CONSTITUTIONAL LAW—RIGHT OF GRAND JURY TO OPEN AND EXAMINE PRIMARY BALLOT BOXES—[Missouri].—Suit was brought in *State ex rel. Dengel v. Hartman*[1] to prohibit the respondent, judge of the Missouri Circuit Court, from issuing an order compelling the production of primary-election ballot boxes for the purpose of a grand jury investigation. The Supreme Court of Missouri, on appeal, refused to issue the writ of prohibition, saying that by virtue of Article 8, Sec. 3 of the Missouri Constitution,[2] grand juries, in the course of investigation, are authorized to open primary ballot boxes. This case is one of first impression.

The language of the constitutional provision is ambiguous. It reads in part: "All elections by the people shall be by ballot. . . . All election officials shall be sworn not to disclose how any voter shall have voted. Provided that in cases of contested elections, grand jury investigations, and the trial of all civil and criminal cases in which the violation of any law relating to elections, including nominating elections, is under investigation, or at issue, such officers may be required to testify, and the ballots cast may be opened, examined, counted, compared with the list of voters, and received as evidence."

The case of *State ex rel. Holman v. McElhinney*[3] had held that the addition of the phrase "including nominating elections" to an exception to the inviolacy of the secrecy of ballots, by implication extended the constitutional guaranty of a secret ballot to primaries. The original construction of Article 8, Sec. 3,[4] prior to the addition of this clause, had been to the contrary.[5] Thereupon the legislature extended the exceptions specifically to primaries,[6] and in 1924 the clause referred to was added to the constitutional provision.[7]

The problem before the court in the principal case, obviously, was whether the clause "including nominating elections" applied only to the trial of civil or criminal cases, involving violations of election laws, or whether it applied to cases of contested elections and grand jury investigations as well. The relator, urging the narrower, literal construction, cited as authority *Goldman v. Hiller*[8] and *State ex rel. Dorsay v. Sprague*.[9] The contrary result reached by the court accords with the distinct modern trend in statutory construction of ambiguous legislation.

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1. State ex rel. Dengel v. Hartman, 96 S. W. (2d) 329 (Mo., 1936).
2. Mo. Const., Art. 8, Sec. 3 (1924).
3. State ex rel. Holman v. McElhinney, 315 Mo. 731, 286 S. W. 951 (1926).
4. Art. 8, Sec. 3 prior to its amendment in 1924 declared all elections were to be secret, and by ballot. Exceptions to this secrecy were allowed in grand jury investigations.
5. State ex rel. Feinstein v. Hartman, 231 S. W. 982 (Mo., 1921) in accordance with prior decisions held that the term elections as used in Art. 8, Sec. 3 did not include primaries.
6. R. S. Mo. 1929, sec. 1716; R. S. Mo. 1919 sec. 5403.
7. Mo. Const., Art. 8, Sec. 3 (1924).
8. State ex rel. Goldman v. Hiller, 278 S. W. 708 (Mo., 1926).
9. State ex rel. Dorsay v. Sprague, 326 Mo. 654 (1930), 33 S. W. (2d) 102.

The provision involved in the case at bar lies within that area of ambiguity in which modern courts will give expression of the framers' intent.[10] The court reaches a sound result in view of the growing importance of primaries in the election process, and one which accords with the framers' probable intent, since the term "election" of Art. 8, Sec. 3, had, before 1924, been held not to include primaries,[11] and in view of the legislative attempt at that time to rectify such interpretation by legislation and by proposing the constitutional amendment.[12]

W. A. H.

CONTRACTS—MUTUAL PROMISES AS CONSIDERATION FOR CHARITABLE SUBSCRIPTIONS—[Federal].—In the recent case of *Baker University v. Clelland*,[1] the Eighth Circuit Court of Appeals stated by way of dictum that in Missouri the subscription of one subscriber to a charitable institution does not constitute consideration for the subscription of another.

This dictum was based on the decision of the St. Louis Court of Appeals in the case of *Methodist Orphans' Home Association v. Sharp*.[2] That case, however, can be distinguished from cases involving the ordinary subscription contract,[3] in that there was no pretense of a contract, and the instrument did not express or even imply that there was consideration. There is a distinct difference between such an instrument and a subscription contract for a donee beneficiary in which the expressed consideration is the subscription of others. The dictum in the instant case might tend to be misleading, as there has been no decision by the Missouri appellate courts as to the validity or invalidity of such a subscription contract.

The modern tendency is to make subscriptions to charitable institutions binding wherever that can be done without entirely overstepping established rules requiring consideration.[4] A number of states have held that the mutual promises of subscribers are binding.[5] The result is probably based on public policy since most charitable institutions depend almost en-

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10. State ex rel. Russel et al. v. Highway Commission, 328 Mo. 942, 25 S. W. (2d) 196 (1931); Lovins v. City of St. Louis, 336 Mo. 1194, 84 S. W. (2d) 127 (1935).
11. Supra, note 5.
12. Supra, note 6.

1. Trustees of Baker University v. Clelland, 86 F. (2d) 14 (C. C. A. 8, 1936).
2. Methodist Orphans' Home Association v. Sharp, 6 Mo. App. 150 (1878).
3. Example of ordinary subscription contract: "Because of my interest in the organization, and in consideration of the promises of others, I the undersigned promise to pay —— dollars."
4. 38 A. L. R. 869 (1925).
5. Brokaw v. McElroy, 162 Iowa 288, 143 N. W. 1087, 50 L. R. A. (N. S.) 835 (1913); Greenville Supply Co. v. Whitehurst, 202 N. C. 413, 163 S. E. 446 (1932); Catner College v. Hyland, 133 Kan. 322, 299 Pac. 607 (1931); Petty v. Church of Christ, etc., 95 Ind. 278 (1884); Waters v. Union Trust Co., 129 Mich. 640, 89 N. W. 687 (1902).