nent American political scientists has suggested the use of the Hare system of the single transferable vote (popularly known as "P. R.") in the election of state legislatures.[28] It would seem, in view of the difficulties encountered in operating the single-member district system, that other methods of electing the Missouri general assembly may be examined with profit by a constitutional convention.[29]

J. L. D.
R. S. S.

STATE CONSTITUTIONAL PROHIBITIONS AGAINST OFFICE-HOLDING BY LEGISLATORS

COMMISSION ON INTERSTATE COOPERATION

The Constitution of California prohibits a member of the legislature from holding any "office, trust, or employment" under the state.[1] A statute established the California Commission on Interstate Cooperation, consisting of five members of each house of the legislature, for the purpose of investigating legislative problems common to the several states. No compensation was provided, but members might receive reimbursement for necessary expenses. Plaintiffs, members of the Commission, sought a writ of mandate to compel defendant, Controller of the State of California, to issue warrants reimbursing them for sums expended in carrying out the duties of the Commission. In *Parker v. Riley*,[2] it was *held* that the writ would issue, since the legislature has the right to legislate on the problems handled by the Commission; and, when it has the right to act, it must be given the use of

entirely solved. For a suggestion which would seem more nearly to avoid the dilemma, see Hilpert, supra, at 491: "If instead the total legislative membership only were determined and these were allocated to each district in each election upon the basis of the proportion the total vote of that district bore to the total vote of the state, not only would the objections stated in the preceding paragraph be met, but a further inducement to 'get out the vote,' would be provided. Or, the total legislative membership could be left variable and the quota necessary to elect a member be determined—each district's membership being dependent upon the number of times its total vote fills this quota. A similar arrangement is provided in the new New York City charter for determining the representation as among the several boroughs, although the councilmanic representation of each borough is elected by the Hare system of the single transferable vote."

28. National Municipal League, *Model State Constitution* (1941) §302.

29. This would seem to be more desirable since the proponents of these election systems claim for them advantages other than merely the avoidance of the perplexing problem discussed in this note.

1. Cal. Const. (1879) Art. IV, Sec. 19.
2. (1941) 113 P. (2d) 873.

reasonable means to perform that act. The members of the Commission therefore hold no *new* "office" within the constitutional prohibition, and the Commission itself was a *committee* of the legislature, properly created.

The creation of interstate cooperation commissions fills a great need for intelligent handling of common state problems which are similar enough to require similar solutions or which may require concurrent action by several states. These commissioners have in recent years been instrumental in preventing the erection of interstate trade barriers, working out a practical and advantageous system of state relief, developing a comprehensive and constructive program of taxation, and fostering numerous other advances in state legislation.[3] The model commission, as proposed by the Council of State Governments, includes ten legislators and five administrative officials, the former appointed by the legislature, the latter by the governor.[4] These commissions have been established in forty-four states;[5] in forty-one they have been established by legislative action—in the remaining three, official agencies have been appointed by the governor pending the establishment of a statutory commission.[6] The commission involved in the principal case was composed entirely of legislators.

The court held that the California Commission was properly created as a committee of the legislature. A state legislature may, either by single house or by concurrent resolution, appoint committees for the purpose of obtaining information concerning proposed legislation, with power to sit during a session or during recess.[7] However, neither house may appoint a committee with power to sit after adjournment.[8] Some courts have held that such interim committees may be appointed by concurrent resolu-

3. Council of State Governments, 4 *Book of the States* (1941-1942) 15 ff.

4. Id., at 15.

5. The states which do not have such commissions are: Arizona; Idaho; North Dakota; Washington.

6. Council of State Governments, 4 *Book of the States* (1941-1942) 15 ff.

7. Dickinson v. Johnson (1915) 117 Ark. 582, 176 S. W. 116, L. R. A. 1915E, 496, Ann. Cas. 1916B, 1067; In re Battelle (1929) 207 Cal. 227, 277 Pac. 725, 65 A. L. R. 1497; Fergus v. Russel (1915) 270 Ill. 304, 110 N. E. 130, Ann. Cas. 1916B, 1120.

8. Tipton v. Parker (1903) 71 Ark. 193, 74 S. W. 298; State v. Guilbert (1906) 75 Ohio St. 1, 78 N. E. 931; Commonwealth v. Costello (1912) 21 Pa. Dist. Rep. 232; Ex parte Caldwell (1906) 61 W. Va. 49, 55 S. E. 910, 10 L. R. A. (N. S.) 172, 11 Ann. Cas. 646; see State v. Childers (1923) 90 Okla. 11, 215 Pac. 773; Brown v. Brancato (1936) 321 Pa. 54, 184 Atl. 89. The court in the *Childers* case, after reviewing the authorities, concluded that this is the general state rule; but, for the federal rule, which is contra, see McGrain v. Daugherty (1926) 273 U. S. 135, where it was held that the Senate is a continuing body.

tion,[9] but usually a concurrent resolution in states so holding is handled procedurally just as a statute.[10] Other courts have stated that a committee with power to sit after adjournment can be created only by statute.[11] The California court adopted the latter view in *Swing v. Riley*.[12] The Commission in the principal case (considered by the court as an interim committee) was created by statute in accordance with that decision.

Since most state constitutions contain a provision similar to that of California, prohibiting members of the legislature from holding any other office of trust or profit,[13] the question may arise in other jurisdictions, especially where the commissions consist of members and non-members of the legislature. In a commission composed of ten members and five non-members (as is the usual case) the non-members of the legislature might very well hold the balance of power in the commission and thus the policy of the legislature would be controlled by outsiders. Such a commission might be considered an extra-legislative body, and legislators serving on it considered as holding a *new* office. But such a result, in the opinion of the writer, would be very unwise, because the power to appoint a committee composed of private

9. In re Davis (1897) 58 Kan. 368, 49 Pac. 160; People v. Backer (1920) 113 Misc. 400, 185 N. Y. S. 459; People v. Hofstadter (1932) 258 N. Y. 425, 180 N. E. 106, 79 A. L. R. 1208; Terrell v. King (1929) 118 Tex. 237, 14 S. W. (2d) 786; Sullivan v. Hill (1913) 73 W. Va. 49, 79 S. E. 670, Ann. Cas. 1916B, 1115.

10. That is, they are passed by both houses and are signed by the governor, thus having the effect of law. For example, see Tex. Const. (1876) Art. IV, §15.

11. Dickinson v. Johnson (1915) 117 Ark. 582, 176 S. W. 116, L. R. A. 1915E, 496, Ann. Cas. 1916B, 1067; Stockman v. Leddy (1912) 55 Colo. 24, 129 Pac. 220, Ann. Cas. 1916B, 1052; Fergus v. Russel (1915) 270 Ill. 304, 110 N. E. 130, Ann. Cas. 1916B, 1120; Ex parte Hague (1929) 105 N. J. Eq. 134, 147 Atl. 220; State v. Gayman (1908) 31 Ohio Cir. Ct. Rep. 59.

12. (1939) 90 P. (2d) 313.

13. For a collection of state constitutions, see New York State Constitutional Convention Committee, *Constitutions of the States and the United States* (1938); for phraseology of the usual provision, see Pa. Const. (1874) Art. II, §6 ("Civil office"); Ill. Const. (1870) Art. IV, §3 ("Lucrative office except justice of the peace or notary public"); Mich. Const. (1909) Art. V, §6 ("Any office under United States or this State"). The Mo. Const. (1875) art. IV, §12, is similar to the Michigan provision, and reads, "No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this state, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justices of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress."

citizens as well as legislators has been held to rest upon the doctrine that a committee may appoint all outside help or counsel needed to accomplish its purpose,[14] and to hold differently would seriously hamper the legislature in handling an important part of its work, namely interstate cooperation. Moreover, the commissions as so composed demonstrate an actual development by the states, within the framework of their present separation of powers, toward accomplishing a degree of the executive-legislative coordination thought desirable by political science theorists.[15]

R. S. S.

EFFECT OF CIVIL RIGHTS OF PARDON IN FORUM FOR CRIME COMMITTED IN ANOTHER JURISDICTION

Defendant was convicted of a felony in a federal court. For this crime he would have served two years in a federal penitentiary, but was released on a federal parole after serving part of his term. The full period of his sentence having expired, he was issued a certificate of restoration of the rights of citizenship by the Kentucky governor, and he thereupon sought nomination for the position of sheriff in a county in that state. Plaintiffs contended that by virtue of his conviction he became disqualified either to vote or hold office under the constitution and laws of the state[1] and could not be nominated in the primary election because of such disqualification, despite the gubernatorial pardon. *Held,* that even though the conviction was in the federal court of a federal crime, the disqualification which resulted, *viz.*, the

14. The court so held in Terrell v. King (1929) 118 Tex. 237, 14 S. W. (2d) 786, where the legislature directed the payment of expenses of a Tax Survey Committee, composed of legislators and non-legislators, from its contingent fund. *Held,* this was a proper exercise of the committee power of the legislature. The California court in the principal case uses strong dictum to the effect that such is the view of that court.

15. For example, section 29 of the Model State Constitution (National Municipal League (1921)) would provide for a legislative council composed of seven legislators and the governor.

1. Ky. Const. (1891) §§145, 150. Section 145, part 1, provides: "Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage" shall not have the right to vote; "but persons hereby excluded may be restored to their civil rights by executive pardon."

Section 150 provides: " * * * All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or of such high misdemeanor as may be prescribed by law, but such disability may be removed by pardon of the governor." These are typical constitutional provisions of the American states. Cf. Mo. Const. (1875) art. VIII, §2.