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Journal of the 1973 Constitutional Convention Vol. 1, No. 4

State of Rhode Island and Providence Plantations

JOURNAL

OF THE

1973 CONSTITUTIONAL CONVENTION

Vol. 1, No. 4. Tuesday, September 18, 1973

FOURTH DAY
TUESDAY, SEPTEMBER 18, 1973
THE CONVENTION CALLED TO ORDER AT 7:30 P.M.

The Chairman: The Convention will come to order. It is extremely important that you understand and please don't let anything interfere with your calling the Chair's attention to the fact that something has not been made clear, or you wish to be repeated.

We are graced this evening and honored by the attendance of Reverend Father Howard C. Olson, Pastor of Saint Barnabas Episcopalian Church in Warwick. It has been my good fortune and privilege in the past to be associated with Father Olson and we served together on the Board of Directors of Big Brothers.

It is not unusual for Father Olson to be identified with civic, social, and court affairs, and so it is a privilege to have him here tonight to lead us in our constant search for divine guidance as we deliberate from those provinces entrusted to us by this state.

The convention will please be attentive while Father Olson delivers the prayer.

(Invocation by Father Olson, Saint Barnabas Episcopal Church.)

The Chairman: The convention will please attend the salute to the flag.

(Salute to the flag.)

The Chairman: The permanent secretary of the convention informs the Chair that he would be a few minutes late in arriving; so, the Chair is assuming the privilege of asking the first vice-chairman, Helen Migliaccio, to act as secretary pro tem in the calling of the roll.

The Chair is advised that in this session, as in the previous session, when you answer the call of your name, let the Chair and people know if you have any proposals you intend to present.

(Roll call taken.)

(The following delegates were absent:)

Joseph A. Caliri

Arthur F. Mitchell

Laurent L. Rousseau

Paul O. Vadenais

David Veloso, Jr.

The Chairman: The chair is informed that there is a quorum present.

The order of business is the correction of the Journal of the previous session. Are there any errors or omissions? Hearing none the Journal stands approved as printed. For a special purpose in having made such a previous arrangement the chair recognizes delegate John Capaldi.

Mr. Capaldi: Mr. Chairman and members of the Convention, I would like to call the Convention's attention to the gallery where we are graced by Brother Frederick and the senior class from LaSalle Academy.

The Chairman: Brother and students are certainly most welcome, and we hope many more of the public will emulate them.

We will continue with reports of standing committees. The chair recognizes Joseph H. O'Donnell, Jr., the Chairman of the Committee on Administration.

Mr. O'Donnell: The Committee on Administration gives the following report:

The expenditures thus far including tonight's session are:

Director of Administration	$652.00
Secretaries (2)	321.00
Research Directors	735.00
Subtotal	$1708.00
Research Assistants	1116.00
Pages (7)	130.00
Sergeant-at-Arms	50.00
Assistant Sergeant-at-Arms	20.00
	$3024.00
Payroll taxes	301.00
	$3325.00

Contractual Services:

Stenographic	$ 900.00
Equipment Rental	135.00
Supplies	100.00
Printing	
Journal Vol. 1 #1	300.00
Vol. 1 #2	285.00
Vol. 1 #3	360.00
	$2080.00

I would like to point out that in Journal #3 you will find the listing of the committees and the committee members and also the rules of the Convention as corrected. This is a particularly large volume and thus that expense.

Our total services were $2,080.00. Our total expenditures to date are $5,405.00 out of $20,000.00 appropriated. This represents 27 percent of the appropriation.

The Chairman: The chair recognizes delegate Zygmunt Friedemann, the Chairman of the Standing Committee on Legislative Compensation.

Mr. Friedemann: Thank you, Mr. Chairman, delegate Friedemann, reporting.

(See transcript for full texts of committee reports.)

The Chairman: Thank you, Mr. Friedemann. Are there any other members on the Legislative Council here?

Ms. D'Alessio: Yes, sir.

The Chairman: The name of the lady?

Ms. D'Alessio: Delegate D'Alessio, District 7. Correction to be made in the Journal. They left my name off the Legislative Pay Committee, and I'm the secretary of that committee. Thank you.

The Chairman: Before proceeding to the next committee, the chair would like to advise you that the pages are passing around Xerox copies of the opinion received from the Attorney General on the requested advisory opinion voted by the Convention.

The chair recognizes Ronald Gagnon, Esq., Chairman of the Committee on Lotteries.

Mr. Gagnon: Mr. Chairman, for purposes of giving the report, I would like to call on Mrs. Ilse Messina, Secretary of the committee.

(The report is read.)

The Chairman: You have heard the report. Are there any comments? Hearing none the report is received and stands approved as read.

The Chairman: The chair recognizes delegate William T. Murphy, Chairman of the Committee on Elections.

Mr. Kidder: In the absence of the Chairman and also Mr. McKenna, I, the Secretary, will give a brief report.

(The report is given.)

The Chairman: Thank you. The chair recognizes the Honorable Giovanni Folcarelli, Chairman of the Committee on Grand Jury.

Mr. Folcarelli: Mr. Chairman, delegate Folcarelli reporting:

(The report is made.)

The Chairman: Thank you, Mr. Folcarelli. Any comments? Hearing none, the report is received and approved as read.

The Chairman: The chair recognizes the Senator from Newport, Erich O'D. Taylor, Chairman of the Committee on Style and Drafting.

Mr. Taylor: Senator Erich O'D. Taylor, District 49. I have nothing to report but our first meeting will take place on Thursday and members have been notified, and we will at that time have a report.

The Chairman: Thank you very much. Committee on Resolutions. The chair recognizes the Chairman of that Committee, Frank Caprio.

Mr: Caprio: Frank Caprio, District 8. Delegate Caprio, Providence, reporting for the Committee on Resolutions. The Committee on Resolutions had its initial meeting on Wednesday, September 12 at which time it elected William McAtee as its secretary, and then decided that it would conduct a meeting after a public hearing to be held on Tuesday, September 18, 1973 at 6:00 p.m.

The Committee held a public hearing and questioned as to whether the Constitutional Convention shall present to the voters specific proposals to be voted upon separately or whether the Convention should present to the voters to vote upon in toto. There were five distinguished citizens of the state, including public office holders who testified before the committee, and there being a quorum, and listening to the testimony of all witnesses, the committee went into Executive Session, and unanimously approved a resolution presented by delegate Leo Connors, District 27 that provides that the Constitutional Convention shall present to the voter specific proposals to be voted upon separately and that it shall not require approval or objection in toto, and I present this, Mr. Chairman, with unanimous recommenation for passage of the Committee on Resolutions. That is my report.

The Chairman: The chair will rule that the substantive report of the Committee on Resolutions relative to the resolution to be adopted or proposed for adoption by the full Convention will be read by you before we come to second readings on the calendar for this evening. Is that satisfactory?

Mr. Caprio: That is satisfactory to me, Mr. Chairman.

The Chairman: After you read it, it is the intention of the chair to place it on special orders of the day for this session.

Mr. Caprio: Very well:

The Chairman: Any comments on the report of the Committee on Resolutions? Hearing none, the report is received and approved as read.

The Chairman: The chair recognizes delegate John O'Hare.

Mr. O'Hare: John O'Hare, District 37, reporting for the Committee on Public Information.

(The report is made.)

The Chairman: Thank you, and there being no questions or objections, the report is received and approved as read.

The Chairman: The chair should announce at this point that there are copies of all proposals that were introduced at the last session on the desk of every delegate.

Now there is something else. The Convention asked the chair to see what could be done about free television time on public information relative to hearings and committee meetings and I

contacted WJAR and WPRI and they were very gracious about it.

They have prepared a slide and they will announce the committee meetings and the sessions as we advise them, and this becomes of more importance than might have been originally thought.

We are all aware, I think, that the Journal Bulletin is not publishing advertisements or, public notices such as ours. It has been impossible, therefore, although we have them ready and offered them for publication, they have not appeared in the public press. The rules call for publication in a newspaper, presumably of statewide circulation, at least three days before committee hearings.

It looks like we are not going to comply with that and we are not going to be able to do it, not for any fault attributable to us, but simply because the statewide newspaper is not carrying them; they are unable to do it. So, the chair in order to clear this up so we won't have any misunderstanding later . . . rules that the requirement of three days publication prior to a committee hearing is directory, and not mandatory and that the failure to have publication of such meetings published three days before a meeting will not impair the validity of the meeting itself.

That is the ruling of the chair; do you wish to discuss it?

Mr. Taylor: Erich O'D. Taylor, District 49 — I would move approval and ask the concurrence of the delegation.

Mr. McKenna: Robert J. McKenna, District 50. Seconded.

The Chairman: Moved by Senator Taylor and seconded by Mr. McKenna from Newport, the ruling of the chair has now prevailed. As many as are in favor "Aye"; opposed "No." The "Ayes" have it.

(Motion passed.)

The Chairman: We come now to communications. We have two communications, one from the Attorney General which we will hold in abeyance, and the first the secretary will now read.

Mr. Conley: Honorable William E. Powers, Chairman of the Convention. Dear Justice Powers: This is to inform you that the Providence Chapter of the Rhode Island Workers Association has requested that the Constitutional Convention insert an antidiscrimination clause, and a clause guaranteeing to all a safe and healthful workplace in the Rhode Island State Constitution.

The Chairman: The receipt of the communication will be noted in the Journal and the communication will be noted in the Journal and kept in the records of the convention.

The secretary will proceed to read the advisory opinion furnished by the Attorney General at the request of the convention, and before he does, I would be grossly failing in my obligations to the Attorney General if I did not acknowledge on behalf of all of us appreciation for his prompt attention to our inquiry, and with that, the secretary will read it.

Mr. Conley: The opinion is as follows:

(Text of opinion was distributed to the delegates and is reprinted in the Appendix of this Journal.)

The Chairman: Thank you, Mr. Secretary. The opinion of the Attorney General has been received and read. It will stand among the permanent papers of the convention. Are there any comments?

Mr. Connors: Mr. Chairman, delegate Connors from Foster.

The Chairman: Delegate Connors?

Mr. Connors: It would appear from the general reasoning of this opinion that the convention might well, as to the four issues before it, take a broader interpretation than merely the one that was submitted on the issue of the compensation for the general assembly; that is, actions under the four topics that are within the

framework of those topics, it would appear to be by this opinion validated if they do not go beyond the generalized scope of the subject matter.

Am I correct on that, Your Honor?

Mr. Taylor: Delegate Taylor, District 49.

The Chairman: Senator Taylor.

(Senator Taylor offered several criticisms of the opinion.)

Mr. O'Donnell: Mr. Chairman, delegate O'Donnell, District 30.

The Chairman: Delegate O'Donnell?

Mr. O'Donnell: I believe the senator's remarks on this really come down to this. If you don't like the opinion you have asked for, you disregard it.

I think since this body had asked for the opinion, I think it has been given in great detail. There has obviously been a great deal of research behind it, and I, for one, feel that inasmuch as we have asked this authority for the opinion that we should respect it.

The Chairman: It is the opinion of the chair, subject, of course, to appeal that every delegate is at liberty to entertain his or her view of the merit of the opinion, and it would serve no meaningful purpose to get into individual discussions of how the delegates feel about it.

It is the opinion of the chair that despite what the opinion may seem to suggest or hold, the answer of the attorney general to a specific query made of him by this convention is that the language of the act requiring consideration of revision of legislative compensation be confined to the creation of a seven-member commission, and that the convention is at liberty within the call of the people to propose or submit for their consideration amendment to the legislative compensation article as they see best.

It would be helpful if we had a determination of whether or not that is the judgment of the convention so that it can stand as guidance for the convention, confining ourselves strictly to the question of legislative compensation and revision.

The chair will entertain a motion for the purpose of disposing of this question: that the opinion of the Attorney General as to legislative compensation revision, the convention is not confined to the proposal advanced by the general assembly.

Mr. Breslin: Mr. Chairman, Robert Breslin, delegate Breslin from District 16, Warwick.

The Chairman: Delegate Breslin?

Mr. Breslin: Mr. Chairman, I would propose in accordance with the opinion of the Attorney General that the legislative pay committee and the convention as a whole have within its scope any amendments to the constitution; anything proposed to the convention that has to do with legislative pay.

The Chairman: That you so move?

Mr. Breslin: I so move.

Mr. O'Donnell: Delegate O'Donnell, District 30, will second the motion.

Mr. Capaldi: Delegate John Capaldi, District 36, I would second the motion of delegate Breslin.

The Chairman: You have heard the question. Are you ready for it? The thrust of the question before the house is that this convention in considering proposed revision of legislative compensation is not confined to the method proposed by Chapter 98. As many as are in favor will say, "Aye." Opposed, "No." The ayes appear to have it. The ayes do have it.

(So voted.)

Mr. Taylor: Mr. Chairman, delegate Taylor, District 49. I'm going to be recorded as voting, "Yes."

(So noted.)

The Chairman: The chairman will note that delegate Senator Taylor voted "Yes." This brings us to the question of introduction of proposals and first reading.

Mr. Conley: Before calling for the proposals, I note that Ann Baker, Robert McKenna, and myself were not here for the original call of the roll. Is there anyone else who is in attendance that was not here at the call of the roll? Now the proposals.

Following is a list of proposals submitted indicating the name of the delegate who introduced each proposal, the subject, the number, and the committee to which it was referred.

	Res. No.	Comm.
Delegate Cavanagh: Lotteries	23	Lotteries
Delegate Coleman: Absentee ballots for students	24	Elections
Delegate Coleman: Ban on wiretapping	25	Resolutions
Delegate Conley: (with Migliaccio, DeAngelis, D'Amico, McAllister, Kaufmann and Citizen Carlo Spirito, Jr. of Cranston) Financial disclosure in campaigns	26	Elections
Delegate Cotter: Qualifications of electors	27	Elections
Delegate D'Alessio: Legislative compensation	28	Leg. Comp.
Delegate D'Alessio: Electronic voting	29	Resolutions
Delegate D'Amico: Legislative compensation	30	Leg. Comp.
Delegate D'Amico: Elections—Master lever	31	Elections
Delegate Federico: Creation of the office of ombudsman	32	Resolutions
Delegate Friedemann: Setting legislative compensation by statute	33	Leg. Comp.
Delegate Friedemann: Setting legislative compensation by commission	34	Leg. Comp.
Delegate Grimes: Lotteries	35	Lotteries
Delegate Kaufmann: Lotteries	36	Lotteries
Delegate Kaufmann: Roll call votes in general assembly	37	Resolutions
Delegate Kaufmann: Appointment of secretary of state and general treasurer	38	Resolutions
Delegate Kidder: Apportioning of Senate and House of Representatives	39	Elections
Delegate Lister: Lotteries	40	Lotteries
Delegate O'Hare: Lotteries	41	Lotteries
Delegate Spingarn: Lotteries	42	Lotteries
Delegate Taylor: Legislative compensation	43	Leg. Comp.
Delegate Chace: Legislative compensation	44	Leg. Comp.
Delegate Garan (with Connors) Grand jury	45	Grand Jury

The Chairman: Proceeding to second reading, you will recall that when the Chairman of the Committee on Resolutions stated that he had a substantive report to make in the form of a resolution for consideration by this Convention, Chairman Caprio was asked to hold it for second reading. The chair recognizes delegate Caprio for the purpose of reading the resolution.

Mr. Caprio: Mr. Chairman, delegate Caprio from the 8th Senatorial District in Providence. The Committee on Resolutions met this evening and after a public hearing unanimously approved and recommends to the Convention passage of the following resolution:

"That the Constitutional Convention shall present to the voter specific proposals to be voted upon separately and that it shall not require approval or objection in toto."

I now present this to you, Mr. Chairman, with the unanimous recommendation of passage of the Committee on Resolutions.

Mr. Taylor: Erich O'D. Taylor, District 49. Seconded.

The Chairman: Assigned to the special orders of the day for this session.

(So assigned.)

The Chairman: The Committee on Resolutions has no further report?

Mr. Caprio: No, Mr. Chairman, that is the only resolution.

The Chairman: The order of business is resolutions and motions. There appears to be none. There is no unfinished business either.

Mr. Kimball: Walter Kimball, District 26. I have a resolution regarding television coverage by the state educational television.

Mr. Conley: This resolution will be numbered five, Resolution for Television Coverage by State Educational Television, "BE IT RESOLVED That the Chairman of the Constitutional Convention request that the state educational television system, WSBE TV, Channel 36, broadcast live coverage of the convention proceedings on the last two meetings of the Constitutional Convention." Submitted by Walter Kimball, Delegate, District 26.

The Chairman: Thank you. Ordinarily this resolution would be referred to the Committee on Resolutions for study, but it seems to the chair that it is self-explanatory and appeals, or does not appeal, to the delegates as they hear it.

So, without objection, the chair recognizes the motion of the delegate that the resolution be adopted. Is there a second?

Mr. Cavanagh: Roderick Cavanagh, District 24. I second the motion.

The Chairman: Moved and seconded. Is there discussion? As many as are in favor, "Aye"; opposed "No." The "Ayes" appear to have it. The "Ayes" do have it.

(Motion passed.)

The Chairman: Unfinished business — there is none. We come now to special orders of the day. This brings us to a consideration of the resolution reported out tonight by the Resolutions Committee, relative to this convention expressing that all proposals to amend the constitution that may appear on the ballot when the proposals are submitted to the electorate will be placed in such a manner as to give the electorate a free choice. Discussion?

Mr. Malinou: Martin Malinou, District 1. If the chair pleases, at this time I would like to move to table the motion to adopt that resolution on the grounds that it anticipates that a limited number of propositions will be placed before the people.

I think the intent of those introducing the resolution is that there would be at most 4 propositions which could be presented to the voter separately and reasonably. There is the possibility that this convention will be submitting an entirely new constitution to the people, and if so, it would certainly be unreasonable to present a whole series of proposals separately. Some of them we might indeed want to propose separately, so I move that that motion be tabled for the time being.

The Chairman: Is there a second? Motion fails for lack of second. The chair would observe in passing that it is extremely unlikely that

there is one delegate who doesn't believe that at least 4 proposals are expected by the electorate to be submitted for their consideration, and if not 4, certainly 3, anyway multiple proposals, and all this is doing is providing that such multiple proposals as are submitted will appear in a manner that the electorate has a free choice. Any further comments on this?

The Chairman: Ready for the question? As many as are in favor, say "Aye"; oppose "No." The "Ayes" appear to have it. So voted.

That brings us to general orders of the day — there are none. Before adjourning, the chair would like to ask each of the chairmen of the standing committees or a member of the select Committee on Elections if they can give to the convention an idea as to when substantive proposals will be coming out of their committee for deliberation by the full convention. It might be helpful if it is possible.

Mr. McKenna: Robert J. McKenna, District 50. In the absence of Chairman Murphy, as acting chairman I would like to announce that the meeting of the Election Committee scheduled for Friday has been cancelled and there will be a public hearing Monday evening at 7:00 p.m. in Room 203.

The Chairman: Received and noted. Committee on Legislative Compensation. The Chair informs the delegates as to the potential date on which substantive proposals will be submitted.

Mr. Friedemann: Zygmunt Friedeman, District 18, Chairman of the Committee reporting. The Committee is about to hold an open public hearing on Wednesday, September 26. We will probably come back with some reporting on Tuesday after September 26 or probably Thursday if possible, on the twenty-seventh. Thank you, Mr. Chairman.

The Chairman: The Chairman of the Committee on Lotteries, Mr. Gagnon.

Mr. Gagnon: Ronald Gagnon, District 37. The committee met at 6:30 this evening and tentatively scheduled a public hearing on September 26, which is the same evening as the Committee on Legislative Pay.

I would like to ask the members of the Committee on Lotteries to meet here after the meeting for perhaps five minutes to set another time and date. With that in mind, we will probably be prepared to render substantive proposals at the meeting of October 2.

The Chairman: Thank you. Committee on Grand Jury, Mr. Folcarelli.

(Not present.)

Mr. Malinou: I cannot speak for the chairman at this point, and so far as the discussion in committee is concerned, we have not reached a consensus on any target date, Mr. Chairman.

The Chairman: Thank you very much. The Chairman of the Committee on Elections is not with us, but Vice-Chairman McKenna is.

Mr. McKenna: I am afraid at this point the Elections Committee is not able to report when we will have a substantive report.

The Chairman: No idea as to when a report might be forthcoming?

Mr. McKenna: Not at this point, Mr. Chairman.

The Chairman: The Committee on Resolutions — I take it you have no substantive report in the offing?

Mr. Caprio: Mr. Chairman, we appear at this evening's meeting to get a general consensus on the Resolutions Committee, and based on those resolutions that are before the committee at the present time, I would venture a conservative guess that my next Tuesday meeting, barring any new developments in the convention, we would be prepared to give a substantive report on the resolutions currently before us.

The Chairman: Thank you very much. That concludes the chair's inquiry. Adjournment is in order, but for any purpose does any delegate desire the floor?

Mr. Kimball: Mr. Chairman, Kimball from the 26th District.

The Chairman: Yes, sir?

Mr. Kimball: I'll speak as a member of the Grand Jury Committee only, but in order to help you and to better inform the public I feel that we ought to have a proposal ready for the convention no later than October 2.

The Chairman: Thank you, Mr. Kimball. Does any delegate desire the floor for any purpose whatsoever? Apparently not. A motion to adjourn is in order.

(Motion made and seconded to adjourn.)

The Chairman: Motion has been made and seconded that the convention be adjourned. The convention is adjourned to Thursday, September 20, at 7:30. All in favor say, "Aye." Opposed, "No." The ayes have it. Convention stands adjourned.

(Convention adjourned to Thursday, September 20, 1973 at 7:30 p.m.)

PATRICK T. CONLEY, *Secretary*

ELLIOTT E. ANDREWS, *Recorder*

Appendix

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ATTORNEY GENERAL
Providence County Court House
Providence, R. I. 02903

RICHARD J. ISRAEL,
Attorney General

September 17, 1973

To the Honorable Presiding Officer and
Delegates to the Constitutional Convention
Providence, Rhode Island

Your Honors:

I have your request of September 14, 1973 for my Opinion on the following question:

"Whether the convention is confined to the language of the call on the question of legislative compensation to be determined solely by the Compensation Commission."

Out of consideration for the fundamental importance of your work and my judgment that every public officer ought to give you every lawful assistance, I am pleased to render my Opinion of what a proper answer to your question ought to be.

In order to alter the fundamental instrument by which the government and all its officers, executive, legislative and judicial, hold and exercise their powers, some link must be made between the existing institutions and the ultimate source of power while the alteration process is being carried out. The government, and all its officers, derive and draw their power from the people through an existing constitution. Some constitutions like that of Rhode Island contain a built-in method for their own amendment. But, however skillfully devised, no such method can meet every future contingency when it may be necessary to alter or revise the existing constitution.

The Constitution belongs to all the people, and most of us agree that the people may revise, amend or replace their Constitution peaceably by any means provided within the constitution, or by ratification of the proposals of a lawful convention, or forcibly by the revolutionary displacement of the existing government, and its officers, in the event that government will not or claims it cannot respond to their will. Governments, however, ought not to force the people to revolution where there is any reasonably acceptable peaceable way to achieve fundamental constitutional change. The only way, however, by which the people may use the existing institutions and officers of government for this purpose is by the exercise of one of the powers conveyed to such institutions or officers in the existing constitution or by calling upon a power of the existing government which is derived from sources outside of the constitution, sometimes referred to as "inherent" or "natural law" powers. In judicial and quasi-judicial functions such powers are also sometimes referred to as "common-law" powers.

There has not been suggested any office or institution of government in Rhode Island, which has any constitutional, inherent, natural, or common-law power to convene a body of delegates to represent the people for the purpose of proposing amendments to the constitution, unless it be the general assembly. The general assembly may properly exercise its powers under the constitution by the passage of laws, or enactments, requiring the concurrence of both houses and subject to the veto power of the Governor. Presumably, it may in the same manner exercise any extra-constitutional power it has, if it finds the need great enough. Accordingly, we must always refer to the pertinent Act to see whether and how the General Assembly exercised its powers.

The advisory opinion of the Justices of Rhode Island Supreme Court to the Governor entitled: *In Re The Constitutional Convention,* (1935), 55 R. I. 56, rendered on April 1, 1935 opined that Section 10 of Article IV of the Constitution preserved to the General Assembly the same power to call constitutional conventions after the adoption of the constitution as it had enjoyed prior to the adoption. The Court pointed to the conventions of 1824, 1834, 1841, and 1842, the last of which proposed the present constitution, all of which were called by the General Assembly under its power derived from the Charter granted by King Charles II, of July 8, 1663. On May 4, 1776 the people substituted themselves for the King of England as sovereign in Rhode Island.

A group of persons peacably organized and convened for the purpose of proposing amendments to the constitution, pursuant to an Act of the General Assembly, under color of lawful authority, derived either from the existing constitution or from a preserved extra-constitutional power ought not to be regarded as a treasonous assembly, revolutionary in nature, so that it might become the obligation of the constitutional government to resist it. Their work should not be a constitutional nullity if they are responding to a well-perceived need to preserve the viability of representative government, and if their work is subject to ultimate approval by the people.

Assuming, as I must from your question, that you believe you have lawful constitutional existence by virtue of the act of the General Assembly designated Chapter 98 of the Public Laws of 1973, and by virtue thereunder of the vote of the qualified electors of the State on August 7, 1973, wherein your Convention was approved and you were elected from your respective districts, you now inquire as to what extent your deliberations and proposals must conform to the Act of the General Assembly and the Question approved by the qualified electors who voted on August 7, 1973. You particularly inquire as to whether or not you may consider and propose for adoption an amendment or amendments respecting the compensation of members of the general assembly other than that set forth in paragraph numbered 3 both in Section 1 of said Chapter 98 of the Public Laws of 1973 and in the Question approved by the electors on August 7, 1973.

The Justices of our Supreme Court in their advisory opinion of 1935 noted that the power of the General Assembly to call constitutional conventions was not excluded because the General Assembly was authorized by Article XIII to propose amendments in a specific fashion to be adopted by the people. The Justices felt that the power to call a convention which they found preserved under Section 10 of Article IV and the power to propose amendments which is expressly granted under Article XIII were not inconsistent powers to do the same thing, but altogether different powers to do different things. The Justices are supoprted in this view by Jameson on *Constitutional Conventions.* We can only regard with awe the capacity to discern the distinction between the two powers.

A more intellectually sound approach would have been to recognize that from time to time the constitutionally provided means of amendment may not be adequate to make necessary changes to a constitution, even in the absence of the great emergency referred to by the Justices of the Supreme Judicial Court of Massachusetts in *Opinion of the Justices,* 6 Cush. 573. Accordingly, the General Assembly thereupon has a right, even a duty, to call delegates into convention to propose a new constitution or to

revise the old to maintain the very existence and credibility of the government of which the General Assembly itself is a part. Such a right to self-preservation, to the avoidance of revolution and to direct resort to the power of the sovereign in the interest of continued viability of the instruments of government ought not to be thwarted by refined doctrines of contractual or statutory construction. In any event, it is now far too late in the day to deny the power of the General Assembly to call a constitutional convention, from whatever source that power is derived. See, *Opinion to the House of Representatives* (1965), 99 R. I. 382.

But, an incidental spin-off from the rationale of the 1935 opinion of the Justices, is the concept that Article XIII may be the exclusive means by which "a special and particular amendment or a few of them, where the matter is relatively simple"[1] may be proposed, whereas a convention is the only means available for "a general revision of a constitution or the making of a new one."[2] Put another way, the only way the General Assembly may propose a specific amendment to the people for their approval is through the device provided by Article XIII. From this point of view, if paragraph 3 of Section 1 of Chapter 98 is a proposal of a "special and particular amendment," it then would be an unconstitutional violation of Article XIII, and its submission to the people would be a nullity. But courts and constitutional officers are charged to so construe and apply acts of the General Assembly wherever possible as to avoid a determination of unconstitutionality. See, *Opinion to the House of Representatives*, 99 R. I. 382, 387 (1965); *Murphy* v. *Director of Public Works*, 103 R. I. 451, 458 (1968).

The power of the General Assembly to limit the scope of the deliberations and proposals of a constitutional convention was said by the Justices in 1935 to be determined by whether or not the electors had ratified such limitations at the time it approved the call.[3] The Justices, however, in their opinion referred to the "scope of the convention." From the sense of their opinion, and from their distinction between Article XIII powers and Section 10, Article IV retained powers they could not have intended a limitation of the scope of a convention to include the proposal by the General Assembly of a specific particular amendment.

The argument is made that even if the General Assembly may not limit your consideration to a specific particular amendment, the people in their ratification of your call may do so. That argument would point to the Question approved by the electors on August 7, 1973 as the factor limiting your powers, and not the Act of the General Assembly. In that regard, you are the judges of your mandate from the people, and if the people believe you have exceeded your mandate they will advise you of that fact when you submit your proposals to them for their ratification.

Furthermore, to accept that argument would reduce your function to an absurdity. The people in their vote of August 7, 1973 would thus have asked you to ask them whether or not they approve the proposed amendment. All that you can now do under that argument is permit or deny them the opportunity to consider the proposed amendment for the second time. They might just as well have submitted the question to themselves. In effect you become what is known to lawyers as a "straw man" through whom the people are transmitting a question to themselves. You thereby would become a device by which a legislative proposal to amend the constitution is submitted to the people. You may wish to assume that role. You need not.

Therefore, it is my opinion that you need not regard paragraph number 3 of Section 1 of Chapter 98 of the Public Laws of 1973, as approved by the electors on August 7, 1973, as a proposed particular amendment which you must decide whether or not to further propose for adoption by the electors. You may, consistent with the Constitution of the State, as well as with said Chapter 98 and the approval of the Question submitted to the electors, consider and propose for adoption any amendment or amend-

[1] 55 R. I. at page 67.

[2] *Ibid.*

[3] 55 R. I. at page 99.