions and Political Subdivisions and referred to Committee on Education, Resources and Public Lands, 22

Returned to 6th Order, 1350

Reported back:

Amended, 254

Amendments adopted, 262

Floor amendments:

286 Not adopted, 289

First passage:

290 Ayes, 87; nays, 8; absent, 3

Referred to Committee on Style and Drafting, 346

Reported back (Style and Drafting):

Amended, 1301

Reconsideration of adoption of Style and Drafting Committee Report, 1350

Re-referred to Committee on Style and Drafting, 1350

Committee Proposal No. 1-14

Incorporated into Style and Drafting Redraft Proposal No. 5-15

No further action, 1694

Committee Proposal No. 1-14. Be it resolved by the North Dakota Constitutional Convention that sections 206 and 207 of the constitution of the state of North Dakota be repealed; and that article XV to the constitution of the state of North Dakota be created; all of which pertain to state boundaries and the state seal.

Introduced by Committee on Judicial Functions and Political Subdivisions and referred to Committee on Judicial Functions and Political Subdivisions, 22

Re-referred to Committee on Judicial Functions and Political Subdivisions, 148

Amended, 101-102

Divided report — Majority, to amend, 392-393, 470

Minority, to amend, 393, 470

Committee report laid over one day, 393, 470

Minority report failed on division vote, 519

Majority report adopted, 519

Amendments adopted, 116, 569

Motion to lay over to a time certain failed, 147

First passage:

830-831 Ayes, 92, nays, 2; absent, 4

Reported back:

No further action, 1694

Committee Proposal No. 1-15

Incorporated into Style and Drafting Redraft Proposal No. 5-4

Committee Proposal No. 1-15. Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149, 150, 151, 152, and article 54 of the constitution of the state of North Dakota be repealed; and that article V to the constitution of the state of North Dakota be created; all of which pertain to education.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 22

Reported back:

Divided report — Majority, to amend, 734
Minority, to amend, 734-735
Committee report laid over to a time certain, 735
Minority report failed on a roll call vote, 957
Majority report adopted, 957

Amendments adopted, 1046

Floor amendments:

1231 Adopted, 1233
1235 Adopted, 1237
1236 Amendment to amendment, Adopted, 1237
1238 Not adopted, 1246
1246 Not adopted, 1246

Question divided, 1247

First passage:

1252 Section 1 Ayes, 90; nays, 5; absent, 3
1254 Excluding Section 1 Ayes, 85; nays, 8; absent, 5

No further action, 1694

Committee Proposal No. 1-16

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-16. Be it resolved by the North Dakota Constitutional Convention that article VI to the constitution of the state of North Dakota, which pertains to environmental degradation, be created.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 22

Reported back:

Divided report — Majority, do pass, 564
Minority, to amend, 564
Committee report laid over to a time certain, 566
Minority report failed on division vote, 587
Majority report adopted, 587

Floor amendments:

831 Not adopted on roll call vote, 836

First passage:

836 Ayes, 66; nays, 30; absent, 2

No further action, 1694

Committee Proposal No. 1-17

Committee Proposal No. 1-17. Be it resolved by the North Dakota Constitutional Convention that sections 153, 154, 155, 156, 157, 158, 160, 161, 163, 164 and 165 of the constitution of the state of North Dakota be repealed; and that article VII to the constitution of the state of North Dakota be created; all of which pertain to trust lands.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 22

Withdrawn, 533

Committee Proposal No. 1-18

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-18. Be it resolved by the North Dakota Constitutional Convention that sections 215 and 216 of the constitution of the state of North Dakota be repealed; and that article VIII to the constitution of the state or North Dakota be created; all of which pertain to public institutions.

Introduced by Committee on Education, Resources and Public Lands, and referred to Committee on Education, Resources and Public Lands, 22-23

Reported back:

Do pass, 197

Proposal placed at foot of calendar, 234

Floor amendments:

252 Adopted, 252

Rules suspended, properly engrossed, placed on first passage, 252

First passage:

252 Ayes, 84; nays, 12; absent, 2

Referred to Committee on Style and Drafting, 253

No further action, 1694

Committee Proposal No. 1-19

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-19. Be it resolved by the North Dakota Constitutional Convention that section 210 of the constitution of the state of North Dakota be repealed; and that article IX to the constitution of the state of North Dakota be created; both of which pertain to appropriation of waters.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 23

Re-referred to Committee on Education, Resources and Public Lands, 190

Reported back:

Do pass, 175, 254

First passage:

275 Ayes, 83; nays, 12; absent, 3

Reconsideration of Style and Drafting Committee report adoption, 1351

Referred to Committee on Style and Drafting, 278-279

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

No further action, 1694

Committee Proposal No. 1-20

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-20. Be it resolved by the North Dakota Constitutional Convention that sections 131, 132, 133, 134, 136, 137, 138, 140, 141, 143, 144 and 145 of the constitution of the state of North Dakota be repealed; and that Article X to the constitution of the state of North Dakota be created; all of which pertain to corporations.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 23

Re-referred to Committee on Education, Resources and Public Lands, 153

Question divided:

Excluding section 135, 151

Excluding section 142, 152

Excluding section 146, 151

Reported back:

Do pass, 116

Amended, 213

Amendments adopted, 268

First passage:

327 Ayes, 87; nays, 1; absent, 10

Referred to Committee on Style and Drafting, 346

No further action, 1694

Committee Proposal No. 1-21

Committee Proposal No. 1-21. Be it resolved by the North Dakota Constitutional Convention that article XI, sections 174 through 181, pertaining to revenue and taxation, article XII, sections 182 through 187, pertaining to public debt and public works, of the constitution of the state of North Dakota, and article 56 of the amendments to the constitution of the state of North Dakota, pertaining to motor fuel and license taxes, be repealed; and that a new article XI to the constitution of the state of North Dakota, pertaining to finance and public debt, be created.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 23

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposals 1-23, 1-74, 1-77, 1-87 and 1-96, 692

Committee Proposal No. 1-22

Committee Proposal No. 1-22. Be it resolved by the North Dakota Constitutional Convention that articles 14 and 19, pertaining to mills and elevators in Minnesota, Wisconsin and North Dakota; article 24, pertaining to hail tax; articles 59, 65 and 87, pertaining to veterans' bonuses; article 60, pertaining to the medical center; and article 76, pertaining to bonds, of the amendments to the constitution of the state of North Dakota, be repealed.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 23

Reported back:

Do pass, 101-102

Question divided, 130

First passage:

Excluding Article 60 — Medical Center, 131

Article 60, 131

Motion to return proposal to Convention failed, 163

Referred to Committee on Style and drafting, 132

Repeal — No further action, 1695

Committee Proposal No. 1-23

Incorporated into Style and Drafting Redraft Proposal No. 5-2

Committee Proposal No. 1-23. Be it resolved by the North Dakota Constitutional Convention that sections 175, 178, 179 and 186 of the constitution of the state of North Dakota be repealed; and that new sections to the constitution of the state of North Dakota be created; all of which pertain to finance and taxation and state moneys.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 118

Re-referred to Committee on Finance and Taxation, 267

Reported back:

Amended, 197, 285

Amendments adopted, 219, 350

Floor amendments:

408 Not adopted on division vote, 412

414 Adopted on division vote, 416

417 Not adopted on division vote, 419

422-423 Adopted, 424

Rules suspended, properly engrossed, placed on first passage, 420

Rules suspended, properly re-engrossed, placed on first passage, 424

Question divided, 401, 414

First passage:

421 Section 2 Ayes, 21; nays, 74; absent, 3 Lost

421 Section 3 Ayes, 85; nays, 9; absent, 4

421 Section 4 Ayes, 89; nays, 3; absent, 6

421 Section 5 Ayes, 93; nays, 1; absent, 4

422 Section 6 Ayes, 82; nays, 12; absent, 4

424 Section 1 Ayes, 93; nays, 0; absent, 5

No further action, 1694

Committee Proposal No. 1-24

Committee Proposal No. 1-24. Be it resolved by the North Dakota Constitutional Convention that sections 177, pertaining to hail tax; 180, pertaining to poll tax; 181, pertaining to passage of laws to carry out provision of finance and taxation article; and 187, pertaining to certificate of indebtedness to be signed by auditor and secretary of state; of the constitution of the state of North Dakota, be repealed.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 118

Reported back:

Do pass, 275

First passage:

328 Ayes, 86; nays, 0; absent, 12

Referred to Committee on Style and Drafting, 346

Repeal — No further action, 1695

Committee Proposal No. 1-25

Incorporated into Style and Drafting Redraft Proposal No. 5-13

Committee Proposal No. 1-25. Be it resolved by the North Dakota Constitutional Convention that sections 79 and 80 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to the veto power of the governor, be created.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 133

Re-referred to Committee on Executive Functions, 388

Reported back:

Do pass, 254

Amended, 735-736

Amendments adopted, 781

Floor amendments:

329 Adopted, 330

First passage:

331 Ayes, 87; nays, 5; absent, 6

1003 Ayes, 94; nays, 0; absent, 4

Referred to Committee on Style and Drafting, 346

Reconsideration:

Prevailed, 383

No further action, 1694

Committee Proposal No. 1-26

Incorporated into Style and Drafting Redraft Proposal No. 5-13

Committee Proposal No. 1-26. Be it resolved by the North Dakota Constitutional Convention that section 77 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to gubernatorial succession, be created.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 133

Re-referred to Committee on Executive Functions, 338

Reported back:

Do pass, 254

Amended, 736

Amendments adopted, 782

First passage:

1009 Ayes, 95; nays, 0; absent, 3

No further action, 1694

Committee Proposal No. 1-27

Incorporated into Style and Drafting Redraft Proposal No. 5-13

Committee Proposal No. 1-27. Be it resolved by the North Dakota Constitutional Convention that sections 75, 76 and 78 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to powers and duties of the governor, be created.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 133

Reported back:

Do pass, 254

Floor amendments:

339 Adopted, 339

341 Adopted, 341

Rules suspended, properly engrossed, placed on first passage, 339-340, 341

First passage:

341 Ayes, 87; nays, 1; absent, 10

Referred to Committee on Style and Drafting, 346

Reported back (Style and Drafting):

Amended, 1301

Re-referred to Committee on Style and Drafting, 963, 1350

Returned to 6th order, 1350

Reconsideration of adoption of Style and Drafting Committee Report, 1350

No further action, 1694

Committee Proposal No. 1-28

Incorporated into Style and Drafting Redraft Proposal No. 5-13

Committee Proposal No. 1-28. Be it resolved by the North Dakota Constitutional Convention that sections 73 and 84 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to qualifications and compensation of elected officials, be created.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 134

Reported back:

Do pass, 254

Floor amendments:

342 Adopted, 342

523 Adopted, 527

527 Adopted, 527

Rules suspended, properly engrossed, placed on first passage, 342

Rules suspended, properly re-engrossed, placed on first passage, 531

First passage:

343 Ayes, 87; nays, 2; absent, 9

532 Ayes, 89; nays, 3; absent, 6

Referred to Committee on Style and Drafting, 346

Reconsideration:

Prevailed, 425

Placed at foot of calendar, 425-426

Reported back, (Style and Drafting):

Amended, 1301

Returned to 6th Order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350

Re-referred to Committee on Style and Drafting, 1350

No further action, 1694

Committee Proposal No. 1-29

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-29. Be it resolved by the North Dakota Constitutional Convention that sections 29 and 35 of Article II and section 214 of Article XVIII of the constitution of the state of North Dakota be repealed; and that section 4 of Article II to the constitution of the state of North Dakota be created; all of which pertain to reapportionment of the state legislature.

Introduced by Committee on Executive Functions and referred to Committee on Legislative Functions, 134

Re-referred to Committee on Legislative Functions, 671

Reported back:

Amended, 522, 736

Amendments adopted, 570, 784

Floor amendments:

1178-1179 Amendment question divided, 1182

First sentence, Section 4, not adopted on division vote, 1190

Excluding first sentence, Section 4, not adopted on roll call vote,
1193

1194 Not adopted, 1196

1196 Adopted, 1197

Rules suspended, properly engrossed, placed on first passage, 1197

Question divided, 1175; withdrawn, 1197

First passage:

1179 Ayes, 79; nays, 16; absent, 3

Reconsideration:

Failed on division vote, 1331

No further action, 1694

Committee Proposal No. 1-30

Incorporated into Style and drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-30. Be it resolved by the North Dakota Constitutional Convention that section 211 of Article XVII of the constitution of the state of North Dakota be repealed; and that section 27 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the oath of office.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 134

Reported back:

Do pass, 153

Proposal laid over one day, 180

Floor amendments:

191 Adopted, 191

Rules suspended, properly engrossed, placed on first passage, 192

First passage:

192 Ayes, 95; nays, 0; absent, 3

Referred to Committee on Style and Drafting, 209

No further action, 1694

Committee Proposal No. 1-31

Committee Proposal No. 1-31. Be it resolved by the North Dakota Constitutional Convention that section 194 of Article II of the constitution of the state of North Dakota be repealed; and that section 22 of Article II to the constitution of the state of North Dakota be created; both of which pertain to grounds for impeachment.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 134

Re-referred to Committee on Constitutional Ballot, 1226

Returned to Convention floor, 687, 1689

Withdrawn, 1690

Committee Proposal No. 1-32

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-32. Be it resolved by the North Dakota Constitutional Convention that sections 194, 195 and 196 of Article XIV of the constitution of the state of North Dakota be repealed; and that section 22 of Article II to the constitution of the state of North Dakota be created; all of which pertain to grounds for impeachment.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 134

Reported back:

Do pass, 446

Floor amendments:

496 Adopted, 497

498 Adopted, 499

499 Adopted, 499

537 Adopted, 538

Rules suspended, properly re-engrossed, placed on first passage at a time certain, 500

Rules suspended, properly re-engrossed, placed on first passage, 538

First passage:

538-539 Ayes, 89; nays, 0; absent, 9

Reported back (Style and Drafting):

Amended, 1301

Returned to 6th Order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350

Re-referred to Committee on Style and Drafting, 1350

No further action, 1694

Committee Proposal No. 1-33

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-33. Be it resolved by the North Dakota Constitutional Convention that sections 197, 198, 200 and 201 of Article XIV of the constitution of the state of North Dakota be repealed; and that section 24 of Article II to the constitution of the state of North Dakota be created; all pertaining to impeachment.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 134

Reported back:

Do pass, 154

Proposal laid over one day, 180

Floor amendments:

193-194 Adopted, 194

1038 Adopted, 1038

Rules suspended, properly engrossed, placed on first passage, 194

Rules suspended, properly re-engrossed, placed on first passage, 1039

First passage:

194 Ayes, 95; nays, 0; absent, 3

1039 Ayes, 89; nays, 0; absent, 9

Referred to Committee on Style and Drafting, 209

Reconsideration:

Prevailed, 1038

No further action, 1694

Committee Proposal No. 1-34

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-34. Be it resolved by the North Dakota Constitutional Convention that section 29 of Article II to the constitution of the state of North Dakota, which pertains to the matter of legislative ethics, be created.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 134

Reported back:

Amended, 154

Proposal laid over one day, 176

Amendments adopted, 189

Floor amendments:

221 Not adopted on roll call vote, 229

Motion to lay amendments and proposal over one convention day failed, 229

Motion to re-refer to Committee on Legislative Functions failed, 232

First passage:

232 Ayes, 51; nays, 46; absent, 1

Referred to Committee on Style and Drafting, 253

No further action, 1694

Committee Proposal No. 1-35

Committee Proposal No. 1-35. Be it resolved by the North Dakota Constitutional Convention that section 202 of Article II of the constitution of the state of North Dakota be repealed; and that sections 25 and 26 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the manner in which the constitution may be altered.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 135

Re-referred to Committee on Constitutional Ballot, 1226

Returned to convention floor, 687, 1689

Withdrawn, 1690

Committee Proposal No. 1-36

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-36. Be it resolved by the North Dakota Constitutional Convention that section 202 of Article XV of the constitution of the state of North Dakota, and Article 88 of the amendments thereto, be repealed; and that sections 25 and 26 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the manner in which the constitution may be altered.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 135

Reported back:

Amended, 481-482

Amendments adopted, 513

Floor amendments:

721 Adopted, 722

723 Adopted, 724

724 Not adopted, 726

726 Not adopted, 726

1031 Not adopted, 1031

1032 Not adopted, 1032

First passage.

1032 Ayes, 80; nays, 13; absent, 5

No further action, 1694

Committee Proposal No. 1-37

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-37. Be it resolved by the North Dakota Constitutional Convention that sections 41, 53, 55 and 56 of Article II of the constitution of the state of North Dakota be repealed; and that section 8 of Article II to the constitution of the state of North Dakota be created; both of which pertain to a legislative timetable.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 135

Reported back:

Amended, 429

Amendments adopted, 462

Floor amendments:

544 Not adopted, 546

548 Not adopted, 549

First passage:

552 Ayes, 78; nays, 7; absent, 13

No further action, 1694

Committee Proposal No. 1-38

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-38. Be it resolved by the North Dakota Constitutional Convention that sections 37 and 39 of Article II and Article 51 of the amend-

ments to the constitution of the state of North Dakota be repealed; and that section 7 of Article II to the constitution of the state of North Dakota be created; all of which pertain to restrictions on the office-holding capabilities of state legislators.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 135

Reported back:

Do pass, 566

Floor amendments:

837 Adopted, 837

838 Adopted on division vote, 841

842 Adopted on division vote, 843

844 Adopted on division vote, 846

1127 Adopted, 1129

Rules suspended, properly re-engrossed, placed on first passage, 1129

First passage:

1130 Ayes, 83; nays, 12; absent, 3

No further action, 1694

Committee Proposal No. 1-39

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-39. Be it resolved by the North Dakota Constitutional Convention that section 45 of Article II of the constitution of the state of North Dakota be repealed; and that section 10 of Article II to the constitution of the state of North Dakota be created; both of which pertain to legislative compensation.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 135

Proposal laid over one day, 180

Re-referred to Committee on Legislative Functions, 180

Reported back:

Do pass, 154

Amended, 214

Amendments adopted, 268

Floor amendments:

343 Adopted, 345

Rules suspended, properly engrossed, placed on first passage, 345

First passage:

345 Ayes, 85; nays, 3; absent, 10

Referred to Committee on Style and Drafting, 346

No further action, 1694

Committee Proposal No. 1-40

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-40. Be it resolved by the North Dakota Constitutional Convention that section 28 of Article II to the constitution of the state of North Dakota, which pertains to the office of auditor general, be created.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 135

Reported back:

Amended, 275

Amendments adopted, 284

First passage

355 Ayes, 94; nays, 1; absent, 3

No further action, 1694

Committee Proposal No. 1-41

Committee Proposal No. 1-41. Be it resolved by the North Dakota Constitutional Convention that section 29 of Article II of the constitution of the state of

North Dakota be repealed; and that section 4 of Article II to the constitution of the state of North Dakota be created; both of which pertain to reapportionment of the state legislature.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 135

Re-referred to Committee on Constitutional Ballot, 1226

Returned to convention floor, 687, 1689

Withdrawn, 1690

Committee Proposal No. 1-42

Committee Proposal No. 1-42. Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the constitution of the state of North Dakota be repealed; and that section 1 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the legislative system.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 136

Reported back:

Without recommendation, 275

To be considered in special manner, 292-293

Poll of Delegates choice, 318-322

Re-referred to Committee on Legislative Functions, 323

Returned to convention floor, 687, 1689

Re-referred to Committee on Constitutional Ballot, 1226

Withdrawn, 1690

Committee Proposal No. 1-43

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-43. Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the constitution of the state of North Dakota be repealed; and that section 1 of Article II to the constitution of the state of North Dakota be created; both of which pertain to the legislative system.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 136

Reported back:

Amended, 214

Amendments adopted, 270

To be considered in special manner, 292-293

Poll of Delegates choice, 318-322

First passage:

323 Ayes, 68; nays, 27; absent, 3

Referred to Committee on Style and Drafting, 346

No further action, 1694

Committee Proposal No. 1-44

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-44. Be it resolved by the North Dakota Constitutional Convention that sections 27, 30 and 33 of Article II of the constitution of the state of North Dakota be repealed; and that sections 2 and 5 of Article II to the constitution of the state of North Dakota be created; all pertaining to legislative terms of office.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 136

Reported back:

Do pass, 566

Floor amendments:

847 Adopted, 847

1209 Amendment question divided, 1209

Section 2 adopted on division vote, 1214

- 1214 Not adopted, 1218
 - Reconsideration of Section 2 adoption prevailed on division vote, 1219
 - Amendment not be divided — ruled out of order, 1221
 - Section 5 be considered before Section 2 failed on division vote, 1222
 - Section 2 not adopted on division vote, 1223
 - Section 5 of amendment withdrawn, 1273
- 1274 Adopted, 1276
- 1503-1504 Not adopted, 1510
 - 1510 Adopted, 1511
 - 1511 Not adopted, 1512
 - 1514 Adopted, 1515

Rules suspended, properly engrossed, placed on first passage, 852

Rules suspended, properly re-engrossed, placed on first passage, 1276, 1513, 1515

First passage:

- 854 Ayes, 70; nays, 26; absent, 2
- 1276 Ayes, 81; nays, 12; absent, 5
- 1515 Ayes, 87; nays, 8; absent, 3

Reported back (Committee on Style and Drafting):

Amended and incorporated in Redraft Proposal No. 5-12, 1540

Amendments adopted, 1541

Reconsideration:

Prevailed, 1028

Section 5 only (Section 6 of Redraft Proposal No. 5-12), Prevailed, 1500

Further consideration delayed until a time certain, 1501

No further action, 1694

Committee Proposal No. 1-45

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-45. Be it resolved by the North Dakota Constitutional Convention that sections 28 and 34 of Article II of the constitution of the state of North Dakota be repealed; and that section 3 of Article II to the constitution of the state of North Dakota be created; all of which pertain to qualifications for legislative office.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 136

Reported back:

Amended, 482

Amendments adopted, 514

Floor amendments:

729 Not adopted, 734

First passage:

734 Ayes, 84; nays, 11; absent, 3

No further action, 1694

Committee Proposal No. 1-46

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-46. Be it resolved by the North Dakota Constitutional Convention that section 1 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to inalienable rights.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 136

Reported back:

Do pass, 197

Floor amendments:

235 Not adopted, 236

First passage:

238 Ayes, 76; nays, 21; absent, 1

Referred to Committee on Style and Drafting, 253

Reported back (Style and Drafting):

Amended, 1302

Returned to 6th Order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350

Re-referred to Committee on Style and Drafting, 1350

No further action, 1694

Committee Proposal No. 1-47

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-47. Be it resolved by the North Dakota Constitutional Convention that section 3 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the supreme law of the land.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 136

Reported back:

Do pass, 198

First passage:

238 Ayes, 88; nays, 8; absent, 2

Referred to Committee on Style and Drafting, 253

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-48

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-48. Be it resolved by the North Dakota Constitutional Convention that section 10 of the constitution of the state of North Dakota be revealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to right to assemble.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 136

Reported back:

Do pass, 198

First passage:

239 Ayes, 94; nays, 2; absent, 2

Referred to Committee on Style and Drafting, 253

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-49

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-49. Be it resolved by the North Dakota Constitutional Convention that section 12 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the military being subordinate to the civil power.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 136-137

Reported back:

Do pass, 198

First passage:

239 Ayes, 97; nays, 0; absent, 1

Referred to Committee on Style and Drafting, 253

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

No further action, 1694

Committee Proposal No. 1-50

Committee Proposal No. 1-50. Be it resolved by the North Dakota Constitutional Convention that section 17 of the constitution of the state of North Dakota, which pertains to slavery, be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 137

Reported back:

Do pass, 198

First passage:

240 Ayes, 94; nays, 2; absent, 2

Referred to Committee on Style and Drafting, 253

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

Repeal proposal — No further action, 1695

Committee Proposal No. 1-51

Committee Proposal No. 1-51. Be it resolved by the North Dakota Constitutional Convention that section 19 of the constitution of the state of North Dakota, which pertains to treason against the state, be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 137

Reported back:

Do pass, 198

Motion to lay over one day failed, 242

First passage:

243 Ayes, 45; nays, 50; absent, 2; Lost

Committee Proposal No. 1-52

Committee Proposal No. 1-52. Be it resolved by the North Dakota Constitutional Convention that section 21 of the constitution of the state of North Dakota, which pertains to provisions of the constitution being mandatory and prohibitory, be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 137

Reported back:

Do pass, 198

First passage:

246 Ayes, 62; nays, 35; absent, 1

Referred to Committee on Style and Drafting, 253

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

Repeal — No further action, 1695

Committee Proposal No. 1-53

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-53. Be it resolved by the North Dakota Constitutional Convention that section 23 of the constitution of the state of North Dakota

be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom to obtain employment.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 137

To be considered at a time certain, 377

Reported back:

Divided report — Majority, do pass, 431

Minority, to amend, 431

Minority report adopted on roll call vote, 446

Amendments adopted, 462

Floor amendments:

554 Adopted, 555

556-557 Not adopted, 559

737 Not adopted, 739

739 Not adopted on roll call vote, 740

Rules suspended, properly re-engrossed, placed on first passage, failed on a division vote, 559

First passage:

740 Ayes, 66; nays, 28; absent, 4

No further action, 1694

Committee Proposal No. 1-54

Committee Proposal No. 1-54. Be it resolved by the North Dakota Constitutional Convention that section 209 of the constitution of the state of North Dakota, which pertains to child labor, be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 137

Reported back:

Do pass, 201

First passage:

246 Ayes, 94; nays, 3; absent, 1

Referred to Committee on Style and Drafting, 253

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

Repeal — No further action, 1695

Committee Proposal No. 1-55

Committee Proposal No. 1-55. Be it resolved by the North Dakota Constitutional Convention that section 212 of the constitution of the state of North Dakota, which pertains to blacklists, be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 137

Reported back:

Do pass, 482

First passage:

570 Ayes, 89; nays, 2; absent, 7

Repeal — no further action, 1695

Committee Proposal No. 1-56

Committee Proposal No. 1-56. Be it resolved by the North Dakota Constitutional Convention that section 213 of the constitution of the state of North Dakota, which pertains to property rights of women, be repealed.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 137

Reported back:

Do pass, 214

First passage:

356 Ayes, 94; nays, 1; absent, 3

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

Repeal proposal — No further action, 1695

Committee Proposal No. 1-57

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-57. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to equal enjoyment of public accommodations, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Legislative Functions, 154

Re-referred to Committee on Preamble, Bill of Rights and Suffrage, 155-156, 357

Reported back:

Do pass, 214

Amended, 456

Placed at foot of calendar, 464

Amendments not adopted, 515

Proposal laid over one day, 467-468, 746

Floor amendments:

740 Not adopted, 746

742 Amendment to amendment failed, 743

1117 Adopted, 1118

1154 Adopted on roll call vote, 1156

1156 Adopted, 1156

Rules suspended, properly engrossed, placed on first passage, 1118

Rules suspended, properly-re-engrossed, placed on first passage, 1156

First passage:

1119 Ayes, 86; nays, 9; absent, 3

1156 Ayes, 84; nays, 3; absent, 11

Reconsideration:

Prevailed, 1153

No further action, 1694

Committee Proposal No. 1-58

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-58. Be it resolved by the North Dakota Constitutional Convention that section 5 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to release from unlawful detention or imprisonment.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 154

Reported back:

Do pass, 214

Floor amendments:

358 Adopted, 358

360 Adopted, 360

Rules suspended, properly engrossed, placed on first passage, 358, 360

First passage:

361 Ayes, 73; nays, 18; absent, 7

Reported back (Style and Drafting):

Amended, 1302

Returned to 6th order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350
Re-referred to Committee on Style and Drafting, 1350

Reconsideration:

(When Section 15 of Redraft Proposal No. 5-9) Failed, 1378

No further action, 1694

Committee Proposal No. 1-59

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-59. Be it resolved by the North Dakota Constitutional Convention that section 9 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to freedom of press.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 154

Reported back:

Do pass, 215

First passage:

362 Ayes, 92; nays, 0; absent, 6

Reported back (Style and Drafting):

Amended, 1302

Returned to 6th order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350

Re-referred to Committee on Style and Drafting, 1350

No further action, 1694

Committee Proposal No. 1-60

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-60. Be it resolved by the North Dakota Constitutional Convention that section 8 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to indictment and information.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155

Re-referred to Committee on Preamble, Bill of Rights and Suffrage, 364

Reported back:

Do pass, 215

Amended, 456, 662

Amendments adopted, 465, 674

Floor amendments:

1060 Adopted, 1060

Rules suspended, properly re-engrossed, placed on first passage, 1060

First passage:

1061 Ayes, 90; nays, 0; absent, 8

No further action, 1694

Committee Proposal No. 1-61

Committee Proposal No. 1-61. Be it resolved by the North Dakota Constitutional Convention that section 16 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bills of attainder and ex post facto laws and nonimpairment of obligations of contracts.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155

Re-referred to Committee on Preamble, Bill of Rights and Suffrage, 365-366

Reported back:

Do pass, 215

Indefinitely postponed, 482

First passage:

365 Ayes, 22; nays, 69; absent, 7 Lost

Committee Proposal No. 1-62

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-62. Be it resolved by the North Dakota Constitutional Convention that section 15 of the constitution of the state of North Dakota be repealed; and that a new section of the constitution of the state of North Dakota be created; both of which pertain to not being imprisoned for debt.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155

Reported back:

Do pass, 215

First passage:

379 Ayes, 78; nays, 15; absent, 5

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-63

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-63. Be it resolved by the North Dakota Constitutional Convention that section 18 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to search and seizure.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155

Reported back:

Do pass, 275

First passage:

382 Ayes, 51; nays, 42; absent, 5

Reported back (Style and Drafting):

Amended, 1302

Return to 6th Order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350

Re-referred to Committee on Style and Drafting, 1350

No further action, 1694

Committee Proposal No. 1-64

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-64. Be it resolved by the North Dakota Constitutional Convention that section 2 of the present constitution of the state of North Dakota, which pertains to political power in the people, be retained in its present form.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155

Reported back:

Do pass, 215

First passage:

447 Ayes, 82; nays, 0; absent, 16

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-65

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-65. Be it resolved by the North Dakota Constitutional Convention that section 11 of the present constitution of the state of North

Dakota, which pertains to uniform operation of laws, be retained.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155

Reported back:

Do pass, 215

First passage:

448 Ayes, 84; nays, 0; absent, 14

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-66

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-66. Be it resolved by the North Dakota Constitutional Convention that section 13 of the present constitution of the state of North Dakota, which pertains to rights of a defendant in criminal prosecutions, be retained.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155

Reported back:

Do pass, 215

First passage:

449 Ayes, 92; nays, 0; absent, 6

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-67

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-67. Be it resolved by the North Dakota Constitutional Convention that section 20 of the present constitution of the state of North Dakota, which pertains to not granting special privileges and immunities, be retained.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 155-156

Reported back:

Do pass, 276

First passage:

450 Ayes, 94; nays, 0; absent, 4

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-68

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-68. Be it resolved by the North Dakota Constitutional Convention that section 24 of the present constitution of the state of North Dakota, which pertains to declaration of rights remaining inviolate, be retained.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 156

Reported back:

Do pass, 216

First passage:

450 Ayes, 94; nays, 1; absent, 3

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-69

Committee Proposal No. 1-69. Be it resolved by the North Dakota Constitutional Convention that sections 31, 36, 46, 47, 48, 49, 58, 61, 63, 64 and 66 of Article II of the constitution of the state of North Dakota be repealed; and that new sectional Convention that sections 31, 36, 46, 47, 48, 49, 58, 61, 63, 64, 65 and 66 of of North Dakota be created, all of which pertain to matters of legislative procedure.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 156

Re-referred to Committee on Constitutional Ballot, 1226

Returned to convention floor, 687, 1689

Withdrawn, 1690

Committee Proposal No. 1-70

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-70. Be it resolved by the North Dakota Constitutional Convention that sections 31, 36, 46, 47, 48, 49, 58, 61, 63, 64, 65 and 66 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 6, 11, 12, 13, 14, 16, 17, 18 and 19 of Article II to the constitution of the state of North Dakota be created; all of which pertain to matters of legislative procedure.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 156

Reported back:

Do pass, 522

Floor amendments:

749 Adopted, 749

1158 Adopted, 1161

Rules suspended, properly engrossed, placed on first passage, 749-750

Rules suspended, properly re-engrossed, placed on first passage, 1161

First passage:

750 Ayes, 89; nays, 2; absent, 7

1161 Ayes, 92; nays, 3; absent, 3

Reconsideration:

Prevailed, 1067

No further action, 1694

Committee Proposal No. 1-71

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-71. Be it resolved by the North Dakota Constitutional Convention that section 6 of the constitution of the state of North Dakota be repealed; and that a new section to the Constitution of the state of North Dakota be created; both of which pertain to bail.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 156

Reported back:

Do pass, 216

Placed at foot of calendar, 452

Floor amendments:

570-571 Adopted, 572

Rules suspended, properly engrossed, placed on first passage, 572

First passage:

572 Ayes, 92; nays, 0; absent, 6

No further action, 1694

Committee Proposal No. 1-72

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-72. Be it resolved by the North Dakota Constitutional Convention that section 22 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; which pertains to courts being open.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 156

Reported back:

Amended, 483

Amendments adopted, 515

Floor amendments:

750 Adopted, 751

751 Adopted, 752

967 Not adopted, 970

Rules suspended, properly re-engrossed, placed on first passage, 751, 752

First passage:

752 Ayes, 94; nays, 0; absent, 4

974-975 Ayes, 84; nays, 4; absent, 5

Reconsideration:

Prevailed, 930

No further action, 1694

Committee Proposal No. 1-73

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-73. Be it resolved by the North Dakota Constitutional Convention that section 4 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to religious freedom.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 156

Reported back:

Do pass, 216

First passage:

454 Ayes, 77; nays, 17; absent, 4

Reported back (Style and Drafting):

Amended, 1302

Returned to 6th order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350

Re-referred to Committee on Style and Drafting, 1350

No further action, 1694

Committee Proposal No. 1-74

Incorporated into Style and Drafting Redraft Proposal No. 5-2

Committee Proposal No. 1-74. Be it resolved by the North Dakota Constitutional Convention that section 182 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to state debt.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 171-172

Reported back:

Amended, 676

Amendments adopted, 785

Floor amendments:

1257 Adopted on division vote, 1264

1264 Not adopted, 1270

Request that amendment question be divided denied, 1268

1269 Amendment to amendment adopted, 1269

1270 Adopted, 1273

Further consideration delayed until time certain, 1273
1334 Adopted on division vote, 1342
1336 Amendment to amendment adopted on division vote, 1337
1338 Amendment to amendment adopted, 1338
1339 Amendment to amendment not adopted, 1341

Properly re-engrossed, placed on first passage, 1342

First passage:

1342 Ayes, 89; nays, 2; absent, 7

No further action, 1694

Committee Proposal No. 1-75

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-75. Be it resolved by the North Dakota Constitutional Convention that sections 42, 67, 68, 69 and 70 of Article II of the constitution of the state of North Dakota be repealed; and that new sections 9, 20 and 21 of Article II of the constitution of the state of North Dakota be created; all of which pertain to the legislative process.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 172

Reported back:

Do pass, 676

Floor amendments:

1033 Adopted, 1033

Rules suspended, properly engrossed, placed on first passage, 1035

First passage:

1035-1036 Ayes, 90; nays, 1; absent, 7

No further action, 1694

Committee Proposal No. 1-76

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-76. Be it resolved by the North Dakota Constitutional Convention that section 50 of Article II of the constitution of the state of North Dakota be repealed; and that a new section 15 of Article II of the constitution of the state of North Dakota be created; both of which pertain to the openness of legislative sessions.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 172

Reported back:

Do pass, 483

Proposal laid over two days, 573

Floor amendments:

1015 Not adopted, 1018

First passage:

1020 Ayes, 87; nays, 7; absent, 4

No further action, 1694

Committee Proposal No. 1-77

Incorporated into Style and Drafting Redraft Proposal No. 5-12

Committee Proposal No. 1-77. Be it resolved by the North Dakota Constitutional Convention that sections 183 and 184 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to political subdivision debt.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 172

Reported back:

Do pass, 483

Floor amendments:

574 Not adopted, 575

First passage:

575 Ayes, 89; nays, 5; absent, 4

No further action, 1694

Committee Proposal No. 1-78

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-78. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to the death penalty, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 176

Reported back:

Do pass, 276

First passage:

455 Ayes, 76; nays, 17; absent, 5

Reported back (Style and Drafting):

Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303

Reconsideration of Style and Drafting Committee report adoption, 1351

No further action, 1694

Committee Proposal No. 1-79

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-79. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to keep arms, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 176

Reported back:

Amended, 456

Amendments adopted, 465

First passage:

580 Ayes, 77; nays, 18; absent, 3

Reconsideration:

Failed, 1030

No further action, 1694

Committee Proposal No. 1-80

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-80. Be it resolved by the North Dakota Constitutional Convention that Section 208 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the right of debtors.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 179-180

Reported back:

Amended, 662

Amendments adopted, 676

Floor amendments:

1090 Adopted, 1090

1090 Adopted, 1092

1092 Not adopted, 1093

Rules suspended, properly re-engrossed, placed on first passage, 1094

First passage:

1089 Ayes, 45; nays, 47; absent, 6 Lost

1094 Ayes, 91; nays, 3; absent, 4

Reconsideration:

Prevailed, 1090

No further action, 1694

Committee Proposal No. 1-81

Committee Proposal No. 1-81. Be it resolved by the North Dakota Constitu-

tional Convention that a new section to the constitution of the state of North Dakota, which pertains to cumulative voting for candidates for legislative office, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 177

Re-referred to Committee on Legislative Functions, 267

Reported back:

Indefinitely postponed, 736

Committee Proposal No. 1-82

Incorporated into Style and Drafting Redraft Proposal No. 5-10

Committee Proposal No. 1-82. Be it resolved by the North Dakota Constitutional Convention that section 127 of the constitution of the state of North Dakota is hereby repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to voting disqualifications.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 177

Reported back:

Do pass, 520

Floor amendments:

768 Adopted on division vote, 773

772 Amendment to amendment not adopted, 773

1162 Adopted, 1166

1166-1167 Not adopted on division vote, 1170

1332 Adopted, 1333

Proposal laid over one day, 774

Rules suspended, properly engrossed, placed on first passage, 774

Rules suspended, properly re-engrossed, placed at foot of calendar for first passage, 1172

Properly re-engrossed, placed on first passage, 1333

First passage:

1333-1334 Ayes, 88; nays, 1; absent, 9

No further action, 1694

Committee Proposal No. 1-83

Committee Proposal No. 1-83. Be it resolved by the North Dakota Constitutional Convention that section 129 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to duties of the legislature with regard to elections.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 177

Re-referred to Committee on Preamble, Bill of Rights and Suffrage, 766

Reported back:

Divided report — Majority, do pass, 520

Minority, to amend, 520

Proposal laid over two days, 521

Minority report failed on division vote, 620

Majority report adopted, 620

Placed at head of calendar, 765

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal, 1-85, 966

Committee Proposal No. 1-84

Committee Proposal No. 1-84. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to counsel for indigents in civil proceedings in which the state or its subdivisions are adverse parties, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 177

Reported back:

Do pass, 276

Floor amendments:

503 Not adopted, 504

504 Died for want of second, 504

711 Not adopted on roll call vote, 718

First passage:

505 Ayes, 39; nays, 54; absent, 5 Lost

718 Ayes, 28; nays, 68; absent, 2 Lost

Reconsideration:

Prevailed, 510

Placed at foot of calendar, 511

Committee Proposal No. 1-85

Incorporated into Style and Drafting Redraft Proposal No. 5-10

Committee Proposal No. 1-85. Be it resolved by the North Dakota Constitutional Convention that sections 121, 122, 123, 124, 125, 126, 128 and 129 of the constitution of the state of North Dakota and articles 36 and 40 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to the elective franchise.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 177

Re-referred to Committee on Preamble, Bill of Rights and Suffrage, 766

Reported back:

Do pass, 520

Amended, 966

Amendments adopted, 1047

Floor amendments:

754 Adopted, 757

757 Withdrawn, 758

759 Adopted on division vote, 760

761 Not adopted on division vote, 762

1285 Adopted, 1286

1286 Not adopted, 1287

Reconsideration of action by which amendment at page 1286 was not adopted, failed, 1290

Rules suspended, properly engrossed, placed on first passage, 764

Question divided, 760-761

Placed on calendar at a time certain, 764-765

Moved to the head of the calendar, 765

Properly re-engrossed, placed on first passage, 1290

First passage:

1291 Ayes, 81; nays, 12; absent, 5

No further action, 1694

Committee Proposal No. 1-86

Committee Proposal No. 1-86. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to making all persons over eighteen years of age adults for all purposes, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 177

Reported back:

Do pass, 483

Floor amendments:

1283 Not adopted, 1284

First passage:

592 Ayes, 73; nays, 20; absent, 5

1284 Ayes, 30; nays, 63; absent, 5 Lost

Reconsideration:

Prevailed, 962

Proposal placed at foot of calendar, 962-963

Committee Proposal No. 1-87

Incorporated into Style and Drafting Redraft Proposal No. 5-2

Committee Proposal No. 1-87. Be it resolved by the North Dakota Constitutional Convention that article 56 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to revenue from gasoline and motor vehicle registration and license taxes.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 189

Reported back:

Divided report — Majority, do pass, 676

Minority, to amend, 676

Minority report adopted on division vote, 686

Amendments not adopted, 785

Reconsideration of action not adopting amendments, 785-786

Amendments adopted, 787

Floor amendments:

1316 Not adopted on roll call vote, 1321

1322 Not adopted on division vote, 1324

First passage:

1324 Ayes, 79; nays, 13; absent, 6

No further action, 1694

Committee Proposal No. 1-88

Committee Proposal No. 1-88. Be it resolved by the North Dakota Constitutional Convention that sections 38, 40, 43, 44, 51, 54, 57, 59, 60 and 62 of Article II, section 199 of Article XIV and article 75 of the amendments to the constitution of the state of North Dakota be repealed.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 189

Reported back:

Amended, 690

Amendments adopted, 787

First passage:

1037 Ayes, 91; nays, 0; absent, 7

Repeal proposal — no further action, 1695

Committee Proposal No. 1-89

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-89. Be it resolved by the North Dakota Constitutional Convention that section 14 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to eminent domain.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 209

Reported back:

Amended, 456

Proposal laid over one day, 592

Amendments adopted, 466

Floor amendments:

975-976 Not adopted, 987

977 Amendment to amendment adopted, 980

987 Adopted, 988

988 Not adopted on division vote, 990

991 Not adopted, 992
 1120 Adopted, 1124
 1132 Adopted on division vote, 1135
 1133 Amendment to amendment adopted, 1133
 1133 Amendment to amendment adopted, 1134
 1173 Withdrawn, 1198
 1198 Adopted, 1203
 1199 Amendment to amendment adopted, 1202
 1203 Not adopted, 1205
 1205 Not adopted on division vote, 1208
 Rules suspended, properly engrossed, placed on first passage, failed on a division vote, 1125
 Rules suspended, properly re-engrossed, placed on first passage, 1131
 Motion to indefinitely postpone ruled out of order, 1122
 Proposal moved to head of calendar, 1120, 1172
 Further consideration until time certain, 1174
 Rules suspended, properly re-engrossed, placed on first passage, 1208
 First passage:
 1208 Ayes, 83; nays, 12; absent, 3
 No further action, 1694

Committee Proposal No. 1-90

Committee Proposal No. 1-90. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to laws fostering dependence on state government, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 209

Reported back:

Indefinitely postponed, 662

Committee Proposal No. 1-91

Incorporated into Style and Drafting Redraft Proposal No. 5-13

Committee Proposal No. 1-91. Be it resolved by the North Dakota Constitutional Convention that sections 74, 82 and 83 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to elections and terms, be created.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 278

Reported back:

Do pass, 667

First passage:

859 Ayes, 88; nays, 1; absent, 9

Reported back (Style and Drafting):

Amended, 1302-1303

Returned to 6th order, 1350

Reconsideration of adoption of Style and Drafting Committee report, 1350

Re-referred to Committee on Style and Drafting, 1350

No further action, 1694

Committee Proposal No. 1-92

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-92. Be it resolved by the North Dakota Constitutional Convention that section 19 of the present constitution of the state of North Dakota, which pertains to treason, be retained.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 278

Reported back:

Do pass, 483

Floor amendments:

592 Adopted, 594

1374 Adopted, 1374
Rules suspended, properly engrossed, placed on first passage, 594, 1375

First passage:
594 Ayes, 73; nays, 21; absent, 4
1375 Ayes, 86; nays, 8; absent, 4

Reconsideration:
(When Section 14 of Redraft Proposal No. 5-9) Prevailed, 1374
No further action, 1694

Committee Proposal No. 1-93

Committee Proposal No. 1-93. Be it resolved by the North Dakota Constitutional Convention that section 146 of the constitution of the state of North Dakota, which pertains to the controlling of prices, be repealed.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 278

Reported back:
Do pass, 662

First passage:
998 Ayes, 93; nays, 0; absent, 5
Repeal — no further action, 1695

Committee Proposal No. 1-94.

Committee Proposal No. 1-94. Be it resolved by the North Dakota Constitutional Convention that section 142 of the constitution of the state of North Dakota, which pertains to the regulation of common carrier corporations, be repealed.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 278

Reported back:
Do pass, 285

First passage:
506 Ayes, 84; nays, 9; absent, 5

Reported back (Style and Drafting):
Not amended, 1303

Re-referred to Committee on Style and Drafting, 1303
Reconsideration of Style and Drafting Committee report adoption, 1351
Repeal — no further action, 1695

Committee Proposal No. 1-95

Committee Proposal No. 1-95. Be it resolved by the North Dakota Constitutional Convention that section 135 of the constitution of the state of North Dakota, which pertains to cumulative voting in corporations, be repealed.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 278

Reported back:
Do pass, 285

First passage:
595 Ayes, 94; nays, 0; absent, 4
Repeal proposal — no further action, 1695

Committee Proposal No. 1-96

Incorporated into Style and Drafting Redraft Proposal No. 5-2

Committee Proposal No. 1-96. Be it resolved by the North Dakota Constitutional Convention that section 185 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to public business.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 284

Reported back:
Do pass, 690

Floor amendments:

1097 Not adopted, 1107

First passage:

1108 Ayes, 69; nays, 27; absent, 2

No further action, 1694

Committee Proposal No. 1-97

Incorporated into Style and Drafting Redraft Proposal No. 5-2

Committee Proposal No. 1-97. Be it resolved by the North Dakota Constitutional Convention that section 176 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to tax uniformity and exemptions.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 325

Reported back:

Divided report — Majority, do pass, 456, 471

Minority, to amend, 457, 471

Committee report laid over one day, 457

Minority report failed on division vote, 481

Majority report adopted, 481

Floor amendments:

595 Not adopted on division vote, 597

597 Adopted on division vote, 602

867 Not adopted, 870

870 Not adopted on division vote, 873

873 Adopted, 875

Rules suspended, properly engrossed, placed on first passage, failed, 606

Motion to lay over one day failed, 602

Proposal laid over one day, 606

Rules suspended, properly re-engrossed, placed on first passage, 875

First passage:

876 Ayes, 87; nays, 10; absent, 1

No further action, 1694

Committee Proposal No. 1-98

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-98. Be it resolved by the North Dakota Constitutional Convention that section 16 of the present constitution of the state of North Dakota, which pertains to bills of attainder, ex post facto laws and obligations of contracts, be retained.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 394

Reported back:

Do pass, 483-484

Floor amendments:

607 Not adopted, 611

607 Amendment to amendment not adopted, 610

Motion to lay over one day failed, 610

First passage:

611 Ayes, 79; nays, 14; absent, 5

No further action, 1694

Committee Proposal No. 1-99

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-99. Be it resolved by the North Dakota Constitutional Convention that article 33 of the amendments to the constitution of the state of North Dakota be repealed; and that new section 8 of Article XVI of the constitution of the state of North Dakota be created, both of which pertain to the recall of certain elected officials.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 430

Reported back:

Do pass, 664

Floor amendments:

1139 Not adopted, 1142

1142 Not adopted, 1144

First passage:

1144 Ayes, 75; nays, 19; absent, 4

No further action, 1694

Committee Proposal No. 1-100

Incorporated into Style and Drafting Redraft Proposal No. 5-13

Committee Proposal No. 1-100. Be it resolved by the North Dakota Constitutional Convention that two new sections to the constitution of the state of North Dakota, both of which pertain to the executive branch of government, be created.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 430

Re-referred (portions passed and paragraph (b) of section 1) to Executive Functions, 800

Reported back:

Do pass, 667

Amended, 1029

Amendments adopted, 1047

Floor amendments:

1150 Not adopted on division vote, 1151

Proposal moved to head of calendar, 775, 1144

Question divided, 798

First passage:

799 Excluding paragraph (b) of Section 1
Ayes, 94; nays, 3; absent, 1

1152 Excluding Section 1 (a) Section 2
Ayes, 77; nays, 18; absent, 3

No further action, 1694

Committee Proposal No. 1-101

Incorporated into Style and Drafting Redraft Proposal No. 5-7

Committee Proposal No. 1-101. Be it resolved by the North Dakota Constitutional Convention that section 139 of the constitution of the state of North Dakota be repealed; and that article XVII to the constitution of the state of North Dakota be created; both of which pertain to public utilities.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 430

Reported back:

Do pass, 484

Floor amendments:

695 Not adopted, 697

701 Adopted on division vote, 701

1108 Adopted on division vote, 1114

1111 Amendment to amendment adopted, 1111

1112 Amendment to amendment not adopted, 1114

1115 Not adopted, 1116

Motion to place at foot of calendar failed, 700

Rules suspended, properly engrossed, placed on first passage, failed, 701

Rules suspended, properly re-engrossed, placed on first passage, 1114-1115

First passage:

1116 Ayes, 63; nays, 32; absent, 3

No further action, 1694

Committee Proposal No. 1-102

Incorporated into Style and Drafting Redraft Proposal No. 5-13

Committee Proposal No. 1-102. Be it resolved by the North Dakota Constitutional Convention that sections 71 and 72 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to the executive branch of government.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 430

Reported back:

Amended, 667

Amendments adopted, 674

Proposal moved to head of calendar, 775

Floor amendments:

811 Not adopted, 813

815 Not adopted, 817

818 Adopted, 818

Rules suspended, properly re-engrossed, placed on first passage, 819

First passage:

820 Ayes, 75; nays, 23; absent, 0

No further action, 1694

Committee Proposal No. 1-103

Committee Proposal No. 1-103. Be it resolved by the North Dakota Constitutional Convention that section 81 of the constitution of the state of North Dakota be repealed.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 430

Reported back:

Do pass, 692

Floor amendments:

860 Adopted on division vote, 861

Rules suspended, properly engrossed, placed on first passage, 862

First passage:

862 Ayes, 63; nays, 27; absent, 8

Repeal — no further action, 1695

Committee Proposal No. 1-104

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-104. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to governmental immunity, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 470

Reported back:

Do pass, 662

Floor amendments:

1313 Adopted, 1314

Properly engrossed, placed on first passage, 1314

First passage:

1314 Ayes, 74; nays, 17; absent, 7

No further action, 1694

Committee Proposal No. 1-105

Incorporated into Style and Drafting Proposal No. 5-1

Committee Proposal No. 1-105. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 1 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 492

Reported back:

Do pass, 662

Floor amendments:

892 Adopted, 892

895 Not adopted, 897

Rules suspended, properly engrossed, placed on first passage, 895

First passage:

897 Ayes, 94; nays, 2; absent, 2

No further action, 1694

Committee Proposal No. 1-106

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-106. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 2 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 492

Reported back:

Do pass, 663

Floor amendments:

898 Not adopted on division vote, 900

900 Not adopted on division vote, 901

926 Not adopted on division vote, 928

Motion to delay until time certain failed, 902

Placed on calendar at time certain, 902

First passage:

928 Ayes, 72; nays, 18; absent, 8

No further action, 1694

Committee Proposal No. 1-107

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-107. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 3 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 492

Reported back:

Do pass, 663

Floor amendments:

902 Adopted, 905

Rules suspended, properly engrossed, placed on first passage, 905

First passage:

905 Ayes, 94; nays, 1; absent, 3

No further action, 1694

Committee Proposal No. 1-108

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-108. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 4 of Article XVI to the constitution of the state of North Dakota be created; all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 492

Reported back:

Do pass, 663

Floor amendments:

906 Adopted, 910

907 Amendment to amendment not adopted on roll call vote, 910

912 Not adopted, 913

Rules suspended, properly engrossed, placed on first passage, 913

First passage:

914 Ayes, 80; nays, 12; absent, 6

No further action, 1694

Committee Proposal No. 1-109

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-109. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 5 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 492

Reported back:

Do pass, 663

First passage:

915 Ayes, 86; nays, 6; absent, 6

No further action, 1694

Committee Proposal No. 1-110

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-110. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 6 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 492

Reported back:

Do pass, 663

First passage:

916 Ayes, 88; nays, 2; absent, 8

No further action, 1694

Committee Proposal No. 1-111

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-111. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed, and that a new section 7 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 492

Reported back:

Do pass, 663

First passage:

916 Ayes, 92; nays, 0; absent, 6

No further action, 1694

Committee Proposal No. 1-112

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-112. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 8 of Article XVI to the constitution

of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 493

Reported back:

Do pass, 664

Floor amendments:

916 Adopted 921

917 Amendment to amendment adopted on division vote, 918

918-919 Amendment to amendment adopted, 919

Rules suspended, properly engrossed, placed on first passage, 921-922

First passage:

922 Ayes, 88; nays, 4; absent, 6

No further action, 1694

Committee Proposal No. 1-113

Incorporated into Style and Drafting Redraft Proposal No. 5-1

Committee Proposal No. 1-113. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota be repealed; and that a new section 9 of Article XVI to the constitution of the state of North Dakota be created, all of which pertain to constitutional rights reserved in the people.

Introduced by Committee on Legislative Functions and referred to Committee on Legislative Functions, 493

Reported back:

Do pass, 664

Floor amendments:

922 Not adopted on division vote, 923

924 Not adopted on division vote, 924

925 Adopted, 925

925 Adopted, 925

Rules suspended, properly engrossed, placed on first passage, 925-926

First passage:

926 Ayes, 866; nays, 5; absent, 7

No further action, 1694

Committee Proposal No. 1-114

Committee Proposal No. 1-114. Be it resolved by the North Dakota Constitutional Convention that article XIX to the constitution of the state of North Dakota, which pertains to adverse possession of public lands, be created.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 493

Reported back:

Do pass, 521

First passage:

822 Ayes, 25; nays, 67; absent, 6 Lost

Committee Proposal No. 1-115

Incorporated into Style and Drafting Redraft Proposal No. 5-5

Committee Proposal No. 1-115. Be it resolved by the North Dakota Constitutional Convention that sections 153, 154, 155, 156, 157, 158, 160, 161, 163, 164 and 165 of the constitution of the state of North Dakota be repealed; and that article VII to the constitution of the state of North Dakota be created; all of which pertain to trust lands.

Introduced by Committee on Education, Resources and Public Lands and referred to Committee on Education, Resources and Public Lands, 493

Reported back:

Do pass, 521

Floor amendments:

826 Not adopted, 828

First passage:

829 Ayes, 98; nays, 0; absent, 0

No further action, 1694

Committee Proposal No. 1-116

Incorporated into Style and Drafting Proposal No. 5-2

Committee Proposal No. 1-116. Be it resolved by the North Dakota Constitutional Convention that section 174 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to raising of revenues.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 522

Reported back:

Do pass, 566

First passage:

884 Ayes, 55; nays, 41; absent, 2

No further action, 1694

Committee Proposal No. 1-117

Introduced by Committee on Finance and Taxation, 246

Committee Proposal No. 1-117. Be it resolved by the North Dakota Constitutional Convention that section 174 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to raising of revenues.

Introduced by Committee on Finance and Taxation and referred to Committee on Finance and Taxation, 522

Reported back:

Without recommendation, 566

Indefinitely postponed on roll call vote, 929

Committee Proposal No. 1-118

Incorporated into Style and Drafting Redraft Proposal No. 5-10

Committee Proposal No. 1-118. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to having a justiciable right to an electoral system not prejudicial to his candidacy, be created.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 522

Reported back:

Without recommendation, 664

First passage:

1043 Ayes, 57; nays, 33; absent, 8

No further action, 1694

Committee Proposal No. 1-119

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Committee Proposal No. 1-119. Be it resolved by the North Dakota Constitutional Convention that section 7 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to jury trial.

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Preamble, Bill of Rights and Suffrage, 522-523

Reported back:

Do pass, 664

Floor amendments:

1048 Adopted on roll call vote, 1063

1294 Adopted on division vote, 1295

1295 Amendment to amendment adopted, 1295

1365 Not adopted on division vote, 1368

1368 Adopted, 1369

1517 Adoption on division vote, 1521

Rules suspended, properly engrossed, placed on first passage, failed, 1063
Rules suspended, properly re-engrossed, placed on first passage, 1296, 1521
Proposal laid over one day, 1369

First passage:
1296-1300 Ayes, 78; nays, 16; absent, 4
1521 Ayes, 78; nays, 17; absent, 3

Reconsideration:
(When Section 7 of Redraft Proposal No. 5-9) Prevailed, 1364

Reported back (Style and Drafting Committee):
Amended, 1546

Amendments adopted, 1546
No further action, 1694

Committee Proposal No. 1-120

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Committee Proposal No. 1-20. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to the executive branch of government, be created.

Introduced by Committee on Executive Functions and referred to Committee on Executive Functions, 590

Reported back:
Amended, 736

Amendments adopted, 783

First passage:
1014 Ayes, 93; nays, 2; absent, 3

No further action, 1694

Committee Proposal No. 1-121

Committee Proposal No. 1-121. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota be created, pertaining to a transition schedule.

Introduced by Committee on Coordination and Transition, 1674

Rules suspended, not referred to Committee, placed on first passage, 1674

Floor amendments:

1680 Adopted, 1681
1681 Amendment to amendment adopted, 1681
1685 Adopted, 1688
1687 Amendment to amendment adopted, 1687
1688 Adopted, 1688

Rules suspended, properly engrossed, placed on first passage, 1689

First passage:
1689 Ayes, 94; nays, 0; absent, 4

Reported back (Style and Drafting Committee):
Amended 1747

Amendments adopted, 1748

Rules suspended, properly re-engrossed, placed on second passage, 1748

Second passage:
1748 Ayes, 92; nays, 0; absent, 6

No further action, 1766

DELEGATE PROPOSAL INDEX

Delegate Proposal No. 2-1

Delegate Proposal No. 2-1. Be it resolved by the North Dakota Constitutional Convention that Sections 71, 72, 75, 77, 79 and 80 of the constitution of the state of North Dakota, pertaining to the governor's executive powers, be amended.

Introduced by Delegate Tudor and referred to Committee on Executive Functions,
17

Withdrawn, 468

Delegate Proposal No. 2-2

Delegate Proposal No. 2-2. Be it resolved by the North Dakota Constitutional Convention that section 16 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bill of attainder and ex post facto laws.

Introduced by Delegate Geelan and referred to Committee on Preamble, Bill of Rights and Suffrage, 17

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-98, 484

Report not adopted on division vote, 485

Placed on calendar, 485-486

To be considered in special manner, 486

Withdrawn, 614

Delegate Proposal No. 2-3

Delegate Proposal No. 2-3. Be it resolved by the North Dakota Constitutional Convention that section 5 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the writ of habeas corpus.

Introduced by Delegate Geelan and referred to Committee on Preamble, Bill of Rights and Suffrage, 17

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal, 1-58, 486

Delegate Proposal No. 2-4

Delegate Proposal No. 2-4. Be it resolved by the North Dakota Constitutional Convention that section 14 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created, both of which pertain to eminent domain.

Introduced by Delegate Geelan and referred to Committee on Preamble, Bill of Rights and Suffrage, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-89, 486

Delegate Proposal No. 2-5

Delegate Proposal No. 2-5. Be it resolved by the North Dakota Constitutional Convention that sections 147 and 155 of the constitution of the state of North Dakota be repealed; and that two new sections to the constitution of the state of North Dakota be created; pertaining to education and school lands, respectively.

Introduced by Delegate Tudor and referred to Committee on Education, Resources and Public Lands, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-15, 217

Delegate Proposal No. 2-6

Delegate Proposal No. 2-6. Be it resolved by the North Dakota Constitutional Convention that section 121 of the constitution of the state of North Dakota and article 36 of the amendments to the constitution of the state of North Dakota, per-

taining to voting requirements and article 1 of the amendments to the constitution of the state of North Dakota, pertaining to lotteries, be repealed; and that a new section to the constitution of the state of North Dakota pertaining to voting requirements be created.

Introduced by Delegate Tudor and referred to Committee on Preamble, Bill of Rights and Suffrage, 18

Withdrawn, 670

Delegate Proposal No. 2-7

Delegate Proposal No. 2-7. Be it resolved by the North Dakota Constitutional Convention that section 25 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to matters of initiative and referendum.

Introduced by Delegate Paulson and referred to Committee on Legislative Functions, 18

Motion to return to desk prevailed, 688

Withdrawn, 1291

Delegate Proposal No. 2-8

Delegate Proposal No. 2-8. Be it resolved by the North Dakota Constitutional Convention that section 37 of the constitution of the state of North Dakota and article 51 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; all of which pertain to prohibitions against legislators holding additional state offices during their tenure in the legislative assembly.

Introduced by Delegate Paulson and referred to Committee on Legislative Functions, 18

Motion to return to desk prevailed, 688

Withdrawn, 1291

Delegate Proposal No. 2-9

Delegate Proposal No. 2-9. Be it resolved by the North Dakota Constitutional Convention that section 56 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to a limitation upon the number of days in which the legislative assembly may meet during any biennium.

Introduced by Delegate Hoffner and referred to Committee on Legislative Functions, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-37, 664-665

Delegate Proposal No. 2-10

Delegate Proposal No. 2-10. Be it resolved by the North Dakota Constitutional Convention that section 56 of the constitution of the state of North Dakota be repealed; and that section 53 of the constitution of the state of North Dakota be amended; both of which pertain to a schedule of and limitations upon the number of days in which the legislative assembly may meet during any biennium.

Introduced by Delegate Paulson and referred to Committee on Legislative Functions, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-37, 665

Delegate Proposal No. 2-11

Delegate Proposal No. 2-11. Be it resolved by the North Dakota Constitutional Convention that article IV of the constitution of the state of North Dakota be repealed, and a new article to the constitution of the state of North Dakota be created, pertaining to the judicial branch of government.

Introduced by Delegate Engelter and referred to Committee on Judicial Functions and Political Subdivisions, 18

Reported back:

Indefinitely postponed, 394

Delegate Proposal No. 2-12

Delegate Proposal No. 2-12. Be it resolved by the North Dakota Constitutional Convention that a new section of the constitution of the state of North Dakota be created, requiring that governmental meetings be open to the public.

Introduced by Delegate Rundle and referred to Committee on Judicial Functions and Political Subdivisions, 18

Reported back:

Amended, 665

Amendments adopted, 675

Floor amendments:

1020 Adopted, 1024

1023 Amendment to amendment adopted, 1023

1023 Amendment to amendment withdrawn, 1023

1025 Adopted 1025

Rules suspended, properly engrossed, placed on first passage, 1025

First passage:

1026 Ayes, 19; nays, 75; absent, 4 Lost

Delegate Proposal No. 2-13

Delegate Proposal No. 2-13. Be it resolved by the North Dakota Constitutional Convention that section 50 of the constitution of the state of North Dakota, pertaining to the openness of legislative sessions, be amended.

Introduced by Delegate Rundle and referred to Committee on Legislative Functions, 18

Motion to return to desk prevailed, 688

Withdrawn, 1276

Delegate Proposal No. 2-14

Delegate Proposal No. 2-14. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota be created to require court proceedings be open to the public.

Introduced by Delegate Rundle and referred to Committee on Judicial Functions and Political Subdivisions, 18

Reported back:

Indefinitely postponed, 665-666

Delegate Proposal No. 2-15

Delegate Proposal No. 2-15. Be it resolved by the North Dakota Constitutional Convention that sections 147 and 155 of the constitution of the state of North Dakota be repealed; and that two new sections to the constitution of the state of North Dakota be created; pertaining to education and school lands, respectively.

Introduced by Delegate Tudor and referred to Committee on Education, Resources and Public Lands, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-15, 217

Delegate Proposal No. 2-16

Delegate Proposal No. 2-16. Be it resolved by the North Dakota Constitutional Convention that section 202 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to constitutional amendments.

Introduced by Delegate Tudor and referred to Committee on Legislative Functions, 18

Motion to return to desk prevailed, 688

Withdrawn, 1291

Delegate Proposal No. 2-17

Delegate Proposal No. 2-17. Be it resolved by the North Dakota Constitutional Convention that sections 174 and 183 of the constitution of the state of North Dakota be repealed; and that two new sections to the constitution of the state of North Dakota be created, all of which pertain to finance and public debt.

Introduced by Delegate Tudor and referred to Committee on Finance and Taxation, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-23, 567

Delegate Proposal No. 2-18

Delegate Proposal No. 2-18. Be it resolved by the North Dakota Constitutional Convention that section 167 of the constitution of the state of North Dakota be repealed, that section 130 be amended and that a new section be created relating to local self-government and division of the state into counties.

Introduced by Delegate Tudor and referred to Committee on Judicial Functions and Political Subdivisions, 18

Withdrawn, 689

Delegate Proposal No. 2-19

Delegate Proposal No. 2-19. Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149 and 151 of the constitution of the state of North Dakota be repealed; and that a new section be created, all pertaining to public schools, instruction in temperance, and the prevention of illiteracy.

Introduced by Delegate Devine and referred to Committee on Education, Resources, and Public Lands, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-15, 217

Delegate Proposal No. 2-20

Delegate Proposal No. 2-20. Be it resolved by the North Dakota Constitutional Convention that article 54 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created, all pertaining to the creation, powers and duties of the state board of higher education.

Introduced by Delegate Devine and referred to Committee on Education, Resources and Public Lands, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-15, 218

Delegate Proposal No. 2-21

Delegate Proposal No. 2-21. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota be created, pertaining to environment.

Introduced by Delegates Fritzell and Sanstead and referred to Committee on Education, Resources and Public Lands, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-16, 218

Delegate Proposal No. 2-22

Delegate Proposal No. 2-22. Be it resolved by the North Dakota Constitutional Convention that article 54 of the amendments to the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to boards of education.

Introduced by Delegate Hill and referred to Committee on Education, Resources and Public Lands, 18

Withdrawn, 690

Delegate Proposal No. 2-23

Incorporated into Style and Drafting Redraft Proposal No. 5-9

Delegate Proposal No. 2-23. Be it resolved by the North Dakota Constitutional Convention that a new section be created to the constitution of the state of North Dakota, pertaining to a recognition of veterans' contributions to the state.

Introduced by Delegate Thompson and referred to Committee on Preamble, Bill of Rights and Suffrage, 18

Reported back:

Amended, 457

Amendments adopted, 467

First passage:

705 Ayes, 85; nays, 9; absent, 4

No further action, 1694

Delegate Proposal No. 2-24

Delegate Proposal No. 2-24. Be it resolved by the North Dakota Constitutional Convention that section 18 of the constitution of the state of North Dakota be repealed, and that a new section to the constitution of the state of North Dakota be created, all pertaining to the right to be secure against unreasonable search and seizure.

Introduced by Delegate Hubrig and referred to Committee on Preamble, Bill of Rights and Suffrage, 18

Withdrawn, 669

Delegate Proposal No. 2-25

Delegate Proposal No. 2-25. Be it resolved by the North Dakota Constitutional Convention that article III of the constitution of the state of North Dakota, consisting of sections 71 through 84, inclusive, be repealed; and that a new article to the constitution of the state of North Dakota be created; both of which pertain to the executive branch of government.

Introduced by Delegate Vogel and referred to Committee on Executive Functions, 18

Withdrawn, 469

Delegate Proposal No. 2-26

Incorporated into Style and Drafting Redraft Proposal No. 5-15

Delegate Proposal No. 2-26. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota, which pertains to the establishment of an independent government agency which shall receive complaints against state agencies and officials, be created.

Introduced by Delegate O'Toole and referred to Committee on Preamble, Bill of Rights and Suffrage, 18

Returned from Committee on Legislative Functions, 117

Re-referred to Committee on Preamble, Bill of Rights and Suffrage, 117

Reported back:

Do pass, 276

First passage:

711 Ayes, 69; nays, 26; absent, 3

No further action, 1694

Delegate Proposal No. 2-27

Delegate Proposal No. 2-27. Be it resolved by the North Dakota Constitutional Convention that article III of the constitution of the state of North Dakota, including sections 71 through 84 and pertaining to the executive branch of government, be amended.

Introduced by Delegate Byrne and referred to Committee on Executive Functions, 18

Withdrawn, 469

Delegate Proposal No. 2-28

Delegate Proposal No. 2-28. Be it resolved by the North Dakota Constitutional Convention that article IV of the constitution of the state of North Dakota including sections 85 through 120 be repealed, and that a new article to the constitution of the state of North Dakota be created, all pertaining to the judicial branch of government.

Introduced by Delegate Warner and referred to Committee on Judicial Functions and Political Subdivisions, 18

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-11, 690

Delegate Proposal No. 2-29

Delegate Proposal No. 2-29. Be it resolved by the North Dakota Constitutional Convention that sections 72, 74 and 77 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; and that section 73 of the constitution of the state of North Dakota be amended, all of which pertain to the office of lieutenant governor and succession to the governorship.

Introduced by Delegate Rundle and referred to Committee on Executive Functions, 18

Withdrawn, 468

Delegate Proposal No. 2-30

Delegate Proposal No. 2-30. Be it resolved by the North Dakota Constitutional Convention that section 83 of the constitution of the state of North Dakota, pertaining to the powers and duties of state officials, be repealed; that section 82 of the constitution of the state of North Dakota pertaining to the election of state officials, be amended, and that a new section to the constitution of the state of North Dakota, pertaining to reorganization of the executive department, be created.

Introduced by Delegate Baker and referred to Committee on Executive Functions, 18

Reported back:

Indefinitely postponed, 667-668

Delegate Proposal No. 2-31

Delegate Proposal No. 2-31. Be it resolved by the North Dakota Constitutional Convention that sections 188, 189, 190, 191, 192 and 193 of the constitution of the state of North Dakota be repealed; that a new section to the constitution of the state of North Dakota be created; all of which pertain to the establishment of a state militia.

Introduced by Delegate Nething and referred to Committee on Executive Functions, 18

Withdrawn, 180

Delegate Proposal No. 2-32

Delegate Proposal No. 2-32. Be it resolved by the North Dakota Constitutional Convention that section 82 of the constitution of the state of North Dakota be repealed; that three new sections to the constitution of the state of North Dakota be created; all of which pertain to the election or appointment of state officials and the organization of executive government.

Introduced by Delegate Chase and referred to Committee on Executive Functions, 18

Withdrawn, 469

Delegate Proposal No. 2-33

Delegate Proposal No. 2-33. Be it resolved by the North Dakota Constitutional Convention that articles III, VI, and X of the constitution of the state of North Dakota be repealed, and that two new articles be created, all relating to the executive branch of state government and county, city and township government.

Introduced by Delegate Hill and referred to Committee on Executive Functions, 19

Withdrawn, 469

Delegate Proposal No. 2-34

Delegate Proposal No. 2-34. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to legislative ethics, be created.

Introduced by Delegate Omdahl and referred to Committee on Legislative Functions, 19

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-34, 666

Delegate Proposal No. 2-35

Delegate Proposal No. 2-35. Be it resolved by the North Dakota Constitutional Convention that section 182 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to bonding limits for the state.

Introduced by Delegate Saugstad and referred to Committee on Finance and Taxation, 19

Motion to return to desk prevailed, 703

Withdrawn, 1292

Delegate Proposal No. 2-36

Delegate Proposal No. 2-36. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota be created, pertaining to administration of education of the visually and audibly handicapped.

Introduced by Delegate Peterson and referred to Committee on Education, Resources and Public Lands, 19

Reported back:

Indefinitely postponed, 218

Delegate Proposal No. 2-37

Delegate Proposal No. 2-37. Be it resolved by the North Dakota Constitutional Convention that sections 166, 167, 168, 169, 170, 172 and 173 of the constitution of the state of North Dakota be repealed, and a new section to the constitution of the state of North Dakota be created, pertaining to the organization of the state into districts for local government.

Introduced by Delegate Hubrig and referred to Committee on Judicial Functions and Political Subdivisions, 19

Withdrawn, 689

Delegate Proposal No. 2-38

Delegate Proposal No. 2-38. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota be created, pertaining to the right to an electoral system that is not prejudicial.

Introduced by Delegate Omdahl and referred to Committee on Preamble, Bill of Rights and Suffrage, 19

Withdrawn, 668

Delegate Proposal No. 2-39

Delegate Proposal No. 2-39. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, providing that anyone over the age of eighteen shall be an adult for all purposes, be created.

Introduced by Delegate Thompson and referred to Committee on Preamble, Bill of Rights and Suffrage, 19

Withdrawn, 669

Delegate Proposal No. 2-40

Delegate Proposal No. 2-40. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to the death penalty, be created.

Introduced by Delegate Lamb and referred to Committee on Legislative Functions, 19

Withdrawn, 668-669

Delegate Proposal No. 2-41

Delegate Proposal No. 2-41. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota be created pertaining to the call of future constitutional conventions.

Introduced by Delegate Lamb and referred to Committee on Preamble, Bill of Rights and Suffrage, 19

Reported back:

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 1-36, 691

Delegate Proposal No. 2-42

Delegate Proposal No. 2-42. Be it resolved by the North Dakota Constitutional Convention that article 56 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to dedicated funds for highways.

Introduced by Delegate Saugstad and referred to Committee on Finance and Taxation, 19

Motion to return to desk prevailed, 703

Withdrawn, 1292

Delegate Proposal No. 2-43

Delegate Proposal No. 2-43. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota pertaining to penalties for drug offenses, be created.

Introduced by Delegate Hubrig and referred to Committee on Preamble, Bill of Rights and Suffrage, 28

Reported back:

Indefinitely postponed, 116

Delegate Proposal No. 2-44

Delegate Proposal No. 2-44. Be it resolved by the North Dakota Constitutional Convention that article 54 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to education.

Introduced by Delegate Billey and referred to Committee on Education, Resources and Public Lands, 28

Withdrawn, 720

Delegate Proposal No. 2-45.

Delegate Proposal No. 2-45. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to reimbursement to counties for costs of the special election on the proposed constitution, be created.

Introduced by Delegate Dobson and referred to Committee on Finance and Taxation, 28

Withdrawn, 163

Delegate Proposal No. 2-46

Delegate Proposal No. 2-46. Be it resolved by the North Dakota Constitutional Convention that section 98 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the filling of vacancies in the offices of justice or judge.

Introduced by Delegate Dobson and referred to Committee on Judicial Functions and Political Subdivisions, 28

Withdrawn, 689

Delegate Proposal No. 2-47

Delegate Proposal No. 2-47. Be it resolved by the North Dakota Constitutional Convention that section 176 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created, both pertaining to uniformity of taxation.

Introduced by Delegate Erickson and referred to Committee on Finance and Taxation, 28

Withdrawn, 905

Delegate Proposal No. 2-48

Delegate Proposal No. 2-48. Be it resolved by the North Dakota Constitutional

Convention that a new article to the constitution of the state of North Dakota, which pertains to a Bill of Rights for minors, be created.

Introduced by Delegate Hubrig and referred to Committee on Preamble, Bill of Rights and Suffrage, 28

Reported back:

Indefinitely postponed, 457

Delegate Proposal No. 2-49

Delegate Proposal No. 2-49. Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149, 150, 151 and 152 of the constitution of the state of North Dakota be repealed; and that article V, section 1, of the constitution of the state of North Dakota be created; all of which pertain to education.

Introduced by Delegate Peterson and referred to Committee on Education, Resources and Public Lands, 28-29

Withdrawn, 720

Delegate Proposal No. 2-50

Delegate Proposal No. 2-50. Be it resolved by the North Dakota Constitutional Convention that article 56 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to dedicated funds for highways.

Introduced by Delegate Trenbeath and referred to Committee on Finance and Taxation, 29

Motion to return to desk prevailed, 703

Withdrawn, 1342

Delegate Proposal No. 2-51

Delegate Proposal No. 2-51. Be it resolved by the North Dakota Constitutional Convention that sections 25 and 202 of the constitution of the state of North Dakota, which pertain to matters of initiative and referendum and amendments to the state constitution, respectively, be amended.

Introduced by Delegate Rundle and referred to Committee on Legislative Functions, 29

Motion to return to desk prevailed, 688

Withdrawn, 964

Delegate Proposal No. 2-52

Delegate Proposal No. 2-52. Be it resolved by the North Dakota Constitutional Convention that article II of the constitution of the state of North Dakota, including sections 25 through 70 and pertaining to the legislative branch of government, be amended.

Introduced by Delegate Cart and referred to Committee on Legislative Functions, 29

Motion to return to desk prevailed, 688

Motion to withdraw denied, 1291

Reported back:

Indefinitely postponed, 1292

Delegate Proposal No. 2-53

Delegate Proposal No. 2-53. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to right to obtain employment or practice a profession, and preclusion of corporations from engaging in farming, be created.

Introduced by Delegate Brakke and referred to Committee on Preamble, Bill of Rights and Suffrage, 118

Reported back:

Indefinitely postponed, 486

Withdrawn, 487

Delegate Proposal No. 2-54

Delegate Proposal No. 2-54. Be it resolved by the North Dakota Constitutional

Convention that a new section to the constitution of the state of North Dakota, which pertains to environment, be created.

Introduced by Delegate Hubrig and referred to Committee on Education, Resources and Public Lands, 118

Reported back:

Indefinitely postponed, 567

Delegate Proposal No. 2-55

Delegate Proposal No. 2-55. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to environment, be created.

Introduced by Delegate Hubrig and referred to Committee on Education, Resources and Public Lands, 118

Reported back:

Indefinitely postponed, 567

Delegate Proposal No. 2-56

Delegate Proposal No. 2-56. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to the limitation of terms of elected officials, be created.

Introduced by Delegate Burke and referred to Committee on Judicial Functions and Political Subdivisions, 137-138

Reported back:

Indefinitely postponed, 691

Delegate Proposal No. 2-57.

Delegate Proposal No. 2-57. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to the uniform legislative treatment of corporations, be created.

Introduced by Delegate Hubrig and referred to Committee on Legislative Functions, 157

Reported back:

Indefinitely postponed, 568

Delegate Proposal No. 2-58

Delegate Proposal No. 2-58. Be it resolved by the North Dakota Constitutional Convention that section 29 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to legislative apportionment.

Introduced by Delegate Hendrickson and referred to Committee on Legislative Functions, 157

Motion to return to desk prevailed, 688

Withdrawn, 1226

Delegate Proposal No. 2-59

Delegate Proposal No. 2-59. Be it resolved by the North Dakota Constitutional Convention that section 29 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to legislative apportionment.

Introduced by Delegate Hendrickson and referred to Committee on Legislative Functions, 157

Motion to return to desk prevailed, 688

Withdrawn, 1226

Delegate Proposal No. 2-60

Delegate Proposal No. 2-60. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to property taxation, be created.

Introduced by Delegate Ketchum and referred to Committee on Legislative Functions, 157

Motion to return to desk prevailed, 703

Withdrawn, 1343

Delegate Proposal No. 2-61

Delegate Proposal No. 2-61. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to eminent domain, be created.

Introduced by Delegates Trenbeath, Saugstad, Miller, Erickson and Ketchum and referred to Committee on Preamble, Bill of Rights and Suffrage, 157-158

Withdrawn, 670

Delegate Proposal No. 2-62

Delegate Proposal No. 2-62. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to uniformity of taxation and the power to define and exempt classes of property from taxation, be created.

Introduced by Delegate Haugen and referred to Committee on Finance and Taxation, 158

Motion to return to desk prevailed, 703

Withdrawn, 928

Delegate Proposal No. 2-63

Delegate Proposal No. 2-63. Be it resolved by the North Dakota Constitutional Convention that section 74 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to the election of the governor and lieutenant governor.

Introduced by Delegate Baker and referred to Committee on Executive Functions, 158

Reported back:

Indefinitely postponed, 692

Delegate Proposal No. 2-64

Delegate Proposal No. 2-64. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, setting forth a date on which the provisions of the convention's product would become effective, be created.

Introduced by Delegate Lamb and referred to Committee on Preamble, Bill of Rights and Suffrage, 158

Reported back:

Do pass, 666

Withdrawn, 1026

Delegate Proposal No. 2-65

Delegate Proposal No. 2-65. Be it resolved by the North Dakota Constitutional Convention that sections 147, 148, 149, 150, 151, 152, and article 54 of the constitution of the state of North Dakota be repealed; and that Article V to the constitution of the state of North Dakota be created; all of which pertain to education.

Introduced by Delegate Meidinger and referred to Committee on Education, Resources and Public Lands, 177-178

Withdrawn, 720

Delegate Proposal No. 2-66

Delegate Proposal No. 2-66. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to state debt, be created.

Introduced by Delegates Saugstad and Trenbeath and referred to Committee on Finance and Taxation, 178

Motion to return to desk prevailed, 703

Withdrawn, 1342

Delegate Proposal No. 2-67

Delegate Proposal No. 2-67. Be it resolved by the North Dakota Constitutional

Convention that a new section to the constitution of the state of North Dakota, which pertains to uniformity of taxation and exemptions, be created.

Introduced by Delegate Cart and referred to Committee on Finance and Taxation, 178

Motion to return to desk prevailed, 703

Withdrawn, 934

Delegate Proposal No. 2-68

Delegate Proposal No. 2-68. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to the right to family farming, be created.

Introduced by Delegate Dobson and referred to Committee on Preamble, Bill of Rights and Suffrage, 178

Reported back:

Indefinitely postponed, 487

Delegate Proposal No. 2-69

Delegate Proposal No. 2-69. Be it resolved by the North Dakota Constitutional Convention that section 127 of the constitution of the state of North Dakota is hereby repealed; and that a new section to the constitution of the state of North Dakota be created; both of which pertain to voting disqualifications.

Introduced by Delegate Thompson and referred to Committee on Preamble, Bill of Rights and Suffrage, 178

Committee report laid over to a time certain, 278

Motion to return to desk prevailed, 703

Withdrawn, 774

Delegate Proposal No. 2-70

Delegate Proposal No. 2-70. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to uniformity of taxation and tax exemptions, be created.

Introduced by Delegate Burke and referred to Committee on Finance and Taxation, 178

Motion to return to desk prevailed, 703

Withdrawn, 928

Delegate Proposal No. 2-71

Delegate Proposal No. 2-71. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, which pertains to trust lands, be created.

Introduced by Delegate Rundle and referred to Committee on Education, Resources and Public Lands, 178

Reported back:

Indefinitely postponed, 568

Delegate Proposal No. 2-72

Delegate Proposal No. 2-72. Be it resolved by the North Dakota Constitutional Convention that sections 29 and 35 of Article II and section 214 of Article XVIII of the constitution of the state of North Dakota be repealed; and that section 4 of article II to the constitution of the state of North Dakota be created; all of which pertain to reapportionment of the state legislature.

Introduced by Delegate Dobson and referred to Committee on Legislative Functions, 178

Motion to return to desk prevailed, 688

Withdrawn, 1226

Delegate Proposal No. 2-73

Delegate Proposal No. 2-73. Be it resolved by the North Dakota Constitutional Convention that section 25 of the constitution of the state of North Dakota be repealed; and that a new section to the constitution of the state of North Dakota, pertaining to the initiative and referendum, be created.

Introduced by Delegate Hill and referred to Committee on Legislative Functions, 182

Motion to return to desk prevailed, 688

Withdrawn, 1291

Delegate Proposal No. 2-74

Delegate Proposal No. 2-74. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to rights of debtors and homesteads, be created.

Introduced by Delegate Lamb and referred to Committee on Judicial Functions and Political Subdivisions, 184

Re-referred to Committee on Preamble, Bill of Rights and Suffrage, 185

Reported back:

Indefinitely postponed, 666-667

Delegate Proposal No. 2-75

Delegate Proposal No. 2-75. Be it resolved by the North Dakota Constitutional Convention that sections 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 and 120 of the constitution of the state of North Dakota be repealed; and that article IV to the constitution of the state of North Dakota be created; all of which pertain to the judicial branch of government.

Introduced by Delegate Omdahl and referred to Committee on Finance and Taxation, 184

Re-referred to Committee on Judicial Functions and Political Subdivisions, 185

Withdrawn, 689

Delegate Proposal No. 2-76

Delegate Proposal No. 2-76. Be it resolved by the North Dakota Constitutional Convention that section 25 of Article II of the constitution of the state of North Dakota be repealed; and that three new sections of Article II to the constitution of the state of North Dakota be created; all of which pertain to the legislative branch of government.

Introduced by Delegate Engstrom and referred to Committee on Legislative Functions, 184

Motion to return to desk prevailed, 688

Withdrawn, 1291

Delegate Proposal No. 2-77

Delegate Proposal No. 2-77. Be it resolved by the North Dakota Constitutional Convention that sections 29, 35 and 214 of the constitution of the state of North Dakota be repealed; and that new sections to the constitution of the state of North Dakota be created; all pertaining to legislative reapportionment.

Introduced by Delegate Kwako and referred to Committee on Legislative Functions, 184

Withdrawn, 614

Delegate Proposal No. 2-78

Delegate Proposal No. 2-78. Be it resolved by the North Dakota Constitutional Convention that a new section to the constitution of the state of North Dakota, pertaining to non-discrimination in licensing and employment be created to read as follows:

Introduced by Delegates Burbidge, Aas, Baker, Bender, Benz, Berg, Binek, Burke, Butler, Byrne, Cart, Christensen, Dawson, Decker, Devine, Diehl, Engstrom, Erickson, Fallgatter, Hartl, Hernet, Hoghaug, Hougen, Huckle, Kessel, Ketchum, Knudson, Kretschmar, Kwako, Lander, Lerberg, Litten, Longmire, McElroy, McIntyre, Meidinger, Miller, Nething, Nicholas, Peters, Poulson, Quam, Roney, Rundle, Saugstad, Scheel, Solberg, Stanton, Thompson, Trenbeath, Tudor, Unruh and Wallin and referred to Committee on Preamble, Bill of Rights and Suffrage, 184

Reported back:

Indefinitely postponed, 487

ALTERNATE PROPOSAL INDEX

Alternate Proposal No. 4-1

Alternate Proposal to Committee Proposal No. 1-43

Alternate Proposal No. 4-1. Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-43 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot.

Introduced by Delegates Benson, Bender, Poulson, Brakke, Bassingthwaite, Aubol, Billey, Lander, Hardmeyer, Hill, Hoghaug, Hougen, Hubrig, Erickson, Fritzell, Geelan, Haugen, Decker, Larsen, Thompson, Wallin, Tudor, Simonson, Sinner, Sondreal, Urdahl, Warner, Wicks, Miller, Sullivan, Paulson, Litten, Dawson, Scheel, Roney, Vogel, Maxwell, Sanstead, Rosendahl, Peterson, Chase, Christensen, Binek, Burke, Daniels, Griffin, Gipp, Hartl, Hildebrand, Fiedler, Schmit, Engstrom, Dobson, Nicholas, O'Toole, Kelsch, Kessel and Jestrab and referred to Committee on Constitutional Ballot, 862-863.

Reported back:

Amended, 1577

Amendments adopted, 1582

Floor amendments:

1595 Not adopted, 1600

Rules suspended, properly engrossed, placed on first passage, 1583

First passage:

1601 Ayes, 59; nays, 38; absent, 1

Referred to Committee on Style and Drafting, 1601

Reported back:

Amended, 1690

Rules suspended, placed in sixth order, 1690

Amendments adopted, 1692

Rules suspended, properly re-engrossed, placed on second passage, 1692

Second passage:

1693 Ayes, 83; nays, 10; absent, 5

No further action — incorporated into Redraft Proposal No. 5-16, 1755

Alternate Proposal No. 4-2

Alternate proposal to Committee Proposal No. 1-4

Alternate Proposal No. 4-2. Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-4 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot.

Introduced by Delegates Bassingthwaite, Aas, Bender, Billey, Chase, Brakke, Cart, Ketchum, Unruh, Baker, Fallgatter, Erickson, Huckle, Rundle, Scheel, Knudson, Hougen, Trenbeath, Haugen, Stanton, Peterson, Wenstrom, Peters, Jestrab, Hernet, Paulson, Byrne, Diehl, Longmire, Warner and Christensen and referred to Committee on Constitutional Ballot, 863.

Reported back:

Indefinitely postponed, 1421

Report not adopted on roll call vote, 1429

Reported back (Committee on Constitutional Ballot):

Amended, 1577

Amendments adopted, 1610

Rules suspended, properly engrossed, placed on first passage, 1610

First passage:

1613 Ayes, 58; nays, 39; absent, 1

Reconsideration:

Prevailed, 1703

Floor amendments:

1703-1704 Adopted, 1706

1704-1705 Amendment to amendment not adopted on division vote, 1706

Rules suspended, properly re-engrossed, placed on first passage, 1706

First passage:

1707 Ayes, 65; nays, 29; absent, 4

No further action — incorporated into Redraft Proposal No. 1755

Alternate Proposal No. 4-3

Alternate proposal to Committee Proposal No. 1-102

Alternate Proposal No. 4-3. Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-102 for submission to the electorate as an alternate proposal on the Constitutional Convention Ballot.

Introduced by Delegates Stanton, Solberg, Kwako, Berg, Warner, Roney, Trenbeath, Wallin, Peters, Rundle, Baker, Erickson, Diehl, Knudson, Fallgatter, Unruh, Saugstad, Binek, Pearce, Cart, Devine, Ketchum and Benz and referred to Committee on Constitutional Ballot, 1158

Reported back:

Indefinitely postponed, 1578

Re-referred to Committee on Constitutional Ballot, 1581

Reported back:

Indefinitely postponed, 1628

Proposal laid over one day, 1632

Report not adopted on division vote, 1654

Proposal placed on calendar, 1654

Floor amendments:

1654 Not adopted on roll call vote, 1671

1671 Not adopted on division vote, 1673

First passage:

1673 Ayes, 22; nays, 73; absent, 3 Lost

Alternate Proposal No. 4-4

Alternate proposal to Committee Proposals Nos. 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112 and 1-113.

Alternate Proposal No. 4-4. Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposals Nos. 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112, 1-113 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot.

Introduced by Delegates Rundle, Stanton, Trenbeath, Kwako, Hill, Engstrom, Wallin, Sanstead, Rude, Rosendahl, Nicholas, Binek, Saugstad, Hoghaug, Knudson, Aubol, Baker, Berg, Warner, Peterson, Hougen, Fallgatter and Ketchum and referred to Committee on Constitutional Ballot, 1225

Reported back:

Amended, 1577-1578

Amendments adopted, 1623

Floor amendments:

1623 Adopted on division vote, 1624

1625 Adopted, 1626

1638-1639 Not adopted, 1639

1640 Amendment question divided, 1641

To delete Section 2 not adopted, 1643

To delete Section 5 adopted on division vote, 1645

1645 Adopted, 1646

Rules suspended, properly engrossed, placed on first passage, 1623

Rules suspended, properly re-engrossed, placed on first passage, 1626, 1646

Further consideration delayed until time certain, 1650

First passage:

1626 Ayes, 34; nays, 58; absent, 6 Lost

1651 Ayes, 73; nays, 14; absent, 11

Reconsideration:

Prevailed on division vote, 1637

No further action — incorporated into Redraft Proposal No. 5-16, 1755

Alternate Proposal No. 4-5

Alternate proposal to Committee Proposal No. 1-11

Alternate Proposal No. 4-5. Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-11 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot.

Introduced by Delegates Aubol, Bassingthwaite, Hoghaug, Rude, Sondreal, Chase, Hoffner, Hildebrand, Sinner, Rundle, Longmire, Peterson, Urdahl, Hougen, Warner, Vogel, Hill, Hardmeyer, Griffin, Gipp, Sanstead, Omdahl, Rosendahl, Daniels, Kretschmar, Larsen, Hendrickson, Fritzell, Nicholas, Wicks, Dobson, Burke, Jestrab and Haugen and referred to Committee on Constitutional Ballot, 1326, 1581

Reported back:

Indefinitely postponed, 1627

Alternate Proposal No. 4-6

Alternate proposal to Committee Proposal No. 1-44

Alternate Proposal No. 4-6. Be it resolved by the North Dakota Constitutional Convention that the following be introduced as an alternate proposal to Committee Proposal No. 1-44 for submission to the electorate as an alternate proposal on the Constitutional Convention ballot.

Introduced by Delegates Stanton, Kwako, Warner, Thompson, Unruh, Tudor, Trenbeath, Solberg, Aas, Berg, Billee, Binek, Burke, Burbidge, Roney, Baker, Cart, Rundle, Meidinger, Kretschmar, Knudson, Vogel, Peters and McElroy and referred to Committee on Constitutional Ballot, 1326, 1581

Reported back:

Indefinitely postponed, 1628

Alternate Proposal No. 4-7

Alternate Proposal No. 4-7. Be it resolved by the North Dakota Constitutional Convention that the question as to whether the proposed constitution shall contain a provision declaring persons eighteen years of age or older adults shall be submitted to the electorate as a separate issue on the Constitutional Convention Ballot:

Introduced by Committee on Preamble, Bill of Rights and Suffrage and referred to Committee on Constitutional Ballot, 1415

Reported back:

Do pass, 1577

Floor amendments:

1602 Adopted, 1604

1603 Amendment to amendment withdrawn, 1604

1605 Not adopted on roll call vote 1609

Rules suspended, properly engrossed, placed on first passage, 1609

First passage:

1610 Ayes, 66; nays, 29; absent, 3

No further action — incorporated into Redraft Proposal No. 5-16, 1755

Alternate Proposal No. 4-8

Alternate Proposal No. 4-8. Be it resolved by the North Dakota Constitutional Convention that the question as to whether the proposed constitution shall contain a right-to-work provision be submitted to the electorate as a separate issue on the Constitutional Convention Ballot.

Introduced by Delegates Poulson, Lander, Thompson, Hougen, Dobson, Hill, Kelsch, Hendrickson, Roney, Omdahl, O'Toole, Sinner, Devine, Chase, Aubol, Engelter, Larson, Urdahl, Warner and Quam and referred to Committee on Constitutional Ballot, 1431

Reported back:

Without recommendation, 1577

Floor amendments:

1614 Adopted, 1615

Rules suspended, properly engrossed, placed on first passage, 1616

First passage:

1621 Ayes, 30; nays, 67; absent, 1 Lost

Alternate Proposal No. 4-9

Alternate Proposal No. 4-9. Be it resolved by the North Dakota Constitutional Convention that the following section be introduced for submission to the electorate as a separate issue on the Constitutional Convention Ballot, and if approved by the electorate shall become a part of the proposed constitution replacing section 25 of article I of that document relating to nondiscrimination in employment.

Introduced by Delegates Hubrig, Hougen, Haugen, Rosendahl, Bassingthwaite, Larson, Aubol, Urdahl, Sanstead, Omdahl, Warner, Ketchum, Hoffner, Gipp, Maxwell, Lamb, Hoghaug, Schmit, Sondreal, Daniels, O'Toole, Brakke, Poulson, Rude, Nicholas, Hildebrand, Fiedler and Vogel and referred to Committee on Constitutional Ballot, 1537

Propriety of introduction requested with reference to Rule 18.2, 1536

Appeal ruling of the chair, lost, 1537

Reported back:

Without recommendation, 1577

Floor amendments:

1615 Adopted, 1615

Rules suspended, properly engrossed, placed on first passage, 1616

First passage:

1619 Ayes, 29; nays, 68; absent, 1 Lost

REDRAFT PROPOSAL INDEX

Style and Drafting Redraft Proposal No. 5-1

A redraft of Committee Proposals Nos. 1-99, 1-105, 1-106, 1-107, 1-108, 1-109, 1-111, 1-112 and 1-113

Style and Drafting Redraft Proposal No. 5-1. Be it resolved by the North Dakota Constitutional Convention that Article II to the constitution of the state of North Dakota which pertains to powers reserved to the people, be created.

Introduced by Committee on Style and drafting, 1390

Floor amendments:

1392 Adopted, 1392

1393 Adopted, 1394

1395 Adopted, 1395

Rules suspended, properly engrossed, placed on second passage, 1390, 1395-1396

Question divided, 1396

Second passage:

1398 Sections 2, 4, 5, 8 and 9 Ayes, 90; nays, 4; absent, 4

1398 Sections 1, 3, 6, 7 and 10 Ayes, 92; nays, 0; absent, 6

Reconsideration:

Prevailed, 1721

Final draft incorporation prevailed, 1721

No further action — incorporated into Redraft Proposal No. 5-16, 1756

Style and Drafting Committee Redraft Proposal No. 5-2

A redraft of Committee Proposals Nos. 1-23, 1-74, 1-77, 1-87, 1-96, 1-97 and 1-116

Style and Drafting Redraft Proposal No. 5-2. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to finance and public debt, be created.

Introduced by Committee on Style and Drafting, 1475

Floor amendments:

1476 Adopted, 1476

1477 Adopted, 1478

1478 Adopted, 1479

Rules suspended for substantive amendment, 1480, 1495

1480 Adopted, 1494

1487 Amendment to amendment not adopted, 1490

1490 Amendment to amendment not adopted on division vote, 1492

1493 Amendment to amendment not adopted, 1494

1494 Amendment to amendment adopted, 1494

1495-1496 Adopted, 1496

1496 Adopted, 1496

1764 Adopted, 1765

Rules suspended, properly engrossed, placed on second passage, 1497

Second passage:

1498 Section 1 Ayes, 89; nays, 6; absent, 3

1498 Section 8 Ayes, 78; nays, 18; absent, 2

1498 Section 10 Ayes, 83; nays, 15; absent, 0

1498 Sections 2, 3, 4, 5, 6, 7 and 9 Ayes, 94; nays, 4; absent, 0

1766 Section 8 and 9 Ayes, 91; nays, 3; absent, 4

Reconsideration:

Sections 8 and 9 Prevailed, 1766

Rules suspended, properly re-engrossed, placed on second passage, 1765

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-3

A redraft of Committee Proposal No. 1-11

Style and Drafting Redraft Proposal No. 5-3. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the judicial department, be created.

Introduced by Committee on Style and Drafting, 1446

Floor amendments:

1446 Adopted, 1446

1447 Adopted, 1447

1447 Adopted, 1448

1449 Adopted, 1449

1450 Adopted, 1451

Rules suspended, properly engrossed, placed on second passage, 1451

Second passage:

1451 Ayes, 93; nays, 0; absent, 5

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-4

A redraft of Committee Proposal No. 1-15

Style and Drafting Redraft Proposal No. 5-4. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to education, be created.

Introduced by Committee on Style and Drafting, 1467

Floor amendments:

1467 Adopted, 1467

1468 Adopted, 1468

1469 Adopted, 1469

Rules suspended, properly engrossed, placed on second passage, 1470

Second passage:

1470 Ayes, 94; nays, 0; absent, 4

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-5

A redraft of Committee Proposals Nos. 1-18 and 1-115

Style and Drafting Redraft Proposal No. 5-5. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to trust lands, be created.

Introduced by Committee on Style and Drafting, 1470

Floor amendments:

1470 Adopted, 1471

1471 Adopted, 1471

1473 Adopted, 1474

Rules suspended, properly engrossed, placed on second passage, 1475

Second passage:

1475 Ayes, 96; nays, 0; absent, 2

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-6

Style and Drafting Redraft Proposal No. 5-6. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to name, boundary, seal and capital, be created.

Introduced by Committee on Style and Drafting, 1535

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 5-15, 1536

Style and Drafting Committee Redraft Proposal No. 5-7

A redraft of Committee Proposals Nos. 1-12 and 1-101

Style and Drafting Redraft Proposal No. 5-7. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to political subdivisions, be created.

Introduced by Committee on Style and Drafting, 1451

Floor amendments:

1452 Adopted, 1452

1453 Adopted, 1453

1454 Not adopted, 1457

1458 Withdrawn, 1460
 Rules suspended for substantive amendment, 1461
 1461 Adopted, 1461
 1461-1462 Adopted, 1462
 1729 Adopted on division vote, 1735
 1732 Amendment to amendment not adopted, 1733
 Rules suspended, properly engrossed, placed on second passage, 1465, 1736
 Question divided, 1463, 1465

Second passage:

1466 Sections 1-10 Ayes, 94; nays, 1; absent, 3
 1466 Section 11 Ayes, 75; nays, 19; absent, 4
 1466 Section 12 Ayes, 60; nays, 35; absent, 3
 1736 Section 11 Ayes, 69; nays, 25; absent, 4

Reconsideration:

Section 11 (passed as Section 10 of Committee Proposal No. 1-10)
 failed on division vote, 1725

Section 11 (passed as Section 10 of Committee Proposal No. 1-10)
 prevailed on division vote, 1728

Section 11 (Section 10 of Committee Proposal No. 1-10)
 placed on first passage on division vote, 1729

Rules suspended, properly engrossed, Section 11 placed on first passage, 1735

First passage:

1736 Section 11 Ayes, 63; nays, 32; absent, 3

Re-referred to Committee on Style and Drafting, 1736

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-8

A redraft of Committee Proposal No. 1-1

Style and Drafting Redraft Proposal No. 5-8. Be it resolved by the North Dakota Constitutional Convention that the preamble to the constitution of the state of North Dakota be created.

Introduced by Committee on Style and Drafting, 1351

Second passage:

1353 Ayes, 93; nays, 1; absent, 4

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-9

A redraft of Committee Proposals Nos. 1-46, 1-47, 1-48, 1-49, 1-53, 1-57, 1-58, 1-59, 1-60, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-68, 1-71, 1-72, 1-73, 1-78, 1-79, 1-80, 1-89, 1-92, 1-98, 1-104, 1-119 and Delegate Proposal No. 2-22

Style and Drafting Redraft Proposal No. 5-9. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the declaration of rights, be created.

Introduced by Committee on Style and Drafting, 1354

Floor amendments:

	1354	Adopted, 1354
When Section 7 was reconsidered	1360	Adopted, 1361
as Committee Proposal No. 1-119	1365	Not adopted on division vote, 1368
	1368	Adopted, 1369
		Further consideration of Section 7 (as Committee Proposal No. 1-119) laid over one day, 1369
When Section 14 was reconsidered	1374	Adopted, 1374
as Committee Proposal No. 1-92		

Amended Committee Proposal No. 1-92 incorporated as Section 14 in Redraft Proposal No. 5-9, 1375

1378 Out of order, 1379
1382 Out of order, 1383
1383 Adopted, 1384
1384 Adopted, 1384
1384 Withdrawn, 1385
1385 Not adopted, 1385
1517 Adopted on division vote, 1521

When Section 7 was reconsidered
as Committee Proposal No. 1-119

Reported back (Style and Drafting Committee):

Amended and incorporated into Redraft Proposal No. 5-9, 1546

Amendments adopted and incorporated into Redraft Proposal No. 5-9, 1546

Rules suspended, properly engrossed, placed on second passage, 1375, 1386, 1547

Question divided, 1356, 1358, 1359

1357 Section 1 Ayes, 93; nays, 1; absent, 4
1357 Section 2 Ayes, 94; nays, 0; absent, 4
1362 Sections 3, 4, 5, 6, 8 Ayes, 97; nays, 0; absent, 1
1386 Sections 9-28 Ayes, 92; nays, 4; absent, 2
1547 Section 7 Ayes, 76; nays, 9; absent, 13

Reconsideration:

Section 7 (passed as Committee Proposal 1-119) prevailed, 1364
Section 14 (passed as Committee Proposal 1-92) prevailed, 1374
Section 15 (passed as Committee Proposal 1-58) failed, 1378
Section 22 (passed as Committee Proposal 1-104) failed, 1738

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-10

A redraft of Committee Proposals Nos. 1-82, 1-85 and 1-118

Style and Drafting Redraft Proposal No. 5-10. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the elective franchise, be created.

Introduced by Committee on Style and Drafting, 1386

Floor amendments:

1387-1388 Adopted, 1388

Question divided, 1389

Rules suspended, properly engrossed, placed on second passage, 1389

Second passage:

1389 Section 1 Ayes, 89; nays, 4; absent, 5
1389 Section 2 Ayes, 93; nays, 3; absent, 2
1389-1390 Section 3 Ayes, 84; nays, 11; absent, 3

Re-referred to Committee on Style and Drafting, 425

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-11

Style and Drafting Redraft Proposal No. 5-11. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to general provisions, be created.

Introduced by Committee on Style and Drafting, 1535

Indefinitely postponed, such proposal having been incorporated into Committee Proposal 5-15, 1536

Style and Drafting Committee Redraft Proposal No. 5-12

A redraft of Committee Proposals Nos. 1-29, 1-36, 1-37, 1-38, 1-39, 1-40, 1-43, 1-44, 1-45, 1-70, 1-75 and 1-86

Style and Drafting Redraft Proposal No. 5-12. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the legislative department, be created.

Introduced by Committee on Style and Drafting, 1399

Reconsideration of passage, Section 4, passed as Committee Proposal 1-38; withdrawn, 1403

Floor amendments:

	1400-1401	Adopted, 1401
	1401	Adopted, 1401
	1403	Adopted, 1403
	1404	Adopted on division vote, 1407
	1404	Amendment to amendment not adopted on division vote, 1406
	1408	Adopted, 1409
	1409	Adopted, 1411
	1411	Adopted, 1412
	1413	Adopted, 1414
When Section 6 was reconsidered	1503-1504	Not adopted, 1510
as Section 5 of Committee	1510	Adopted, 1511
Proposal 1-44:	1511	Not adopted, 1512
	1514	Adopted, 1515

Reported back (Style and Drafting Committee):

Amended and incorporated into Redraft Proposal No. 5-12, 1540

Amendments adopted and incorporated into Redraft Proposal No. 5-12, 1541

Floor amendments:

1542 Adopted, 1542
1544 Adopted, 1545
1544 Amendment to amendment adopted, 1545
1573 Adopted, 1575

Rules suspended, properly engrossed, placed on second passage, 1414

Second passage:

1414 Ayes, 88; nays, 4; absent, 6
1545 Ayes, 87; nays, 2; absent, 9
1576 Ayes, 85; nays, 11; absent, 2

Reconsideration:

Section 6 (Section 5 of Committee Proposal No. 1-44) prevailed, 1500
Prevailed, 1540, 1720
Section 4 prevailed, 1573

Rules suspended, properly re-engrossed, placed on second passage, 1545, 1575

Referred to Committee on Style and Drafting, 1720

No further action — incorporated into Redraft Proposal No. 5-16, 1756

Style and Drafting Committee Redraft Proposal No. 5-13

A redraft of Committee Proposals Nos. 1-25, 1-26, 1-27, 1-28, 1-91, 1-100 and 1-102

Style and Drafting Redraft Proposal No. 5-13. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the executive department, be created.

Introduced by Committee on Style and Drafting, 1433

Floor amendments:

1434 Adopted, 1434
1434 Adopted, 1434
1436 Adopted, 1441
1443 Adopted, 1443
1444 Adopted, 1444
1445 Adopted, 1445
1763 Adopted, 1764

Second passage:

1446 Ayes, 90; nays, 4; absent, 4
1766 Section 8 Ayes, 94; nays, 0; absent, 4

Reconsideration:

Section 8 prevailed, 1766

Rules suspended, properly re-engrossed, placed on second passage, 1762

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-14

A redraft of Committee Proposal No. 1-13

Style and Drafting Redraft Proposal No. 5-14. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to the compact with the United States, be created.

Introduced by Committee on Style and Drafting, 1523

Floor amendments:

1523-1524 Adopted, 1524

Rules suspended, properly engrossed, placed on second passage, 1524-1525

Second passage:

1525 Ayes, 93; nays, 1; absent, 4

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-15

A redraft of Committee Proposals Nos. 1-10, 1-14, 1-16, 1-18, 1-19, 1-20, 1-30, 1-32, 1-33, 1-34, 1-120 and Delegate Proposal No. 2-26

Style and Drafting Redraft Proposal No. 5-15. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to general provisions, be created.

Introduced by Committee on Style and Drafting, 1526

Floor amendments:

1526 Out of order, 1527

1530 Adopted, 1530

Rules suspended for substantive amendment, 1531

1531 Adopted on division vote, 1533

1532 Amendment to amendment withdrawn, 1533

Rules suspended, properly engrossed, placed on second passage, 1533

Question divided, 1528, 1534

Second passage:

1534 Section 5 Ayes, 65; nays, 28; absent, 5

1535 Section 6 Ayes, 79; nays, 14; absent, 5

1535 Section 8 Ayes, 86; nays, 8; absent, 4

1535 Section 1, 2, 3, 4, 7, 9, 10, 11, 12 and 13 Ayes, 93; nays, 1; absent, 4

Reconsideration:

Section 5 Failed, 1743

Section 6 Failed, 1744

No further action, 1766

Style and Drafting Committee Redraft Proposal No. 5-16

A redraft of Style and Drafting Redraft Proposals Nos. 5-1, 5-12, and Alternate Proposals Nos. 4-1, 4-2, 4-4 and 4-7

Style and Drafting Committee Proposal No. 5-16. Be it resolved by the North Dakota Constitutional Convention that a new article to the constitution of the state of North Dakota which pertains to an adoption schedule and ballot, be created.

Introduced by Committee on Style and Drafting, 1748

Floor amendments:

1753 Adopted, 1753

Rules suspended, properly engrossed, placed on second passage, 1755

Second passage:

1755 Ayes, 83; nays, 8; absent, 7

No further action, 1766

Final Draft — Proposed 1972 Constitution

Introduced by Committee on Style and Drafting, 1763

Committee report introducing final draft adopted, 1763

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Resolution No. A. A resolution recommending that the 43rd Legislative Assembly appropriate moneys for the costs of the special election on the Constitutional Convention's proposed constitution.

Introduced by Committee on Finance and Taxation, 262

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Resolution No. B

Resolution No. B. A resolution wishing for a speedy recovery of Delegate Darold Benz and return to his duties at the Constitutional Convention.

Introduced by Committee on Resolutions, 264

Motion prevailed to have rules suspended, Resolution read in its entirety, placed in the Journal, not printed as a Proposal, placed on final passage, 265

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Resolution No. C

Resolution No. C. A resolution expressing the best wishes of the North Dakota Constitutional Convention to the Constitutional Convention of the State of Montana.

Introduced by Committee on Resolutions, 323

Motion prevailed to have rules suspended, Resolution read in its entirety, placed in the Journal, not printed as a Proposal, and placed on final passage, 324

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Resolution No. D

Resolution No. D. A resolution expressing sympathy to the family of Delegate Binek.

Introduced by Committee on Resolutions, 703

Motion prevailed to have the rules suspended, not referred to Committee and placed before Convention for final passage, 703.

Resolution read, 703

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Resolution No. E

Resolution No. E. A resolution expressing gratitude for the use of the library facilities of the North Dakota Supreme Court.

Introduced by Committee on Resolutions, 1348

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1349

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Resolution No. F

Resolution No. F. A resolution expressing the gratitude of the Convention to the University of North Dakota for its generous support and sponsorship of informational meetings on the subject of constitutional revision.

Introduced by Committee on Resolutions, 1349

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1350

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Resolution No. G. A resolution expressing the gratitude of the Constitutional

Convention to the chorus of the Bismarck Elks Lodge No. 1199 for performing at the opening session of the plenary session.

Introduced by Resolutions Committee, 1415

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1416

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Resolution No. H

Resolution No. H. A resolution expressing appreciation to the North Dakota National Guard and to Major General LeClair A. Melhouse for their assistance to the North Dakota Constitutional Convention in the opening ceremony of the plenary session on January 3, 1972.

Introduced by Resolutions Committee, 1416

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1417

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Resolution No. I

Resolution No. I. A resolution expressing appreciation to the North Dakota Highway Department for the use of their facilities and for other assistance.

Introduced by Resolutions Committee, 1417

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Resolution No. J. A resolution expressing appreciation to Delegate Joseph Byrne for his efforts in securing federal funds for the use of the Convention.

Introduced by Resolutions Committee, 1417

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Resolution No. K. A resolution expressing the gratitude of the Convention to the Grand Forks Red River High School Band for its performance at the opening ceremonies of the Constitutional Convention's plenary session.

Introduced by Resolutions Committee, 1419

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Resolution No. L. A resolution requesting that the area of taxation of the extractive industries be investigated by the investigative branch of the legislature.

Introduced by Delegates Meidinger, Trenbeath, Poulson, Larsen, Lander, Litten, Engstrom, Griffin, Sullivan, Jestrab, Fritzell, Hernett, Knudson and Christensen and referred to Committee on Resolutions, 1433

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Resolution No. M. A resolution expressing the appreciation of the Constitutional Convention to the Honorable William L. Guy, Governor of the state of North Dakota, for his generous support of the cause of constitutional revision.

Introduced by Resolutions Committee, 1539

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1539

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Resolution No. N. A resolution expressing the intent of the Convention as to the form of the question on the adoption of the proposed 1972 constitution.

Introduced by Committee on Constitutional Ballot, 1566

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Resolution No. O

Resolution No. O. A resolution expressing the gratitude of all the delegates to the employees of the Convention who have contributed so much to its success, and to making it an enjoyable experience.

Introduced by Resolutions Committee, 1775

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1776

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Resolution No. P

Resolution No. P. A resolution urging the secretary of state to employ boldface or italicized type in the preparation of the official ballot for the proposed 1972 constitution.

Introduced by Resolutions Committee, 1746

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Resolution No. Q. A resolution vesting the president of the Constitutional Convention with the authority to perform all necessary acts relative to the Convention after its adjournment.

Introduced by Resolutions Committee, 1756

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Resolution No. R. A resolution expressing the gratitude of the Convention to the State Library Commission and its employees for the many services rendered to the delegates, committees and staff.

Introduced by Resolutions Committee, 1759

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1760

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Resolution No. S. A resolution expressing the gratitude of all the delegates of the North Dakota Constitutional Convention for the efforts the staff of the Convention has expended to make the work of each delegate to the Convention most pleasant and to make the Convention most successful.

Introduced by Resolutions Committee, 1777

Motion prevailed to have rules suspended, not referred to Committee, placed before Convention for final passage, 1777

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Abbreviations used in this index are as follows:

A.P.	Alternate Proposal
C.P.	Committee Proposal
D.P.	Delegate Proposal
R.P.	Style and Drafting Committee Redraft Proposal

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