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THE CONSTITUTION REVIEW COMMISSION OF KENTUCKY*

By ELVIS J. STAHR, JR.**

By an act of the 1950 regular session of the General Assembly, there was created a Constitution Review Commission.¹ The statute creating the Commission is codified as KRS 447.160 through 447.180. The new Commission was created to carry on the program initiated by a temporary Constitution Review Commission appointed pursuant to Executive Order of the Governor on February 1, 1949, one of the recommendations of the temporary Commission having been that a permanent Commission be established by statute. Like the temporary Commission, the statutory Commission is to consist of seven members appointed by the Governor. Both the temporary Commission and the first statutory Commission have been composed entirely of lawyers from all parts of the State.²

The statute provides that the Commission shall constitute an independent agency of the State government, its members to serve without compensation. Its functions are to carry on a continuous program of study, review and reexamination of the Constitution of Kentucky, continuing the program initiated by the temporary Commission, such program to be so designed and carried on as to determine to what extent the Constitution requires amendment or revision, to analyze and appraise suggestions for amendment or revision advanced by interested persons or groups, and to secure a considered public opinion respecting proposals for amendment or revision. It is further provided that the Commission shall prepare and propose in detail, and publicize in such manner as it deems proper, such amendments or revisions of the Constitution as in its opinion will promote the interests and welfare of the Commonwealth, and shall report to each regular session of the General Assembly

* This article has the approval of the Constitution Review Commission.

** Member and secretary, Constitution Review Commission, and Dean, College of Law, University of Kentucky, Lexington, Ky.

¹ Acts 1950, c. 210, effective June 15, 1950.

² Members of the temporary commission were James W Stites, Louisville, former judge of the Court of Appeals, chairman; Oldham Clarke, Louisville; Edwin R. Denney, Mount Vernon, former circuit judge and former member of the General Assembly; James B. Milliken, Cold Spring, former state senator, now a judge-elect of the Court of Appeals; Ira D. Smith, Hopkinsville, circuit judge; Elvis J. Stahr, jr., Lexington, Dean of the College of Law, University of Kentucky; and Simeon S. Willis, Ashland, former governor and former judge of the Court of Appeals.

The first statutory Commission, appointed in June, 1950, is composed of James W Stites, chairman; Charles S. Adams, Covington; Edwin R. Denney; Hubert Meredith, Owensboro, former attorney general; John B. Rodes, Bowling Green, circuit judge; Elvis J. Stahr, jr., secretary; and Simeon S. Willis.

The need for constitutional revision has long been felt by great numbers of the people of Kentucky. Although the calling of a Constitutional Convention was voted down at the polls in November, 1947, there was little evidence that the vote meant that the people were completely satisfied with the entire Constitution. As a matter of fact, even the most vocal opponents of a convention admitted that changes were needed but felt that amendments would be preferable to the calling of a convention. Two noteworthy amendments were adopted by the people in November, 1949, these being the raising of the limit on salaries of State officials and the enlarging of the proportion of the school fund which could be used for equalization. In the meantime, the temporary Commission worked steadily throughout 1949 on a careful study of the entire Constitution, and in February, 1950, submitted its Report to the General Assembly. Printed with the Report was an appendix composed of the reports of eight subcommittees set up to study specific fields in which there was evidence that considerable change might be desirable. Some forty outstanding citizens of the State, aside from the commissioners, participated in the work of one or more of these subcommittees. In addition, a call was sent out to all citizens of the State to submit recommendations and a fair number of responses were received.

One of the first tasks of the temporary Commission was to consider the methods available for revision or amendment of the Constitution, and it was decided that for several reasons, stated in the Report, the amendment route was preferable to another effort to call a convention. However, the Commission felt that in order for even the most highly desirable changes to be effected within anything like a reasonable time, an amendment to Section 256, which deals with the method of amendment, would first be necessary. Consequently, the Commission drafted and proposed a new Section 256 and recommended to the General Assembly that top priority be given to that amendment initially. The 1950 General Assembly overwhelmingly followed this recommendation, and the proposed amendment to Section 256 will be on the ballot in November, 1951. It will be the task of the new Commission to recommend the next steps to be taken in the light of the adoption or rejection of this proposal to amend the section governing amendments.

In support of its conclusion that Section 256 must be amended, and in carrying out its mandate from the Governor to study, examine and review the Constitution for the purpose of determining whether it requires revision and, if so, the nature and character thereof and the means by which it may best be accomplished, the Commission in

its Report pointed out that it had studied all 263 sections of the Constitution, line by line, had considered the recommendations from the public and the reports of all subcommittees, and had concluded that more than 70 sections needed either to be changed or to be deleted and a few new sections needed to be inserted. It would be wasteful of time and space to consider all these changes in detail in this article, since this would in effect involve a reprint of the Commission's own Report, which is concisely written. Interested persons are invited to write to the Reviser of Statutes, State Capitol, Frankfort, Kentucky, for copies of the Report, which consists of 57 pages plus the appendix of 38 pages.

In nearly all instances the temporary Commission submitted a specific recommendation as to the nature of the changes that should be made, and stated the reasons therefor succinctly. These recommended changes were divided into four categories: first, those deemed immediately pressing; second, those deemed desirable; third, those that require further study; and fourth, those needed to eliminate obsolete provisions.

The only recommendation with regard to the Bill of Rights was that it be not touched. I believe it can be stated with assurance that the new Commission will not alter this recommendation. As to the other recommendations, the new Commission will feel free to re-examine them but it is anticipated that in very few instances will they be changed.

One of the major tasks of the new Commission will be to consider those sections and subjects which were designated in the 1950 Report as needing further study. Therefore, a brief mention of those changes is worth making here, in the hope that the readers of this article will give them some thought and submit their suggestions to the Commission. Included are Section 106, having to do with the fees and office expenses of county officials in counties having 75,000 population or more; Section 156, which stands in the way of "home rule" for cities; Sections 157 and 158, having to do with local debt limitations; Section 181, having to do with local taxation, and Section 184, having to do with State support of higher education. The Report also pointed out that various suggestions for major reorganizations in the departments of government should also fall in the class of changes requiring further study. The bar of Kentucky is urged to make known its ideas on these matters to the new Commission. The new Judicial Council and the new Civil Code Commission are especially invited to submit recommendations to the Constitution Review Commission where those agencies find constitutional change is needed to enable Kentucky to

improve its administration of justice. It is hoped that constitutional stumbling blocks to the success of the important work of those agencies may be removed without great delay. This depends a good deal upon the adoption of the proposed amendment to Section 256. A tremendous amount of uncompensated work has been and will be put into the problems of modernizing Kentucky's Constitution by the old and new Commissions, and it is of major importance to the future of the Commonwealth that this work be understood and implemented by the people. Those who have constructive suggestions are again urged to submit them. Those who do not can be of the greatest help by supporting the work of the Commission, which would seem fully entitled to that support. The first job on which help is needed is in securing an affirmative vote of the people on the amending of Section 256 in November, 1951.