

The Ohio Constitution: A Brief History

The present Constitution of Ohio was adopted by the people in 1851. It is not the oldest state constitution still in effect today, but not many are older. The present Indiana Constitution was adopted the same year and that of Wisconsin three years earlier; only the constitutions of five of the six New England states (Massachusetts, New Hampshire, Vermont, Maine and Rhode Island) surpass these three midwestern ones in age.

Although the basic Ohio document has not been entirely rewritten for more than 120 years, it has been amended. Amendments agreed to by the voters have included proposals placed on the ballot from all three sources authorized by the Constitution—the General Assembly, a convention, and initiative petition.

In November, 1972, the voters will be asked to answer "yes" or "no" to the question: Shall there be a convention to revise, alter, or amend the constitution? Twice before in this century (1932 and 1952) and once in the last (1891), Ohio voters answered "no" to that question, which is placed on the ballot every 20 years pursuant to a constitutional directive adopted in 1851. In 1871 and again in 1910, the voters approved a convention call, but the new constitution proposed by the 1874 convention was rejected at the polls and the 1912 Convention submitted separate amendments for voter action rather than a new constitution. Thus the 1851 Constitution, as amended, remains today Ohio's basic government document.

The 1851 Constitution is the state's second. The first was written and adopted by a convention of elected delegates in 1802, when Ohio became the first state carved out of the northwest territory. The Northwest Ordinance, adopted by Congress in 1787, provided for the government of the northwest territory ("the territory of the United States northwest of the River Ohio") prior to statehood and is, in many respects, the territory's first constitution. It provided for the government of the territory in two stages, and looked forward to the day when not less than three nor more than five states would be formed in the territory and admitted to the union "on an equal footing" with the original states, with their own "permanent" constitutions, with republican forms of government, and in conformity with the principles expressed in the Ordinance.

The first stage of government in the territory under the Northwest Ordinance consisted of the appointment by Congress of a Governor, a Secretary, and three judges. When the free male adult inhabitants in the territory numbered 5,000,

a representative assembly was to be chosen, (one representative for each 500 free male inhabitants) and the lawmaking authority, previously vested in the Governor and the judges, would then be given to the Assembly, which consisted of the elected representatives, the Governor, and a legislative council of five persons chosen by Congress from a list of 10 names submitted by the representatives, each of the ten to be possessed of a freehold in 500 acres and resident of the district. By 1798, the population of the territory had increased to the point of at least 5,000 free male adult inhabitants (although slavery was prohibited in the territory by the provisions of the Northwest Ordinance, runaway slaves from other states were reclaimable, and therefore all men were not free) and the first Assembly was elected and met in Cincinnati early in 1799. Not too long thereafter, Congress divided the territory into two parts—Ohio and Indiana—and the residents of the Ohio portion elected their own territorial assembly. Finally, in 1802, Congress enacted a law enabling the people of Ohio to "form a constitution and state government" and be admitted to the union as a state.

The push for statehood may have been premature under the terms of the Northwest Ordinance, which required 60,000 free inhabitants in order to form a state. The 1800 census showed a population of 45,365 in the entire Ohio portion of the territory, with an additional 5,000 or so in the Indiana portion. However, Governor St. Clair, who was reappointed several times as Governor of the territory, was very unpopular, and those opposed to him and his regime prevailed upon Congress to pass the law providing for a constitutional convention, for the admission of Ohio as a state, and defining the state's boundaries to separate it from the remainder of the Ohio portion of the already-divided Northwest Territory.

The 1802 constitutional convention met in Chillicothe on November 1, 1802 and had drafted and adopted a Constitution before the month was ended. It was not submitted to the people for their approval, although there is little reason to believe it would not have been approved if it had been submitted. In establishing a framework of government for the new state, the Constitution shows clearly the unpopularity of St. Clair which, together with "the general distrust of executives during the post-colonial period, and . . . the Democratic tendencies of the Jeffersonians"¹ resulted in greatly restricting the Governor's powers. Under the Northwest Ordinance, for example, the Governor had an absolute veto over all legislative acts; the new Constitution gave him

¹Roseboom, Eugene H. Weisenburger, Francis P. "A History of Ohio" 2d Ed. Columbus: The Ohio Historical Society, 1967, p. 69.

no veto power whatever. He was stripped of practically all powers of appointment; these were to be exercised, instead, by the General Assembly.

Many excellent histories of Ohio review the content of the 1802 Constitution and the state government which resulted from its provisions, and these matters will not be discussed here. The Constitution formed the basis for government for nearly fifty years, during which time the state increased in population, in agriculture, in commerce and in industry to an extent not envisioned at the beginning of the century. The Constitution itself provided no method of amendment except by the calling of a convention, and the only convention call in the fifty-year period was rejected by the people in 1819. By the middle of the century, the serious deficiencies in the judicial system, the size of the state debt, and other matters led to such public dissatisfaction that the general Assembly again submitted to the electors the question of calling a convention, and this time it was approved. The convention of elected delegates began meeting in 1850 and completed its work in March, 1851. A new Constitution was drafted and approved by the voters at a special election in June, 1851.

The new Constitution was notable for greatly restricting the operations of the legislature without granting the Governor substantial additional powers. Additional state executive officials were provided for, to be elected by the people, and existing powers of appointment were taken away from the legislature. Judges were now elected rather than appointed by the legislature, and the judicial system was changed substantially. Among the limitations placed on the legislature were prohibitions against special laws conferring corporate powers, and a debt limit of \$750,000. Other limitations in the article on debt were designed to prohibit further state and local involvement in private enterprises such as railroads. General laws were required to be of uniform application, and retroactive laws were prohibited; the legislature was expressly forbidden to grant divorces or exercise judicial power. Taxes were required to be uniform on both real and personal property. The question of holding a convention to revise, alter or amend the Constitution was to be submitted to the people every 20 years (a Jeffersonian principle) but the new Constitution also provided for amendments to be proposed by $\frac{3}{5}$ of the members of the General Assembly and then submitted to the voters. A majority of those voting at the election was required for approval of the amendment. This latter provision made amending the Constitution still a difficult job, since those who voted at an election but failed to vote either for or against the constitutional amendment were, in effect, casting negative votes. Between 1851 and the next convention, in 1873-74,

the legislature had seven proposed constitutional amendments placed on the ballot, and all failed, although six of them received the approval of a majority of those voting on the amendment.

The 20-year convention was put to the voters in 1871 and was approved. At least part of the success in securing a favorable convention call in both 1871 and 1910 is attributable to the party ballot or straight party voting when the party has designated a position for or against a convention. Prior to 1912, few amendments were successful at the polls, and those that were adopted secured the necessary votes by the same method of voting.

Although the convention call was approved in 1871, the new Constitution submitted to the voters in 1874 was rejected. The 1851 Constitution, not yet successfully amended, continued to form the basis of government in Ohio. In the years following 1874, and prior to the 1912 convention, 25 amendments were submitted to the voters, and nine of these were adopted. Some of these were changes which had been proposed in the 1874 Constitution. The nine amendments adopted included providing for a Supreme Court Commission to "dispose of such part of the business on the dockets of the Supreme Court" as might be transferred to it by the Court; a major issue in calling the 1873-74 convention was the general lag in the judicial system, especially in the Supreme Court, in disposing of pending cases. The number of judges was increased, and other changes in the judicial system were effected by constitutional amendment. The date of the general election for state and county officers was changed from October to November, to coincide with the date for the election of federal officials. The famous—or infamous—"Hanna" amendment was adopted in 1903, giving each county at least one representative in the Ohio House of Representatives, and thus destroying the approximation of equal representation which had existed prior to that time. The Governor was given the veto power, also in 1903—a political issue which had been debated for 100 years in Ohio, ever since the 1802 Constitution failed to give the Governor this power. Double liability of corporate stockholders was prohibited by amendment in 1903, and in 1905 public bonds were exempted from taxation, and state and county elections were changed to the even-numbered year. The people defeated the convention call when it appeared on the ballot in 1891.

The convention call would have appeared automatically on the ballot again in 1911, but the General Assembly did not wait. The question was submitted to the voters in 1910 and approved. The following year the General Assembly passed the necessary enabling legislation, and delegates were elected to the convention, which took place

in 1912. The 1912 convention has been called "the most outstanding single event in the political evolution of the state of Ohio"¹ and the convention call was supported by diverse groups of people, advocating such "progressive" platforms as the initiative and referendum, recall of public officials, woman suffrage, compulsory workmen's compensation and other provisions designed to benefit workers, home rule for cities, direct primaries, and civil service. Business groups wanted a classified property tax, temperance groups wanted a liquor license system and other groups wanted other things. Political party endorsement of the convention call undoubtedly helped to increase the votes in favor.

The delegates to the 1912 convention determined to submit separate amendments to the people rather than an entirely new Constitution. Forty-one amendments were adopted by the convention and placed on the ballot; 33 of these were approved. The convention and the subsequent ratification of its results "took place in a mood of public excitement, the climax of the Theodore Roosevelt-Woodrow Wilson-Robert M. LaFollette Progressive era."² The progressives and the unions predicted the arrival of the millenium as a result of the approval of measures such as the initiative and referendum, assuring the people an opportunity to participate directly in the enactment of laws, and compulsory workmen's compensation, which shifted some of the burden of industrial injuries from the worker to the employer. Conservatives predicted disaster.

The 1851 Constitution was further changed in 1912 by the inclusion of a merit system requirement for employment in the civil service of the state, counties, and cities; by the enactment of Article XVIII, which provides for municipal home rule; by giving the Governor veto power over items in the appropriation act; by reducing from $\frac{2}{3}$ to $\frac{3}{5}$ the number required to override a gubernatorial veto; by establishing an eight-hour day on public works and authorizing laws regulating hours and working conditions, and fixing minimum wages for employees; by authorizing laws to encourage forestry and to conserve natural resources; and others. Among the defeated proposals were woman suffrage and removing the word "white" from the description of those entitled to vote; also defeated was the abolition of capital punishment.

A significant change to the amending procedures adopted in 1912 was enabling a majority of those voting on the question to amend the Constitution. That change, together with the provisions for the initiative and referendum, has resulted in

increasing both the number of constitutional amendments submitted to the people and the number adopted in the years since 1912. Prior to 1920, 14 initiated constitutional amendments were placed on the ballot; four of these were adopted. Use of the initiative tapered off over the years, but submission of amendments by the General Assembly increased. Since 1912, and prior to 1972, the General Assembly has submitted 79 proposals to amend the Constitution to the voters, and 53 of these have been adopted.

Significant changes in Ohio's Constitution since 1912 include: application of the uniform rule of taxation to real property only; property taxation limited to one per cent of true value without vote; income and inheritance taxes required to be distributed, in part, to local governments; authorization of debt for various purposes — capital improvements, industrial development, soldiers' bonuses; permitting counties to adopt charters and acquire "home rule" powers; reapportionment of both houses of the General Assembly following the one man-one vote decisions of the United States Supreme Court; major changes in the court system pursuant to the "modern courts" amendment adopted in 1968; prohibition of the use of motor vehicle related taxes for other than highway purposes; elimination of straight party voting by requiring that electors must vote individually for a candidate for office; creation of the state board of education; four-year terms for elected state executive officials and senators and limiting the Governor to two successive terms. This list is, of course, incomplete; many other changes have been adopted which may be just as significant to particular subjects as those listed. The liquor question, for example, generated controversy and issues of various types over the years, some adopted and some defeated. As a constitutional issue, however, it no longer seems as significant as it was in the past.

Twice since 1912 the voters have rejected the proposal to call a constitutional convention — in 1932 and again in 1952. In 1932, little interest seems to have developed for calling a convention in Ohio; both government and governed were preoccupied by economic conditions. Prior to 1952, a flurry of interest in the convention question was shown by the publication by The Stephen H. Wilder Foundation of Cincinnati of "An Analysis and Appraisal of the Ohio State Constitution, 1851-1951." Articles on various portions of the Constitution were prepared for this booklet by members of the Social Science Section of the Ohio College Association, and edited by Dr. Harvey Walker, of Ohio State University. The Ohio Program Commission created a Constitutional Convention Committee and printed a short history of the development and content of the Ohio Constitution written by its Executive Secretary, Lauren

¹Glosser, Lauren A., "Ohio's Constitution in the Making," Ohio Program Commission, 1950

²Downes, Randolph C., unpublished speech, February 1968, LWV, Toledo

A. Glosser. The history was designed "to give the average person an understanding of the Constitution." The *Ohio Bar*, in 1949 and 1950, carried articles concerning the calling of a convention, including one by Jefferson B. Fordham, Dean of the College of Law at Ohio State University, entitled "Some Aspects of Constitutional Revision in Ohio."

Groups such as the League of Women Voters and the Ohio Chamber of Commerce studied the Constitution and the convention question prior

to the 1952 vote, as they are doing today. The Wilder Foundation has published, in 1970, a new look at Ohio's Constitution, "State Government for Our Times" prepared by W. Donald Heisel, Director and Iola O. Hessler, Research Associate of the Institute of Governmental Research of the University of Cincinnati, and the Ohio Constitutional Revision Commission, pursuant to its legislative directive, is studying Ohio's much-amended 1851 Constitution and making recommendations for amendments to the General Assembly.