

Washington University Law Review

Volume 9 | Issue 2

January 1924

The New Constitution of Missouri

William W. Hollingsworth
Washington University in St. Louis

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Recommended Citation

William W. Hollingsworth, *The New Constitution of Missouri*, 9 ST. LOUIS L. REV. 071 (1924).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol9/iss2/1

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ST. LOUIS LAW REVIEW

Vol. IX

Published by the Undergraduates of the
Washington University School of Law

No. 2

THE NEW CONSTITUTION OF MISSOURI.*

In 1820 a constitutional convention met and within the phenomenally short space of five weeks drew up Missouri's first constitution. So complete did the members of this convention regard their work that this document was never submitted to the people for approval or rejection, but was put immediately into effect. Another constitution drafted in 1845 was rejected by the people of the State the following year. A third convention met in 1861, but owing to war conditions, no constitution resulted. Again in 1865, a new convention drafted and submitted a constitution which was to last only ten years. In 1875 a convention drew up and promulgated the constitution under which Missouri is now governed.

Since the adoption of the present constitution, there have been proposed approximately one hundred amendments, about twenty of which have been adopted.

For more than a decade a movement for a convention to revise the constitution of Missouri has been under way, but there was no well-organized effort before 1918. Each successive session of the legislature was prevailed upon to submit the question to the voters of the State, but without avail.

*By William W. Hollingsworth, Assistant Professor of Political Science, Washington University, published in the National Municipal Review.

Finally the New Constitution Association of Missouri took form and began to function.¹ Since the legislature refused to submit the matter to the voters, it was decided that the next best step was to change, by means of the initiative, the method of calling constitutional conventions. Under the auspices of the above named organization, a committee of prominent lawyers drew up an amendment to the constitution which was submitted to the voters on November 2, 1920, and carried by a vote of 394,437 to 317,815. This amendment provided in substance:—

First. For a change of method for choosing delegates to constitutional conventions, so that there would be chosen from each of the thirty-four senatorial districts, two elected delegates representing the two major parties, and fifteen non-partisan delegates from the State at large.

1. The following organizations endorsed and took part in the movement for a new constitution:

American Legion, Department of Missouri.
 Missouri Bankers' Association.
 Missouri State Bar Association.
 Missouri State Medical Association.
 Missouri Press Association.
 Missouri Federation of Labor.
 Brotherhood of Locomotive Engineers.
 Missouri Dental Association.
 Missouri College Union.
 Federation of Missouri Commercial Clubs.
 Missouri League of Women Voters.
 League of Missouri Municipalities.
 Post Travelers' Protective Association.
 Chamber of Commerce of St. Louis.
 St. Louis Bar Association.
 St. Louis Real Estate Exchange.
 Civic League of St. Louis.
 Chamber of Commerce of Springfield.
 Chamber of Commerce of Joplin.
 Chamber of Commerce of Hannibal.
 Commerce Club of St. Joseph.
 Missouri State Teachers' Association.
 Chamber of Commerce of Kansas City.

Second. For a special election August 2, 1921, so that the voters might indicate whether or not a convention should be called to revise or amend the present constitution.

Whether a constitutional convention should be called was the principal issue to be decided in the election held August 2, 1921. About one-sixth of those eligible participated, and the result stood 175,353 for and 127,130 against calling the convention.

Governor Hyde called a special election which was held January 31, 1922, for the purpose of choosing delegates to the constitutional convention.

As indicated above, the organization plan called for a bi-partisan selection of district delegates. The Democratic and Republican parties, each acting through its committees, elected a candidate from each of the thirty-four senatorial districts, and the two State central committees at a series of meetings selected a fusion ticket for the fifteen delegates at large. This ticket was submitted to the voters and was overwhelmingly approved.

The convention met May 15, 1922, continued in session until December 15 and then adjourned so that the legislature might meet. The convention re-assembled April 16 and finished its work November 6, 1923.

As is usually the case, lawyers were in the majority in the convention. Out of the 83 delegates, 56 were attorneys. There were besides these, seven bankers, four editors, four teachers, two each of farmers and insurance men, and one each of the following: adjuster, advertising solicitor, brewer, physician, railroad man, minister and real estate dealer. Four of the delegates were women.

Among the changes in the present constitution proposed by the agitators for a new constitution may be mentioned the following: Removal of restrictions on cities and provision for a greater degree of home rule; reshaping of the educational machinery, especially with reference to the rural schools; reorganization of the courts and a simplification of

procedure and practice; bringing the tax methods and machinery up to date; repealing of the provision allowing aliens to vote; provision for a shorter ballot and other measures of somewhat less importance. It will be observed from the outline below that all these and even more important changes have been effected.

LEGISLATURE.

An increase from five to ten dollars per diem for the members of the legislature has been authorized. This salary rate applies for seventy days of the regular session, ninety days of revising session and thirty days of extra session; for the remainder of the sessions the compensation is two dollars per day.

In the future, the legislative expense is to be limited to \$300 and \$400 per day, respectively, for Senate and House during regular and revising sessions and \$150 and \$200, respectively, for extra sessions. The president pro tempore of the Senate and speaker and speaker pro tempore of the House shall receive two dollars and fifty cents per day additional compensation.

The governor, secretary of State, attorney-general, auditor and treasurer elected in 1924 or a majority of them are required in the year 1925, after the adoption of the constitution, to reconstruct the present ill-apportioned senatorial districts. This same group of State officials is required in the future, to rearrange both senatorial and representative districts after each decennial national census.

With reference to emergency legislation, it is provided that no law passed by the legislature, except those making appropriations for current expenses of the State and for the maintenance of State institutions and the public schools, shall take effect until ninety days after adjournment of the session at which it was enacted, unless in case of emergency measures for the preservation of the public peace, health or safety, the legislature by vote of two-thirds of all members elected to each house otherwise direct.

JUDICIARY.

The amendment dealing with the Judiciary would leave the State Supreme Court with seven members as at present, but would have one of them elected as chief justice for his full term, rather than permit the seven judges to rotate that honor among themselves as at present.

The three Courts of Appeals, as now constituted, would remain undisturbed, except the one at St. Louis would consist of six judges in two divisions, instead of three judges and one division as at present.

A judicial council has been created, composed of chief justice of the Supreme Court, the presiding judge of each division thereof, the presiding judges of Kansas City and Springfield Courts of Appeals and a judge of the St. Louis Court of Appeals, selected by the judges thereof, and three circuit court judges who shall be chosen by the above named persons. It will be the duty of this council to establish and simplify the rules of practice and procedure, to transfer causes from one appellate court to another, to assign judges from one jurisdiction to a similar jurisdiction when the efficient transaction of business of such court so requires; also, the council may, when the business of the court requires, call to the aid of the Supreme Court or any of the Courts of Appeals, one or more judges of the circuit courts for such time as may be necessary—may even create an extra division of said courts.

Candidates for Judge of Supreme Court, Courts of Appeals and Circuit Courts are to be nominated at a time different from that for the nomination of candidates for other offices.

The term of office for judges of the Courts of Appeals is to be reduced from twelve to eight years. The terms of judicial officers under the new provision will be as follows: Supreme Court, ten years; Courts of Appeals, eight years; and Circuit Courts, six years.

INITIATIVE AND REFERENDUM.

The present constitution requires eight per cent of the legal voters, in each of two-thirds congressional districts of the State to initiate a law or amendment to the Constitution. The new provision for the initiation of a law is not changed, but the number of signers required for submitting a constitutional amendment has been raised to twelve per cent. The percentage of voters to invoke the referendum has been raised from five to ten per cent. The ballot submitting an act of the legislature to a referendum is required under the new constitution to read "Shall the Act of the General Assembly be rejected?" instead of "Shall the Act of the General Assembly be approved?", thus requiring an affirmative vote to reject.

The legislature may appeal or modify an act adopted by the initiative and the people may reject or amend a measure passed by the legislature.

EXECUTIVE DEPARTMENTS.

At present, the functions of the executive branch of the government are performed by some seventy or more departments, commissions, bureaus, boards and other agencies created at different times and under different circumstances which has resulted in duplication and overlapping of services, inefficiency and increased cost of operation. Provision is now made that by January 1, 1926, all the State activities must be consolidated under not more than twelve administrative departments, exclusive of the governor and lieutenant-governor. Five of these divisions are named in the constitution—departments of State, Law, Audit and Accounts, Treasury, Education. The heads of the first four departments are to be elective, but the head of the Department of Education is to be selected by a board of education elected by the people. The legislature is authorized to create not more than seven other departments and provide for their

appointment or election and to assign to them, as well as to the other five aforementioned departments, their appropriate powers and functions.

ELECTIONS.

Under the present constitution, ballot boxes can be opened only in case of a contested election. The new constitution authorizes the opening of ballot boxes and comparison of ballots with the poll lists in the investigation of fraud in both primary and regular elections. Also, the ballots may be used in the investigation and prosecution of criminal cases. This change was made necessary on account of court decisions holding that the opening of the ballot boxes and the comparing of the ballots with the poll lists destroyed secret voting since it disclosed how the individual voted.

NOMINATING METHODS.

Political parties have been authorized to determine for themselves whether they will nominate their candidates by direct primary or by the convention. Both methods of nominating candidates are to be regulated by law.

SUFFRAGE.

The present constitution permits aliens to vote upon the mere declaration of intention to become citizens of the United States. The new provision requires full naturalization before being allowed to vote.

The legislature is required to pass laws providing for registration of voters in counties having more than one hundred thousand and in cities having more than ten thousand.

NEPOTISM

This subject was dealt with by the convention in the following terms: "Any public officer or employee of this State or of any political subdivision thereof who shall, by

virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to said service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment.''

EDUCATION

At present the department of education is under the control of an ex-officio board composed of the Governor, Secretary of State, Attorney-General and Superintendent of Public Schools. The Superintendent is the administrative head of the department and is elected by the people. The new constitution creates a board of Education of six members whose election, term of office and per diem compensation shall be determined by law. This board is charged with the supervision of public instruction and the selection of the State Commissioner of Education who is to have administrative direction of the Department. The Commissioner is responsible solely to the Board of Education under whose authority he serves.

A very important amendment affecting the schools of Missouri is the one which will do away with the restrictions on rural districts in raising sufficient funds to operate effectively their schools. Rural school districts at present can levy only forty cents on \$100 valuation; sixty-five cents, if a majority of the voters of the district approve; and an additional sum for buildings and repairs if two-thirds agree to it. City districts are in a much better position in this respect, since they can levy sixty cents without a vote, \$1.00 with the approval of the majority and a building levy may be made with the consent of two-thirds of the voters. This new amendment also enables country and city schools to increase their tax rate from forty cents in the country and seventy-five cents in cities and towns maintaining a four-year high

school course to \$1.00 on \$100 valuation on a majority vote, \$1.20 on a two-thirds vote and \$1.50 on three-fourths vote. Excess levies now can be made only when authorized by annual elections. Under this new provision a levy would stand for a number of years up to four as specified in the call for election thus saving the districts the expense of repeated elections. The boards are not required to levy the full voted rates in succeeding years unless needed.

The general assembly may provide for, but cannot compel, free instruction by school districts of persons other than those between six and twenty years of age.

BUDGET

Under the present constitution a budget system has been impossible because entrusting the preparation of the budget to the Governor has been construed to constitute an unconstitutional limitation on the power of the legislature to appropriate money for public purposes. Under the new constitution an executive budget is provided for vesting in the Governor full responsibility for preparing and submitting to the legislature within fifteen days after it assembles in biennial session, a consolidated budget containing all expenditures which in his opinion should be undertaken and a proposed method for obtaining the required revenues. Such a budget is to be prepared after having full and comprehensive reports from all officers and departments expending or supervising the expenditure of State money. Public hearings are provided for on these reports. Estimates submitted by the legislative and judicial departments cannot be revised by the Governor, but he may make such recommendations as he thinks proper with reference to them.

The new constitution provides that the budget "shall contain all the estimates so revised or certified and shall be accompanied by a bill or bills for all proposed appropriations and re-appropriations, clearly itemized; it shall show the

estimated revenues for the ensuing fiscal biennial period and the estimated surplus or deficit of revenues at the end of the current fiscal period, together with the measures of taxation, if any, or for borrowings, if any, which the Governor may propose for the increase or decrease of revenues; it shall be accompanied by a statement of the current assets, liabilities, reserves and surplus or deficit of the State; statements of the debts and funds of the State; an estimate of its financial condition as of the beginning and end of the biennial period; such other information as may be required by law and a statement of revenues and expenditures for the biennial period next preceding, in a form suitable for comparison. The Governor may, before final action thereon by the legislature, amend or supplement the budget.”

The Legislature is permitted to reduce, but not increase the items in the budget. All additional appropriations must be in the form of special bills carrying provisions for the necessary revenue and subject to the item veto of the Governor.

With reference to the Governor and executive heads appearing in the legislature to defend the budget, it is provided that, “it shall be the right of the Governor and the heads of executive departments, and it shall be the duty of the heads of departments, when requested, to appear in either House of the General Assembly and be heard and to answer inquiries relating to the budget.” The Legislature is not permitted to pass any other appropriation bills until the Governor’s budget has been finally acted upon by both houses.

The budget when passed by the legislature with or without amendments shall become a law immediately without approval by the Governor except that appropriations for the legislature and judiciary shall be subject to his approval.

TAXATION AND REVENUE

Among the outstanding changes in the new constitution affecting taxation and revenue may be mentioned the one

which authorizes cities to borrow money on the security of public utilities for the purpose of constructing, acquiring, altering, enlarging, extending or improving public utilities, which indebtedness shall be payable exclusively from the income and revenues or proceeds of sale of such public utilities. Cities are also enabled by another provision with a two-thirds vote to create and maintain a permanent improvement revolving fund for the purpose of financing directly all special tax bills for local improvements such as construction of streets, alleys, and so on.

Another important change is the provision classifying all property for purposes of taxation. Inasmuch as the State Supreme Court has recently declared a mortgage recording tax and a secured debt tax unconstitutional, this amendment is very much in point.

Under the head of miscellaneous tax and revenue provisions might be mentioned the following: The section subjecting motor vehicles to license and registration taxes as well as general property tax; the section making property of cemeteries established and maintained for private gain liable for taxation; the property of other cemeteries, including money and personal property and income therefrom, held for the purpose of improving and preserving such cemeteries, to be exempt from taxation; the section reducing the maximum State tax levy for general revenue purposes from fifteen to ten cents on the hundred dollars valuation; section providing that the fiscal year shall begin on first day of July; the section including "business trusts" with corporations and associations required to make payment into the State Treasury on the capital invested; section abolishing ex-officio board of equalization.

MUNICIPALITIES

Municipalities are to be classified and the legislature is especially prohibited from making further classifications. The classifications provided for runs as follows:—

First—All cities of 70,000 or more population and would include St. Louis, Kansas City, and St. Joseph.

Second—All cities of 25,000 to 70,000 population and would include Springfield and Joplin.

Third—All cities ranging from 3,000 to 25,000 population and would at present include fifty-two cities.

Fourth—All cities ranging from 500 to 3,000.

Villages—Communities of less than 500.

Cities of the first class would be allowed to consolidate their governments in whole or in part with those of the counties in which they are located.

Under the present constitution the legislature and Governor conduct the police departments of St. Louis, Kansas City and St. Joseph (the cities of the first class) and fix the compensation and qualification of policemen. Under the new provision these cities are authorized to establish and maintain their own police departments subject to the right of the Governor, at his discretion, to remove any police commissioner or commissioners, but the Governor shall have no authority to fill any vacancy thus incurred.

Cities of the first three classes are authorized to frame, adopt and amend their charters. How sweeping are the home rule provisions may be seen from the following:—

“Except as otherwise provided in this Constitution every city which has or shall adopt a special charter is hereby declared to possess for all municipal purposes full and complete power of self government and corporate action. No enumeration of powers in this Constitution or in any law shall be deemed to limit or restrict the general grant of authority conferred; but this grant of authority shall not be deemed to limit or restrict control by laws of the State on matters of general State concern or operation, as distinguished from those of local concern and municipal government, and provided that as to such matters as are of both local and State concern city charters and ordinances shall not

be in conflict with but shall be subordinate to the general laws of the State upon the same subject.”

Thus it is observed that cities are to be given complete control over their own affairs purely local in character, acts of the legislature to the contrary notwithstanding. They would be authorized, among other things, to determine what agencies shall be necessary to conduct their affairs, the distribution of powers among such agencies, the mode of selection, duties, qualifications, tenure, method of removal and compensation of all officers and employees.

To levy, assess and collect taxes and to borrow money, within the limits prescribed by the constitution; and to levy and collect special assessments on the basis of local benefits.

To acquire by gift, condemnation or otherwise own, establish, maintain and police, either within or without its corporate limits parks, boulevards, which have cemeteries, hospitals and all works which involve the public health of safety.

To provide for one or more houses of legislation to be elected by general ticket or by the voters of the several wards or districts of the city or village.

By and with the consent of a majority of the qualified voters voting at an election submitting any proposition, to acquire by condemnation or otherwise, construct, own, operate, sell or pledge public utilities for wholly or in part supplying water, light, heat, gas and power to the municipality and its inhabitants and, to the extent and in the manner prescribed by law, for supplying water, light, heat, gas, and power beyond its corporate limits.

To acquire by condemnation or otherwise, construct, own, operate, sell or pledge subways, lines and equipment for wholly or in part supplying transportation to the municipality and its inhabitants and to the extent and in the manner prescribed by law for supplying transportation beyond its corporate limits.

To rent, lease or let and authorize the operation of any utility subway lines or equipment owned by it to private individuals or corporations or other municipal corporations.

The right of cities to create zones for the regulation and use of land and structures, now under question in the State Supreme Court, is written into the new constitution as well as a provision authorizing excess condemnation of land for public improvements.

The new constitution provides specifically that the State retains the right to control all elections, public utilities, to demand financial reports, to limit city indebtedness, to regulate education and all other matters of a general State concern and operation. There was an attempt to establish home rule for Missouri cities in the present constitution adopted in 1875, but that was defeated by a clause requiring all home rule provisions to be subject to the general laws of the State, thus enabling the legislature at will, for forty-eight years to enact legislation for each of the cities.

St. Louis, by the provisions of the present constitution, was separated from St. Louis County. For some purposes it is a county, for others it is a city. It cannot expand without crossing the boundary line into St. Louis County, and this would require constitutional amendment. It is proposed to relieve St. Louis of this embarrassing situation by providing for it three avenues of expansion.

First—It is provided that counties may by a majority vote of each county concerned, be consolidated into one, and that St. Louis for this purpose is to be regarded as a county. This amendment would enable the city of St. Louis and St. Louis County to merge into a county or a city-county.

Second—Cities, including St. Louis, are authorized to extend their boundaries and annex contiguous cities without reference to county lines, provided such annexations are approved by a majority of the voters of the territory affected. This section of the new constitution, of course, applies to

such other cities as Kansas City, St. Joseph and others, but is of most direct concern to St. Louis.

Third—St. Louis may return to and become a part of St. Louis County and then expand in the usual way.

Another provision relating to St. Louis specifies that the board of aldermen, which is now elected at large from wards, shall, in the future, be elected by wards. At present, with the members of the board elected at large, all are Republicans, but with this proposed change the Democrats will gain representation.

MISCELLANEOUS PROVISIONS

Provisions which may be included under this head are as follows:

Criminal prosecutions may be instituted by indictment or information, and that said indictment or information shall be sufficient if it states in plain and concise language the facts constituting the alleged offense. The purpose of this statement is to simplify indictments and informations and thus prevent expense, delay, dismissal and retrial of criminal cases because of technical errors.

At present, religious corporations are allowed to hold real estate only for church buildings, parsonages, and cemeteries. Under the new amendment such corporations may hold real estate for missionary, charitable, or educational activities, schools, hospitals, orphanages, or similar non-gainful, religious, charitable or educational purposes. Real estate held for other purposes is limited to six years.

Laws pensioning indigent mothers by the State, disabled firemen and policemen by cities and providing for widows and children under sixteen years of age of deceased firemen and policemen have been authorized. Provision is also made for compulsory or elective workmen's compensation laws.

The State shall provide by law for the safeguarding and promotion of the public health.

The State Board of Education, instead of the Superintendent of Public Schools is made liable to impeachment.

Affirmative vote of two-thirds of the entire membership of the Senate is required for conviction on impeachment.

The provision in the present constitution exempting conscientious objectors from military service is repealed.

Profiting by the experience of other States, notably New York and Illinois, which submitted their revised constitutions to the people to be approved or rejected as a whole with the result that they were rejected, the Missouri constitution makers have decided to submit the revised sections to the people in the form of twenty amendments to the constitution and one amendment to the schedule which contains provisions for carrying the constitution into effect. The form of the ballot permits separate vote on each amendment and a majority of the votes cast on any amendment is sufficient for its adoption or rejection.

The date set for the vote on the new provisions is February 26, 1924.