

## THE PROPOSED NEW CONSTITUTION OF ILLINOIS, 1922.

Changed conditions, increased experience, dissatisfaction among some classes and increasing knowledge demand from time to time adjustments in the basic laws of our Government.

Adjustments are made in the Federal Government by amendments to the Constitution. We are now passing through a transitional period and as a result four amendments have been added to our Federal Constitution since 1909, the first amendments that have been made since 1870.

State governments usually change their basic law by adopting a new constitution. This Missouri contemplates doing. At this time the Constitutional Convention is assembled in Jefferson City working on a new constitution for the State of Missouri. The greatest problems of Missouri are practically the problems of the other States in the Union.

It would therefore be interesting and profitable to study and consider the work of a similar convention in one of the great sister States. The Constitutional Convention of Illinois has just drafted a constitution which will be submitted to the voters in December of this year. Briefly then, may I point out the salient features of this document, which, in these days of political party control, the makers call at the outset a compromise constitution. In this paper only the improvements made and the outstanding features will be discussed.

### BILL OF RIGHTS.

The Bill of Rights provides that the reading of any version of the Bible in public schools without comment is permitted.<sup>1</sup>

A defendant charged with a felony may waive a trial by jury and be tried by a judge.<sup>2</sup>

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References refer to Sections of the Proposed New Constitution of Illinois.

1. See Section 3.
2. See Section 5.

Formerly in many of the smaller counties the grand jury only met at intervals of several months. If one suspected was arrested and failed to give bail, he was held until the grand jury met, because of the provision that no man could be held to answer for a felony except upon indictment by the grand jury. Under the proposed constitution all felonies, except capital cases, may be prosecuted upon an indictment by the grand jury, or upon an information filed by the Attorney General or by the State's Attorney. The State's Attorney, however, must have the permission of the Court, which is to be granted only after a showing of probable cause. This was done to simplify and expedite prosecutions, with no loss of protection to the accused and to quickly ascertain the innocence or guilt of the defendant.<sup>3</sup>

Women will be eligible as jurors.<sup>4</sup>

Juries of less than twelve men in civil cases may be authorized by law.<sup>5</sup>

The Bill of Rights contains the provisions common to the constitutions of the American States, but which are too well known to discuss separately.<sup>6</sup>

#### TAXATION.

There is a firm conviction in the minds of most of our people that the present system of taxation is defective and unjust. It must be admitted that the landowner pays more than his share of the taxes. To equalize this the new constitution declares (after first providing taxation by valuation) that, "In lieu of any tax on intangible property of any kind or class thereof, by valuation, the General Assembly may provide a uniform and substantial tax of such income derived therefrom. The rate of such a tax shall be uniform on all

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3. See Section 3.

4. See Section 5.

5. See Section 5.

6. See Section 1 to 19 inclusive.

incomes taxed under this section.''' An income tax<sup>8</sup> is not provided but the General Assembly can provide such a tax in the future if the needs of the State require it. Reasonable restrictions are placed on the General Assembly in case they put the income tax on the statute books.<sup>9</sup>

The new constitution wisely makes all forest lands and lands devoted to forest culture tax exempt.<sup>10</sup>

#### REPRESENTATION IN GENERAL ASSEMBLY.

One of the greatest problems of Illinois is that of representation in the General Assembly. Forty-seven per cent of the population of the State reside in Cook County. Under the proposed constitution, Cook County (which includes Chicago) can never have more than nineteen of the fifty-seven members of the Senate, while membership in the House is determined as in the past, by the population of the district.

This was not only a just compromise between Chicago and the "down staters" but a fortunate one. The down state voters have so feared Chicago control that they have not redistricted the State since 1900. The proposed constitution apparently prevents Chicago control and settles a question which in the past has caused much controversy.<sup>11</sup>

#### PASSAGE OF NEW LAWS.

No act passed by the General Assembly becomes a law until sixty days after the end of the session, thus giving everybody reasonable notice and a chance to become familiar with the new statutes.

At present the two houses often disagree on appropriation bills. Where this occurs the bill is sent to a conference committee, in which committee many unjust appropriations are

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7. See Section 142.

8. See Section 143.

9. See Section 144, 145.

10. See Section 146.

11. See Section 23.

often tacked on to the bill. By the new constitution only the debated appropriations may be changed and nothing new can be inserted in the bill by the conference committee.

#### RURAL LAND CREDIT.

The General Assembly is permitted to establish a system of rural land credit to encourage the ownership of land and to protect the farmer in times of poor crops and to prevent the necessity of farmers disposing of their land in hard times. This must be approved by a majority of the voters who vote on the question. It applies only to the farmer who owns, cultivates and occupies the land. The loans are secured by first mortgage trust deeds and cannot be for a period of over thirty-three years.<sup>12</sup>

#### EXECUTIVE DEPARTMENT.

There is very little in the article relating to the Executive department worthy of special mention with one or two exceptions.

A definite concrete report of the State Treasurer is required semi-annually, accompanying which report is a sworn statement by an officer of every bank in which money has been deposited. This statement from the bank shows all payments of interest on State funds in the bank's hands for the preceding six months.<sup>13</sup> The State Treasurer holds office for four years under the new constitution instead of two years, and he cannot hold the office two terms in succession.<sup>14</sup>

The State Auditor of Public Accounts has power to prescribe a uniform system of accounting for all county officers, and all county accounts shall be audited by him.<sup>15</sup>

The County Judge of Cook County is no longer to supervise the election machinery of said County, but an officer or

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12. See Section 63.

13. See Section 82.

14. See Section 67, 68.

15. See Section 85.

officers will be elected to supervise elections, thus relieving the County Judge of a task not in keeping with his judicial duties. The election of County Judge would then be on the merits of his ability as Judge and not as to his fitness for appointing the Judges and Clerks of elections.

#### ELECTIONS.

Great savings will be made in the matter of elections. Subject to legislative change after January 1st, 1927, no final election (outside of Cook County and for Supreme Court Judges from the district of which Cook County is a part) shall be held except once a year. In even years State and Federal officials will be elected, while in the odd years local and county elections will be held.<sup>16</sup> Provision is made for election of officials in cases where vacancy occurs ninety days before election where the unexpired term is for a year or more. Until the qualification of such persons so elected and in case of all other vacancies, the office is to be filled by appointment.<sup>17</sup>

#### JUDICIAL DEPARTMENT.

Probably the greatest changes and the greatest improvements are made in Article V., relating to the Judicial Department. The Supreme Court shall consist of nine justices instead of seven as at present.<sup>18</sup> Three Justices are to come from the judicial district of which Cook County is a part but no more than two shall come from any one county of that district,<sup>19</sup> thus limiting the County of Cook to two Justices. Their term of office is to be ten years.<sup>20</sup>

The Governor may fill a vacancy in the Supreme Court, if so requested by a majority of the court, in case one of the regular Justices is unable to serve and the remaining Judges

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16. See Section 136.  
17. See Section 137.  
18. See Section 87.  
19. See Section 88.  
20. See Section 89.

state that they are unable to dispose of pending litigation in a reasonable time.<sup>21</sup>

The Supreme Court shall have original jurisdiction in cases relating to revenue, in quo warranto, mandamus, habeas corpus, prohibition and other cases involving questions of great public importance (the last group is a new power and is subject to the discretion of the court), and appellate jurisdiction in all cases.<sup>22</sup> Concurrence of five Justices is necessary for every decision.<sup>23</sup>

I believe that Section 93 is one of the most important and one of the most discussed sections of the proposed constitution, and for that reason will quote the section *verbatim*. It provides as follows:

“The Supreme Court shall have exclusive power to prescribe rules of pleading, practice and procedure in all courts; but rules not inconsistent therewith may be prescribed respectively by other courts of record. Any rule of pleading, practice or procedure may be set aside by the General Assembly by a special law limited to that purpose.”

Surely simplicity in practice is desirable, necessary and essential to the quick and fair administration of justice. The Supreme Court, because of its non-political organization, its conservatism, and its experience, is better able to prescribe the rules of practice than the Legislature. To the courts belong the power to make rules by which justice shall be administered and by the very nature of things, this power should be vested there.

Four Appellate Courts are created<sup>24</sup> to consist of three Judges each or such multiple thereof as the Supreme Court may determine.<sup>25</sup> Judges of the Appellate Courts are appointed by the Supreme Court, as in the past, but they are no longer

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21. See Section 90.

22. See Section 92.

23. See Section 91.

24. See Section 95.

25. See Section 96.

taken from the Circuit Bench. They are now separate from the Circuit bench. Their term is for six years and they may be removed by the Supreme Court on cause.<sup>26</sup> The Appellate Courts hold such sessions as the Supreme Court may direct.

Except in criminal cases where punishment is by death or life imprisonment, or in cases where a freehold, franchise or the validity of a statute is involved, the Supreme Court can make the Appellate Court the court of final jurisdiction.<sup>27</sup>

City Courts are abolished.<sup>28</sup> The State is divided into circuits and three Judges are elected for each circuit.<sup>29</sup> The Circuit Court shall have original jurisdiction of all cases at law and equity as provided by law<sup>30</sup> and shall always be open for transaction of business. Provision is made for the Circuit Court to be held in the larger cities that are not the county seat of a county.

The County Court and the Probate Court are merged, and provision is made for more than one Judge where the business of the court warrants it. The County Court is to have jurisdiction in all probate matters, guardianship, administration and settlement of estates, and concurrent jurisdiction with the Circuit Court in actions arising from these matters, and all appeals from Justice of the Peace courts.<sup>31</sup> The County Court shall always be open for business and provision is also made for the County Court to sit in the larger cities of the County when necessary.<sup>32</sup>

Justices of the Peace are appointed or elected, and their salary is fixed by the County Board. The old fee system is abolished. The office of Justice of the Peace and Constable may be abolished or restored to any town by a majority of the electors voting on the question.<sup>33</sup>

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26. See Section 97.

27. See Section 100.

28. See Section 86.

29. See Section 102.

30. See Section 103.

31. See Section 114.

32. See Section 115.

33. See Section 118.

Provision may be made by rule of the Supreme Court for actions in which a declaratory judgment is sought, and authorizing the court to make a binding declaration of right whether or not any consequential relief may be claimed.<sup>34</sup>

The proposed constitution requires the Judges to be older and to have a longer residence in the State than formerly.<sup>35</sup>

The various counties of the State are divided into classes according to the population, and the local government of the county can be changed by law uniform as to classes of counties, only after acceptance by a majority of those voting on the question in the county.<sup>36</sup>

#### CHICAGO HOME RULE.

Cook County (Chicago) is given a special form of government because of its great population.<sup>37</sup>

Chicago is given home rule subject to the veto of the General Assembly upon its legislation.<sup>38</sup> Chicago is granted the right, if a majority of the citizens so desire, to acquire and operate transportation and water systems on condition that such rates will be charged as will make the utility self-supporting and furthermore the city must provide for a direct annual tax to take care of the interest and principal of any bonds issued to obtain any such utility. Utilities are prohibited from charging less than actual cost of the service rendered.

Prominent men in the State Legislature have said that one half of the fights and the problems of the Legislature have been local problems of Chicago. Now these problems are worked out by the city itself and the State Legislature will have time to do the work for the State as a whole.

There are some objections to the proposed constitution. I will merely mention the objections that are most discussed. The greatest objection is the power of the Supreme Court. Increased power of taxation is thought by some to be an objec-

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34. See Section 122.

35. See Section 124.

36. See Section 166.

37. See Section 174, 175.

38. See Section 178 to 193.



tion, since they say the more ways there are to tax, the higher taxes will become. Except in time of temporary necessity, no public money shall be given or applied for any sectarian purpose or to any institution controlled by a church or sect. This prevents the private schools from ever getting public help without an amendment to the Constitution.<sup>39</sup> The teachers of some of the larger cities are against the new Constitution because they are not pensioned by it.

The convention in its letter to the people, said: "On December 12, 1922, the election will be held to determine whether our judgment of the welfare of the State shall be approved. On that date every man and woman who loves his or her State should glory to discharge the highest political duty of free men and free women and register their opinion at the polls."

The new Constitution requires that we have confidence in our State Supreme Court. What branch of our government is more worthy of our confidence? Equalization of the burden of taxation; the reorganization of the Judiciary; the improvement in court practice; home rule for Chicago; the new Appellate Court and the many other improvements on the Constitution of 1870 should not be lost to the citizens of Illinois. The one question is this—Is the proposed Constitution better than the Constitution of 1870? May the voters know their responsibility, feel their duty and, when the votes are counted, may the best interests of the State and the best interests of the Nation be truly served. May the verdict of the Illinois voters be moulded by the spirit of her sons and influenced by the memory of all that is worthy and great in our country's history. When the decision is reached on this question may we of Illinois, by reason of our decision, with a loud voice proclaim again the words of our greatest son, that "the government of the people, by the people and for the people shall not perish from the earth."

EDW. B. MERIWETHER, '23.

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39. See Section 159.