10-1-1933

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Recommended Citation
A.J. W. Hutton, Proposed Amendments to the Pennsylvania Constitution, 38 DICK. L. REV. 1 (1933). Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol38/iss1/1

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PROPOSED AMENDMENTS TO THE PENNSYLVANIA CONSTITUTION

At the election to be held over the Commonwealth of Pennsylvania on Tuesday, November 7, 1933, there will be submitted for adoption by the people twelve resolutions proposing amendments to the present constitution. It may be timely, therefore, to present some general observations on the subject of proposed amendments and also some further observations directed specifically to the twelve resolutions to which reference has been made, all for the purpose of aiding those interested in the subject of amendments to understand the processes of their making and the import of those under particular consideration.

Article 18, Section 1 of the Constitution of Pennsylvania provides as follows:

"Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and, if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified
electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately."

NOT LEGISLATION

In Commonwealth v. Griest, 196 Pa. 396, it was held that an amendment to the Constitution proposed by Joint Resolution of the General Assembly need not be submitted to the Governor for his approval or veto, Green, C. J. observing:

"It will be observed that the method of creating amendments to the constitution is fully provided for by this article of the existing constitution. It is a separate and independent article standing alone and entirely unconnected with any other subject. Nor does it contain any reference to any other provision of the constitution as being needed, or to be used, in carrying out the particular work to which the 18th article is devoted. It is a system entirely complete in itself, requiring no extraneous aid, either in matters of detail or of general scope to its effectual execution. It is also necessary to bear in mind the character of the work for which it provides. It is constitution making, it is a concentration of all the power of the people in establishing organic law for the commonwealth, for it is provided by the article, 'If such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the constitution.' It is not law-making, which is a distinct and separate function, but it is a specific exercise of the power of a people to make its constitution. Recurring to this subject later on, and proceeding now to analyze the requirements of the 18th article in the process of creating amendments, we notice in their order the successive particulars to be observed. First, the amendment is to be proposed in the senate or house. Second, it must be
'agreed to by a majority of the members elected to each house.' Third, it must 'be entered on their journals with the yeas and nays taken thereon.' Fourth, in immediate sequence to the entry on the journals and as a part of the same sentence, the article provides, 'and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election in at least two newspapers in every county in which such newspapers shall be published'.”

In *Sweeney v. King*, 289 Pa. 92, the question was presented as to the propriety of the adoption by the General Assembly at a special session of a resolution proposing an amendment to the constitution despite the fact that the subject matter thereof was not referred to in the Governor’s proclamation calling the session. A bill was filed to enjoin the Secretary of the Commonwealth from publishing the resolution as provided by Article 18, Section 1 of the Constitution. The lower court dismissed the bill and the Supreme Court on appeal expressed itself in accord with that conclusion, Simpson, J. declaring:

“...The constitutional provision relied on by plaintiff is article III, section 25, which says, 'When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session.' We held in *Commonwealth v. Griest*, 196 Pa. 396, that constitutional amendments are not ‘legislation’. As it thus appears that they are among the ‘matters left open by the written Constitution’ (*Likins’s Petition No. 1*, 223 Pa. 456, 460), the legislature may proceed in relation to them in special or in general sessions, at its discretion: *Com. v. Stewart*, 286 Pa. 511.

In *People v. Curry*, 130 Cal. 82, a different conclusion is reached, but *Com. v. Griest*, supra, which we believe to be right and adhere to, makes the former opinion of no importance here, especially as every other jurisdiction which has considered the matter agrees with our opinion: *Johnson v. Craft*, 205 Ala. 386; *Mitchell v. Hopper*, 153 Ark. 515; *McCall v. Wilkins*, 145 Georgia 342; *In re Opinion of the Justices (Me.)*, 107 Atl. 673; *Warfield v. Vandiver*, 101 Md.
78; State v. Dahl, 6 North Dakota 81; State v. Marcus,
160 Wisc. 354.

The decree of the court below is affirmed and the
appeal is dismissed at the cost of appellant."

MEMBERS ELECTED

A resolution for an amendment may be proposed in
either branch of the Legislature but it must "be agreed to
by a majority of the members elected to each House". The
question has some times arisen as to what constitutes a
majority of the members elected. In the 1933 regular ses-
sion of the General Assembly the House by resolution
adopted put itself on record as to its interpretation of the
various expressions in the Constitution concerning major-
ities and members elected. The resolution was as follows:

"Whereas, Various sections of the Constitution
contain provisions referring to the number of votes re-
quired for the transaction of certain business; and

Whereas, there is no uniformity in the Constitu-
tion in the use of these terms and it is desirable that a
construction be made by the Members of the House in
order that definite precedents may be established to de-
termine the number of votes required for each action; and

Whereas, Such clauses are as follows:
"A majority of each House"—(Art. II, Sec. 10.)
"A majority of all the Members elected"—(Art.
III, Sec. 4.)
"Two-thirds of all the Members elected"—(Art.
III, Sec. 17.)
"Two-thirds of both Houses according to rules
and limitations prescribed in the case of a bill"—(Art.
III, Sec. 26.)
"Two-thirds of all the Members elected to that
House"—(Art. IV, Sec. 15.)

therefore be it

Resolved, That the term "Members elected" as
used in the Constitution directly or by reference, shall
be construed to include all Members elected in ac-
cordance with law, whether or not actually Members
of the House when action is taken, but shall not be
construed to include Members authorized to be elected
by law where there was a failure to elect;
Resolved, That the term “a majority of each House” as used in the Constitution shall be construed to mean a majority of those Members elected, sworn and living, whose membership has not been terminated by death, resignation or otherwise, or held in abeyance by failure to qualify.

Resolved, That any rule of the House of Representatives founded on a provision of the Constitution, inconsistent with this interpretation, shall, until amended, be construed in accordance with the Constitutional provision upon which founded."

Before the vote was taken adopting this resolution the gentleman from Franklin made some extended remarks explaining the various situations which had arisen, the provisions of the Constitution in detail and the law as it had been collated in other jurisdictions having similar constitutional provisions. These remarks will be found in Volume 15, No. 24 of the Legislative Journal of the Session 1933, 130th of the General Assembly, recording the proceedings of Monday, February 27, 1933, at pages 781-784 inclusive.

TWICE ADOPTED

Article 18, Section 1 provides that the proposed amendment must be twice adopted by the majority of the members elected to each House, and the two respective adoptions must be by consecutive but separate General Assemblies. Each General Assembly is elected for the biennium and during any session, regular or special during that biennium a constitutional amendment resolution may be adopted but the second adoption must be “in the General Assembly next afterwards chosen.”

PUBLICATION

It is the duty of the Secretary of the Commonwealth to publish the respective adoptions as made by the General Assembly and on the authority of Commonwealth v. Griest, supra, he cannot allege as grounds for refusing to publish a proposed amendment to the Constitution as provided by Article 18 that no appropriation had been made to defray
the cost of publication. Furthermore, it is distinctly pro-
vided by the Article under consideration that the publi-
cation following the first adoption by the General Assembly
shall be "three months before the next general election, in at
least two newspapers in every county in which such news-
papers shall be published."

In Commonwealth v. King, 278 Pa. 280, at page 282,
Moschzisker, C. J. explains:

"There is a real reason for requiring the adver-
tisement prior to the general election when the legisla-
ture has still to pass on a proposed amendment. Mem-
ers of the general assembly are chosen only at gen-
eral elections; hence, as the opinion under review well
says, "The purpose of the (constitutional) requirement
of publication three months before the next general
election (following the first legislative agreement to
the proposed amendment (this being 'the only place
where the phrase 'the general election' appears')
was to give the electors an abundant opportunity to be
advised concerning the proposed amendment and to
ascertain the policy of candidates for the general as-
sembly to be (next afterwards chosen), 'because they
would have to pass upon the proposed amendment
when it came before the general assembly a second
time.' This, as noted by the court below, is suggested
by us in Commonwealth v. Griest 196 Pa. 396, 415."

In Commonwealth v. King, supra, decided June 23,
1923, the question was upon the second publication and as
to whether the Secretary of the Commonwealth might ad-
vertise prior to a municipal election in an odd numbered
year a proposed constitutional amendment which had been
agreed to by the Legislature a second time. On this score
the learned Chief Justice further explains:

"On the other hand, when a proposed amendment
reaches the stage of the present one, it is evident no
such reason as that above stated applies, for, to again
quote from the opinion under review, 'the purpose of the
second publication (which is the one here in question)
is to advise the electors themselves, so that they may
vote intelligently (and directly) upon the proposed
amendment', and 'this published information would
have the same effect, if made before a municipal elec-
tion, as if made prior to a general election." The constitutional provision calling on the Secretary of the Commonwealth to cause the second notice 'to be published in the manner aforesaid' means that the required notice must appear 'in at least two newspapers in every county' in which that course is possible; its appearance in the proper publications three months before the day set for the electorate to pass on the proposed amendment is sufficient."

The Act of April 3, 1923, P. L. 55, construed in Commonwealth v. King, supra, was an amendment to the original Act of June 7, 1913, P. L. 693, entitled "An Act prescribing the manner and time of submitting to the qualified electors of the State proposed amendments to the Constitution in order to determine whether the same be approved by a majority of those voting thereon, as provided by Article 18, Section 1, of the Constitution."

The law in question was further amended by the Act of April 27, 1925, P. L. 311 and now reads as follows:

"Section 1. Be it enacted, etc., That, unless the General Assembly shall prescribe otherwise with respect to any particular proposed amendment or amendments, the manner and time of submitting to the qualified electors of the State any proposed amendment or amendments to the Constitution for the purpose of ascertaining whether the same shall be approved by a majority of those voting thereon, the said amendment or amendments heretofore, or which may hereafter be proposed, and which have not been submitted to the qualified electors of the State, shall be submitted to the qualified electors of the State for the purpose aforesaid at the first municipal or general election at which such amendment or amendments may be legally submitted to the electors, and which election shall occur at least three months after the date upon which such proposed amendment or amendments shall have been agreed to for the second time by a majority of the members elected to each house of the General Assembly, as provided in article eighteen, section one, of the Constitution. Said election shall be opened, held and closed, upon said election day in the manner and within the hours at and within which the said election is directed to be opened, held and closed, and
in accordance with the provisions of the election laws of the Commonwealth of Pennsylvania, and the amendments thereof, and supplements thereto. Such proposed amendment or amendments to the Constitution shall be so printed in full upon the ballots, and followed by the words "Yes" and "No", as to give each voter a clear opportunity to express his approval or disapproval of said proposed amendment or amendments, by a cross mark (X) in a square of sufficient size at the right of the words "Yes" or "No".

The provisions of this act are severable, and, if any of its provisions are held to be unconstitutional, such decision shall not affect or impair the remaining provisions of this act. It is hereby declared as a legislative intent that this act would have been passed had such unconstitutional provision not been included therein.

In Conflicting Amendments, 62 Pitts. 437, 1914, it was stated to be the duty of the Secretary to advertise several proposed amendments though if each were adopted the constitutional provisions on the same subject would be conflicting.

The remedy which may be invoked to compel action as to publication by the Secretary of the Commonwealth is the writ of mandamus or by injunction to restrain publication.

In Taylor v. King, 284 Pa. 235, Sadler, J. said:

"The Constitution of the State may be legally amended in the manner specifically set forth therein, or a new one may be put in force by a convention duly assembled, its action being subject to ratification by the people, but these are the only ways in which the fundamental law can be altered. If directed by the legislature, after compliance with the constitutional requirements, it becomes the duty of the Secretary of the Commonwealth to advertise, as directed by the 18th section, and if he improperly refuses through the result of a misunderstanding as to his duty, the courts will require by mandamus that this be done (Com. v. Griest, 196 Pa. 396), though it be necessary, because of delay, to hold the election at a time later than that named by the legislature."
"There may be technical error in the manner in which a proposed amendment is adopted, or in its advertisement, yet, if followed, unobjected to, by approval of the electors, it becomes a part of the Constitution. Legal complaints to the submission may be made prior to taking the vote, but, if once sanctioned, the amendment is embodied therein, and cannot be attacked, either directly or collaterally, because of any mistake antecedent thereto. Even though it be submitted at an improper time, it is effective for all purposes when accepted by the majority: Armstrong v. King, 281 Pa. 207."

FIVE YEAR RULE

Article 18, Section 1, stipulates, inter alia, "but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately."

In Armstrong v. King, 281 Pa. 207, the question arose as to the meaning of the portion of the section just quoted. Simpson, J. explained:

"It is clear that unless we wholly ignore the words 'but no amendment or amendments shall be submitted oftener than once in five years,'—a conclusion for which no one does, or reasonably can contend,—we must either construe the language exactly as it is written, namely, as prohibiting the submission of any amendments 'oftener than once in five years,' or we must interpret it as referring to the amendments specified in the preceding part of the article, which would result in precluding only the resubmission of amendments once defeated by the people. We cannot take this latter alternative, however, because the language used will not permit us to do so. When it was intended to refer to the amendments dealt with in the earlier part of the article, the clause so providing was always preceded by the word 'such'. Thus it is said, if 'any amendment or amendments' are agreed to by the legislature, 'such proposed amendment or amendments' shall be entered on their journals and duly advertised, and if the next legislature shall agree to 'such proposed amendment or amendments' another publication shall be had, and 'such proposed amendment or amendments' shall be submitted to the electors for ap-
proval, and if 'such proposed amendment or amend-
ments' are approved by a majority of those voting
thereon, 'such amendment or amendments shall be-
come a part of the Constitution.' On the other hand,
the prohibiting clause does not use this or any similar
word; it simply says 'but no amendment or amend-
ments shall be submitted oftener than once in five
years'. This broadening of the language necessarily
implies an intentional broadening of thought; hence it
must be construed as it is written, namely, as a pur-
pose on the part of the people that they shall not be
asked to amend their Constitution 'oftener than once
in five years'."

It follows from this reasoning that the Constitution can
only be subjected to amendment by vote of the people under
the terms of Article 18, Section 1, every five years. The
last time amendments were submitted was in 1928, conse-
quently, the next period is 1933 and the period following
would be 1938 and so on.

MULTIPPLICITY

In Taylor v. King, 284 Pa. 235, the question was raised
as to whether a resolution for an amendment could contain
two propositions, viz; the right to increase the bonded in-
debtedness for road purposes and also to pay a soldier's
bonus. It was argued that the electors in marking their
ballots could not differentiate between the questions pre-
sented. The Supreme Court, per Sadler, J. observed that
there was merit in the contention and cited 12 C. J. 690 and
by comparison Hollinger v. King, 282 Pa. 157, but the ques-
tion was not decided. In the Resolution known as Num-
ber C-1 adopted for the first time at the Legislative Session
of 1931, proposing an amendment to Article 3, Section 18,
two propositions were presented, viz; assistance to mothers
having dependent children and to aged persons without
adequate means of support by reason of indigency, disease,
infirmity or other disability. This proposed amendment
was only acted upon in the Regular Session of 1933 by the
House and, consequently, failed for presentation to the
people.
As Article 18 distinctly specifies that when two or more amendments shall be submitted they shall be voted upon separately it would appear that sound principle would dictate only one proposition to be inserted in a proposed amendment. For example in C-1 as cited had it appeared upon the November ballot those favoring mothers' assistance but not favoring old age pensions or vice versa would be presented with a dilemma in the casting of the ballot.

PROPOSED AMENDMENTS

By the current publications at least two newspapers in every county in which such newspapers shall be published carry the notices of the Secretary of the Commonwealth setting forth in full the twelve resolutions proposing amendments to the present Constitution and to be voted upon at the coming election to be held Tuesday, November 7, 1933. These resolutions are numbered from one to twelve consecutively and will now be taken up in the discussion seriatim.

RESOLUTION NO. 1

This resolution embodies an amendment to Article 3, Section 18 which as now constituted reads as follows:

"No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

The amendment would read as follows:

"Section 18. No appropriations, except for pensions or gratuities for military services and to blind persons twenty-one years of age and upwards, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

The effect of the amendment would be to permit the General Assembly to make appropriations as gratuities to persons who were blind and of the age of twenty-one years
and upwards. As the section now stands appropriations for gratuities are confined to military services and with that exception prohibits appropriations for charitable, educational, or benevolent purposes to any person or community or to any denominational or sectarian institution, corporation or association.

For two interesting recent decisions on this particular section, see Buusser v. Snyder, 282 Pa. 490 and Collins v. Martin, 290 Pa. 388.

A criticism of the amendment as proposed is that it makes a rather invidious distinction between those who are blind and those suffering from some other form of physical disability and with a preference in favor of the former. Furthermore, it is difficult to distinguish the merits of the blind as a class from those who are aged. Another weakness is that the specification is to blind persons who are twenty-one years of age and upwards and does not distinguish those who need aid from those who are financially independent.

RESOLUTION NO. 2

This resolution would add to Article 9 a new section to read as follows:

"Section 17. In addition to the powers heretofore granted, the General Assembly may authorize cities and boroughs to assess the costs of highway improvement, consisting of paving, curbing, and the incidental grading and draining, or either or any of them, upon abutting property, in all cases where no prior assessment has been made for a similar improvement."

The following comment upon this proposed amendment is found in the issue Number 1107. August 8, 1933, of Citizens' Business published by the Bureau of Municipal Research, 311 S. Juniper Street, Philadelphia, under the caption "The Highway Improvement Amendment":

"Owners of property fronting on streets in Pennsylvania cities and boroughs will be interested in a proposed constitutional amendment, scheduled to ap-
pear on the ballot this fall. It raises the question whether certain street improvements must be paid for by the taxpayers at large or whether abutting owners may be assessed for them.

The Original-Paving Rule. In the late 1860's Philadelphia levied against abutting owners the cost of paving part of Broad Street with wooden blocks. This was done by a special assessment authorized by the legislature. Prior to that, Broad Street had been paved with cobblestones, at the expense of the property-owners. One of the owners won a supreme court decision that the law authorizing the second assessment was unconstitutional (Hammett v. Philadelphia, 65 Pa. 146—1869). This decision has become basic in Pennsylvania law. It upheld the power of a municipality to levy a special assessment to the extent of the benefit conferred by a public improvement, but denied the power to levy a local tax (by special assessment) for general municipal purposes. It held that a municipality could levy special assessments for an original paving, but that after a street has been once opened and paved, a repaving of it is for the benefit of the municipality at large and must be paid for by the taxpayers rather than by the abutting owners.

The Rule Resisted. The rule may seem somewhat arbitrary, but it does set up a standard which will help the abutting owner to know when his liability is at an end. This does not mean that the rule has been easy to apply. There have been doubts as to what constitutes an original paving. Whether a municipality has accepted a street has often been a difficult question of fact. And at one point the rule has been rather stubbornly resisted as inequitable. Suppose the cost of an original paving is not assessed against abutting owners, but is met by the taxpayers. Can the abutting owners be assessed for a repaving? In 1915 the legislature authorized boroughs and townships in such circumstances to assess one-third of the repaving cost against the abutting owners. The borough of Towanda levied such an assessment, but the Superior Court held that it does not matter whether abutting owners paid for the first paving or not; they cannot be assessed for repaving; (Towanda v. Swingle, 90 Pa. Super. 82—1927).

Amendment Proposed. A few months later the 1927 legislature approved a constitutional amendment
which apparently was intended to revoke at least in part the original-paving rule. It would authorize the legislature to permit cities and boroughs 'to assess the costs of highway improvement consisting of paving, curbing, and the incidental grading and draining, or either or any of them, upon abutting property, in all cases where no prior assessment has been made for a similar improvement.' The 1929 legislature again approved the amendment. Since then it has been silently waiting the next date for submission of amendments to the voters—November 7, 1933.

How Many? How many Philadelphia streets could be repaved at the abutting owners' expense if this amendment is adopted which would have to be replaced at general expense if it is not adopted? We do not know. Probably no one knows. But there are probably many such streets."

RESOLUTION NO. 3

This resolution provides an amendment to Article 3, Section 22, which at the present reads as follows:

"No act of the General Assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees, in the bonds or stock of any private corporation, and such acts now existing are avoided saving investments heretofore made."

The amendment would read as follows:

"Section 22. The General Assembly may, from time to time, by law, prescribe the nature and kind of investments for trust funds to be made by executors, administrators, trustees, guardians and other fiduciaries."

In support of the present constitutional provision and as a sound argument against any change the Supreme Court of Pennsylvania in 1910 in the case of Commonwealth v. McConnell, 226 Pa. 244, thus spoke through Mestrezat, J.:

"We are not inclined to disturb the rule announced by Chief Justice Black more than half a century ago in Hemphill's App., 18 Pa. 303, and since recognized and followed by this court. In delivering the opinion in that case the Chief Justice said (p. 305):"
In England it has been held for more than a century past to be settled law, that a trustee can only protect himself from risk, when he invests the trust fund in real or government securities or makes the investment in pursuance of an order by the court... The same rule has been adopted in its whole length and breadth by the courts of New York and New Jersey... In Pennsylvania this doctrine does not appear ever to have been either affirmed or denied... But the time has come when the interests and rights of trustees, as well as orphans, married women and insane persons, demand the settling of it, and we think think the rule here ought to be as it is elsewhere." In Worrell's App., 23 Pa. 44, Knox, J., delivering the opinion said (p. 48): 'It may now be considered as settled law, that in Pennsylvania an investment by a guardian or other trustee, unless authorized by the deed of trust, in the stock of an incorporated company, whether a bank, railroad, canal, manufacturing, or mining corporation, cannot be made at the risk of a ward or other cestui que trust. It is unnecessary to repeat the reasons which are the foundation of this rule. In England and in this country the adoption of the rule has been found essentially necessary for the protection of those who could not protect themselves. It will not do to say that because prudent men sometimes invest their own money in such stocks, guardians may legally invest the estate of their wards in like manner.' About thirty years later after full argument and due consideration, we recognized and enforced the rule announced in those cases in Frankenfield's App., 11 W. N. C. 373. It was said (p. 374): 'This being so, the law regulating investments by committees of lunatics becomes applicable to the case and controls it. The act of June 12, 1836, Sec. 25, expressly directs that such investments must be made under the direction of the court of common pleas, and only exempts the committee from liability for loss when he pursues this course and in good faith. In Hemphill's App., 18 Pa. 303, it was firmly and definitely settled that a trustee can only protect himself from risk when he invests the trust fund in real or governmental securities or makes the investment in pursuance of an order of court.'

The doctrine thus firmly established in this state prohibits a trustee from investing the estate of his cestui que trust in the bonds or stocks of a private corporation. The people of the commonwealth have at-
tempted to enforce the rule by art. III, sec. 22, of the present constitution, which prohibits the general assembly from authorizing the investment of trust funds by a trustee in the bonds or stocks of any private corporation. Time has tested the wisdom of the rule, and, as our cases declare, it is firmly established in this commonwealth."

See also Taylor's Estate, 277 Pa. 518.

**RESOLUTION NO. 4**

This resolution suggests an amendment to Article 9, by adding the following section:

"Section 16. In addition to the purposes stated in article nine, section four of this Constitution, the State may be authorized by law to create debt and to issue bonds, to the amount of fifty millions of dollars, for the payment of compensation to certain persons from this State who served in the Army, Navy or Marine Corps of the United States during the war between the United States and Spain, between the twenty-first day of April, one thousand eight hundred and ninety-eight, and the thirteenth day of August, one thousand eight hundred and ninety-eight, or who served in the China Relief Expedition, in the Philippines or Guam, between the twenty-first day of April, one thousand eight hundred and ninety-eight, and the fourth day of July, one thousand nine hundred and two, or who served in the Army, Navy or Marine Corps of the United States during the World War between the sixth day of April, one thousand nine hundred and seventeen, and the eleventh day of November, one thousand nine hundred and eighteen."

The adoption of this amendment by the people will authorize the General Assembly in its wisdom to create a debt of fifty millions of dollars for the purpose of paying compensation to Pennsylvania veterans who served in the war with Spain, the Philippines, Guam, China and the World War.

**RESOLUTION NO. 5**

This resolution provides an amendment to Article 8, Section 1 which at present reads as follows:
"Every male citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections, subject however to such laws requiring and regulating the registration of electors as the General Assembly may enact:

1. He shall have been a citizen of the United States at least one month.

2. He shall have resided in the State one year (or, having previously been a qualified elector or native-born citizen of the State, he shall have removed therefrom and returned, then six months), immediately preceding the election.

3. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

4. If twenty-two years of age and upwards, he shall have paid within two years a State or county tax, which shall have been assessed at least two months and paid at least one month before the election."

The amendment would read as follows:

"Section 1. Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections, subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

1. He or she shall have been a citizen of the United States at least one month.

2. He or she shall have resided in the State one year (or, having previously been a qualified elector or native-born citizen of the State, he or she shall have removed therefrom and returned, then six months) immediately preceding the election.

3. He or she shall have resided in the election district where he or she shall offer to vote at least two months immediately preceding the election."

The adoption of this amendment by the people will accomplish two changes, first, the phraseology is made to conform to the substance of the Nineteenth Amendment to the Constitution of the United States which was declared to be a part of the Federal Constitution by proclamation of the Secretary of the State, dated August 26, 1920 and which reads as follows:
"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation."

Second, there is an elimination of paragraph 4 of the present Section 1, thus doing away with the requirement of the payment of a state or county tax within two years of the election as a qualification of the elector to vote.

RESOLUTION NO. 6

This resolution provides an amendment to Article 9, Section 8, which at the present reads as follows:

"The debt of any county, city, borough, township, school district or other municipality or incorporated district, except as provided herein, and in section fifteen of this article, shall never exceed seven (7) per centum upon the assessed value of the taxable property therein, but the debt of the city of Philadelphia may be increased in such amount that the total city debt of said city shall not exceed ten per centum (10) upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt, or increase its indebtedness to an amount exceeding two (2) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law. In ascertaining the borrowing capacity of the city of Philadelphia, at any time, there shall be deducted from such debt so much of the debt of said city as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in the construction, purchase, or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, whether separately or in connection with any other public improvement or public utility, or part thereof, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, may be prescribed by the General Assembly."
In incurring indebtedness for any purpose the city of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof, with provision for a sinking-fund sufficient to retire said obligations at maturity, the payment to such sinking-fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said city of Philadelphia for the purpose of the construction or improvements of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of, the interest and sinking-fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred; and said city shall not be required to levy a tax to pay said interest and sinking-fund charges as required by section ten, article nine of the Constitution of Pennsylvania, until the expiration of said period of one year after the completion of said work.”

The amendment would read as follows:

“Section 8. The debt of any city, borough, township, school district or other municipality or incorporated district except as provided herein, and in section fifteen of this article, shall never exceed seven (7) per centum upon the assessed value of the taxable property therein, and the debt of any county, except as provided in section fifteen of this article, shall never exceed ten (10) per centum upon the assessed value of the taxable realty therein, but the debt of the city and county of Philadelphia may be increased in such amount that the total city and county debt of said city and county shall not exceed fifteen (15) per centum upon the assessed value of the taxable realty therein; nor shall any municipality or district incur any new debt, or increase its indebtedness, to an amount, exceeding two (2) per centum upon such assessed valuation of taxable property, without the consent of the electors thereof at a public election in such manner as shall be provided by law. In ascertaining the borrowing capacity of the city and county of Philadelphia, at any time, there shall be
deducted from such debt so much of the debt of said city and county as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in the construction, purchase, or condemnation of any public utility or part thereof, or facility therefor to the extent that such public improvement or public utility, or part thereof, whether separately, or in connection with any other public improvement or public utility, or part thereof, may yield, or may reasonably be expected to yield, revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, may be prescribed by the General Assembly.

In incurring indebtedness for any purpose the city and county of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof, with provision for a sinking-fund sufficient to retire said obligations at maturity, the payment to such sinking-fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be, or shall have been incurred by said city and county of Philadelphia for the purpose of the construction or improvements of public works or utilities of any character, from which income or revenue is to be derived by said city and county, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city and county, such obligations may be in an amount sufficient to provide for, and may include the amount of, the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred, but not in excess of five years from the time of the incurring of such indebtedness; and said city and county shall not be required to levy a tax to pay said interest and sinking fund charges, as required by section ten, article nine of the Constitution of Pennsylvania, until the expiration of said period of one year after the completion of said work."

It will be noted that the change in the maximum debt of a county is proposed from seven (7) per centum to ten (10) per centum but the method of ascertaining the percentage
is also changed from the assessed value of taxable property to the assessed value of taxable realty. Furthermore, the combined total debt of the city and county of Philadelphia is placed at a maximum of fifteen (15) per centum likewise to be calculated upon the assessed value of the taxable realty therein. There are also several changes relative to the method of calculating the borrowing capacity of the city and county of Philadelphia and in providing for the retirement of obligations issued through sinking fund charges. The prime purpose of this proposed amendment is to aid the solution of the debt situation of the city and county of Philadelphia. The only change affecting other portions of the state is in the change of the maximum indebtedness of counties and the base on which the percentage is to be calculated.

RESOLUTION NO. 7

This resolution provides an amendment to Article 17, Section 3 which at present reads as follows:

"All individuals, associations and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue, or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers within the State or coming from or going to any other State. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates."

The amendment would read as follows:

"All individuals, associations and corporations shall have equal rights to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers within the State or coming from or going to any other State."
It will be noted that the amendment eliminates the latter clause of the present section entirely. The omitted portion involves what is known as the long and short haul provision affecting the railroads of the State which are urging the change in order to permit a more just arrangement of rates and in accordance with the determinations of the Interstate Commerce Commission which already acted upon the matter on January 12, 1933.

RESOLUTION NO. 8

This resolution suggests an amendment to Article 9, by adding the following section:

“Section 17. The Governor, the Auditor General, and the State Treasurer, immediately upon the adoption of this amendment by the electors, may borrow an amount not exceeding twenty-five million dollars to defray the expenses of the State government for the biennium beginning June first, one thousand nine hundred thirty-three; provided the General Assembly, at its regular session of one thousand nine hundred thirty-three, has authorized the borrowing of money for this purpose.”

This amendment is necessary in order to empower the General Assembly to borrow a requisite amount of money to carry on the expenses of the State Government during the present biennium. The necessity has been brought about through appropriations for unemployment relief and a steady falling off of revenues of the State from taxation.

RESOLUTION NO. 9

This resolution suggests an amendment to Article 9 by adding thereto a new section to read as follows:

“Section 19. The City of Philadelphia, in constructing, for the benefit of the inhabitants thereof, transit subways, rapid transit railways, or other local transit facilities for the transportation of persons or property, shall have the power, in order the more justly to distribute the benefits and costs of such transit facilities, to levy special assessments against such
properties, whether abutting or not abutting upon said transit facilities; as are or will be specially and particularly benefited by the construction or operation of such transit facilities; such power to be exercised in accordance with existing or with future laws or pursuant to statutes enacted prior to the adoption of this amendment but made effective by it. Such special assessments when so levied, may be made payable presently when levied or in installments over a period of years, with or without interest and shall immediately, when so levied, be deducted from any indebtedness incurred for such purposes in calculating the debt of such city. Such city may acquire by eminent domain either the fee or less estate or easements in land necessary for the construction or operation of such transit facilities or for the disposal of earth or material excavated in the construction thereof or for other incidental purposes; but this provision shall not create any additional powers for the condemnation of any railroad or street railway in operation."

The following comment upon this proposed amendment is found in the issue No. 1079, January 24, 1933, of Citizens' Business, published by the Bureau of Municipal Research, 311 South Juniper Street, Philadelphia, under the caption "Benefit-Assessment Amendment".

"An amendment to the state constitution which would give the City of Philadelphia the power to levy special assessments against property benefited by the city's development of local transit facilities was passed in the special session of the legislature in 1932. The Amendment is again before the legislature (House Bill 177).

Part of Costs on Property Benefited. A number of advantages would accrue to the city in the proposed grant of power. A primary advantage would be that the city could place the burden of transit developments on properties which are or which will be benefited by the construction and operation of the transit facilities. The general taxpayer would thereby be relieved of a portion of the financial burden of transit. Not all the property benefited by transit is immediately adjacent to the transit line. In the proposed amendment, the city will be authorized to levy an assessment upon any
property benefiting from the transit facilities whether or not the property abuts upon the transit facilities.

**Sectional Pressure Restricted.** Many plans have been advanced for the extension of city-owned transit lines into various areas. Pressure for these extensions comes largely from the sections which expect to benefit. The proposed amendment, by making it possible to assess properties in the benefited areas, would tend to counteract undue pressure. This would perhaps be the most important effect of the amendment. However, if the section is thoroughly convinced as to the benefits to be received, the special assessments will not prevent the development of the extension. And, if the general taxpayers desire, the way is open to make any transit expansion which is desirable for the common good without benefit assessments.

**Borrowing Capacity Freed.** A large part of the borrowing capacity of the city is at present frozen in transit loans. None of these transit loans will be freed from the debt limit by the benefit-assessment amendment, although another constitutional amendment now in course of adoption would give relief to the extent that the facilities are self-supporting. But the benefit-assessment amendment would give additional relief on new transit developments. It would exempt from being a charge against the debt limit an amount of debt equal to any special assessments that might have been levied.

**Further Action Necessary.** If the amendment is passed by the legislature now in session, it can be submitted to a vote of the people and adopted at the municipal election next November. If it is not passed by this legislature it cannot become part of the constitution before 1938, barring, of course, the possibility of a constitutional convention. It is desirable, therefore, that the amendment be approved at the present session. It would help Philadelphia."

As House Bill 177 this resolution was passed the second time by the General Assembly at the Regular Session of 1933 and became known as resolution No. E-4.

**RESOLUTION NO. 10**

This resolution suggests an amendment to Article 15
by adding thereto Section 5 as follows:

"The General Assembly may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating highways or streets connecting with bridges crossing streams or tunnels under streams which form boundaries between this and any other State, but the additional land and property, so authorized to be taken, shall not be more than sufficient to form suitable building sites on such highways or streets. Nor shall the authority hereby conferred be exercised in connection with the laying out, widening, extending or relocating of any highway or street at a point more than three miles distant from the approach to any such bridge or tunnel. After so much of the land and property has been appropriated for such highways or streets as is needed therefore, the remainder may be sold or leased and any restrictions imposed thereupon which will preserve or enhance the benefit to the public of the property actually needed for the aforesaid public use."

This amendment confines to cities the authority proposed to be exercised and applies to highways approaching bridges and tunnels crossing or going under streams interstate and obviously refers to the cities of Philadelphia and Pittsburgh.

The following comment upon this proposed amendment is found in a recent issue No. 1112—September 12, 1933 of Citizens' Business, supra, under the caption "For Better Bridge Approaches":

"On the ballot November 7 will be a proposed constitutional amendment (No. 10) intended to facilitate the construction of suitable Delaware River Bridge approaches. The amendment does not mention the bridge by name, but it would apply to laying out, widening, extending, or relocating city highways 'connecting with bridges crossing streams or tunnels under streams which form boundaries between this and any other state'. If it is adopted, Philadelphia could be authorized to take by eminent domain, in addition to the land needed for highways themselves, enough land for suitable building sites fronting on the highways. Then, after having used what is needed
for the highways, the city could sell or lease the rest, imposing such restrictions as would 'preserve or enhance the benefit to the public' of the land needed for the highways. This special power could be exercised to a point three miles from the approaches to the bridge (or tunnel).

Excess Condemnation. This is known in America as 'excess condemnation'. Why should a city have power to use it? So that it can be sure of an orderly and profitable development of land abutting on public improvements. A highway cut through a built-up section, where only enough land is taken for the highway, often resembles the path of a hurricane. Backyards, unsightly walls, parts of buildings—almost anything may front on the new highway. This condition will be slow to right itself, and may never do so. There are likely to be remnants of land of odd shapes and sizes, no plot itself suitable for development on the new front, with the plots held by many owners, any one of whom is in position to block development. The result is a longstanding eyesore and a failure of both owners and the city to realize the full economic possibilities of the land. Excess condemnation helps to avoid such situations. It has been called 'a boon to the property-owner—a blessing to the public'. A city can take enough land for suitable development fronting on the improvement, can consolidate title to parcels previously held by different owners, and can sell or lease the land subject to such restrictions as will 'protect' the improvement.

The Parkway Case. This would not be Philadelphia's first experience with excess condemnation. The city attempted to use it in 1912, in the development of the Parkway, but was stopped by the courts. The Act of June 8, 1907, P.L. 466, gave cities power in developing parks, parkways, and playgrounds to condemn private property within 200 feet of the improvement and to sell this property with such restrictions as would insure 'the preservation of the view, appearance, light, air, health, and usefulness' of the improvement. The Supreme Court (Pa. Mutual Life Ins. Co. vs. Philadelphia, 242 Pa. 47—1913) held that this was forbidden by the constitution. Private property could be condemned for public use, but not for private use. The excess condemnation might be for the public benefit, but the court, seeing that land might be taken from one owner and sold to another, held that the taking
would be for private use. This interpretation makes it impossible to use excess condemnation in the development of bridge approaches unless the constitution is amended."

In case of the adoption of this amendment the question would still remain for solution by the Courts as to whether this amendment is in conflict with the Fourteenth Amendment of the Federal Constitution:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Quoting from Penn Mutual Life Insurance Company v. Philadelphia, supra, we find Mestrezat, J., declaring:

"Holding, as we do, that the use to be made of property located outside a public highway is not a public use for which private property may be taken by the city against the consent of the owner, the effect of the Act of 1907 authorizing the appropriation of property for such purpose is to permit by the exercise of eminent domain the taking of the property of one citizen without his consent and vesting the title thereto in another. No court in this country has yet sanctioned such action by the State or its representative exercising the power of eminent domain. Says Mr. Justice Story, speaking for the court in Wilkinson v. Leland, 27 U. S. 658: 'We know of no case, in which a legislative act to transfer the property of A. to B., without his consent has ever been held a constitutional exercise of legislative power, in any state in the Union. On the contrary, it has been constantly resisted, as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced'."

RESOLUTION NO. 11

This resolution provides an amendment to Article 15, Section 4. This section which was adopted by vote of the people November 6, 1928, confers power on the General
Assembly to provide for consolidations in the Municipal Governments in the County of Allegheny. Pursuant to the power granted by this article the General Assembly passed an Act of Assembly proposing a Consolidated City Charter, but this charter was rejected by the voters of the several municipalities at a special election held on June 5, 1929. (See the Act of April 18, 1929 P. L. 573, and Pittsburgh's Consolidated City Charter, 297 Pa. 502.)

The amendment proposed by this resolution confers on the General Assembly further power in respect to proposing a consolidated charter. It applies solely to the County of Allegheny and presents a problem the determination of which is for the electors of that County although it will be voted upon by the electors at large throughout the state.

RESOLUTION NO. 12

This resolution suggests an amendment to Article 9, by adding thereto the following section:

"Section 16. In addition to the purposes stated in article nine, section four, of this Constitution, the General Assembly may provide by law, for the issue of bonds, to the amount of ten millions of dollars, for the purpose of acquiring toll bridges, and may by law, provide that, upon the acquisition of any such bridge, tolls may be charged for the use thereof, sufficient to pay the interest and sinking fund charges on such bonds and the cost of the maintenance of such bridges, until the bonds issued have been retired and such bridges are freed from tolls."

The adoption of this amendment by the vote of the people would authorize the General Assembly to increase the debt of the Commonwealth to the extent of ten millions of dollars to be used for the acquisition of toll bridges. The debt as created will be paid by the collection of tolls from the bridges so acquired and after such liquidation of the debt the bridges will be free for the use of the travelling public.

Chambersburg, Pa.  A. J. WHITE HUTTON.