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Transcripts of Meetings of the State of Georgia Constitutional Revision Committee to Revise Article IX, Vol. I

State of Georgia



STATE OF GEORGIA
SELECT COMMITTEE ON
CONSTITUTIONAL REVISION
1977-1981

TRANSCRIPTS OF MEETINGS
COMMITTEE TO REVISE

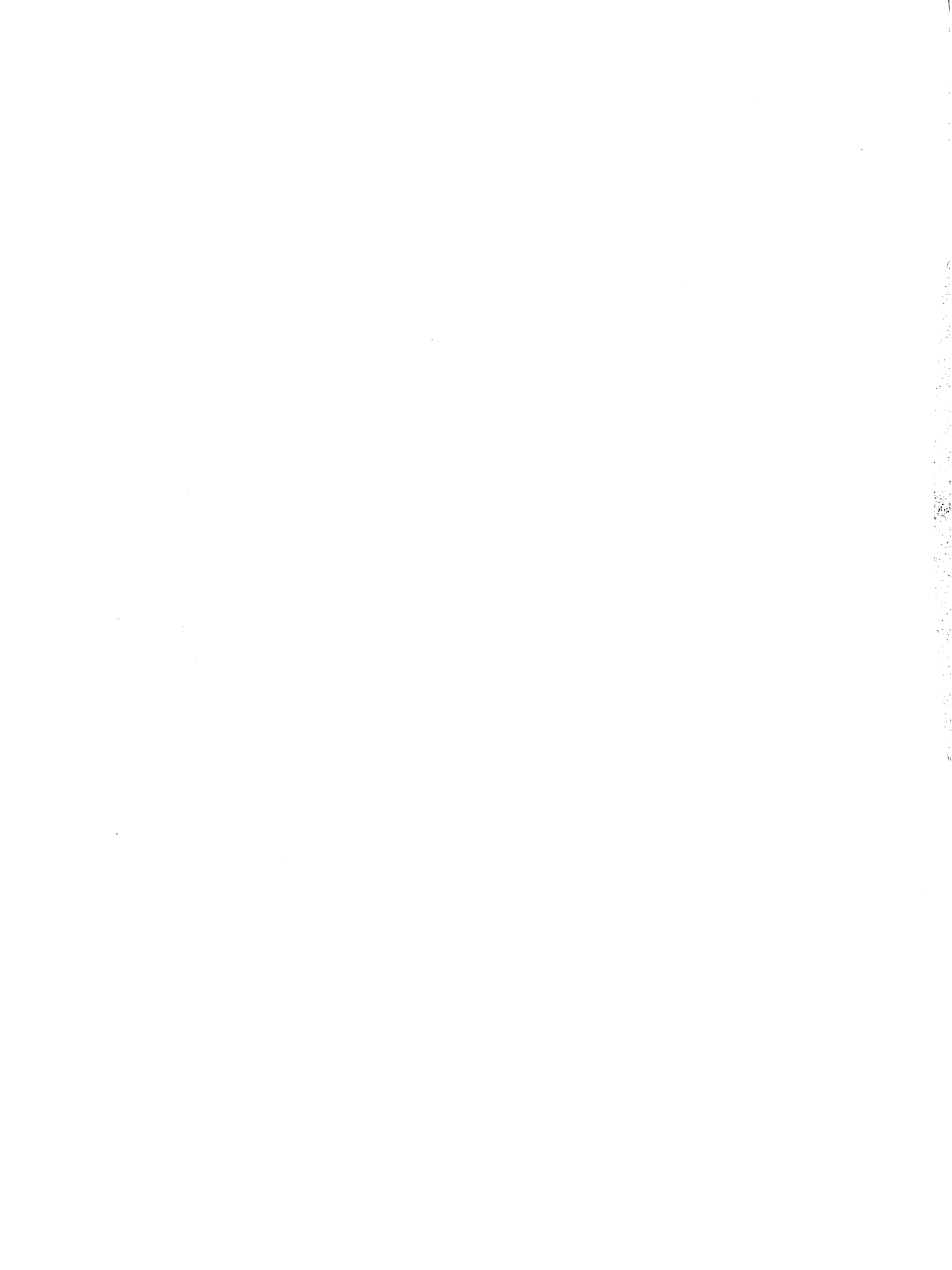
ARTICLE IX

VOL. I



STATE OF GEORGIA
SELECT COMMITTEE ON CONSTITUTIONAL REVISION

Transcripts of Meetings
1977-1981



COMMITTEE MEMBERS:

GEORGE BUSBEE
GOVERNOR
CHAIRMAN

WELL MILLER
LIEUTENANT GOVERNOR

THOMAS B. MURPHY
SPEAKER, HOUSE OF REPRESENTATIVES

ROBERT H. JORDAN
CHIEF JUSTICE, SUPREME COURT

J. KELLEY QUILLIAN
CHIEF JUDGE, COURT OF APPEALS

MICHAEL J. BOWERS
ATTORNEY GENERAL

MARCUS B. CALHOUN
SENIOR JUDGE, SUPERIOR COURTS



SELECT COMMITTEE
ON
CONSTITUTIONAL REVISION

ROOM 23H
47 TRINITY AVENUE
ATLANTA, GEORGIA 30334
404/656-7158

COMMITTEES MEMBERS:

AL HOLLOWAY
SENATE PRESIDENT PRO TEMPORE

JACK CONNELL
SPEAKER PRO TEMPORE

ROY E. BARNES
CHAIRMAN, SENATE JUDICIARY COMMITTEE

WAYNE SNOW, JR.
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FRANK H. EDWARDS
SPECIAL COUNSEL

J. ROBIN HARRIS
EXECUTIVE DIRECTOR

MELVIN B. HILL, JR.
ASSISTANT EXECUTIVE DIRECTOR

MEETINGS HELD ON CONSTITUTIONAL REVISION

COMMITTEE TO REVISE ARTICLE IX

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STATE OF GEORGIA

COMMITTEE TO REVISE ARTICLE IX

of the

CONSTITUTION OF GEORGIA

Room 142
State Capitol
Atlanta, Georgia

Wednesday, September 12, 1979
2:00 p.m.

BRANDENBURG & HASTY

SCIENTIFIC REPORTING

3715 COLONIAL TRAIL, DOUGLASVILLE, GEORGIA 30135

942-0482

DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES

PRESENT WERE:

ROBERT H. SMALLEY, JR., Chairman
G. D. ADAMS
ROY E. BARNES
DAVID T. BARROW
ROBERT M. BRINSON
JAMES V. BURGESS, JR.
PAUL D. COVERDELL
ANN A. CRICHTON
HAL A. DAVIS
WARREN D. EVANS
MERRILL GREATHOUSE
GRACE T. HAMILTON
RAY JACKSON
CHARLES KNOWLES
A. J. MCCLUNG
ROGER RUPNOW
ED S. SELL, JR.
R. PERRY SENTELL, JR.
CALVIN SIMPSON
JIMMY HODGE TIMMONS
J. DEVEREUX WEEKS
ED SUMNER
W. M. ALEXANDER
PAUL BOLSTER
LOU LITCHFIELD
FRANK EDWARDS
HARVEY FINDLEY
CYNTHIA NONIDEZ
ROBIN HARRIS
VICKIE GREENBERG



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P R O C E E D I N G S

1
2 CHAIRMAN SMALLEY: Let the meeting come to order
3 please. I want to apologize for setting such a poor example.
4 I allowed myself thirty-five minutes to get from the north
5 side of town over here and because of my unfamiliarity with
6 these grounds, I have spent most of the last twenty minutes
7 trying to find this room.

8 First of all, let me introduce Mr. Robin Harris,
9 who is the Chairman of the overall Constitutional Select
10 Committee. Robin, stand up please. The distinguished former
11 Chairman of the House Judiciary Committee and an old friend and
12 colleague of mine.

13 Also, Mr. Melvin Hill, who is to be the Executive
14 Assistant in charge of this work and Vickie Greenberg who will
15 be an attorney assisting us as well as the other committees.

16 Now Melvin, if you would, would you sound the roll
17 and let's see who is present.

18 MR. HILL: Okay.

19 CHAIRMAN SMALLEY: I'm going to make this suggestion,
20 since this is our first and our organizational meeting, that
21 as your name is called, if you would stand, so that we can
22 all identify you and if you have a particular connection or
23 interest that has resulted in your being appointed to this
24 committee, if you would identify that please.

25 MR. HILL: These are in alphabetical order.



1 Representative Adams.

2 REPRESENTATIVE ADAMS: I'm Chairman of the Committee
3 of Community Affairs and we handle all legislation for the
4 House.

5 MR. HILL: Representative Jack Connell.

6 CHAIRMAN SMALLEY: Representative Connell said because
7 of the press of other business he didn't think he'd be here.

8 MR. HILL: Representative Warren Evans.

9 REPRESENTATIVE EVANS: I'm a member of the House
10 Judiciary Committee.

11 MR. HILL: Representative Grace Hamilton.

12 REPRESENTATIVE HAMILTON: I represent District 31 in
13 the Georgia General Assembly and I have an interest in local
14 legislation, notably the Atlanta City Charter.

15 MR. HILL: Senator Roy Barnes.

16 SENATOR BARNES: I'm Chairman of the Judiciary
17 Committee in the Senate.

18 MR. HILL: Paul Coverdell.

19 (Senator Coverdell was not present at the roll
20 call but joined the meeting at a later time.)

21 MR. HILL: Senator Jimmy Hodge Timmons.

22 SENATOR TIMMONS: State Senator from District 11.

23 MR. HILL: Senator Charles Wessels.

24 (Senator Wessels was not present.)

25 MR. HILL: Mayor David T. Barrow.



1 MAYOR BARROW: I'm President of the Georgia
2 Municipal Association and Mayor of Bowden. I want to call
3 your attention to the fact that Charles Knowles and I --
4 the President of the County Commissioners Association -- are
5 sitting side by side without a referee, so we're off to a good
6 start.

7 CHAIRMAN SMALLEY: I'll depend on you to keep it
8 that way.

9 MR. HILL: Jim Burgess, James V. Burgess.

10 MR. BURGESS: I'm James Burgess, Attorney.

11 MR. HILL: Ms. Ruth Council.

12 (Ms. Council was not present.)

13 CHAIRMAN SMALLEY: Ms. Council sent me a note
14 declining the appointment I believe.

15 MR. HILL: Ms. Crichton, Ann Crichton.

16 MS. CRICHTON: I'm Mayor of Decatur.

17 MR. HILL: Mr. Woodson Daniel.

18 (Mr. Daniel was not present.)

19 MR. HILL: Mr. Hal Davis.

20 MR. DAVIS: I'm Executive Director of the South
21 Georgia Area Planning & Development Commission headquartered in
22 Valdosta.

23 MR. HILL: Merrill Greathouse.

24 MR. GREATHOUSE: I'm President of the Georgia
25 Sheriffs' Association.



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1 MR. HILL: Ray Jackson.

2 MR. JACKSON: I'm President of the Georgia Tax
3 Officials Association and Tax Commissioner for Bibb County.

4 MR. HILL: Charles Knowles.

5 MR. KNOWLES: I'm President of the Association of
6 County Commissioners of Georgia.

7 MR. HILL: A. J. McClung.

8 MR. MCCLUNG: I'm Mayor Pro Tem of Columbus.

9 MR. HILL: Mrs. Elinor Metzger.

10 (Mrs. Metzger was not present.)

11 MR. HILL: Roger Rupnow.

12 MR. RUPNOW: I'm a Professor of Graduate City Planning
13 Program at Georgia Tech.

14 CHAIRMAN SMALLEY: I had a letter from Mrs. Metzger
15 saying she did want to serve but she could not be here today.

16 MR. HILL: Ed Sell, Jr.

17 MR. SELL: I'm Bibb County Attorney and I'm sitting
18 next to this Georgia Tech man anyway. I may need your help,
19 Sheriff.

20 MR. HILL: Mr. Perry Sentell.

21 MR. SENTELL: University of Georgia Law School.

22 MR. HILL: Calvin Mack Simpson.

23 MR. SIMPSON: I'm President of the Probate Judges
24 Association for the State.

25 MR. HILL: J. Devereux Weeks.

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1 MR. WEEKS: I'm sitting next to Perry Sentell, who
2 has all the answers for the Committee, I'm sure.

3 CHAIRMAN SMALLEY: Perry also wrote me a letter and
4 wants to be overall chairman of everything.

5 MR. HILL: Mr. Bob Brinson.

6 MR. BRINSON: I'm City Attorney of Rome and we have
7 succeeded in freezing the democratic process there.

8 CHAIRMAN SMALLEY: Thank you very much.

9 My name is Bob Smalley and I'm from Griffin.

10 We are the Committee that has been appointed by the
11 Select Committee to consider revising Article IX of the State
12 Constitution, and as you can tell from the identification by
13 each member, each of us has some particular interest in this
14 Article by virtue of either our employment or our representa-
15 tion.

16 I am informed that we have copies -- is it the 1978
17 revision?

18 MR. HILL: Yes, 1976 with the '78 amendments.

19 CHAIRMAN SMALLEY: '76 with the '78 amendments in it,
20 so it's current. Would you make those available to the
21 committee members?

22 (Copies of the Constitution were distributed
23 to the committee members.)

24 CHAIRMAN SMALLEY: We'll have other materials
25 available as we go along, but in my case I intend to keep this



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1 for marking up, just to make any notes about it and I would
2 suggest that you get one and use it as your working copy.

3 Robin Harris has been appointed by the Governor and
4 by the Select Committee to head up this overall undertaking,
5 and I'd like to call on him at this time to give you a briefing
6 about what has already transpired in the way of Constitutional
7 revision and what will be expected of this committee and the
8 time table that they have set for us to work on.

9 MR. HARRIS: Thank you.

10 Mr. Chairman, some of you may recall the very first
11 effort in recent times in '63, which was followed by a Special
12 Session in '64, to revise Georgia's Constitution. That was a
13 session that lasted slightly over two months, it was scheduled
14 to last for three weeks. It resulted in a document that the
15 Court kept off the ballot, the lower court. The Appellate
16 Court reversed that, but by then the general election was over,
17 so no vote was taken by the people. But I tell you now quite
18 candidly I voted against that document anyway in that Special
19 Session in '64, because I didn't think it did anything.

20 There was a Constitutional Revision Commission
21 appointed. Senator Smalley served as a member of that Commission
22 under the chairmanship of Governor Maddox, and it made a report
23 to the General Assembly in 1970. The revised Constitution
24 passed the House in 1970, but time constraints kept it from
25 being considered in the Senate during that session.



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1 Recognizing all of the problems fraught with trying
2 to do a whole document at one time, the thought then occurred to
3 someone to editorially revise the Constitution and submit it
4 to the public in '76. Cyndy Nonidez did most of the work.
5 She's back in the back corner. It simply put subject matter
6 in the correct Articles, made basically no substantive changes,
7 in order to permit an Article by Article revision. Two of
8 those Articles were revised and they passed the House and Senate
9 in '78, Articles II and X. They had virtually no opposition.
10 In fact, I know of absolutely none. Since they sailed through
11 the House and Senate, it was thought they would be ratified
12 and they got on the ballot with thirty-six general amendments
13 and eighty-one local amendments scattered around the State in
14 1978 and it went down to an abysmal defeat.

15 This made those people interested in Constitutional
16 revision think that perhaps more efforts ought to be given
17 towards getting the job done. The Governor would like to have
18 a new Constitution for this state by the time he leaves office
19 at the end of 1982, and that leaves two general elections at
20 which Articles can be submitted, '80 and '82. Six Articles are
21 scheduled to be presented to the General Assembly in 1980, four
22 for probably '81 or '82 for consideration, and hopefully put on
23 the ballot in '82. This Article is one of the 1982 Articles.
24 Articles I, II, III, IV, V and X are targeted for 1980; VI, VII,
25 VIII and IX for 1982 and I would have to say candidly that VI,



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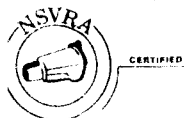
1 VII, VIII and IX are the Articles that are most likely to
2 attract differences of opinion, I guess is a nice way to phrase
3 it, and thus most likely to need all of the time that can be
4 made available for consideration.

5 The fact that you're willing to participate -- and
6 you were selected not by me, you were selected by -- really
7 by the Governor, the Lieutenant Governor and the Speaker, who
8 made the recommendations of those persons to be included in the
9 committees and you were then elected by the Select Committee
10 on Constitutional Revision, which is a statutory body whose
11 existence expires on June 30, 1982.

12 The Governor asked me to serve, as he phrased it so
13 nicely, as the unsalaried Executive Director, in order to --
14 he's very budget conscious and besides that he has been to
15 Sapelo too many times and they have to repair all of the
16 helicopters when he comes back, so they need the money.

17 You will be entitled to compensation at the same rate
18 as members of the General Assembly and you are also entitled
19 to your expenses, travel expenses in getting here and getting
20 back home. But Mr. Hill can go into that in greater detail.

21 I appreciate what you're willing to do. There are a
22 lot of faces here that I have known for a long time. And with
23 your good efforts, I hope that the Constitution that we finally
24 have will be one devoid of all the legislative trash that is
25 currently in the present Constitution, which has been amended in



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1 excess of a thousand times. There is no place in the state
2 where you can get and look at a copy of Georgia's Constitution
3 with all of its amendments. It's got more statutory language
4 in it than a lot of legislation that has been passed and I
5 would hope that what your committee and the other committees
6 give the public is a document that a reasonably intelligent
7 person could take and read and understand his rights vis-a-vis
8 the government, whether it be the state government, local
9 government or whatever, and that is a serious charge to you
10 and I know you will respond looking toward that which will
11 benefit the people of the state.

12 And I thank you for undertaking to do it. Unless
13 anybody's got any questions, Mr. Smalley, that's all I've
14 got to say. In fact, I've used every word I know.

15 CHAIRMAN SMALLEY: Well, at least you didn't indulge
16 in your usual practice of repeating yourself that time.

17 Thank you very much, Robin. Does anyone have any
18 questions? Robin is the most knowledgeable person I know about
19 Constitutional revision in Georgia.

20 All right. This was announced an an organizational
21 meeting and you have my promise that we won't try to start
22 actually drafting amendments today. At the same time, I do
23 think it would be appropriate that we discuss some parameters
24 and then attempt to get some sort of timetable. As you heard,
25 we are not expected to make a final report to the General Assembly



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1 until shortly before the 1982 meeting of the General Assembly.
2 That would say to me that we should expect to have our work
3 done by this time in 1981, so that there will be plenty of time
4 to get it circulated among the members of the General Assembly
5 and the general public before that meeting takes place. So
6 essentially we have approximately two years in which to conduct
7 our deliberations and our drafting.

8 The Article dealing with local governments, which we
9 will be working with, like practically everything else in the
10 Georgia Constitution, is a document that has been arrived at
11 through the process of amendment. In other words, much of the
12 language in Article IX deals with an effort that has been made
13 in the General Assembly to correct perceived wrongs. Some of
14 those go back quite a ways. The earliest parts of this Article,
15 the one that I was familiar with when I went to law school and
16 to some extent when I went to the General Assembly for the first
17 time, had to do with the extreme limitations placed on county
18 governments, both in the fields of finance and in the field of
19 county powers and that same thing might be said to be true of
20 municipalities.

21 There was very little Constitutional law pertaining
22 to municipalities when I went to law school. They were creatures
23 of the General Assembly and to a very great extent still are.
24 But the limitations that were placed on the municipalities in
25 those days were those inherent in the concept that the General

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1 Assembly could only delegate so much of its power.

2 Now in the present Article, you will find sections
3 that have been added to broaden the powers, to define the powers
4 of counties and municipalities in the area of appropriation of
5 money, for instance in the case of counties, and in the area
6 of debt limitation. We must have really had some wild county
7 commissioners back in the last century to have gotten all the
8 limitations that are in the present Constitution on the
9 expenditure of money.

10 Starting in the mid to late 1960's, there was an
11 effort made, and a successful one, to redefine the powers of
12 counties in positive terms so that certain powers are set out
13 now as belonging to counties inherently. The debt limitations
14 are still here and we will, of course, be considering whether
15 they are more or less too onerous at the present time or
16 whether they need some change.

17 Robin also mentioned something that is apparent as
18 you look at this, and that is that there is an awful lot of
19 statutory language in here.

20 My own experience in having had several swats at trying
21 to amend the Constitution or revise it, is that a lot of
22 changes that might be thought to be desirable from a theoretical
23 standpoint are difficult to achieve, particularly in the mix
24 of the General Assembly, because the Probate Judges, for an
25 example, like the idea of having -- is it the 1937 law pertaining



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1 to traffic that's written back into the Constitution? -- they're
2 afraid that if that were lost from the Constitution, it might
3 eventually constitute some threat to that aspect of their
4 jurisdiction.

5 So we have a committee here that has been selected
6 with the view of recognizing all of the various elements that
7 will be affected in our state by anything that we do. Hope-
8 fully we will not unwittingly suggest changes that will not
9 be politically acceptable either to the General Assembly or to
10 the people.

11 Now within that context, I want to take just a minute
12 and invite you to make any comment that you desire to concern-
ing the scope of our work and what you perceive as our role.

14 This is an organizational meeting and part of that process of
15 getting organized, would be to hear from you at this time on
16 what you would like to see us do.

17 SENATOR BARNES: We've got another -- it looks like
18 we're just intent on rewriting all the laws and the Constitution
19 of the state at one time -- we've got another committee working
20 also as you probably know, called the Code Revision Commission,
21 which is going to come out with a new Code, an entirely new
22 Georgia Code Annotated about the same time we're going to
23 report this thing. In fact, we're already working on it Article
24 by Article, and one of the things we've come up with that is
25 related but somewhat not in this Constitutional revision I



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1 guess is population acts, which have always considered to be
2 general statutes, not under the provisions of local -- we
3 don't know what to do with it in the new Code. There are
4 about -- Frank, how many did we figure, 10,000 of them?

5 MR. EDWARDS: Something like that.

6 SENATOR BARNES: 10,000 of them. And one of the
7 solutions that the Code Revision Commission asked me to put to
8 this body was the classification of cities and counties by
9 population, one alternative might be -- Class 1 would be all
10 cities of 10,000 or less, and then provide in the Constitution
11 in this Article that you shall not have a population statute
12 that does not fit within all the cities or counties in that
13 class. So I pass that on from the Code Revision Commission for
14 what it's worth and I'd like us to consider that, because we
15 can't even index the population statutes now in the new Code.
16 So I'd like for us to look at least at that.

17 CHAIRMAN SMALLEY: All right. That's a good point.

18 If you would, make a note of that. These proceedings are
19 being taken down, as you will notice, and I presume the
20 transcripts of each meeting will be available to the members.
21 So from that standpoint we won't lose any suggestions that are
22 made. Appropos of that same point, Roy, the question of local
23 Constitutional amendments in some sense seems to me to address
24 itself to us. I mentioned that to Robin at our organizational
25 meeting of chairmen and didn't seek an answer. I think I may



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1 have gotten an indirect answer the other day. He wrote all of
2 the chairmen to say that there is one area where we do not have
3 the ability of moving things around, in other words, we have to
4 stay within the subject matter of our own Article because other
5 committees are working on other Articles and the problem of
6 coordinating if we decided to take something out of another
7 Article or decided something in our Article was inappropriately
8 placed there and undertook to place it in somebody else's
9 Article, the great chance would be during the deliberations to
10 the General Assembly, that either something would be lost or
11 get duplicated.

12 I am not aware that anybody has been given Article XI
13 and I am certainly not suggesting that we have it, because it
14 is perhaps the thorniest of all the issues we've ever dealt
15 with in efforts to revise the Constitution, but it is a problem
16 along with population acts that has caused perhaps the greatest
17 of all the difficulties in the construction of the Georgia
18 Constitution, at least in the area of local government.

19 MR. BRINSON: Bob Brinson. It also seems to me you
20 have a similar problem if we are to try to edit out some of the
21 legislative language out of the Constitution and it should be
22 going in the Code possibly. And therefore, some sort of liaison,
23 it seems to me, between this committee or this Commission and the
24 Code Revision Commission would be appropriate; it seems to me,
25 if it doesn't already exist.

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1 SENATOR BARNES: Well I'm on both.

2 CHAIRMAN SMALLEY: Well, I think that point is well
3 made also.

4 One approach that we may decide we want to take might
5 be to recommend an effective date on the Article proposed which
6 would -- or might possibly -- give the General Assembly an
7 opportunity to fill any vacuum that we created. I believe that
8 might be more practical than trying to coordinate two drafting
9 efforts simultaneously.

10 Senator Coverdell, welcome. You have the distinction
11 of being the only one later than I am getting here.

12 MR. HARRIS: Senator, I've got no problem with this
13 committee considering the concept of prohibiting local
14 Constitutional amendments. The Article XI is not with another
15 committee and the only concern I was trying to express there
16 was that, particularly of an Article committee that was acting
17 in 1980, to change or to move from one of their Articles
18 something into an article not to be considered till '82,
19 because we couldn't run the risk of the Article in '80 passing
20 and eliminating that and the Article in '82 not passing. You're
21 at the last shot, so if you're going to propose or consider that
22 sort of thing, it's fine with me. I think the committee should
23 have a wide range of things to consider.

24 CHAIRMAN SMALLEY: Well may I say I appreciate that.
25 I don't know whether we want that jurisdiction or not. I think



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1 it would greatly diminish our chances for getting anything
2 passed in the General Assembly if we started tinkering with
3 that.

4 I want you, if you will, and I don't mean right this
5 minute but sometime within the next few days, take the occasion
6 to read through this Article we'll be working with and write
7 back and give Vickie some indication of the particular areas
8 of interest that you would want to be involved in as far as
9 subcommittee work is concerned.

10 This Article is entitled Counties and Municipal
11 Corporations and the basic and most obvious division is between
12 that of counties and matters pertaining to municipalities.

13 In addition to that, however, there are some old provisions
14 at the beginning having to do with counties that have probably
15 been in the Constitution as long as we can remember. Then
16 the section on County Home Rule, which was adopted around 1964 --
17 is that about right?

18 SENATOR BARNES: Yes.

19 CHAIRMAN SMALLEY: Which for the first time established
20 the idea of some inherent powers that could be enacted at the
21 county level as opposed to in the General Assembly.

22 Along in that same period of time, we had a reversal
23 from the very negative language that was in the Constitution
24 pertaining to the taxing authority, to positive language which
25 affirmatively permits counties to appropriate for certain



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1 governmental functions, whereas before, it limited counties
2 from appropriating or taxing for anything except those
3 prescribed limitations. The taxing authority then is going
4 to be one area, and I think we could almost make it a separate
5 area of study even though it would affect counties and
6 municipalities.

7 So I want you, if you will, to give some indication
8 of the areas that you would want to be appointed to. Jim?

9 MR. BURGESS: You may also want to consider the whole
10 area of planning and zoning as a separate study area. There's
11 been a different approach established in that within recent
12 years.

13 CHAIRMAN SMALLEY: Right. By virtue of the 1976
14 Constitution, planning and zoning has formally been turned over
15 to local government exclusively. I think it's thought to be
16 beyond the reach of the General Assembly now.

17 MR. BRINSON: Beyond the reach of local government too.

18 CHAIRMAN SMALLEY: I think so. Bob is an obvious
19 choice for the selection of voting rights, civil rights and
20 reapportionment.

21 MR. BRINSON: Thanks a lot.

22 CHAIRMAN SMALLEY: He's found a means of perpetuating
23 his Board in office for the last eight years now without an
24 election.

25 MR. BRINSON: They scratch my back.



1 CHAIRMAN SMALLEY: May I have any other comments?

2 (No response.)

3 CHAIRMAN SMALLEY: All right. I want to make this
4 further observation. Insofar as we possibly can, and by that
5 I mean unless nearly everyone makes the same choice of the
6 areas we work in, we'll try to accomodate your own wishes of
7 the area you prefer to work in. We have, as I told you, two
8 years in which to complete our work and I would suppose that
9 we might start on a fairly slow schedule of meetings. Say,
10 maybe every sixty days at the outset, and then as we start to
11 get something substantive from the subcommittees back to us,
12 we can increase the frequency and the duration of those meetings
as necessary in order to complete our work in a timely way.

14 I'm going to ask the staff if they will see to it
15 that when any one of you has a suggestion, if you'll communicate
16 it back to the staff, that they in turn will see that every
17 member gets a copy of it. It may well be true that we can
18 accomplish some of the preliminary work through correspondence
19 without the necessity of formal meetings, and I know that each
20 of you is busy full time at something other than this
21 responsibility, so we'll try to keep our actual formal meeting
22 times to minimum.

23 VOICE: What would be the address of the staff?

24 MR. HILL: I have prepared a brief memorandum for
25 you with all of the names of the staff members and the address

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1 and the telephone number, and also there is a credit card
2 number that we have arranged that you can use so that if you
3 want to talk to one another between the meetings, you can use
4 this credit card telephone number on official business and it
5 won't cost you anything.

6 I have also copied the names and addresses of all the
7 members of the committee, so you'll have a better idea who is
8 on it. And the role of the staff really is to provide a
9 coordination and facilitation function to this committee. So
10 if you have any questions about anything, feel free to call us
11 and we'll do the best we can to help you.

12 As Robin pointed out earlier, I am the Assistant
13 Executive Director and Vickie Greenberg is the staff attorney
14 with us and we have another young attorney, Michael Henry, who
15 is waiting for the bar results. In addition to Vickie and
16 Michael, we have an administrative secretary. So there is a
17 full time staff available to help your committee and the other
18 seven committees that are now involved in this Constitutional
19 revision process.

20 As was pointed out, four of these Articles are to be
21 done by December 7th of this year, so that we have a lot of
22 work to do on four of these Articles immediately. Your
23 committee and two of the others -- three of the others -- have
24 somewhat more time. So as I say, I have this memo, I may as well
25 just go ahead and pass it out.



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1 CHAIRMAN SMALLEY: All right.

2 (Mr. Hill distributed a document to the
3 members of the committee.)

4 CHAIRMAN SMALLEY: This might be an appropriate time
5 also, if you would, to inform the members about the methods
6 of being compensated, reimbursed.

7 MR. HILL: Okay. I'm going to pass around a form.
8 I have checked off if you're here but in order to be able to
9 reimburse you, we have to have your total mileage. For some
10 people we know what that is and we've been able to take care
11 of that, but for those that we don't know, if you would fill in
12 your social security number and your total mileage. You only
13 have to give this once, assuming these meetings are all held
14 in Atlanta, we'll have this figure and we'll just be able to
15 send that. You'll receive \$44.00 per day per diem plus mileage
16 expenses. It's fifteen cents a mile for your mileage. If you
17 happen to work for the State of Georgia, if you are already a
18 state employee such as Professor Sentell and Dev Weeks, they
19 don't have the benefit of this.

20 CHAIRMAN SMALLEY: And I believe members of the
21 General Assembly are paid on their payroll, isn't that true?

22 MR. HILL: Members of the General Assembly will be
23 paid through this same budget.

24 MR. HARRIS: The appropriation comes through the
25 legislative budget.

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1 CHAIRMAN SMALLEY: So without distinction, members
2 of the General Assembly will sign the same roster. All right.

3 One other preliminary -- let me ask you, do you have
4 any preference as to days of the week on which to schedule our
5 meetings? I had perhaps a half dozen tell me today was not
6 convenient, but I don't think it pertained to the day of the
7 week, I think it was just a conflict on a given day.

8 MR. KNOWLES: This is a good day for me.

9 MR. GREATHOUSE: Wednesday is a good day for me.

10 CHAIRMAN SMALLEY: Is there anybody who finds it
11 difficult to make a Wednesday?

12 VOICE: Assuming it stays in the afternoon.

13 CHAIRMAN SMALLEY: Yes. I am anticipating that there
14 might be an all day meeting required, but at least for now, I
15 don't think that would be true.

16 All right, let me ask the members of the General
17 Assembly particularly, would you prefer to avoid a meeting
18 during the session?

19 MR. MCCLUNG: Yes.

20 CHAIRMAN SMALLEY: That again may not be something
21 we can promise you next year, but I'm sure we can this year
22 since we don't have to have anything right away.

23 With that in mind, I think we may plan not to have
24 a meeting during January, February or March of this immediately
25 coming year. Do you have any other suggestions with regard to

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1 scheduling?

2 MR. SELLS: How long do you anticipate the meetings
3 would last?

4 CHAIRMAN SMALLEY: I would say I anticipated this
5 one would last about an hour and future meetings when we have
6 something actually on the agenda, perhaps two hours, and again
7 we may not be able to hold to that when we get into the final
8 wrap-up stage, but certainly now I think that would be true.

9 Let me ask you, Mr. Chairman, do you see the need for
10 a further meeting between now and next March, or do you think --

11 MR. HARRIS: In all candor, I would have to say that
12 the staff is going to be totally committed to getting those
13 four Articles that have to be ready by December 7 done. They
14 are on a time schedule that is pretty horrendous. If you
15 elect not to have any more meetings between now and then, I
16 won't complain, although I would hope that, at least through
17 the process of the mail, the getting of information to the
18 members through the staff could go on, and if you want to have
19 meetings, that's fine, I'm just saying that they've got some
20 pretty tough commitments.

21 SENATOR COVERDELL: Mr. Chairman, I would think that
22 we could complete the process of subcommittee selection and
23 that administrative type selection between now and then.

24 MR. HARRIS: The subcommittees may want to meet to
25 organize and this sort of thing.

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1 CHAIRMAN SMALLEY: Well I believe that the selection
2 of subcommittees can largely be accomplished without the
3 necessity of a formal meeting of the entire committee. This
4 will be known as a benevolent dictatorship, you will be given
5 a voice in all these matters, of course, but I hope you won't
6 feel it has to be entirely democratic as far as the selection
7 of subcommittees is concerned.

8 All right, well, with that in mind, I'm going to
9 invite you to address in any manner you choose, comments to me
10 and to the staff concerning what you conceive needs to be done
11 to this Article and the role that you would like to play in it,
12 in the particular area that you prefer to work in and then
13 I will assimilate and correlate that and report back to you
14 and at that time will get further comments and suggestions and
15 then we'll make up some tentative lists of the subcommittees
16 and circulate those and give you a chance to have further
17 comments about that before we make it final. But hopefully we
18 can accomplish all of that in the next five months and be ready
19 to really start with something substantive about next April.

20 Yes, Frank.

21 MR. EDWARDS: I might want to just make one remark
22 about the pay of these people. I'd like to refresh my memory,
23 Perry and Devereux Weeks, they don't get the \$44.00 a day, but
24 they do get their expenses, their expenses will be reimbursed
25 from where you are otherwise coming. There are several of you



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1 on here like this, the Probate Judges for example, would be
2 the court of record. You'll have to double check that. Melvin,
3 do you have a copy of the '78 amendment of the Select
4 Committee Handbook?

5 MR. HILL: No, Frank, I'm sorry.

6 MR. EDWARDS: We were working on that. We'll let
7 everybody know, but everybody is not paid the same way and
8 some people are not paid from the legislative funds. I just
9 wanted to clarify that.

10 CHAIRMAN SMALLEY: Right. The main thing today, unless
11 you're already a full time state employee, sign this roster
12 and if it is found this is not the appropriate way the correction
13 will be made later.

14 Does anyone have anything else to bring before the
15 committee before we entertain adjournment?

16 MR. KNOWLES: Mr. Chairman, what subcommittees do
17 you perceive?

18 CHAIRMAN SMALLEY: I haven't really gotten down to the
19 point of trying to name them. I think the basic division will
20 be matters pertaining to counties and matters pertaining to
21 municipalities and then within that, we have the governmental
22 powers and the taxing powers and those are really the four
23 categories that come to mind immediately. So if you would
24 think in terms -- I'm more interested in counties or I'm more
25 interested in cities, than I am more interested in government or

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1 taxation, that might be a good place to start. I don't think
2 if you want to participate in the function of more than one
3 subcommittee, I don't think you'll hear objection to that. I
4 think it would be useful to have you comment when you do so,
5 on your ideas pertaining to the matters that Roy brought up and
6 also to the matter of local Constitutional amendments.

7 MR. SELL: I can say from the point of view of the
8 counties that given the way the Supreme Court continues to
9 interpret the Constitution, notwithstanding the change in the
10 language, that is with respect to the restrictions placed on
11 strict construction of grants of power, we in Bibb County
12 couldn't function without our something like sixteen local
13 Constitutional amendments.

14 Now I think Robin knows in Dekalb County ten years
15 ago, maybe they had eighteen or twenty and I'm sure they've got
16 more now. I reckon what I'm suggesting is that we've got
17 basically a two-fold problem, one is drafting general language
18 which will be sufficiently affirmative in nature to encompass
19 the powers that seem to be necessary and at the same time
20 convincing the Supreme Court that that's what it means, doing
21 so in a manner that will convince the Court. And I don't
22 perceive any possibility of representation of that body on this
23 committee, but it is a problem.

24 CHAIRMAN SMALLEY: That's clearly beyond our juris-
25 diction, I think.



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1 MR. ADAMS: Mr. Chairman, will it be worthwhile to
2 think about a committee on the advertising process in local
3 legislation, the population brackets?

4 CHAIRMAN SMALLEY: Yes, I think so, you, more than
5 anyone else.

6 MR. ADAMS: We have a problem with that and it's
7 growing to be a greater problem each day.

8 CHAIRMAN SMALLEY: Right, considering the number
9 particularly. All right, make a note of that if you will, as
10 being a suggestion. I hope you'll follow that up with a
11 letter.

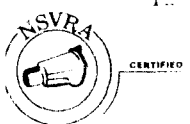
12 MR. ADAMS: Yes, sir, I will.

13 CHAIRMAN SMALLEY: Set out your ideas and recommenda-
14 tions in somewhat more detail.

15 All right, it's almost three. After today it would
16 be my hope to begin on time and to end on time and I'll try to
17 do my part in seeing that that's carried out. Is the hour of
18 two generally a good hour for you?

19 MR. HARRIS: Bob, let me make one more statement. Ed,
20 my concept -- the 79 local Constitutional amendments that dealt
21 with the method of selecting Boards of Education and Superinten-
22 dents in 79 counties because the Constitution provided how a
23 Board of Education would be selected and how a Superintendent
24 is selected, to me the Constitution simply ought to say there
25 should be a Board of Education in each county whose membership

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1 selection and so forth shall be as provided by law, you know,
2 just broadly stated in the Constitution, and let the General
3 Assembly handle local matters by local legislation.

4 MR. SELLS: Well I quite agree with you, you've got
5 political problems there that you have to face.

6 MR. HARRIS: I understand, but see, my job, one of
7 my responsibilities, major responsibilities is to get whatever
8 you produce through the General Assembly and then get it
9 ratified by the people.

10 MR. SELLS: I was really thinking about political
11 acceptance locally where the present system is retained in the
12 General Assembly. If you've got one legislator, then he
13 controls, for example, how your Board of Education is chosen
14 and the local Boards aren't going to like it. That's all I'm
15 saying.

16 MR. HARRIS: That can be a problem, but then, on the
17 other hand, Senator Smalley may remember that we had a member
18 of the General Assembly in '63 -- this was before reapportion-
19 ment -- whose brother had run for mayor of a county seat in the
20 town and lost, so at the next session of the General Assembly
21 it passed a local bill that reduced the city limits down to the
22 courthouse square, so the man that beat his brother wouldn't
23 have anything to be mayor of. You know, these sort of things
24 are going to happen anyway. But I'm just saying, let's give a
25 broad Constitution and let the General Assembly do the



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1 legislating. I used to not be afraid of them, by the way,
2 when I was a member. I'm a little more nervous now.

3 MR. BURGESS: I think that's a good -- seems to me
4 we need some sort of direction. Is the approach that of
5 drafting a Constitutional provision in a broad sense rather
6 than the hodge-podge detail that we have now, with counties
7 having Constitutional home rule with the statutory approach to
8 municipalities, with enumeration of powers? I think there are
9 some issues of this nature that have to be dealt with -- the
10 basic role of the General Assembly versus that of local
11 government, how the drafting of the Constitutional provisions
12 deals with that relationship, which has been changed. It
13 seems to me that before you really get down to the nitty gritty
14 of drafting, you have to tackle those issues in the broad
15 sense and then you can begin to draft accordingly. Otherwise,
16 we're going to be running in a lot of different directions.

17 MR. HARRIS: I support broad home rule powers for
18 cities and counties personally and if people don't like what
19 happens, they're going to recall them like they did in Hall
20 County.

21 MR. BURGESS: It seems to me this committee has to
22 make a decision up front before we even start to get into the
23 nitty gritty of drafting, otherwise we're going to be operating
24 on different -- some of us are going to be operating on a
25 detailed approach, others on a broad approach. I think I would



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1 tend to favor the broad approach.

2 MR. HARRIS: Whatever you do, I'll try to get it
3 passed.

4 CHAIRMAN SMALLEY: My comment would be that this is
5 the sort of thing I hope you will set out, not only that this
6 is an option that we have to face, but also what your ideas are
7 on the proper approach, and I invite each of you to do the same
8 thing so that once we get all of that in, I will undertake to
9 summarize it and get it back to you in such a way that you can
10 then start giving your further ideas to me and to the committee.

11 Is it agreeable with everyone that we plan our
12 next meeting to be sometime in April, after the adjournment of
13 the General Assembly, and that meanwhile you will undertake
14 to set out your own ideas and express your own areas of
15 interest and I can expect that we will have three or four
16 opportunities to correspond between now and next April.

17 There are a few guests here, most of whom I recognize
18 and one or two of whom I do not. Cynthia Nonidez is an old
19 time friend and well experienced in this. What is your present
20 role? Are you --

21 MS. NONIDEZ: I'm with the office of legislative
22 counsel.

23 CHAIRMAN SMALLEY: I see, good. My old friend, Harvey
24 Findley, glad to see you, and Ed Sumner with GMA.

25 MR. BOLSTER: Paul Bolster, I'm with the House.



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1 CHAIRMAN SMALLEY: Right. How are you, Paul.

2 MR. EDWARDS: I'd like to make one more remark. The
3 letter that I just handed you, that you haven't had an oppor-
4 tunity to read -- we're fortunate to have an increased staff
5 for the entire Select Committee and the study committees,
6 Robin Harris, Vickie Greenberg, Melvin Hill and a few more.
7 The legislative counsel's office is going to try to keep a
8 slightly lower profile than we did in '76. We do need to keep
9 abreast of what's going on because we're going to be called on
10 by various members of the General Assembly and by members of
11 these various committees, so I have assigned two people from
12 my office to each study committee and they will try to attend
13 all the meetings so we'll know what's going on in all the study
14 committees so we'll be able to answer questions if they come
15 up from people outside and the legislators and we hope that
16 those two people would have the privilege of the floor so they
17 may make remarks as members and be of whatever assistance they
18 can. Harvey Findley, whom you have known for many years and
19 Lou Litchfield who is comparatively new in this office are
20 assigned to this particular committee and they will hopefully
21 be attending most of the meetings to see what's going on and
22 possibly speak when they feel called upon to do so. Harvey will,
23 as you very well know. Lou might be a little shy. I just
24 wanted to throw that in.

25 CHAIRMAN SMALLEY: If you haven't signed the roster

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for your per diem, be sure to do so before you get away.

Is there anything else to come before us? If not,
the organizational meeting will stand adjourned.

(Whereupon, the meeting was adjourned at 3:03 p.m.
on September 12, 1979.)

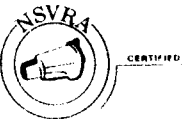


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C E R T I F I C A T E

I, Peggy J. Warren, CVR-CM, CCR No. A-171, do hereby certify that the foregoing 33 pages of transcript represent a true and accurate record of the events which transpired at the time and place set out above.


PEGGY J. WARREN, CVR-CM, CCR A-171



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INDEX

Committee to Revise Article IX

Full Committee Meeting Held on Sept. 12, 1979

FULL COMMITTEE MEETING, 9-12-79
(Procedural)

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STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA



Room 337-B
State Capitol
Atlanta, Georgia

Wednesday, May 21, 1980
10:00 a.m.

PRESENT :

COMMITTEE MEMBERS :

CHAIRMAN ROBERT H. SMALLEY

REPRESENTATIVE G. D. ADAMS

DAVID T. BARROW

ROBERT BRINSON

JAMES BURGESS

REPRESENTATIVE JACK CONNELL

SENATOR PAUL COVERDELL

REPRESENTATIVE WARREN EVANS

MERRILL GREATHOUSE

ED S. SELL

J. DEVEREUX WEEKS

STAFF MEMBERS :

MELVIN B. HILL, Jr.

VICKIE GREENBERG

MICHAEL HENRY

OFFICE OF LEGISLATIVE COUNSEL :

CINDY NONIDEZ

HARVEY FINDLEY

LOU LITCHFIELD



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PROCEEDINGS

1
2 CHAIRMAN SMALLEY: The hour for our convening has
3 come. It would seem we almost have a quorum now. I'm going
4 to ask Mel Hill to call the roll and ascertain who is here,
5 and after we call the roll of the committee, I would like
6 for our staff and other assistants to identify themselves
7 also.

8 MR. HILL: Mr. Smalley.

9 CHAIRMAN SMALLEY: Here.

10 MR. HILL: Mr. Adams.

11 MR. ADAMS: Here.

12 MR. HILL: Mr. Barnes. Mr. Barrow.

13 MR. BARROW: Here.

14 MR. HILL: Mr. Brinson.

15 MR. BRINSON: Here.

16 MR. HILL: Mr. Burgess.

17 MR. BURGESS: Here.

18 MR. HILL: Mr. Connell.

19 MR. CONNELL: Here.

20 MR. HILL: Mrs. Council. Senator Coverdell.

21 SENATOR COVERDELL: Present.

22 MR. HILL: Ms. Crichton. Mr. Daniel.

23 CHAIRMAN SMALLEY: Joe Mundy is here in his place.

24 MR. HILL: Hal Davis. Mr. Evans.

25 MR. EVANS: Here.



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MR. HILL: Mr. Greathouse.

MR. GREATHOUSE: Here.

MR. HILL: Ms. Hamilton. Mr. Jackson. Mr. Knowles.
Mr. McClung. Mrs. Metzger. Mr. Rupnow. Mr. Sell.

MR. SELL: Here.

MR. HILL: Mr. Sentell. Mr. Simpson. Mr. Timmons.
Mr. Weeks.

MR. WEEKS: Here.

MR. HILL: Mr. Wessels.

In terms of the staff, I am Melvin Hill, I am the
Assistant Executive Director, and I apologize for Robin
Harris who is the Executive Director -- he wanted to be with
you today, but he had his monthly board meeting and so Robin
can't be here today, but I am in the office.

Also there is Michael Henry who is in the back, and
Vickie Greenberg; both are staff attorneys with the staff.

The Office of Legislative Counsel has three people
here today. Cindy Nonidez, Harvey Findley and Lou Litchfield.

I think that is the staff,

CHAIRMAN SMALLEY: All right.

For our first order of business I would like for Mel
to give the Committee an updated report on the activity in the
last session of the legislature.

MR. HILL: Okay, We ran into a few roadblocks in
the last session, but I'll try to bring you up to date on the

1 process as it developed.

2 The article committees that were appointed last
3 August and September to work on Articles I, III, IV and V
4 were asked to complete their revisions by December, early
5 December, and they did complete them by December 5th. They
6 were presented to the Select Committee on December 7th, and
7 the Select Committee reviewed the proposals of the article
8 committees, made some changes in them, and presented them to
9 the General Assembly in January.

10 It was introduced in both the House and Senate, and
11 the Senate Judiciary Committee decided to wait for the House
12 Judiciary Committee to finish its work so then it could work
13 on the bill as it came over to it, so about half way through
14 the session the House Judiciary Committee presented to the
15 House the revision that they approved of the proposed
16 Constitution of 1980 which would have been on the ballot
17 this year, and the full House with a number of floor amend-
18 ments then did approve the proposed Constitution of 1980,

19 It went to the Senate, and the Senate Judiciary
20 Committee worked over the course of our different days to
21 make its recommendations. Then it went to the full Senate
22 with five days remaining to go in the session, and there was
23 a lot of confusion over exactly what all was done, and
24 there was controversy about some of the proposals, and in
25 any case the proposal was never approved by two-thirds of



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1 the Senate.

2 At that point there was some question about whether
3 this process was to be continued at all as I mentioned in my
4 memo, and so we were more or less put on hold for a while,
5 and the Governor did decide in thinking it over that this
6 process should be continued but with a new game plan, with a
7 new scheme for how we might get this approved to allow more
8 input and more knowledge of exactly what happens.

9 So under the new proposal the Committee to Revise
10 Article VI, VII, VIII and IX are being asked to complete their
11 recommendations by this December and to present them to the
12 Select Committee again by this December, but then in the next
13 session the Governor plans to have a joint resolution intro-
14 duced and adopted in both houses that would create a
15 committee composed of the members of the Select Committee,
16 the present members of the Select Committee plus other
17 members of the General Assembly and members of the House and
18 Senate Judiciary Committees to take the proposals as they
19 have come to them, and now we're talking about taking the
20 original proposals in Articles I, II, III, IV, V and X which
21 were defeated last time and then the new proposals which you
22 will finish, putting them together in a package and having
23 this larger committee composed of more members of the General
24 Assembly to review and make its recommendations to the
25 special session in 1981 which is going to be called for the

1 purposes of reapportionment and now also for the purposes of
2 constitutional revision.

3 That is the plan at the moment. At least that is
4 the idea the Governor has for how we might be able to get
5 this new constitution approved and to the voters at least by
6 the November election in 1982. That is kind of where we are.

7 I will say this. We have discovered in our last,
8 in our work with the other article committees that there are
9 many provisions in the present constitution that are really
10 not organized, not in the article where they belong. We
11 found many powers of the General Assembly in other articles
12 of the constitution, so in our earlier efforts we shifted
13 many of the provisions from one article to another, to
14 Article III where the legislative branch and powers of the
15 legislature are, and so we arrived at a situation where there
16 was some danger that if one article were approved and another
17 one not approved we would have chaos, a potential for chaos
18 in state government, so while we started with an article by
19 article revision approach and that was the intention of the
20 original plan, we found that in the detailed work we were
21 doing that it just doesn't appear you can present a
22 constitution to the people that way, and so it was all put
23 back together at the last session, and I feel that unless we
24 are able to come up with some different idea that we're going
25 to be looking at a proposed Constitution of 1982 with your



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1 revisions for Article IX in this package, so that it's un-
2 likely at this time at least that we're going to see a
3 question on the ballot "Do you agree with the proposed
4 revision of Article IX?" as a separate question, it's going
5 to probably be part of the entire revision effort,

6 That's an update on where we are at this point.

7 CHAIRMAN SMALLEY: Thank you very much.

8 The first order of business of the committee today
9 is to constitute three subcommittees. I have had Mel send a
10 letter to each member of the committee inviting you to select
11 or state a preference at least as to which subcommittee you
12 would like to serve on.

13 For convenience' sake we have divided the work of
14 this committee into three subcommittees; the Subcommittee on
15 County and Municipal Powers which will deal with Sections 2,
16 3 and 4 of the Article.

17 By the way, if you don't have this, it has been
18 printed and distributed. Perhaps we can get you an extra
19 copy now.

20 The second subcommittee is on County and Municipal
21 Finance, dealing with Sections 5, 7 and 8 of the Article; and

22 The third subcommittee is on Local Government
23 Organization, Reorganization, Intergovernmental Cooperation
24 and General Concerns, and that will deal with Sections 1, 4
25 and 6 of the Article.



1 I have asked Bob Brinson to chair the first sub-
2 committee on County and Municipal Powers, and he has graciously
3 consented to do so;

4 Ed Sell has consented to chair the subcommittee on
5 Finance; and

6 Senator Paul Coverdell has agreed to chair the
7 Subcommittee on Governmental Organization.

8 Let me say this. Those of you who responded for
9 the most part expressed a preference for the first sub-
10 committee, that is to say the one on Municipal and County
11 Powers. At this time I am going to ask the committee to
12 recess for about five minutes and we will have a caucus and
13 give the subcommittee chairmen a chance to solicit members,
14 and insofar as it's possible to do so I would for everyone
15 to be pleased with the subcommittee assignment, but at the
16 same time it will be necessary that we not just turn Ed Sell
17 loose completely to write the finance section by himself.
18 I'm sure it would be a fine product, but I'm not sure it
19 would sell.

20 We will just be in informal recess for a few minutes,
21 and I would like for you to sort of mill around and get
22 acquainted and let's see if we can suit everybody on a
23 subcommittee assignment.

24 We will stand in recess for a few minutes.

25 (A brief recess.)



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1 CHAIRMAN SMALLEY: I have some sense of progress in
2 the arrangement.

3 Mel, would you call the roll of those present again
4 and let's let each individual member now express a preference
5 as a result of the conversations that have taken place.

6 MR. HILL: Okay. Representative Adams,

7 REPRESENTATIVE ADAMS: I would like Subcommittee 1.

8 MR. HILL: David Barrow?

9 MR. BARROW: I'm on Committee 3, and I'm glad to be
10 there, but I would like to serve on 1. I think everybody
11 would.

12 MR. HILL: So 1?

13 MR. BARROW: I told Paul I would serve on 3.

14 SENATOR COVERDELL: You should do what you want,
15 though.

16 MR. BARROW: I think everybody wants 1, that's the
17 problem.

18 SENATOR COVERDELL: We have got another potential
19 member of 3, so why don't you --

20 MR. BARROW: I'll serve anywhere I'm needed. I
21 prefer 1.

22 CHAIRMAN SMALLEY: All right. We certainly want to
23 let everyone have his preference if we can. All right.

24 MR. HILL: Bob Brinson is chairman of Subcommittee 1.
25 Jim Burgess.



1 MR. BURGESS: Number 3.

2 CHAIRMAN SMALLEY: Senator Coverdell is chairman of
3 Subcommittee 3.

4 MR. HILL: We skipped Representative Connell.

5 CHAIRMAN SMALLEY: Jack is going to serve on 2.

6 MR. HILL: Woodson Daniel.

7 MR. MUNDY: I'm just sitting in for him. He asked
8 to be on 3 as far as I know.

9 MR. HILL: All right.

10 Representative Evans?

11 REPRESENTATIVE EVANS: Number 3.

12 CHAIRMAN SMALLEY: Mr. Greathouse?

13 MR. GREATHOUSE: Number 3 preferably.

14 MR. HILL: Ed Sell is chairman of 2.
15 Dev Weeks?

16 MR. WEEKS: 1 preferably.

17 MR. HILL: Okay. Well, that leaves us with four
18 members of Subcommittee 1, two members of Subcommittee 2
19 and five members of Subcommittee 3, and about a third of the
20 committee not assigned because they're not here.

21 CHAIRMAN SMALLEY: All right. Let me give you the
22 names of those who expressed a preference.

23 Charles Knowles preferred 1;

24 Perry Sentell preferred 1,

25 MR. HILL: Representative Hamilton preferred 3.



1
2 CHAIRMAN SMALLEY: Elinor Metzger said she would
3 be pleased to serve on 1 or 3.

4 MR. HILL: Okay. She said 3 the last time I talked
5 to her.

6 CHAIRMAN SMALLEY: Those are the ones in addition to
7 those present that I have heard from.

8 Senator Coverdell, you wanted to see if Senator
9 Barnes would serve with you I believe.

10 SENATOR COVERDELL: That is correct.

11 CHAIRMAN SMALLEY: Let's designate him for Number 3.

12 And did Mrs. Council decide?

13 MR. HILL: I don't believe so.

14 Ann Crichton is out of town; she may resign.

15 CHAIRMAN SMALLEY: All right. We will fill out
16 Subcommittee 2 from those who are not here, Ed, but I'll let
17 you consult with them.

18 I would think that those of you who are particularly
19 interested in local government would want some representation
20 on Subcommittee 2 since it does deal with finance, the method
21 of raising taxes, and --

22 REPRESENTATIVE CONNELL: Mr. Chairman, would you
23 mind also including in that reducing taxes instead of raising
24 taxes?

25 CHAIRMAN SMALLEY: All right.

26 Mike Henry has done some analysis of the local



1 amendments which have been adopted since 1959. Would you
2 distribute that and give us --

3 MR. HENRY: I have just prepared it for you.

4 CHAIRMAN SMALLEY: All right, I can read it to you,
5 then.

6 There have been 633 local amendments in the period
7 of '59 to '79, which is rather scandalous I think. Some 65
8 percent of those have come from six areas. Approximately 30
9 percent have come in the field of tax exemptions, seven percent
10 in the field of JP jurisdiction, 8½ percent in the field of
11 county licensing and ordinance regulation, 3.2 percent in the
12 field of special taxing districts, some 27 percent in the area
13 of local development authorities, and oddly enough a good many
14 of those have come since the introduction of the general law
15 in the area, and the composition of county boards of education
16 accounts for about 9 percent of the amendments that have been
17 adopted, so you can see that in the field of special taxing
18 districts, county licensing and ordinance regulations and
19 tax exemption a very substantial part of the local amendments
20 that have been adopted have been within the area of our
21 jurisdiction.

22 I had a call last week from Randolph Thrower who is
23 the chairman of Article VII, and he raised the question for
24 our consideration whether the taxing powers that are presently
25 divided among Article VII, Article IX and the education



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1 article ought to be combined into one.

2 My response to him was that I didn't think it was
3 proper for us to assume that jurisdictional prerogative at
4 this time, that we would continue to work in the area that is
5 presently in Article IX, and we might or might not choose to
6 make a recommendation again about whether these ought to be
7 consolidated, but ultimately the Select Committee would
8 probably make that determination on organization, so we will
9 be concerned with substance but, Ed, I would like for you to
10 at least give a look to Article VII as a part of your con-
11 sideration of the constitution.

12 A major part of Article VII, as you are already
13 aware, deals with the ad valorem tax which is presently
14 primarily a local tax, it's administered from the state level
15 only for purposes of maintaining consistency, but since the
16 adoption of the sales tax the major resource of county
17 governments has been the ad valorem tax and there's almost
18 none for the state, just a quarter of a mil, so you may wish
19 to consider whether Article IX and Article VII should be
20 combined at least in the area of local taxation.

21 I want to charge the committee and each subcommittee
22 to think positively about the powers of local government and
23 the need for broadening the powers in the field of home rule
24 legislation, looking to the end of in the first place
25 eliminating the need for local constitutional amendments,

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1 and in the second place eliminating the need for coming to
2 the General Assembly insofar as possible with purely local
3 matters.

4 I realize that anything that we do has to pass
5 muster in the General Assembly next year, but having served
6 in the legislature myself I think many of the legislators
7 are coming around to the view that having to deal with local
8 legislation is as much of a chore as a benefit, and personally
9 trying to represent five counties in the Senate I would just
10 as soon not have dealt with local legislation at all. It was
11 a chore, to be frank about it, so I do want you to think
12 positively in terms of the powers of local governments
legitimately should have under our constitution.

14 Now, with that I will invite any response on the
15 part of any committee member at this time before we break into
16 subcommittees.

17 MR. SELL: How do you envision the subcommittees
18 will function, Mr. Chairman? That is to say, will there be
19 periodic subcommittee meetings and, if so, will there be
20 drafting help, will there be research help, or are committee
21 members supposed to do that for themselves, or what?

22 CHAIRMAN SMALLEY: In the first place we do have
23 staff assistance, and in the second place the work of the
24 subcommittees will be subject to the call of each chairman.

25 We are requested to complete the subcommittee work



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1 by September as a means of then getting back together in
2 the whole committee and completing the drafting process by
3 December.

4 Personally I suspect that the September deadline of
5 the subcommittee work may be unrealistic since it is now late
6 May and since summer vacations and other distractions are
7 coming up; it may not be possible to complete this work
8 during June, July and August, but I would like for you to
9 move forward to the extent you can, and each subcommittee
10 chairman will simply be responsible for scheduling his own
11 committee work at the times it's convenient.

12 Now, the question arose during our recess, and let
13 me make it very clear that each of you is a member of the
14 committee and is therefore welcome to attend and participate
15 in any subcommittee work that goes on. As far as actually
16 voting, I think the votes of the subcommittee will be from
17 the members only, but as far as participation in discussion
18 or as far as making suggestions, contributions, drafting
19 language, you are welcome to serve and participate, and I
20 hope that you will do so to the extent you can.

21 I would like for each subcommittee chairman to
22 coordinate the meetings of his committee through Mel and,
23 Mel, I would like for you to keep me apprised when they are
24 meeting.

25 We have three members of the Legislative Counsel,

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1 and we also have staff members of the Select Committee, and I
2 will ask you to apportion yourselves among the subcommittees
3 so that there is representation, staff representation on each
4 subcommittee, and this will be to assist you in drafting and
5 research and in any other staff assistance you need.

6 We are in the process of compiling a comprehensive
7 list of all court decisions construing Article IX of the
8 constitution. Mike has handed me just this morning a memo-
9 randum of all Attorney General's interpretations and judicial
10 construction of the 1976 Constitution pertaining to Article IX,
11 and that will be made available to you today.

12 In addition we will have all cases construing the
13 '45 Constitution and its amendments as soon as it can be
14 compiled.

15 Any other questions or comments or discussion before
16 we break into subcommittees?

17 All right. Mel, can you give us room assignments?

18 MR. HILL: All right. We have this room and Room
19 401-A and Room 402, so we will say that Subcommittee 3 seems
20 to have the most members, Subcommittee 3 can meet here;

21 Subcommittee 1 can meet up in Room 402; and

22 Subcommittee 2 can meet in 401-A.

23 We will give about ten minutes I guess.

24 CHAIRMAN SMALLEY: All right.

25 We do have copies of the constitution here if

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1 anyone doesn't have it memorized.

2 SENATOR COVERDELL: After the subcommittee meetings
3 are we going to report back here, or is that the conclusion
4 of today's meeting?

5 CHAIRMAN SMALLEY: I don't have any particular plans
6 for the whole committee to reconvene today. As soon as the
7 subcommittees have completed their drafting and are ready to
8 report, hopefully in September but certainly by the first of
9 October, we will reconvene the whole committee and look at
10 the whole document, but meanwhile the subcommittees are just
11 to make their own schedules.

12 A MEMBER: Will we have staff assistance now at the
13 subcommittee meetings?

14 MR. HILL: Yes.

15 CHAIRMAN SMALLEY: All right. We will stand in
16 recess.

17 (Whereupon, at 10:40 a.m. the committee meeting
18 was recessed.)

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Committee to Revise Article IX

Full Committee Meeting Held on May 21, 1980

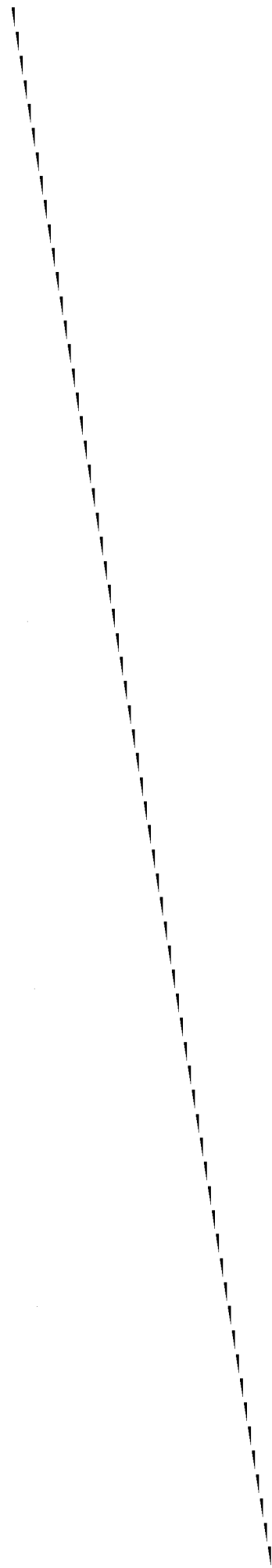
SUBCOMMITTEE MEETING, 5-21-80
(Procedural)

STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

SUBCOMMITTEE ON COUNTY AND MUNICIPAL POWERS

Room 402
State Capitol
Atlanta, Georgia

Wednesday, May 21, 1980



P R O C E E D I N G S

10:55 a.m.

CHAIRMAN BRINSON: Ladies and gentlemen, I am Bob Brinson and formerly I didn't know what a Chairman of a Subcommittee on County and Municipal Powers was. Now I is one, and I want, please, to have your help.

I think you can tell from the earlier meeting this morning that we are really going to have to, as I observe it, get something that is just gargantuan down to something manageable.

I see the need to begin with to get some procedural or organizational matters out of the way and then we will get into more substance as to what the committee will actually aim toward.

First of all, just for my own purposes and inter-communication purposes, I would like to get everybody to put their names and occupations, mailing addresses and telephone numbers on this pad. I have put mine first as Chairman and I want to pass it around if you will, and, in the meantime, if each of you would just simply also for familiarity purposes, lets go around the room and give our names and home towns and we will start with Dave, if you would.

MR. BARROW: I am David Barrow. I am Mayor of Bowdon and President of the Georgia Municipal Associa-

tion.

REPRESENTATIVE ADAMS: I am G. D. Adams, member of the House and Chairman of State Planning Community Affairs, Atlanta.

MR. ANTHONY: I am Steve Anthony. I am Administrative Assistant to the State Planning Community Affairs Committee.

MR. WEEKS: I am Devereau Weeks, Institute of Government, University of Georgia, Athens.

MR. LITCHFIELD: I am Lou Litchfield, Office of Administrative Counsel here in Atlanta.

MR. HILL: I am Melvin Hill with the staff of the Select Committee.

MR. RICKETTS: I am Jay Ricketts with the County Commissioners Association.

MR. GODFREY: My name is David Godfrey and I am with the Georgia Department of Natural Resources here in Atlanta

MS. GRAVES: I am Rita Graves with the DeKalb League of Women Voters.

[REPORTERS NOTE: Also, Billy George and Ed Sumner arrived later.]

CHAIRMAN BRINSON: Thank you very much.

As I say, the list is going around.

Again, with the idea of assistance, I am the

Chairman, so I hear, and I don't mind delegating. I think it would be not inappropriate to have a Vice Chairman of this Committee also and possibly a secretary to record at least the gist of each of our meetings. And speaking of that, I anticipate a good number of meetings. I think it is going to be necessary.

For a lack of any other way to do it, does anybody have any suggestion as to who would--suggestion or a motion as to who would make a good Vice Chairman?

REPRESENTATIVE ADAMS: I nominate Dave Barrow.

CHAIRMAN BRINSON: Mr. Barrow has been nominated, do I hear a second?

MR. WEEKS: I second.

CHAIRMAN BRINSON: Any other nominations?

All that are in favor of Mr. Barrow as Vice Chairman of this committee, please say "I", and all opposed?

MR. BARROW: I think this is a railroad.

CHAIRMAN BRINSON: Yes, it was a railroad.

Do we need a secretary?

MR. HILL: I think we can take care of it. We have a reporter to report the meeting and you will have a report of what happens.

CHAIRMAN BRINSON: All right. Okay.

I am advised by Mr. Hill, who is much more experienced at this gargantuan task than I that we can handle on staff basis the reporting of our proceedings.

I would also like to discuss a little further the meetings and meeting places and you might advise us, Melvin, as to the availability of meeting places, how we go about establishing meeting places. Can we use these rooms?

MR. HILL: Yes, as a matter of fact, we prefer if it is not too inconvenient for the people on the committee that you do meet here, because it solves a couple of purposes, a couple of problems for us. Number one, it gives notice to the people that are interested in this because an announcement goes out from the Office of Legislative Counsel weekly about what committees are going to be meeting here so that those people who are interested have a way of knowing and then, you know, for telephone purposes. Secondly, they are available to us and it is somewhat convenient for the staff, so you are not precluded from meeting elsewhere but then comes the problem of how to get the approval and let everybody know, so if it is -- all of the committee meetings thus far have been held in the Capitol.

CHAIRMAN BRINSON: All right, so that, uh, can

I contact you as far as setting up the meetings?

MR. HILL: Yes, uh-huh.

CHAIRMAN HILL: All right, now, I know and Mr. Smalley also recognized that we are coming up on summer time and yet we have supposedly a September deadline. That's going to make full attendance at meetings probably impossible and it may even be difficult to have a great number of meetings during the summer, but I foresee at least one meeting a month and near the end possibly two meetings a month.

Is there any particular day that we can reach a consensus on? Does anybody have any suggestions to the day and time as far as that goes?

Today being Wednesday, is that a good day for most everybody?

Is there any strong objection to Wednesdays?

I am going to seize on that and say that we will try to arrange the meetings on Wednesday.

Another organizational type need that I see is other organized groups whose input we would value, to wit, the GMA and the County organizations, and I would like to ask, if I could, for you, Dave, to be a liaison with the Georgia Municipal Association and you, as liaison with the county associations if you will?

It is my understanding from Ed Sumner of GMA

that there is a proposal within the municipal association to sub-divide some interested participants or staff, I am not sure which he was talking about, into the same subcommittees that this committee has been sub-divided into, so that there will be some concentration on the particular subject matter, and I would like, as I say, to ask you all to be liaison and receive information and give information to them so that we can make the most efficient use of their thinking and their problems.

REPRESENTATIVE ADAMS: While we are still on meetings, could I suggest that we tentatively set dates for the next three months, since all of us have busy schedules and I have a couple of committee meetings going on.

CHAIRMAN BRINSON: That is probably a good idea. I don't know that we can hold to it, but--

REPRESENTATIVE ADAMS: It would be a tentative thing. I was just looking ahead as we were talking about Wednesday. We could go the 18th, June 18th on Wednesday if that is suitable and go July 23 or 16th, whatever you say, and it would let us know that we had something planned.

CHAIRMAN BRINSON: I welcome all suggestions.

MR. BARROW: Keep it on a particular Wednesday, the first Wednesday or the second Wednesday, once a month.

CHAIRMAN BRINSON: Is not the GMA meeting on the 18th?

MR. GEORGE: It starts on the 22nd.

CHAIRMAN BRINSON: The 18th happens to be particularly bad for me but it might be the first time the Vice Chairman could chair the meeting if you are bent on the 18th. I will be out of the country.

REPRESENTATIVE ADAMS: Well, would you like to set it the last Wednesday?

When is the GMA?

MR. HILL: How about the 11th? How about the second Wednesday in each month? That would be the 11th.

CHAIRMAN BRINSON: How does the second Wednesday in each month sound? June 11th? Then July 9 and August 13.

REPRESENTATIVE ADAMS: I would not be here on June 11, but I will have Steve here and hope I can make the rest of them.

CHAIRMAN BRINSON: Does that sound reasonable to everybody else?

MR. HILL: That's fine.

CHAIRMAN BRINSON: That is what we will shoot for then, the next meeting will be June 11th, the next July 9 and then August 13th.

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REPRESENTATIVE ADAMS: Did you say 10 o'clock in the morning?

CHAIRMAN BRINSON: I think so, 10:00 a.m. and conceivably, I don't know whether June 11th will, but the other two will go on into the afternoon, after lunch.

All right, is there any other organizational activity you think the committee should undertake at this time?

By way of reminder, as I recall, we do have a credit card to use in making communications about the subject matter. That should be in your documents and if you don't have it, it is 035 151 0704 0357. Also, and it is my understanding, Mel, correct me if I am wrong, that we are entitled to \$44.00 per day per diem and 15 cents per mile on going to the meetings, that is everybody except the full-time State employees.

MR. HILL: It is taken care of.

CHAIRMAN BRINSON: I am informed that it will be taken care of automatically.

All right. Any other organizational matters to be taken care of before we get into the substance of what the committee will--the objective of the committee?

(No response.)

CHAIRMAN BRINSON: All right. I foresee that

whatever may become of the language, the proposed language of Article IX and in particular our part, that being Sections II, III, IV--and IV, and paragraphs 2, 3 and 4 of Section IV. You each have copies of the Constitution of '76, or if you do not, they are here (indicating), and that I assume will be a good nucleus to begin from.

Melvin can tell you all of the tremendous problems that we encounter in trying to get something through the Legislature and the opposition that we may face at each stage of bringing this giant matter down into something controllable and manageable.

It may be frustrating at times but I hope we will persevere and also, with the idea of broadening Home Rule and eliminating the need for local Constitutional amendments and local Legislation pursuant to Senator Smalley's charge.

It occurs to me and I would like to throw it out simply for discussion that in arriving at language which is what we are charged to do that we are going to have to consider the present Constitution and all of the local amendments, and present state laws so that what we do does not emasculate anything that is going on now.

Ed Sell mentioned to me that Macon, or rather Bibb County just couldn't operate without some of its

local amendments that they have found necessary over the years so that we don't want to come in there and wipe out something that the various cities and counties are depending on at this time. I think that's certainly a consideration we are going to have to face, that is the present Constitution, its local amendments and state laws that have been enacted pursuant to the Constitutional enablement.

It seems to me also that it would be educational at least to perhaps consider, if there is such a thing, model constitutional language and other sources, including possibly the Constitution's of other states that have proved workable, if that is not too much of a staff research problem. I think it would have to depend on staff research, but it seems to me that other states have had a great deal of success with their constitution, maybe that is because they have had more success with their Supreme Court, but in any event, it seems that it couldn't hurt us to have that information.

In addition, I think we will all--must at some time consider that the federal laws and regulations and federal constitution will have to be considered, at least in the background.

I know that if we get into anything that has to do with elections, we are going to be faced with pre-

clearance by the Justice Department and that is certainly a consideration because it is a very real thing. I know that first hand. So that as I see it, there are at least four other very broad areas that at least should be considered or might be considered by way of edification, that is, the federal laws, the present state laws and Constitution, Constitutional Amendments, other states, and models, and other sources and recommendations or treatises.

With that very broad and not very helpful overview, I would like now to get Melvin who has broken it down to more specifics to address us on what he thinks the committee may be facing and should grapple with, and then after that, I would like to open it up for general discussion. Melvin.

MR. HILL: Okay, Bob. I think this committee is very fortunate. It has two of the foremost experts on this subject in the State of Georgia. I see Perry Sentell as one of the members plus Dev Weeks who has been working for the last eight or nine years in this area for the Institute of Government so we have a lot of expertise that we will be able to draw upon; and for my own part, I have worked for some time at the Institute of Government and a number of things that I saw as problems while there that you may want to address in your committee work.

In the area of Home Rule, I think one of the things we are going to have to try to address is the Dillon's Rule mentality of the courts in the state and whether or not you intend to try to do something about that.

The Dillon's Rule mentality is that every time a city or a county wants to do something, you have to try to find specific authorization for it.

Some states, in an effort to give as much Home Rule as possible to their local governments, have in fact delegated to local governments a broad authority except in those areas in which there is an exception of power, and so if there is ever a question about whether a city or a county has the authority to do something, they do unless the state has said they don't, and so it's exactly the reverse of the presumption which we seem to operate under in this state and I think that the Home Rule Act and the Home Rule amendment for the counties was intending to do that. It appears to intend to give Home Rule authority to cities and counties, but it is worded in such a way that there is doubts in the minds of city and county attorneys as to how much authority they have, so when in doubt, go back to the Legislature and get a local act or a local amendment to do exactly what you want to do. So, now this

is one of the problems that I see that we are going to be wanting to address. How much Home Rule, how much more Home Rule, if any, do you want to try to give to the cities and counties in Georgia?

You know we do have a distinction in the Constitution between County Home Rule and Municipal Home Rule. Is there any valid reason for maintaining that distinction? I am not sure myself but it is something I think we will have to address.

In the '64 proposed Constitution, municipal and county home rule were dealt with in the same way in that they were given to the cities and counties in the Constitution in an identical fashion. I am not sure if you are going to want to adopt any such a philosophy here.

I think that, you know, one of the important questions, and this is more of a system-wide question, but should there be any changes recommended by this committee in the way in which the General Assembly legislates regarding local government matters?

We have about five different ways that it's handled. We have Constitutional Amendments, we have general law, general application; we have general law with limited application of population statutes and then you have local acts.

So, we have so many different ways in which we try to deal with local governments, is there any need for a change in that?

It is really complicated. I think that people that are in the system understand it fairly well, but there may be some benefit in trying to bring about more systematic means of dealing with these matters.

I think it is up to the committee to decide exactly what the scope is, how broad it is. The staff is here merely to help with the research and not to try to encourage one particular direction, but just to try to identify some questions that should be asked at least in the beginning, and so I will do that.

REPRESENTATIVE ADAMS: I think one thing we definitely need and that is the general laws with local application in the manner in which we attempt to use them.

I know that in the past since I have been here, for fifteen years, there has been population acts which have affected other counties and cities, uh, and due to the fact that they grow or they drop off in population, so I really think we need to address that one matter very strongly.

MR. LITCHFIELD: If I may add a comment to

that, as a part of a code revision which is also going on at this time, our office has consolidated and made a list of all population acts passed since about 1979, or something like that, and we are in the process of screening those and we will be contacting counties, municipalities to attempt to get rid of the vast majority of those population acts, either because they no longer apply to the county or the city they were initially passed for, because they no longer have any application because they have been superseded by general law and so on and so forth. We are going to try to pare it down to the absolute minimum that the people say they want to try to preserve right now and hope to get the 2,000 down to maybe a couple of hundred.

REPRESENTATIVE ADAMS: If I understand that, you are going to notify them that they could have been affected.

MR. LITCHFIELD: Yes.

REPRESENTATIVE ADAMS: But they will have to search around and find where they were affected.

MR. LITCHFIELD: That's right and according to whether or not--I mean some of them are so old that they say no, we had no idea what you are talking about and we no longer need that law, so we would repeal those. Those that they say they have to have and they are operating on, like you say, many counties and municipalities are operating

under population acts where they really have no authority to because they have fallen out of the population act, and we are trying to straighten out that whole situation.

REPRESENTATIVE ADAMS: We should have a set manner in which local legislation could be instituted and our committee looked at that all last summer and, at present, according to the Constitution, you had to advertise three times and you can't introduce them until the first week after the last week it ran and it has to be within 60 days of the time you run an ad, and, you know, that should be the one way, or whatever way you would choose; population acts are, you know, just cumbersome and cause us a lot of work of having to check out the county and see if they fall in the bracket. They will name one bracket that will be one under and one over or not over such and such number, and it is just a real burden on us to have to check all of that out.

MR. LITCHFIELD: This subcommittee may want to look into prospective use of that, we are trying to clean up the present situation, and this committee should maybe address how it is going to be handled in the future.

CHAIRMAN BRINSON: That has been published, hasn't it?

MR. LITCHFIELD: That list that was published

was as good as it could have been at the time but it is so outdated that you really can't--if you are talking about the same list I am talking about--you can't really go by it. I mean it is good but--but there is a lot more.

REPRESENTATIVE ADAMS: You are talking about the one Bob spoke of this morning, is that what you are talking about?

CHAIRMAN BRINSON: No, this was the Population Act compilation. This was put out by someone about ten years ago.

REPRESENTATIVE ADAMS: But you are publishing one?

MR. LITCHFIELD: I don't know that we published one. We put one out about maybe ten years or so ago.

MR. WEEKS: We put one out at the Institute of Government, one that went back about eight or ten years.

CHAIRMAN BRINSON: That is the one I am thinking about.

MR. LITCHFIELD: We are trying to clean up the situation as it presently exists.

REPRESENTATIVE ADAMS: Then you know that we do have problems.

MR. LITCHFIELD: Oh definitely.

CHAIRMAN BRINSON: That prompts me to ask you

if you would not mind to be liaison with the code revision?

MR. LITCHFIELD: Oh yes, well that is done through our office and our office handles population acts and to the extent that this committee needs or wants information on the progress of that, or you know, how that is being handled or taken care of.

The problem, or one of the problems--of course, it doesn't affect this committee--is whether to put those population acts that are still valid in the code or leave them as separate independent acts sitting around here somewhere as most of them are now or just exactly what to do with them, and try to get rid of those because really they have no applicability anyway and are just confusing. The counties would be amazed and the cities too, the laws that they think they are operating under but they have no authority to do what they are still doing.

REPRESENTATIVE ADAMS: I think the Chairman alluded to that this morning but for your information we had I think 470 local acts this past session and you know, ten or fifteen years ago, you would have two hundred in a session or 150, so it is getting to be, you know, a matter that needs addressing real bad.

MR. LITCHFIELD: And really, the way the courts, uh, most populations would fall if they were ever challenged anyway and that may be something--



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They are no good anyway, so it is just how much this subcommittee and the committee as a whole wants to get into the matter.

REPRESENTATIVE ADAMS: Well, you know, we have one large county in Georgia which has never used anything but the Population Act to get around the advertising and all of that, but hopefully we'll be able to resolve it.

CHAIRMAN BRINSON: Well, I don't see why the committee shouldn't undertake it. I think that is a big problem and I think it has been and if it is capable of being remedied and apparently it is.

MR. LITCHFIELD: Prospectively.

CHAIRMAN BRINSON: Yes.

MR. LITCHFIELD: We can, we will take care of it currently, but I don't think--you know, the Constitution would have to be changed in order to make our determinations on -- whether you want to allow us to continue on into the future, or whether in twenty years we would have the same problem again, or thirty years.

MR. HILL: I was going to mention to you that the committee to revise Article III, the General Assembly article, did propose that a Population Act relating to only one city or county should be prohibited. I will get you the language that was approved by the House of

Representatives in the last session relating to this very matter and so I think it is very relevant to your committee, whether it is in Article IX or not, it doesn't matter, it doesn't really matter.

MR. LITCHFIELD: Well, there is a basic population figure in Article IX, as far as Amendment 19--

CHAIRMAN BRINSON: Insofar as Amendment 19 or whatever, however it is numbered in there, is concerned, certainly we should address that problem.

MR. HILL: I definitely think we should address it. As a matter of fact, Article III committee said this is more of an Article IX problem than ours, let them work on it and study it, so it is in your court.

CHAIRMAN BRINSON: Well, would you be willing to be the liaison for the code revision and with the Section III, Article III rather committee?

MR. HILL: Well, that committee is no longer meeting, so whatever you recommend will probably carry.

MR. ANTHONY: Are they going to meet again?

MR. HILL: No.

MR. ANTHONY: When the whole package is submitted? So that what they submitted last will be submitted again?

MR. HILL: The Select Committee will decide what versions of that to present next time and I don't

foresee those committees reconvening again. They have presented their best recommendation and it is up to the Select Committee to decide what to do.

CHAIRMAN BRINSON: Any other items that come to your mind as being again at this stage, necessarily have to be pretty general, but problems that we will probably be addressing or should address?

REPRESENTATIVE ADAMS: I would like to make a suggestion, if I may, since we know what we want to--I mean which committee we are on, if each one of us would take these three sections and study them thoroughly and bring back at the next meeting our proposals.

CHAIRMAN BRINSON: On the individual questions?

REPRESENTATIVE ADAMS: Yes, on these three sections assigned to us, and, you know, we all know what is in Article IX, but you know, we can really take these three sections getting into it in depth.

CHAIRMAN BRINSON: In other words, further subdivide?

REPRESENTATIVE ADAMS: Right.

CHAIRMAN BRINSON: I think that is a good suggestion.

MR. HILL: We will try to get copies of other Constitutional provisions from other states relating to Home Rule and City and County Powers and distribute those

to you so you will be able to maybe follow or borrow some language, you know, if you are really going to get into the drafting already. It might be--it might be a little premature in that there are some policy questions maybe that have to be decided, uh, but a good thing about drafting, it does get you down into it so you start seeing what the problems are, so--

REPRESENTATIVE ADAMS: All I am suggesting is that we really study it and see what it does and the changes that we think needs to be made, because today we are coming in cold turkey.

CHAIRMAN BRINSON: That's right.

REPRESENTATIVE ADAMS: (Continuing) And looking at it and we know that the Home Rule thing and the amendment, you know, back in '72 or '73 or whenever, it was, it has been misinterpreted by a lot of municipalities, and counties and a lot of them really don't want the authority they have. They want us to carry the load and then some of them wants more authority, more authority than they have.

CHAIRMAN BRINSON: Well, there is another consideration. The Supreme Court ruled in the City of Lafayette, I think in '77, that as long as some municipal activities are authorized or directed by the state, they

are not subject to Anti-trust litigation and if they are not authorized directly by the state, they are subject to Anti-trust litigation, so it seems to me, naturally the cities are going to start asking the state to do a whole lot of things that border on the possibility of monopolies.

Those kind of considerations I think are within our jurisdiction also.

I think, with that in mind, Representative Adams, then we--if each of you would tell me--I think what we will do when we break up today, we will study the overall Article IX, that is, our section and, but with specific emphasis on your preference, uh, as to each of these sections and if you would, if you have a preference, I wish you would tell me and I will just mark it down and be prepared to discuss that in some detail, in more detail than the overall subcommittee on County and Municipal Powers at our next meeting.

Do you, Representative Adams, have a particular preference?

REPRESENTATIVE ADAMS: I would think probably four with the, you know, the manner in which local governments operate and the provisions, Home Rule, and all of that.

CHAIRMAN BRINSON: All right. I will put "4" by your name.

Mr. Barrow?

MR. BARROW: Three.

CHAIRMAN BRINSON: Mr. Richter?

I am sorry, Mr. Ricketts?

MR. RICKETTS: Pass me by for a second.

CHAIRMAN BRINSON: All right, Mr. Godfrey?

MR. GODFREY: I would pass for the present.

CHAIRMAN BRINSON: How about it Mr. Weeks?

MR. WEEKS: Two is all right, Section II.

(Brief pause.)

CHAIRMAN BRINSON: Again, by way of organization, it occurred to us that since we have such a small subcommittee that there is no sense to being wedded to June 11, since you can't make it, is there another day in that week that you could?

REPRESENTATIVE ADAMS: That entire week I will be unavailable. I will return on Saturday.

(Brief pause.)

REPRESENTATIVE ADAMS: I would be able to meet on the 18th or any other day in that week. I would be able to meet on the 5th or the 3rd.

I will have, as I say, I will have Steve doing a lot of research work or whatever we need to do and he can represent me.

CHAIRMAN BRINSON: Can everybody make it on the 5th?

(Brief pause.)

CHAIRMAN BRINSON: Why don't we just leave it on the 11th.

All right, any other general observations?

Mr. Chairman, do you have any?

CHAIRMAN SMALLEY: None, other than those that I made in the general session.

(Brief pause.)

REPRESENTATIVE ADAMS: Mr. Chairman, since I won't be here, could I give a written report and let Steve represent me on any questions, or--

CHAIRMAN BRINSON: By all means, and we will appreciate it.

REPRESENTATIVE ADAMS: Thank you.

CHAIRMAN BRINSON: Will you be talking to Perry? If you would not mind, if you would tell him that we have sort of decided to have some specialization to this subcommittee on these particular sections and if he could be thinking of some problem areas and ways to address them on three and four?

MR. LITCHFIELD: May I ask a question?

I am a little bit confused as to what the whole

committee and the subcommittee's position is on local constitutional amendments? I mean that is going to come up a hundred thousand times between now and the time we wind up.

Is the intent to get rid of all of them that presently exist and write a constitution in such a manner that they will no longer be needed?

There was some mention that was some county that was concerned that their present local constitutional amendment be preserved?

Are we going to preserve them or are we going to merely have a constitution that will allow that which is presently due by local amendment or will it be done in some other way?

CHAIRMAN BRINSON: Well, I welcome anybody's answer to that question. It seems to me that, at least idealistically, we would head towards doing away with the necessity for local amendments, and that the language that we come up with would be broad enough to include those things that are done by local amendment now, and that may-- I may be in error on that and if anybody has any observations, I would like to know about it.

MR. RICKETS: As Melvin can tell you, the County Commissioner's Association is vitally interested in that aspect of the proposed constitutional provision,

last year, dealing with local Constitutional amendments and perhaps you will recall that the proposal was that the Governor be given veto authority over resolutions with respect to Constitutional amendments.

I think I can state accurately that County officials are not concerned so much with the technical aspects of the Constitution with regards to local Constitutional amendments, but they are more concerned that there be a process by which the authority which is presently conveyed via local Constitutional amendments be included in whatever Constitutional means proposed and verified, and, secondarily, that the process be no more difficult politically than the present process.

Now, if you can--if you can change the Constitution and create a process that eliminates local Constitutional amendments, and substitutes for it the process that has become more politically difficult, then I suspect that as far as candidates are concerned, there would be no problem, but, in view of the many county officials last year, it is more than just a single county who had concern about this. The process that was going to be substantive for the current one was more politically difficult, and I think that was the basis for the County Commissioner's opposition of that aspect of the Constitutional provision.

CHAIRMAN BRINSON: Well, that is a realistic observation, something that we are going to have to face and that we should face.

Again, though, it seems to get back to the -- probably to the breadth of the language ultimately realized.

Does anybody else have any general observations? General or specific observations? Ed?

MR. SUMNER: I am sorry I came in late, but, you know, I think the only thing that we have looked at and I noticed in Mr. Smalley's part this morning in the area of Constitutional revisions tremendous proliferations on the development part of the amendment, for example, and we have identified that as has the Georgia Chamber of Commerce, there is a real concern on what is happening in the authorities area, and it is kind of what Jay was saying, I think what we need to do, what this committee is going to have to do, and it is going to be very difficult is to decide, carve out the areas that should stay with the state, the areas that basically have free range election wise and then grant the authority, that authority which would permit by local ordinance or some type of home rule provision to cities and counties, authority for the counties to adopt if necessary, but

what they are doing in the local amendments is to eliminate the local amendments and then if you think that is something they ought to be able to do, let them be able to do that by home rule type thing, then make the amendments that way.

We need to decide what it is you want to give them here and for example, on the authority issue, you know, why do we have to have authorities, and of course, there is the problem of some of the restrictions that we have got, you know, the current authority, and if development authorities are a good idea and what is good and what we should let the local governments do directly, why do we have to create a lot of independent or quasi-independent authorities to carry out things in the public interest when you have got your local elected bodies to do those things.

That is a real concern. We are getting a lot of proliferation for development authorities, for example, to have the power, the power to tax separately from the governing bodies to support themselves and, you know, it really just isn't a good idea to let people have independent taxing authority outside the control of the local elected officials.

There is just several issues in this area that

might need looking at and if you think development authorities, very tight housing authorities and all of these type things are a good idea, then that would be a very broad zero, the general type thing and let the local elected officials carry that out.

CHAIRMAN BRINSON: Well, we are hitting on some areas I think that again are so broad and I think just mammoth but they are, I think we are charged with dealing with them, so bear in mind, now we have code revisions and we have local amendments, that is both procedure and substance in local amendments and development authorities, three very broad areas which we are going to have to grapple with and the politics of all three. And I am sure there are many other areas that you have pointed out also, Mel.

Is there anybody else that wants to specifically address Sections II, III or IV that we might make an initial report on at this next meeting?

MR. HILL: Could I ask what kind of staff research would you like us to engage in before we have the next meeting that will help you? As I say, we will try to put together a collection of provisions from other state constitutions on these articles so that you can see what some of the other states have done.

I am not sure. There have been so many reports

and studies written, you know, the governor must have ten reports and Perry Sentell has written probably three times that many himself, and how much material and what materials would you like us to try to gather together to help you get a better handle on this article?

CHAIRMAN BRINSON: Well, I think we necessarily are going to depend a lot on those who have experience in the drafting before and that is people like you, and do you think it would help us to have a great wealth of material that we can go through and try to glean some more successful approaches from, or do you think that you ought to challenge in those particular directions?

MR. HILL: Well, I don't think we should challenge in any particular direction, but, suppose I try to identify a few pieces of information that would be helpful related to II, III and IV that might be of assistance? I think the other state Constitution provisions will be something you will want to see.

CHAIRMAN BRINSON: I think that would be helpful and you can give us alternatives and things like that.

MR. RICKETTS: The staff's problem is enormous and I have a great deal of respect for Mr. Hill's ability but I don't think that this process to simply look around at all the various Constitutions and say, well, we might like to have this aspect or this from this state.

It seems to me that the more rational approach would be to take a look at the present article and each of the subcommittee members decide which aspect of the present article is efficient or what problems are being caused by the article presently and then, I think you can begin the process of accumulating information and data from the various states to decide whether or not other states have successfully--otherwise, I think you are going to be hard pressed to impose any kind of rational process.

CHAIRMAN BRINSON: Well, having had the experience and knowing the Constitution as we do and the Article IX in particular, do you think that would be within the expertise of the staff?

In other words, not just give us everything but direct us towards the problem areas?

MR. HILL: Well, I think I -- you know, as we are going to be looking at the Constitution but I think at this point, you know, it is an opportunity to see what other states are doing in this area and I think eventually we are going to be down to this line, but I don't want to close off these options of seeing what other states are doing and I think that it might be helpful.

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REPRESENTATIVE ADAMS: Well, the intent of my suggestion that we do this was to, I guess, identify problems and then seek help in solving them. You know, or look at other states and see what they have done about it, and that would be, what I would ask Steve to do is to work with you all and then all committees on some of these areas and I think probably we might, you know, help you or you could help us.

MR. WEEKS: There is a good bit of writing that point up the problems in the language and so forth.

CHAIRMAN BRINSON: Well, why don't, uh, Perry is not here today and I am sorry he is not but why don't I communicate with him and get him to maybe at the next meeting, which is not too far away, to just generally address the group on those problems and he can sort of boil down these articles.

And then, at the same time, maybe you will have done some other state research which would get us started on where we are on that particular problem and that would at least begin to challenge. I think that would give us two points and give us some direction, go from the problem to the other solutions. Because right now we're just floundering as you can see, trying to get some direction and maybe that will do it, give us a start.

Again, with the input on those of you who intend to address yourselves to particular sections, I can see the next meeting taking a little better shape now that you mention that. I am glad to know that.

MR. WEEKS: He would have been here today but he had classes and he won't, you know, Perry is very religious about this, maybe he will let them go one day for his presentation.

CHAIRMAN BRINSON: Yes, I think his input would be invaluable.

Well, unless there is something more, I think that necessarily communications between now and the next meeting is going to be vital to the value of the next meeting and I will see, I will ask Perry to so address us and if you will get the staff reserach started?

MR. HILL: All right, and if anyone has any suggestions that comes to mind between now and the next time for research, give us a call and we will be readily available to assist you.

CHAIRMAN BRINSON: So that that will be encouraged and easy, what is the number that we can call?

That is the number at the top of your letterhead, 656-7158.

I am talking about all of you and not just the

1 committee now. All of you that have any suggestions on
2 possible research and if you will sort of screen it and
3 keep us apprised?
4

5 MR. HILL: Okay, I will be happy to.

6 CHAIRMAN BRINSON: Anything else to come before
7 this first floundering organizational meeting?
8

9 REPRESENTATIVE ADAMS: You have done a very
10 good job.

11 CHAIRMAN BRINSON: Well, thank you all for
12 coming and I hope with the few points we have identified
13 we can draw a line and start with a direction at the next
14 meeting and we will communicate with you definitely about
15 the time and place. Thank you very much.

16 (Whereupon, at 11:50 a.m., the subcommittee
17 was adjourned.)
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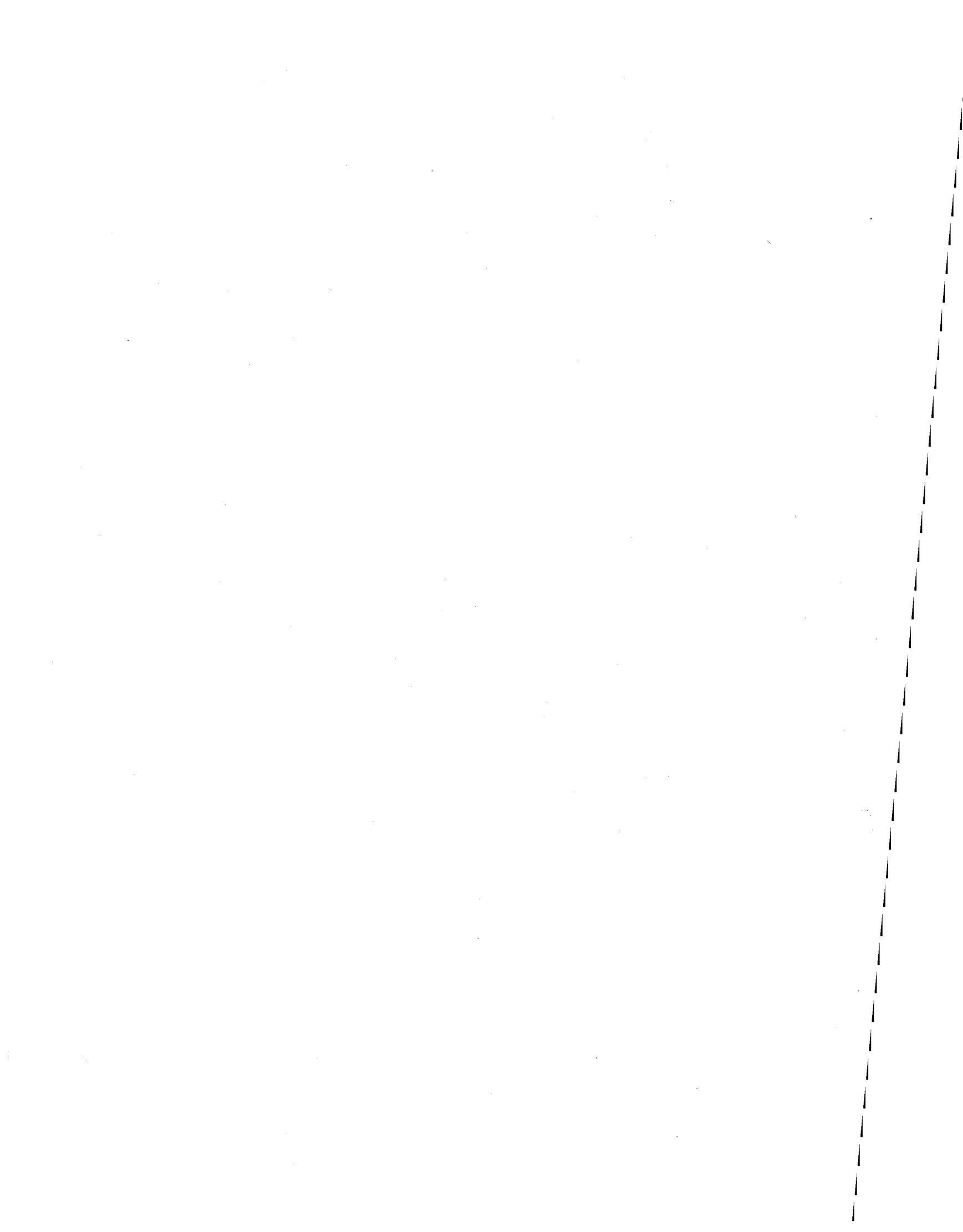
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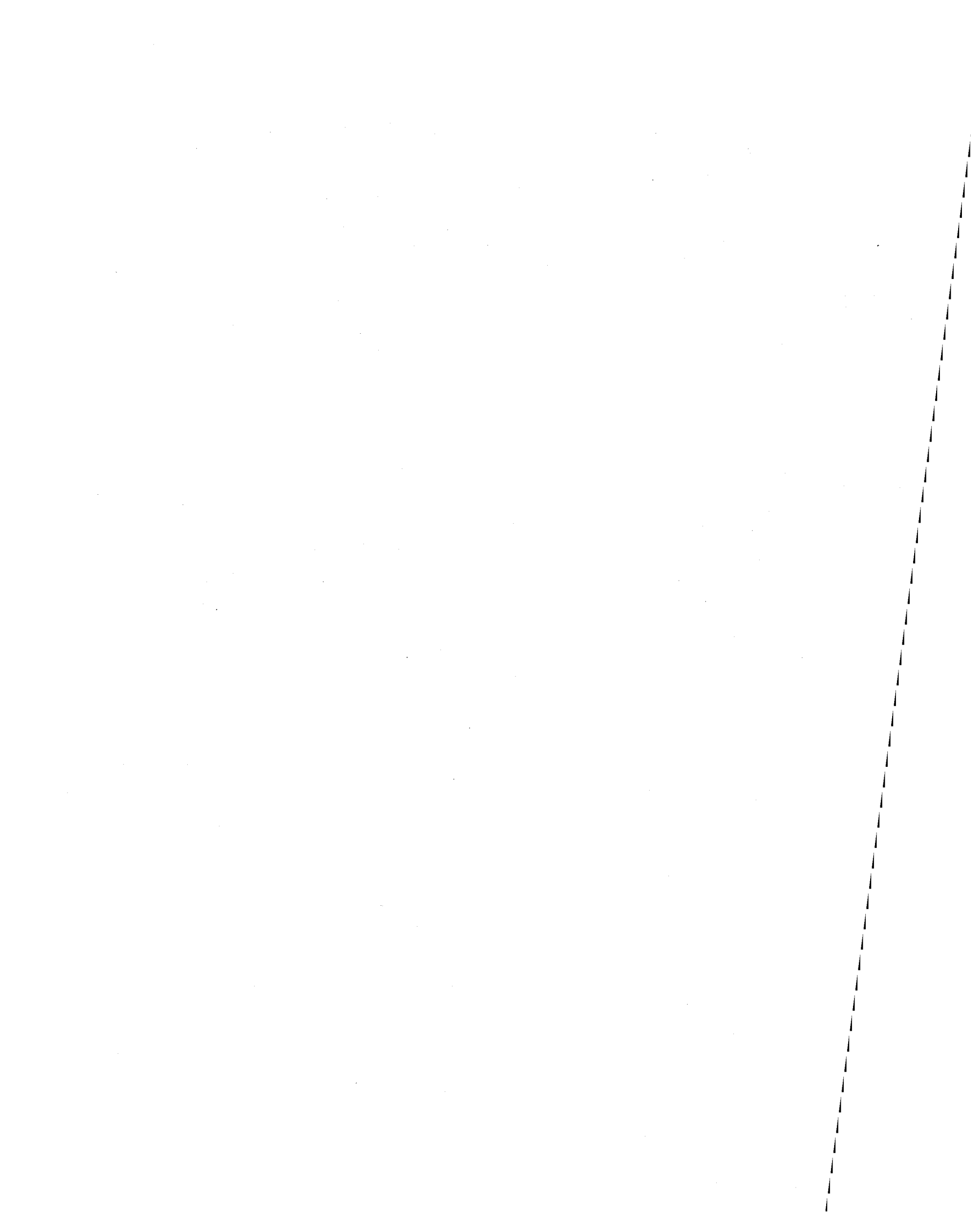
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Committee to Revise Article IX

Subcommittee Meeting Held on May 21, 1980



SUBCOMMITTEE MEETING, 5-21-80
(Procedural)



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STATE OF GEORGIA

COMMITTEE TO REVISE ARTICLE IX

of the

CONSTITUTION OF GEORGIA

Subcommittee on Counties and Municipal Corporations



Room 401-A
State Capitol
Atlanta, Georgia

Wednesday, May 21, 1980
11:00 a.m.



1 PRESENT WERE:

2 COMMITTEE MEMBERS:

3 ED S. SELL, Chairman
4 REPRESENTATIVE JACK CONNELL
5 ROBERT H. SMALLEY, JR., ESQ., Chairman of Article IX
6 Committee

7 SELECT COMMITTEE STAFF:

8 MICHAEL HENRY, ESQ.

9 OFFICE OF LEGISLATIVE COUNSEL:

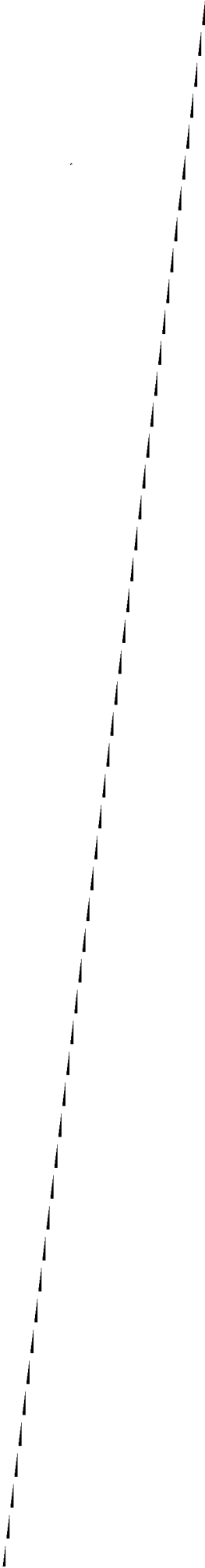
10 DOCTOR CYNTHIA NONIDEZ

11 OTHERS:

12 MR. SUMNER

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11:00 a.m.

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2 CHAIRMAN SELL: I suppose that we ought to lay
3 out a plan of operation. It has occurred to me since
4 thinking about this since last Friday that probably what
5 might be a method of operation would be to ask our staff
6 people preliminarily to give their views, perhaps with a
7 sample provision from constitutions of other states who have
8 had occasion to be concerned with this problem and to see
9 where we ought to head and get some recommendations from
10 them as a beginning point.

11 I would think that simplification is a highly
12 desirable goal in the area of finance to a certain extent,
13 not perhaps as much in the area of organization which is
14 being handled by that sub-committee. The powers granted to
15 local government, particularly the counties, by local
16 constitutional amendments practically form a constitution for
17 the local counties and I think we need to be aware of the
18 extent which we may upset any powers or any functions the
19 counties are already performing to a lesser extent that
20 would apply to municipal corporations, but as all of us know
21 they are governed primarily by their charters as to which
22 there is some greater flexibility because the General Assembly
23 can amend those charters at will.

24 Purely by way of example, Bibb County has had for
25 nearly forty years a local constitutional amendment which

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permits it to provide service districts and at the present time the entire unincorporated area of the county constitutes a fire district. That fire service is financed by a tax levy only in the unincorporated areas. Well, if we had the provision which is in the present constitution that a tax district may only exist with the blessings of the General Assembly and a referendum, our fire department might be out of business in short order. That's -- And there are others that are perhaps similar problems and I just think we need to be very much aware of those problems.

MR. SMALLEY: Is it true that the Legislative Counsel is in the process of compiling those amendments?

DR. NONIDEZ: Yes, sir. We just need to finish listing them on out for you, hopefully I'd say within the next week we should have that available. These amendments from the constitution of 1877, '45, and '76. So we hope to have a comprehensive list and to provide this to you broken out by the appropriate sections in Article IX which this sub-committee is dealing with.

CHAIRMAN SELL: What is the target date on it?

DR. NONIDEZ: I would think that we could have this to you in about another week, week and a half.

CHAIRMAN SELL: Mr. Connell, do you know what the General Assembly's looking for out of this group? Do you have some thoughts about the proceedings?



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1 REPRESENTATIVE CONNELL: Well, the only thing that
2 I might say at this point is be sure that what this sub-
3 committee recommends to Mr. Smalley's full committee and
4 ultimately to the General Assembly is something that you feel
5 that the General Assembly itself will be able to pass, both
6 in the House and the Senate and ultimately the people will
7 adopt it. It's a long road but it starts here and I think we
8 have to temper what our desires might be for a Utopia to what
9 we think we can get passed at the General Assembly level and
10 the people. I think those have to be always in the back of
11 our minds in accomplishing our goals. And as Cynthia
12 realizes that the Select Committee we wrote six articles
13 earlier that that came into play quite a bit.

14 DR. NONIDEZ: Yes, it did.

15 REPRESENTATIVE CONNELL: We agree with everything
16 that we did, didn't we, Cynthia?

17 That's my statement. Okay?

18 CHAIRMAN SELL: Chairman Smalley, do you have any
19 judgments as to how we should proceed otherwise or any
20 additional statements as to how we should proceed?

21 MR. SMALLEY: A general comment. The current
22 sections of the 1976 Constitution are the historic result of
23 amendments to previous documents and we have reached the
24 point in local government finance where there are stated
25 authorities which is almost in converse of what we had prior



RECORDING & REPORTING SERVICE

1 to this where there were stated limitations in every case.
2 I firmly believe that the present Constitution is too
3 restrictive on local governments, that there should be more
4 flexibility and latitude at the local level, both in the
5 production of revenue and the exercise of municipal and county
6 powers which of course is in Sub-committee 1. But in the
7 area of finance it seems to me that local governments being
8 responsive to local needs and the local voters should be able
9 to exercise more discretion.

10 REPRESENTATIVE CONNELL: Could I comment on that?

11 Senator Smalley, I would agree with you up to a
12 point. The problem that we have in our particular area as I'm
13 sure there are -- they're the same as other areas, that when
14 you get to giving the county governing authority more
15 authority, authorization to levy additional taxes for services,
16 we catch it at the City of Augusta level because we have a
17 city that provides certain services and then the county provides
18 those services also but they still tax the city people for
19 that service and we've been working towards eliminating that
20 problem. We've come a long way in the last couple of years
21 particularly since the local option sales tax has been
22 applied for certain services but I think we have to bear in
23 mind once you give authority to the county government for
24 additional taxing powers, you've got to temper that with
25 either providing service by the county or giving -- I mean the

SENATE REPORTING



1 the city people or giving them some authority to either
2 acquire a tax district for that service -- I don't object to
3 my county commissioners having whatever authority they want so
4 long as they don't provide the service and tax the city people
5 for something they don't get.

6 MR. SMALLEY: Well, I think you're specifically
7 addressing the question of double taxation.

8 REPRESENTATIVE CONNELL: That's right, which occurs in
9 many cities and counties throughout the state.

10 MR. SMALLEY: Well, I suggest that that's pertinent
11 to this agenda because it is a real problem.

12 CHAIRMAN SELL: Well, one way of doing that would
13 be to really facilitate the county governments in establishing
14 service districts and making about a three-step process out of
15 it now finally dependent on a public referendum.

16 REPRESENTATIVE CONNELL: Problem you get is you
17 grow into these problems not by design but just grow into them.

18 CHAIRMAN SELL: Right.

19 REPRESENTATIVE CONNELL: The population changes and
20 requirements change and then you get urban areas outside the
21 city limits that require municipal services. This is where
22 our problems arise.

23 CHAIRMAN SELL: We just had a study of that completed
24 in Macon and Bibb County and the conclusion -- not everybody
25 agrees with some of the basic theses of the study -- but the



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1 conclusion of the researchers was that there was somewhere
2 between about 200 thousand and about 900 thousand dollars a
3 year, that's as close as they would come, and they said it
4 could be less than 200 thousand or more than 900 thousand but
5 that was their -- that's what they concluded as what they
6 called transfers.

7 REPRESENTATIVE CONNELL: Who did your study, Mr. Sell?

8 CHAIRMAN SELL: Institute of Gulfman or something.

9 REPRESENTATIVE CONNELL: At Athens?

10 CHAIRMAN SELL: No. It's headed by a lady, a Doctor
11 Golambos who is the daughter of Doctor Sigmund Cohen, who has
12 taught at the University of Georgia Law School for many years
13 but notwithstanding its title, it has no official connection
14 with anybody.

15 MR. SMALLEY: Eva?

16 CHAIRMAN SELL: Eva. Right.

17 Well, I suppose we have a real problem here in that
18 we don't have really a fully formed committee.

19 Mr. Chairman, I would like to suggest if I might that
20 you just assign us some people. I think you have clout. You
21 mentioned Ray Jackson awhile ago, that would be fine with me.
22 I recognize the desire to have somebody who's interested in it
23 if possible, but these people have not exactly rushed in.

24 MR. SMALLEY: Well, I was looking at those who were
25 unassigned. I would suggest Ann Crichton and Ray Jackson, A. J.



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1 McClung, Roger Rupnow.

2 CHAIRMAN SELL: Ann Crichton, Ray Jackson, A. J.

3 McClung? Where is he from, Ed?

4 MR. SUMNER: Columbus.

5 CHAIRMAN SELL: Columbus. Sure,

6 MR. SMALLEY: He's city councilman.

7 CHAIRMAN SELL: And the last one?

8 MR. SMALLEY: Roger Rupnow.

9 CHAIRMAN SELL: May I write these people and tell
10 them that you have assigned them?

11 MR. SMALLEY: Of course.

12 CHAIRMAN SELL: All right.

13 MR. SMALLEY: And perhaps Senator Weßsels also.

14 CHAIRMAN SELL: Yes, I think Charles would be a
15 suitable addition. We might get some Senate feedback. That's
16 why I'm particularly glad to have such a distinguished member
17 of the House of Representatives.

18 MR. SMALLEY: Jack, has Grace Hamilton expressed
19 any preference that you know of?

20 REPRESENTATIVE CONNELL: Who's that?

21 MR. SMALLEY: Grace Hamilton.

22 MR. SUMNER: She's on three.

23 REPRESENTATIVE CONNELL: I think Melvin Hill is on
24 that.

25 CHAIRMAN SELL: That's correct. All right, let's

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1 establish then a pattern for going forward. Number one, I
2 take it, we may expect to have within the next week or two
3 an analysis.

4 DR. NONIDEZ: No. I would say a listing out at
5 least, identification of those local amendments.

6 CHAIRMAN SELL: Local constitutional amendments to
7 the last three Constitutions. I would like to ask Mike or
8 Cindy, whichever one of you would do it, to take a look here
9 in the State Law Library at some of the equivalent provisions
10 of constitutions of two, three, four, some, not a big number
11 but principally states I should think with a common law
12 background that we would think would be reasonably progressive
13 states and who would have reasonable intelligence -- a
14 reasonably intelligent approach; for example, I would select
15 North Carolina over Florida because Florida doesn't have a
16 common law background. I'm not sure what role that plays in
17 this, but I'm sure it does in the history of the local
18 governments, that is if they have tended more to follow as
19 Georgia has the original English system in their development.
20 North Carolina maybe, I think Virginia is a little too different
21 from everybody else but I think we'd like to see what others
22 have done in this area. It may be quite sufficient to get a
23 photocopy of what they have done, a photocopy from their code
24 and just mail it to the committee members.

25 When do you think we might be able to first meet, Mr.



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1 Connell? When do you think would be a good time?

2 REPRESENTATIVE CONNELL: I'll leave that up to you,
3 Mr. Chairman. I'll try to make my plans to be here whenever
4 you call us for a meeting. My schedule in June is bad and
5 July doesn't look too much better as far as I'm concerned, but
6 I'll try to make my schedule to meet with yours.

7 CHAIRMAN SELL: Suppose we do this. Suppose that in
8 about a week after we get these two items and photocopies of
9 provisions from some other constitutions around and about and
10 the listing of the local Constitutional amendments, we simply
11 give ten days or two weeks time in which to read that and
12 absorb it and then have a meeting.

13 REPRESENTATIVE CONNELL: May I ask a question? Bob,
14 those people that you're assigning to this committee, what is
15 their residence? Where do they live? Are most of them nearby
16 here or do they have a long travel to get to Atlanta or --

17 CHAIRMAN SELL: Ray Jackson is from Macon. Ann
18 Crichton's from Decatur, isn't she?

19 MR. SMALLEY: Decatur, I heard.

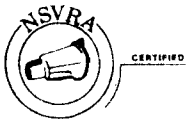
20 CHAIRMAN SELL: A. J. McClung's from Columbus.
21 Charles Wessels is from Savannah.

22 REPRESENTATIVE CONNELL: He's the furthest away.

23 CHAIRMAN SELL: But Roger Rupnow I don't know.

24 MR. SMALLEY: He's at Georgia Tech.

25 REPRESENTATIVE CONNELL: Wessels is the only one that



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1 has a long distance to travel. I'm from Augusta. I can be
2 here in two and a half hours. We could have a day's meeting
3 and go back home without having to spend the night, but I'm
4 up here quite a bit anyhow so I'm sure Senator Wessels is here
5 a lot.

6 CHAIRMAN SELL: I would like to simply notify these
7 others. I'll get out a letter to these other five telling
8 them that they have been appointed and not give them any choice
9 about it. We can't make them come, but at least we'll have
10 some people that we can communicate with. I would like for
11 them to be furnished with copies of handouts for this morning.
12 Mike, I reckon that will fall more in your bailiwick. Then I
think hopefully in about 30 days we'll be prepared to come
14 back here and start some work.

15 Would it be desirable -- Let me ask Cindy if you --
16 if your office has had any suggestions for changes in existing
17 language that they would want to present at this meeting?

18 DR. NONIDEZ: If I may, let me check with Frank and
19 Harvey and Karen who do most of the work in the tax area
20 generally and I'll raise that very question with them and see
21 if they have some issues that are very much on their minds.

22 CHAIRMAN SELL: Do you have one assistant attorney
23 general who perhaps devotes more time? I know a young fellow
24 from over at Monroe is the head Revenue Department lawyer.

25 MR. SUMNER: Perry Michael?

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CHAIRMAN SELL: Perry, yeah.

MR. SUMNER: Perry Michael and Jerry Pat work with Revenue.

CHAIRMAN SELL: But I'm wondering whether or not while you're checking, if you'd be good enough to check with them and see what they -- whether or not they have any -- have had any experience in construing the existing Constitution that would be helpful to us.

Well, I don't know, unless some of you have something to add, I suppose we might as well recess and we'll try to get us a full committee next time.

I will forthwith notify these that they have been chosen.

(Whereupon, at 11:20 a.m. the committee meeting was adjourned.)



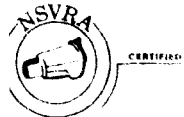
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C E R T I F I C A T E

I, Peggy J. Warren, CVR-CM, CCR A-171, do hereby certify that the foregoing 13 pages of transcript were taken down and transcribed by Ramona LeBlanc, a reporter who is presently unavailable to certify same, and that I believe this to represent a true and accurate record of the events which transpired at the time and place set out above.

Peggy J. Warren
PEGGY J. WARREN, CVR-CM, CCR A-171

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Committee to Revise Article IX

Subcommittee Meeting Held on May 21, 1980

SUBCOMMITTEE MEETING, 5-21-80
(Procedural)

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STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

SUBCOMMITTEE NUMBER 3,
SUBCOMMITTEE ON GOVERNMENTAL
ORGANIZATION

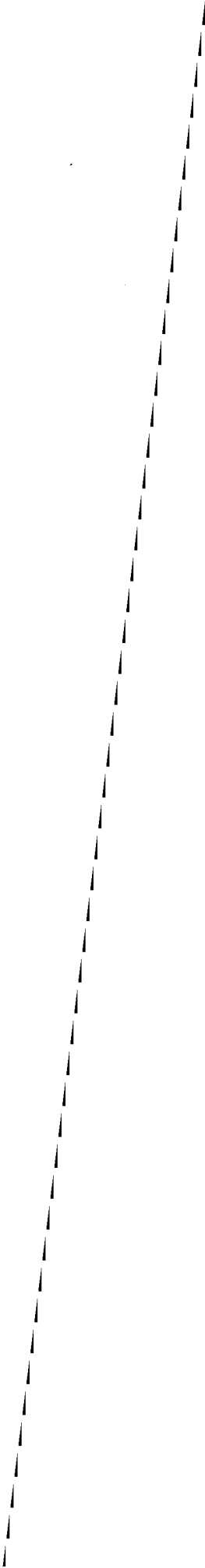


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Room 337-B
State Capitol
Atlanta, Georgia

Wednesday, May 21, 1980
11:00 a.m.



1 PRESENT:

2 COMMITTEE MEMBERS:

3 SENATOR PAUL COVERDELL, Chairman

4 SENATOR ROY BARNES

5 REPRESENTATIVE WARREN EVANS

6 JAMES BURGESS

7 MERRILL GREATHOUSE

8 ALSO PRESENT:

9 VICKIE GREENBERG, Staff Attorney

10 HARVEY FINDLEY, Deputy Legislative Counsel

11 JOE MUNDY

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17 BRANDENBURG & HASTY SCIENTIFIC RESEARCHING



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P R O C E E D I N G S

1
2 CHAIRMAN COVERDELL: I will call the first meeting
3 of the Subcommittee on Local Government Organization,
4 Reorganization, Intergovernmental Cooperation and General
5 Concern, which covers about everything I think, to order.

6 I believe everybody heard that our responsibility
7 is to report back on Section 1, Counties; Section 4, para-
8 graphs 1 and 2, Consolidation of Governments, Consolidation
9 of Services; and Section VI, Contracts, hopefully by
10 September at the order of the chairman of the full committee.

11 I just have one opening comment, and then I think
12 we will get some comments from the staff just for general
13 discussion; for a reference point only in terms of our work
14 division it seems to me that it would be useful if we went
15 through Phase 1 for familiarity where we might hear from
16 various parties regarding these sections and paragraphs,
17 general comment where we are today and what has been suggested
18 in modern times and perhaps what's been done in other states
19 for review and reference.

20 Then we would move into the actual language dis-
21 cussion in preparation for a final report.

22 I think that first stage ought to be particularly
23 useful to everyone.

24 With that opening short comment, Vickie, do you
25 want to pass on any thoughts the staff has had regarding

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1 this subcommittee in your own meetings or comment on my
2 general direction at this point?

3 MS. GREENBERG: I think the idea of familiarity is
4 very important. Michael Henry has prepared some information
5 for this committee, and I'm going to be reviewing that with
6 him so I can bring out some specific things to this committee.

7 I am here for any type of research projects or any
8 information that you want; I am your staff attorney.

9 CHAIRMAN COVERDELL: That's nice to know.

10 Has that paper been distributed as yet? I'm having
11 to reorient myself on what I have received from the full
12 committee, and I can't even determine whether I've gotten
that document.

14 SENATOR BARNES: I remember getting and reading the
15 comparison of the '64 Constitution --

16 MS. GREENBERG: Inside the folder there is a list,
17 an inventory list of materials that you have received and
18 materials that are in this particular folder.

19 CHAIRMAN COVERDELL: Is this the document that
20 you're referring to?

21 MS. GREENBERG: Yes.

22 CHAIRMAN COVERDELL: I see.

23 Harvey, are you going to be our representative from
24 Legislative Counsel?

25 MR. FINDLEY: Just to sit in mainly. Senator

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1 Coverdell, you will have staff assigned to you, but we want to
2 sit in on the meetings and if we can provide any assistance
3 fine, but I think we'll rely on your other staff principally
4 as the assistant, but we would like to kind of monitor what
5 goes on.

6 CHAIRMAN COVERDELL: In that sense are you going to
7 break down -- there are several of you that have been attend-
8 ing the full committees -- are you going to break down and
9 make specific assignments or just --

10 MR. FINDLEY: I was going to work with this
11 committee or sit in with this committee, and our other two
12 staffers that are assigned Article IX from our office will
work with the other two committees, subcommittees.

14 CHAIRMAN COVERDELL: Do you have any general
15 comments to make? I think you ought to share some of your
16 thoughts you and I were discussing.

17 MR. FINDLEY: I think that the background that you
18 suggest in determining what the constitution presently
19 provides, what value it has in the way of governmental
20 reorganization, if any, what kind of problems it presents in
21 a stumbling block to governmental reorganization or innovative
22 ideas in governmental reorganization is certainly where to
23 begin. In other words, determine where you're at and then
24 decide then I think from a policy standpoint as to how
25 flexible should the constitution be in authorizing

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1 innovative governmental reorganization programs. All of them
2 thus far to my knowledge have been, as Jim Burgess is familiar
3 with as well, have had to be preceded by separate constitutional
4 authority that you can't really go about it in thoroughgoing
5 governmental reorganization with any success without first
6 amending the constitution, and should the constitution act as
7 a stumbling block to innovative ideas to local government,
8 will the big jurisdictions have to be treated differently.
9 It's questions like that that I think in this Phase 1 should
10 help make a determination of those things that would then form
11 the basis for trying to deal with some of the hard policy
12 decisions that you folks will have I think involved in this
13 article, I mean in this subcommittee.

14 CHAIRMAN COVERDELL: Comments from members of the
15 subcommittee regarding our initial plan? Do any of you have
16 any specific thoughts?

17 Jim, you have -- one of my interests in asking Jim
18 Burgess to be on the subcommittee was the work he has done in
19 guiding the policymakers through works such as this, and in
20 particular I recall the Atlanta charter. Do you have comments
21 on our system for moving towards a policy-setting?

22 MR. BURGESS: Paul, I would just throw this out as a
23 point of departure, for discussion. This might be a little
24 premature, but in approaching the question of constitutional
25 revision as in terms of its facilitation of governmental

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1 reorganization, consolidation of services, I would pose this
2 question. Do we have to look at the fact that the constitution
3 presently makes a legal distinction between cities and
4 counties. The constitution itself treats -- at least it's my
5 impression in reading it -- counties differently from a legal
6 standpoint than is the case of cities, and you see this for
7 example in Section 1. It says each county is a body corporate
8 with powers and limitations as provided in this constitution
9 as prescribed by law. Then if you contrast that with Section
10 3 which is not one of our assigned sections that provides that
11 the General Assembly is authorized to provide by law for self
12 government of municipalities, then you go into really a home
13 rule provision that's more of a statutory type of authoriza-
14 tion, whereas counties -- their powers of self government for
15 example are prescribed in the constitution itself, and I just
16 wonder if with the way in which government today is evolving
17 in Georgia should we continue this sort of historical
18 distinction between cities and counties and, if we do, should
19 it be set forth in the constitution. It's my understanding
20 that the counties have been considered historically as
21 political divisions of the state and that relationship being
22 fixed in the constitution more as a constitutional basis than
23 is the case of municipal government, and I don't know, it's
24 just a question I have in my own mind whether we should even
25 get into that. That's a real can of worms in itself.

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1 CHAIRMAN COVERDELL: I think the definition of the
2 work before the committee could all be inclusive in that.

3 MR. BURGESS: There's no question I think we can
4 make some revision of the constitution that would certainly
5 facilitate the ability, the authority of local communities on
6 their own initiative to initiate reorganization of the local
7 governmental services, including political reorganization,
8 political consolidation which they really can't do now, they
9 have got to go back and get the constitution amended.

10 I have been involved in fifteen city-county
11 consolidation efforts not only in Georgia but throughout the
12 Southeast, North Carolina down through Florida, and they are
13 all pretty much the same way. You've got to go back and get
14 special authorization to allow a local community to really
15 reexamine itself.

16 The most dramatic one we were involved in which was
17 a success was the Columbus-Muscogee consolidation, and we had
18 to secure, or the local community had to secure the enactment
19 of a local constitutional amendment which had a very broad
20 statement of powers and authorization to allow them to put
21 together a legal document to effect the consolidation, and
22 the constitutional amendment that was drawn was really a
23 product of the Office of the Legislative Counsel, and if you
24 go back historically, you go back to the Albany-Dougherty
25 which I think was one of the early amendments, the ~~Muscogee~~-Bibb

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1 which was an early one, they all seem to be patterned somewhat
2 along the same lines.

3 SENATOR BARNES: Does Albany-Dougherty have a
4 consolidation?

5 MR. BURGESS: No, but they attempted it. If you go
6 back historically you'll see amendments on the books that
7 authorized or where they attempted to authorize consolidation
8 or a study of consolidation.

9 You know, there is a tremendous amount of work we
10 could do in terms of trying to put language in the constitution
11 that would allow what we have had to do historically in the
12 past by local amendment. That is to me one area.

13 However, I still come back and maybe -- can you
14 really in dealing with reorganization of local governments,
15 cities and county and delivery of services and in elected
16 offices, do we have to clearly understand the difference, if
17 there is a difference between the city and the county, and
18 personally I have some problems today of understanding what
19 that difference is because in Georgia cities and counties do
20 just about the same thing. Counties have more powers, state
21 type powers in terms of constitutional offices and the courts,
22 health and welfare, they have a broader charge of responsibility
23 there, but I think today counties have basically the same
24 powers as municipalities.

25 MR. FINDLEY: That's so-called Amendment 19.

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1 MR. BURGESS: And I'm not sure, do we need to get
2 into that relationship or is there a relationship, or should
3 we just forget that one and go on.

4 CHAIRMAN COVERDELL: I think it is too early to
5 forget anything. I think we want to put all of the questions
6 that we think might be pertinent on the table as we move along
7 and we may resolve which of those seem by policy to be issues
8 we're willing to try to resolve, and I think at this point --

9 MR. BURGESS: When you look at the constitution,
10 just from my reading of it, it seems to me that there is just
11 little doubt the constitution right now is a statement of
12 substantive law, it deals with county government differently
than it does with municipalities. Would you agree with that?

14 MR. FINDLEY: The fact of the matter is the
15 constitution until Amendment 19 except for the provision
16 dating back to 1962, the bottom statutory home rule for
17 municipalities preceded by another one, the constitution had
18 very little to say about municipalities, it just didn't talk
19 about municipalities.

20 MR. BURGESS: All the powers were the creation of the
21 General Assembly, solely to be dealt with --

22 MR. FINDLEY: They exist at the pleasure of the
23 General Assembly, and they had an historical difference that
24 they were a community of common interest, that you incorporated
25 into a governmental entity, where as Jim pointed out counties

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1 historically have been political and administrative sub-
2 divisions of the state to run the courts, to build roads and
3 things like that, and the so-called Amendment 19 which is
4 Article IV, Paragraph 2 in here -- I mean Article IX, Section
5 4, Paragraph 2 I think it is in here, kind of revolutionized
6 that all of a sudden, and people have been kind of scratching
7 their heads and wondering what all that means ever since,
8 that counties were given suddenly by one constitutional
9 amendment full-blown municipal type services, and it's
10 interesting.

11 In connection with what Jim is saying, I think the
12 chairman of the full committee mentioned local constitutional
13 amendments, and one of the more difficult things that you
14 folks will have to deal with if you choose to deal with local
15 constitutional amendments is all the intergovernmental
16 consolidation or city-county consolidation amendments that
17 we have on the books, and while none of them have been
18 successful but Columbus-Muscogee the authority is still there
19 for quite a variety of them by local constitutional amendments,
20 and that authority has not expired, it's still there.

21 So if you deal with local constitutional amendments
22 logically those city-county consolidation amendments would be
23 in the charge of this subcommittee. What are you going to do
24 about it?

25 If you're going to obviate the need for local



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1 constitutional amendments, then what are you going to do about
2 those local constitutional amendments, and it presents a
3 particular problem I think from the standpoint of Columbus-
4 Muscogee which is ultimately bottomed on that constitutional
5 amendment; it is a charter they have that actually creates the
6 consolidated government, but that charter depends directly
7 upon the authority in that 1968 local constitutional amendment,
8 so if you're going to eliminate those local constitutional
9 amendments, if that were a policy decision to make the
10 constitution more flexible from the standpoint of inter-
11 governmental reorganization or governmental reorganization
12 you come to severe technical problems on how to deal with
those local constitutional amendments.

14 Are they simply going to be brought forward? That's
15 my bias, a cop-out, but it may be necessity. You know, it
16 could be you reach that conclusion from necessity. Perhaps
17 while it's undesirable it seems to me that those constitutional
18 amendments should be absorbed in the general language of the
19 constitution. That's my own bias.

20 SENATOR BARNES: Of course, I have talked about this
21 at meetings we have had, and this is a decision I think the
22 full committee is going to have to make eventually, but I want
23 to give my opinion of local constitutional amendments, what
24 the overall plan should be.

25 Number one, I do not believe there should be local



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1 constitutional amendments. It is theoretically and logically
2 inconsistent to say that you can create a local exception to
3 a basic document that governs or the basic charter. The
4 theory of a constitution or a charter that operates is the
5 fundamentals by which all are governed, and then that by
6 statute you create certain exceptions rationally within it,
7 so it's my opinion, and I have always felt this way, that we
8 ought not to have local constitutional amendments, and I think
9 eventually that's probably something that I'm going to argue
10 for and suggest to the full committee that there should be a
11 provision in the new constitution, this article that says
12 local constitutional amendments are hereby prohibited, and
that they not be allowed.

14 Now, it does create a problem as to those that are
15 existing, and I foresee that there ought to be in regard to
16 the powers and the responsibilities and abilities to
17 consolidate governments as there are on general powers of
18 cities and counties that there should be only exclusions in
19 the constitution. For example, a city shall not have the
20 right to levy a certain type of tax, and if they are not
21 specifically excluded in the constitution then the power
22 ought to be there instead of the reverse, naming the powers
23 they have and that you're limited to that.

24 We ought to say for policy decisions and reasons
25 there are certain things the counties ought not to be able

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1 to do because that's an exclusive province of the state, and
2 certain things that cities ought not to be able to do because
3 that's an exclusive province of either the county or the
4 state, and otherwise they can do anything they want to do.

5 The same thing ought to be true with consolidation,
6 There ought to be a grant, some type of grant of power that
7 the General Assembly shall have the right to prescribe -- I
8 mean if it's not excluded they would have the right to
9 prescribe a general procedure of consolidation without having
10 to go through a local constitutional amendment, because I'll
11 tell you that's what is killing us is the local constitutional
12 amendments, and it's going to get worse and worse as time
goes on.

14 -MR. FINDLEY: It encourages I think -- if I could
15 just add a platitude to Senator Barnes that he's right as
16 usual, but I think that the local constitutional amendment
17 encourages a cavalier attitude to the constitution generally,
18 that frequently I think it's easier for the General Assembly
19 to pass a proposal to amend the constitution than it is to
20 pass a law.

21 SENATOR BARNES: It is because the people have the
22 ultimate --

23 MR. FINDLEY: You have a cop-out when you pass a
24 constitutional amendment, so you're going to let the voters
25 decide, so you don't really examine or look at what kind of



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1 public policy you're embodying in the constitution itself,
2 and I really believe that the cavalier attitude toward the
3 constitution that's demonstrated I think pretty fairly with
4 a thousand or so amendments I think is encouraged by the
5 existence of local constitutional amendments, so it is a
6 reform kind of without which none it seems to me -- if you
7 can't really address the matter of local constitutional
8 amendments effectively then I don't know that you'll ever have
9 a genuine document that represents what should be the organic
10 law of the state that should be respected and not changed for
11 light and transient reasons.

12 MR. GREATHOUSE: Speaking of limiting the voters'
13 right to vote on merger of city and county government, but
14 only to spell it out --

15 SENATOR BARNES: It would still be by referendum,
16 it just wouldn't have to amend the constitution. In other
17 words, there could be a general law that no -- in other words,
18 there would not be any consolidation, the general statute
19 could say there could be no consolidation without the
20 approval of the governments to be so consolidated -- no
21 problem with that, just not have to go back and do a
22 constitutional amendment each time. We could do it by general
23 statute instead which would be easy to do.

24 If you look at the old laws, the old statutes in
25 this state especially in the 1880s and 1890s, everything was



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1 put to a referendum -- I mean to create a school system, to do
2 anything, a referendum was hooked to it,

3 Paul and I have been through this in the Senate last
4 year on the approval of the new constitutional article that we
5 had, and personally I'm very pessimistic that the General
6 Assembly can put through an effective article without
7 butchering it, I'll be quite frank with you, because it scares
8 me when it gets on the floor and they start monkeying with
9 due process and equal protection and everything else. I mean,
10 you know, by the time it was finished amending I wasn't sure
11 that due process existed in the state, it was just horrible,
12 and I think the same thing is going to happen especially with
13 this article because it affects little cities, little counties,
14 county commissioners and everything else, and so I am
15 pessimistic about it though I think we're going to try.

16 CHAIRMAN COVERDELL: That's not a motion to adjourn,
17 is it?

18 SENATOR BARNES: No, not to adjourn, but I have
19 looked at some of the things that have come out of the Select
20 Committees and all, and they look great coming out of draft
21 form, and then either they get to the full committee that
22 drafts them and they're butchered or they get to the floor of
23 the House or the Senate and they're butchered, and I'm just not
24 going to be party to one that trades a worse document -- at
25 least I know about where everything is in this document, and



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1 even though it's a horrible document in my mind it's been
2 interpreted, and I'm just -- I am for a new constitution, but
3 a new constitution ought not to be over ten or fifteen pages
4 long and that ought to be it.

5 I mean this business of having -- you can't get a
6 current copy of the constitution of Georgia because they can't
7 keep up with the printing fast enough. That's absurd,
8 absolutely absurd.

9 MR. FINDLEY: One doesn't exist. You couldn't carry
10 it if you had a copy of the Constitution of Georgia.

11 REPRESENTATIVE EVANS: The shorter it is, the better
12 it is. Just like a charter of a corporation, it's a charter,
13 it's usually two pages, and then your by-laws are the way in
14 which you carry on your everyday operations, and that's what
15 we need in my opinion in Georgia, and I agree a local
16 constitutional amendment is a pain in the backside.

17 I think we ought to spell out in a sense what they
18 maybe can't do, and then leave everything else to them both
19 in the city and the county.

20 CHAIRMAN COVERDELL: Joe, you were about to say
21 something?

22 MR. MUNDY: I was just going to ask, does anybody
23 keep up with how many over a period of time how many of these
24 amendments pass and lose?

25 I know of no or very few of them that I ever have



1 much idea what I'm voting for, and maybe that's my fault, but
2 I don't.

3 SENATOR BARNES: Most folks don't vote on them, a
4 lot of people don't. They just skip them.

5 MR. MUNDY: I'm just wondering what the percentage
6 is that pass or don't pass, say over a ten-year period.

7 SENATOR BARNES: The last few years they've been
8 rough on them, they've been voting them all down.

9 CHAIRMAN COVERDELL: I have seen data on that, but
10 I don't recall --

11 MR. FINDLEY: There's a table in the back of this
12 book, or used to be. There was a reaction in 1978 by the
13 voters for various reasons, I've heard all sorts of analyses
14 of it, but historically up until then the vast majority of
15 them were voted up, and apparently folks go in, they don't
16 know what that amendment is about, and the tendency has been
17 to vote it up, but for some reason and a variety of reasons
18 that kind of fell apart in '78 and the voters were in a no
19 mood and they voted down quite a number of things including --

20 REPRESENTATIVE EVANS: Didn't we have about 36 on
21 the ballot?

22 MR. FINDLEY: We had over a hundred on the ballot
23 I believe it was in local --

24 SENATOR BARNES: That's not a good service of
25 government.

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1 CHAIRMAN COVERDELL: The discussion so far just
2 basically reinforces what I think I would like to do in
3 terms of the session of information exchange. I think one
4 thought that's been added that might be helpful that I would
5 invite anybody to communicate to the committee the basic
6 questions they see framed in our work. Vickie, you might do
7 that, and I think we have some other people that would help
8 us -- our constitutional lawyer, Senator Barnes; Harvey, I
9 think you could contribute to that; and Jim and any other
10 members, you come from unique backgrounds, and I would list
11 out questions like you have just delineated, city versus
12 county, should there be a distinction or not, not trying to
13 argue necessarily one way or the other, but help the full
14 committee and its chairman get a grip on the issues you feel
15 are essentially before us.

16 Go ahead, Jim.

17 MR. BURGESS: I was just going to make a suggestion
18 that it might be helpful to have a research paper, a brief
19 research paper prepared which examines the treatment of the
20 same subject matters in other constitutions around the
21 country. I think you might look at the Maryland constitution,
22 the Florida constitution, some more other recent revisions
23 and just see how they're dealing with it.

24 I would also look at North Carolina. They have gone
25 through a lot of constitutional revision up there; they have

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1 I think a fairly progressive scheme of local government in
2 North Carolina, a pretty good model.

3 South Carolina has also recently had a constitutional
4 revision with regard to local government.

5 CHAIRMAN COVERDELL: I would assume that the staff
6 would be following that work in other states.

7 MS. GREENBERG: Right, we have, in other state
8 constitutions.

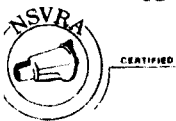
9 In fact, there is a Council of State Governments
10 that has information on recent trends. I can be in contact
11 with them.

12 MR. BURGESS: You might just do some comparative
13 research. I think you're going to find that in the revision
14 of these constitutions of the states that they're revising
15 more in terms of what's actually taking place on the ground,
16 whereas I've always felt that this document really doesn't
17 reflect what we're doing in actual practice; that's one
18 reason we get all these local amendments.

19 SENATOR BARNES: It's too restrictive. It's a
20 straitjacket.

21 MR. BURGESS: Very much so. It's just so out of
22 context when you read Section 1, I have a hard time under-
23 standing what half this stuff -- you know, you could rewrite
24 Section 1 in about one paragraph and cover it.

25 My question is I still -- you know, when you read



1 Section 1 it is really drafted as an archaic expression of
2 the counties' relationship to the legislature. There is no
3 comparable treatment of a city's relationship to the
4 legislature in this constitution, and my question is why.

5 It's almost like Harvey said -- well, it is like he
6 said, you know, the constitution dealt with counties and then
7 cities were just stuck into it later on. I think if you'll
8 look at the other more recent constitutional revisions you're
9 going to find this is not the approach, that they use a more
10 general approach in terms of establishing the legal position
11 of other counties and municipalities. It would be good to
12 have that kind of comparative research, I think that would
help us.

14 CHAIRMAN COVERDELL: I do too.

15 REPRESENTATIVE BARNES: Tell me why in the constitu-
16 tion of this state we should have a provision which says
17 "No county site shall be changed or removed, except by a
18 two-thirds vote of the qualified voters of the county, voting
19 at an election held for that purpose and by a majority of the
20 General Assembly." I mean, you know, that ought to be some-
21 thing that's said in statutory law.

22 CHAIRMAN COVERDELL: The constitution is replete with
23 that language.

24 MR. BURGESS: You could raise the same question on
25 every one of those paragraphs.



1 CHAIRMAN COVERDELL: Let me ask a logistical
2 question, because a key to any subcommittee definitely is its
3 ability to systematically progress through the work. What
4 is the best meeting time for the committee? Mornings,
5 afternoons?

6 What is our travel? I guess Merrill has the
7 greatest distance to go.

8 An eight o'clock meeting is not a good idea. We're
9 talking about a meeting of ten or eleven o'clock.

10 MR. GREATHOUSE: That's fine with me. I could come
11 in behind the traffic.

12 SENATOR BARNES: We're going to deal with Section 1.
13 What else did you say, Paul?

14 CHAIRMAN COVERDELL: Section 1, 4, Paragraph 1 and 2
15 and 6, contracts.

16 REPRESENTATIVE EVANS: If you're asking about --

17 CHAIRMAN COVERDELL: More at this point time. Is
18 10:30 a good time for everybody on a given day?

19 Is there any particular day of the week that is bad?

20 SENATOR BARNES: Monday is bad for me, every court
21 in the world starts on Monday morning.

22 CHAIRMAN COVERDELL: I assume Friday is a bad day.

23 MR. GREATHOUSE: Wednesday is the best day for me.

24 SENATOR BARNES: Wednesday is all right.

25 REPRESENTATIVE EVANS: I guess you're not going to



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1 suit everybody. Thursday is not a good day for me.

2 CHAIRMAN COVERDELL: Is Wednesday okay?

3 REPRESENTATIVE EVANS: Wednesday is fine.

4 CHAIRMAN COVERDELL: Does anybody object to Wednesday?

5 REPRESENTATIVE EVANS: I think we generally said as
6 far as the full committee that Wednesday was the best day.

7 CHAIRMAN COVERDELL: All right. I think we will
8 talk about meeting at 10:30 on Wednesdays, the next meeting
9 to be set -- not today, give us a chance to work with some
10 staff people and try to get our thoughts in order and be
11 notified by mail or phone.

12 SENATOR BARNES: I like to read things a lot better
13 than I like to hear them, and as much as we can accomplish by
14 sending out memos to us without having to come, I sure would
15 appreciate it, especially in the next month or six weeks;
16 I have trials backed up.

17 CHAIRMAN COVERDELL: All right. Duly noted.

18 Any other administrative suggestions?

19 MR. BURGESS: What was that suggestion? I didn't
20 hear it.

21 CHAIRMAN COVERDELL: He would like as much work in
22 advance memorandum and that sort of thing --

23 SENATOR BARNES: Instead of coming in and doing it
24 orally.

25 CHAIRMAN COVERDELL: Unlike the law enforcement, I

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1 don't see how we can function apart. We will have to have a
2 certain number of meetings.

3 SENATOR BARNES: I don't mind, but I don't want to
4 be meeting every week, I'll just tell you.

5 MR. BURGESS: Do you have to meet in the middle of
6 the week? Could we stagger it either toward the front or the
7 end of the week?

8 CHAIRMAN COVERDELL: I just went through that, Jim.

9 MR. BURGESS: I didn't hear it.

10 CHAIRMAN COVERDELL: Mondays and Fridays were viewed
11 as not good at all, Thursday is not good for the representative,
12 so we pretty much went with Wednesday.

13 SENATOR BARNES: We could meet on Sunday afternoon.

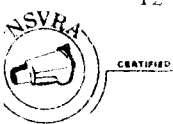
14 (Laughter.)

15 CHAIRMAN COVERDELL: I'm going to veto that one.

16 Okay. Vickie, do you have any logistic thoughts you
17 might want to contribute in terms of how we can best dovetail
18 with your other staff work? I know this is not all you're
19 doing.

20 MS. GREENBERG: I was wondering possibly if it would
21 be beneficial in preparing an historical survey of past
22 constitutional provisions and why certain provisions are in
23 this article. Would that be of interest to you?

24 CHAIRMAN COVERDELL: I think anything that you from
25 your vantage point -- you have been working with this longer



1 than any of us -- might want to put together, and after the
2 meeting I'm going to reflect on the thoughts that have been
3 exchanged here and I'll probably get back in touch with you
4 and we will sort of outline a program of information to be
5 available at the next meeting.

6 MS. GREENBERG: I could possibly, if the meeting is
7 far enough in the distance send these out to the committee
8 members, the historical survey and possibly research into
9 other state constitutions.

10 MR. GREATHOUSE: I would like to have the state
11 constitutions especially in relation to the workings of the
12 commission and other constitutional offices, how they're doing
13 that, where their arbitration powers for budget and so forth,
14 how those are spelled out.

15 CHAIRMAN COVERDELL: Let's do this, because you're
16 going to independently have ideas about what you would like
17 to see, we've got to manage the flow of information, so let's
18 do this. On any request for data, let's formalize it in a
19 memorandum form to go to Vickie, and then any distribution of
20 information would be general to the committee versus a one on
21 one collection of information. I think we can try to keep a
22 handle on it.

23 MS. GREENBERG: I appreciate that.

24 REPRESENTATIVE EVANS: I think one thing, you being
25 in the Senate, and him too, I think we've got to keep in mind



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1 the final product is something we've got to get through the
2 General Assembly by a two-thirds vote if we're going to get
3 anything at all.

4 That may come back to what Roy said a moment ago,
5 do we want to present something that we feel the legislature
6 is not going to accept and then make certain concessions and
7 so forth and end up with a product that may be worse than
8 what we've got now, but we're still going to have to ultimately
9 come up with something that's going to pass two-thirds of the
10 House and Senate.

11 CHAIRMAN COVERDELL: I'm reflecting on the problem
12 Roy mentioned. I tend to be of a mind that whatever we do
13 is going to have to have some substantive revision either at
14 the Select Committee level or in the General Assembly.

15 This entire process may face the pessimistic con-
16 clusion that Roy mentioned, so I think maybe that from, at
17 least from my point of view the contribution we can make is
18 the organization of more proper and current thought coming out
19 of the subcommittee rather than start the process immediately
20 of dismantling what we think may be useful for the state.

21 I suspect that somewhere along the way if this does
22 not conclude in a constitution that is to be adopted by the
23 people in '82, I think we will have come full circle and will
24 be back at some other entity that is reshaping the document
25 and the work of these subcommittees not being encumbered by



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1 just the sole purpose of passage might be useful to that body
2 at that time, if that were to be what happens.

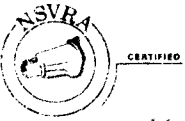
3 I guess the bottom line is I'm saying let's not
4 undo our thinking about what would best facilitate the
5 citizens of the state too early. There will be time for that
6 as we get on down the road, and if not time, somebody else
7 will certainly do it for us.

8 I think the question you have raised, Representative,
9 is key. I would like to get it at the back of our negotia-
10 tions, and not the front of them. I guess that's why I made
11 the remark when Roy made his opening statement if he was making
12 a motion to adjourn.

13
14 REPRESENTATIVE EVANS: The point I was making
15 though was I agree with your comments there, but what I'm
16 saying, I think it would be fruitless for us to come out
17 with something that might be real good, it might be
18 excellent, but yet we know full well that the legislature is
19 not going to buy it by a two-thirds vote.

20 MR. BURGESS: Let me say this, though. I think it's
21 been my experience in drafting city-county consolidation
22 charters, you go ahead and put together the best document
23 that you can and get your best thinking in it, and then put
24 your compromises in it in order to get it passed. If you
25 compromise before you do that, just to me you're operating
unlimited.

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1 If we're going to do this thing, let's go through --
2 if we're going to do it, let's do it and do the best job we
3 can, and then when we get through we'll say "Well, this thing
4 might have this problem in terms of its political feasibility,"
5 then deal with that problem and maybe make the compromise at
6 that point.

7 REPRESENTATIVE EVANS: That's all right. What I'm
8 saying though is still let's keep in our mind that we've got
9 to present a package that's going to be passed.

10 MR. BURGESS: Let me ask you this. There are
11 associations that are represented on the committee, and staff
12 are attending the committee, the GMA, the County Commission
13 and so forth, they've got a lot of information in file,
14 would it be appropriate to request from them --

15 CHAIRMAN COVERDELL: Absolutely. I think our first
16 job is to get a handle on information that we'll be working on.

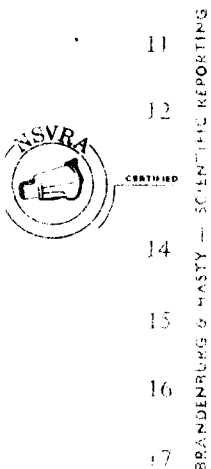
17 MR. BURGESS: I know the GMA have a lot of
18 information.

19 SENATOR BARNES: They do. I have seen some of it
20 too.

21 MR. BURGESS: That could be of help.

22 CHAIRMAN COVERDELL: All right. I'm going to
23 entertain a motion that we adjourn.

24 The next meeting will not be before two weeks, and
25 it might be three depending on what Vickie and I do and it's



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necessary to accumulate.

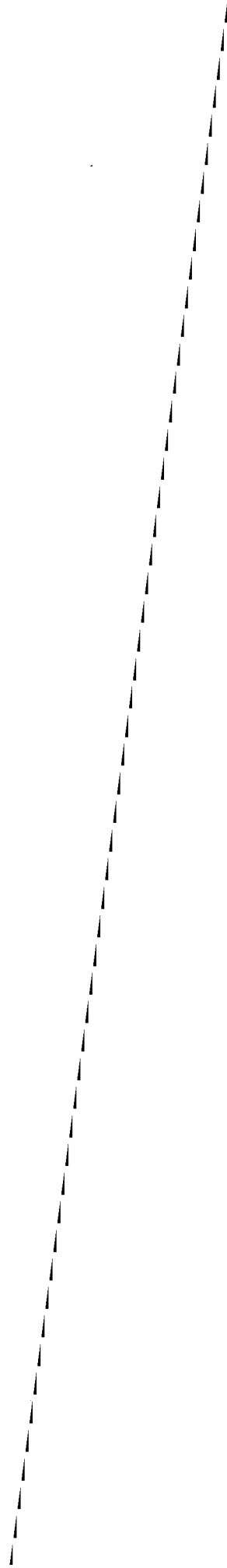
I appreciate everybody's willingness to work on the committee, and look forward to working with each of you.

(Whereupon, at 11:35 a.m. the subcommittee meeting was adjourned.)

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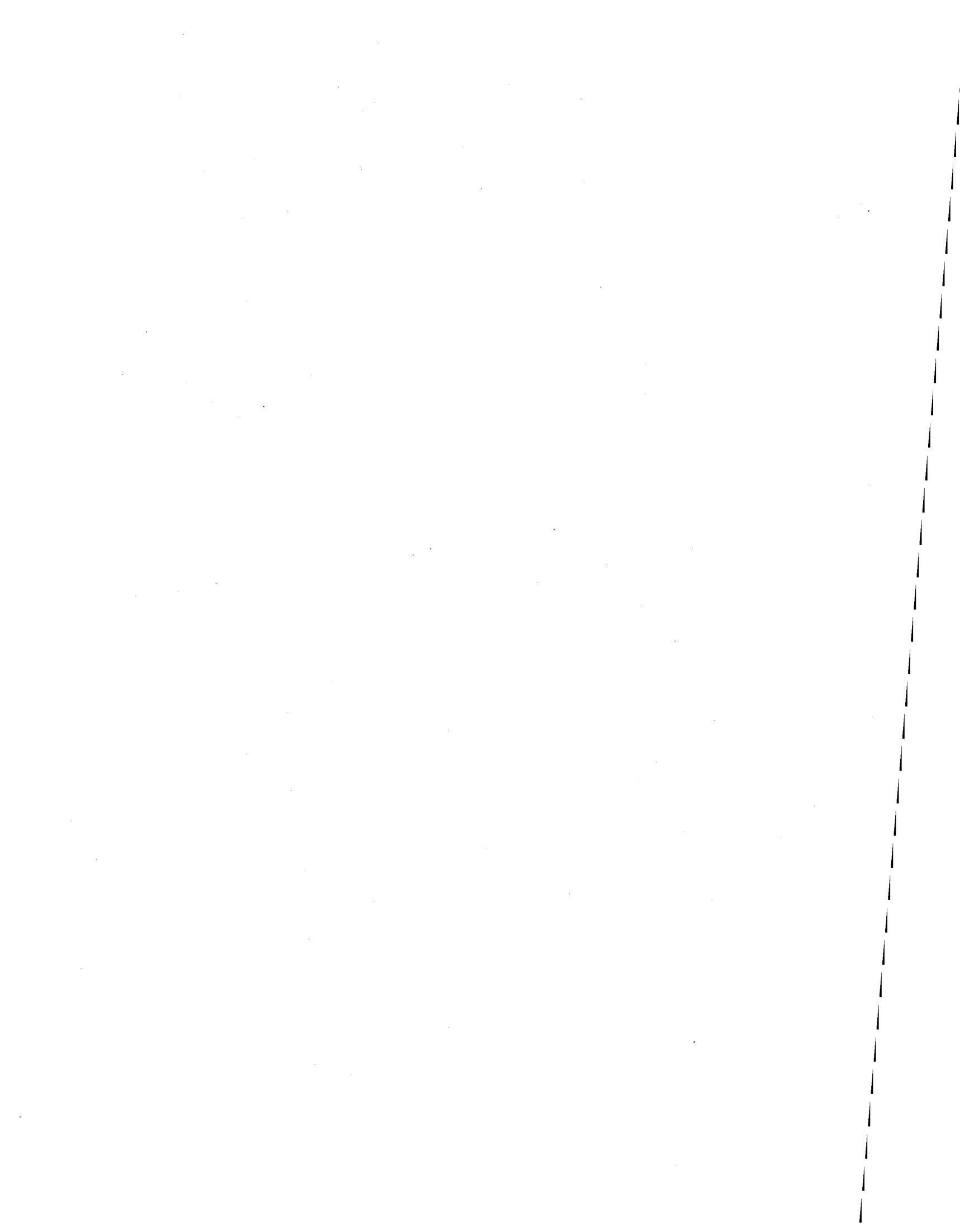
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Committee to Revise Article IX

Subcommittee Meeting Held on May 21, 1980



SUBCOMMITTEE MEETING, 5-21-80
(Procedural)

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STATE OF GEORGIA

SELECT COMMITTEE

ON

CONSTITUTIONAL REVISION

COMMITTEE TO REVISE ARTICLE IX

SUBCOMMITTEE ON COUNTIES AND MUNICIPAL CORPORATIONS

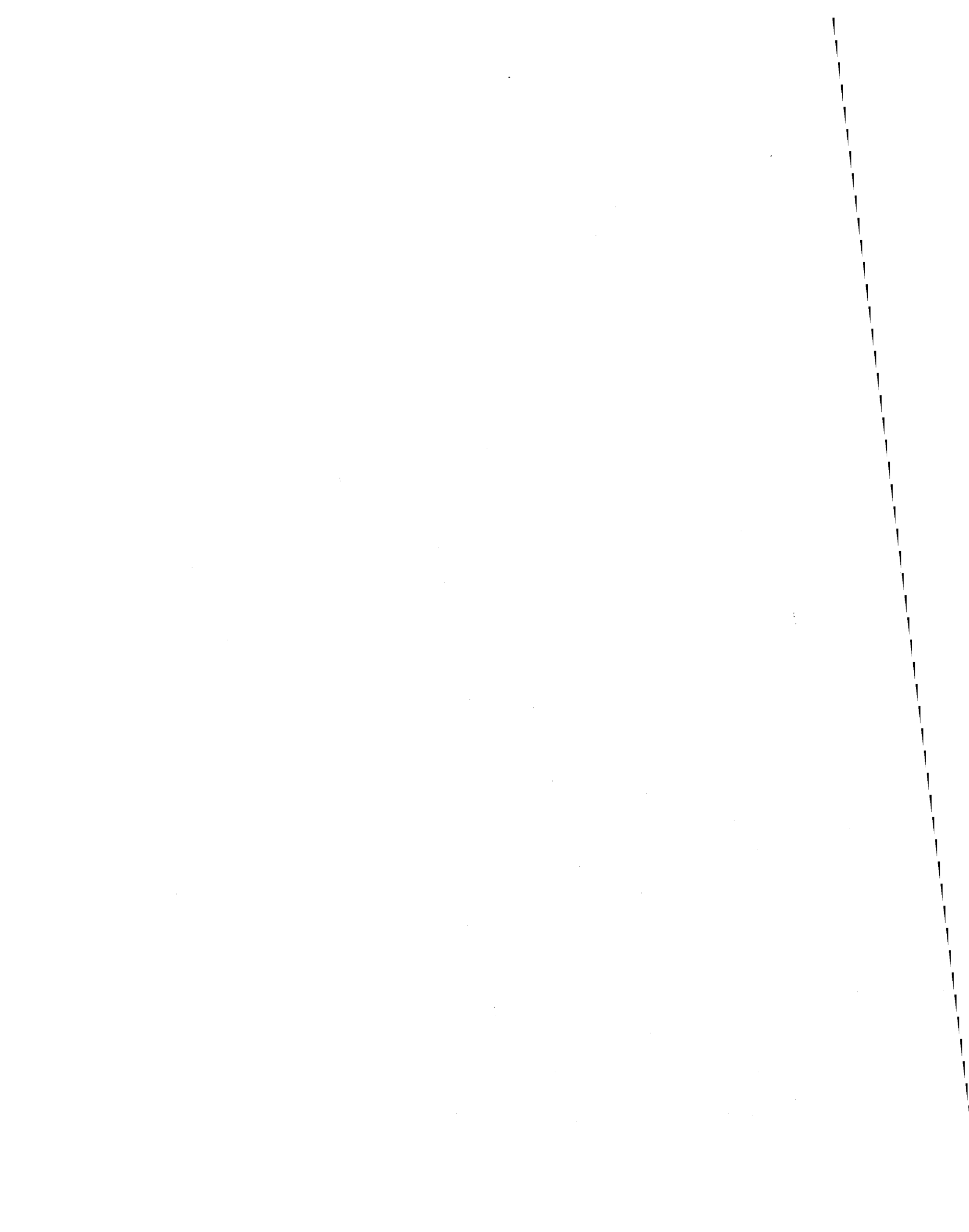
Room 401a
State Capitol
Atlanta, Georgia

Wednesday, June 18, 1980
10:00 a.m.



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1 PRESENT WERE:

2 COMMITTEE MEMBERS:

3 DAVID T. BARROW, VICE-CHAIRMAN
4 J. DEVEREUX WEEKS
5 ROBERT H. SMALLEY
6 ROGER RUPNOW
7 ED S. SELL
8 REPRESENTATIVE JACK CONNELL
9 R. PERRY SENTELL
10 STEVE ANTHONY, on behalf of REPRESENTATIVE G. D. ADAMS

11 SELECT COMMITTEE STAFF:

12 MR. MELVIN HILL
13 MS. VICKIE GREENBERG
14 MICHAEL HENRY

15 OFFICE OF LEGISLATIVE COUNSEL:

16 HARVEY FINDLEY
17 CINTHIA NONIDEZ
18 NANCY RUMBLE
19 DOUGLAS CARLISLE
20 LOU LITCHFIELD

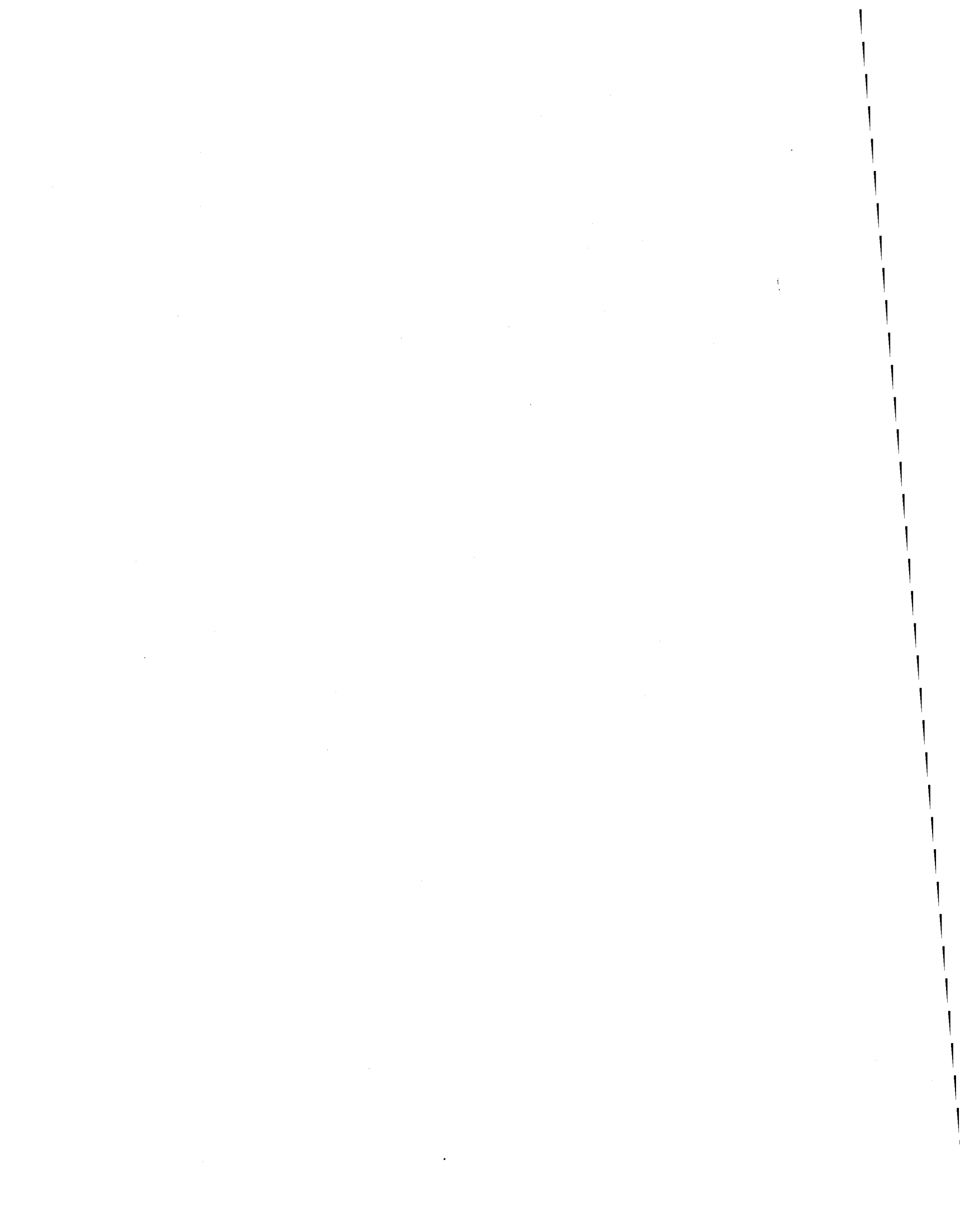
21 OTHERS:

22 ED SUMNER
23 GINGER BARROW
24 JAY RICKETTS
25 KATHY CRAWFORD
JERRY GRIFFIN

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P R O C E E D I N G S

1
2 VICE-CHAIRMAN BARROW: Chairman, Bob Brinson sends
3 his apologies for missing our first meeting -- our second
4 meeting actually. He had previous plans that made it impos-
5 sible for him to be here and asked me to sit in for him as the
6 Vice-Chairman today. I am sure all of you have received the
7 mailings.

8 Bob, I'm glad to have you with us today.

9 We have asked a good many individuals to report to
10 us on different sections of the Section which we are consider-
11 ing. I think more importantly today we have asked Perry Sen-
12 tell to be with us, recognizing his reputation as one of the
top municipal law experts around.

14 PERRY SENTELL: Please, please, shh, shh, shh.

15 VICE-CHAIRMAN BARROW: We would like to spend most
16 of our time today and let Perry talk to us a little while on
17 his ideas of what's needed in the way of a Constitutional
18 Revision in this particular Section, the problems that he sees
19 with the Section, the problems that he anticipates we will face
20 if we try to come up with an acceptable revision of the Sec-
21 tion. After Perry finishes his presentation to us we will open
22 the floor for discussion and/or questions.

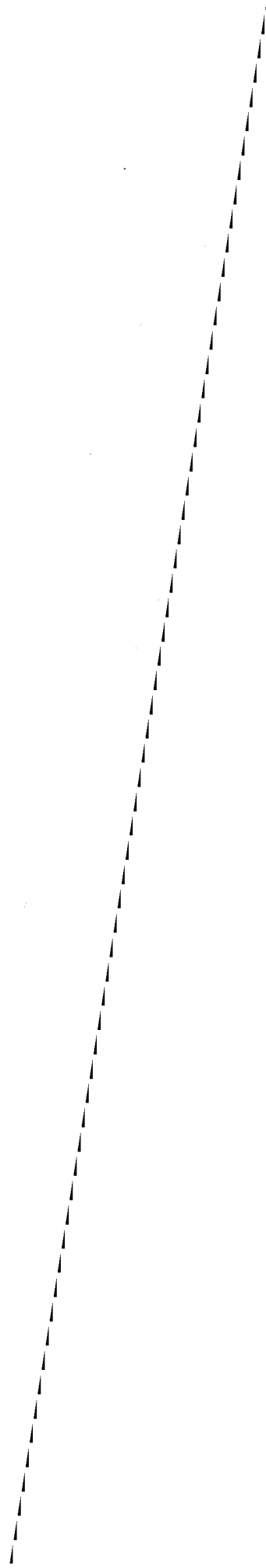
23 Perry, with no further ado I'm going to turn this
24 over to you.

25 PERRY SENTELL: Thank you, Mr. Chairman. Talk about

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1 bringing coals to Newcastle, I see people here that know a lot
2 more about this than I do this morning. But Bob did ask me
3 to come and I appreciate that.

4 I think I'll hand out a little sheet. I only have
5 fifteen or sixteen of these things, but, if you like, we'll let
6 it sort of be a road map of where I'm going. I think you will
7 be familiar with all of it. It's just a one sheet little hand-
8 out there.

9 (Whereupon, the document was distributed.)

10 PERRY SENTELL: I guess I have one word of advice
11 for each of you and that is this. Don't miss a meeting of this
12 subcommittee. I missed the last one and I am paying the price
this morning. So I warn you be here if you don't want to be
14 speaking and messed up.

15 I have already observed one thing too about our
16 Chairman, Mr. Robert Brinson. He's a man of considerable in-
17 sight. He called to inform me that I would be the leadoff
18 person this morning and than he promptly, I understand, arrang-
19 ed a trip out of the country. So I regret that you were so
20 unfortunate that you are stuck with me. In any event I will
21 assure you that I will at least be brief. When one knows
22 little there's little to be said. What Bob asked me to do was
23 to try to come and set the stage generally for the Subcommittee
24 I suppose on this business of local government power and the
25 Georgia Constitution.

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1 Now let me say this, I don't claim to be any expert
2 on Georgia home rule, but I do make one claim. Nobody else
3 is either. I do see several here that know more about this
4 than I do. So I apologize to you in advance.

5 Very briefly then, and this won't take me but a few
6 minutes I assure you, let me impose upon you with just a few
7 observations of local government power and the Georgia Consti-
8 tution --sort of where we started, where we've been and where
9 we are. I know that's familiar territory to many of you.

10 If there is one fundamental cornerstone in local
11 government law, it seems to me, it is this. Local governments,
12 municipalities and counties are creatures of the State. They
13 possess no inherent powers and they completely are dependent
14 upon the State for whatever powers they obtain. Now from that
15 basic principle then, there emerges this movement for what is
16 called local government home rule and as overused and abused
17 as that term is, home rule simply signifies an effort for great-
18 er power of self-determination on the part of local governments.
19 As you, of course, know that effort takes many forms around the
20 country. When home rule powers are delegated by a State Consti-
21 tution directly to the municipalities and counties, then those
22 local governments are sometimes said to possess Constitutional
23 home rule. On the other hand when a Constitution provides for
24 the State Legislature to delegate such powers to municipalities
25 and counties, then those local governments are often referred

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1 to as possessing legislative home rule. So local governments
2 then must obtain whatever home rule powers they are to possess
3 from one of those sources; either directly from the Constitu-
4 tion or from the Legislature as authorized by the Constitution.
5 Finally there is one other point of caution. Most State Consti-
6 tutions, including the Georgia Constitution, declare that all
7 State Legislative power is vested in the State General Assembly.
8 So anytime you consider delegating larger powers to local
9 governments you always have to remember that provision.

10 One thing which, it seems to me, you quickly discover
11 in this business is that it's not too helpful to talk home rule
12 in the abstract. The different states are simply different.
13 Their needs may be different. Their local government tradi-
14 tions may be different. Their Legislatures may be different.
15 Their Appellate Courts may be different and their overall Con-
16 stitutional framework may be different. So unless you are
17 familiar with all of those things about a particular state then
18 I don't think you can begin to appreciate the kind of home rule
19 which that State either has or may need. Certainly this is
20 true of the home rule history of Georgia.

21 I would like now to hit on a few of the highlights
22 of that history with you, recognizing again, most of you are
23 very familiar with this. What I like to call the modern histo-
24 ry of local government home rule in Georgia is the period of
25 the last thirty-five years. That period begins, of course,

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1 with the 1945 Constitution which contained the following com-
2 mand to the General Assembly. That's item number one now on
3 your handout sheet.

4 The General Assembly shall provide for uniform
5 systems of county and municipal governments and pro-
6 vide for optional plans of both and shall provide for
7 systems of initiative and referendum and recall in
8 some of the plans for both county and municipal
9 governments. The General Assembly shall provide a
10 method by which a county or municipality may select
11 one of the optional uniform systems or plans or re-
12 ject any or all proposed systems or plans.

13 Now acting under that command the General Assembly
14 first enacted something called the Municipal Home Rule Law of
15 1946. Later it repealed that statute and enacted the Municipal
16 Home Rule Law of 1951. Then in 1953 in a case, Phillips vs.
17 the City of Atlanta, the Georgia Supreme Court invalidated that
18 1951 statute because, said the Court, that statute did not set
19 forth several model plans of government which cities or coun-
20 ties could either select or reject. Therefore, the Court held
21 that the Legislature in enacting the 1961 Home Rule Statute
22 had not done what the 1945 Constitution commanded it to do.

23 Well instead of going back and enacting another Home
24 Rule Statute at that point, the General Assembly instead pro-
25 posed a change in the 1945 Constitution. That change was rati-

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1 fied by the people in 1954 and was as follows. It's item num-
2 ber two on your sheet.

3 The General Assembly is authorized to provide by
4 law for the self-government of municipalities and
5 to that end is hereby expressly given the power to
6 delegate its powers so that matters pertaining to
7 municipalities upon which, prior to the ratifica-
8 tion of this amendment, it was necessary for the
9 General Assembly to act may be dealt with without
10 the necessity of action by the General Assembly.

11 Any powers granted as provided herein shall be ex-
12 ercised subject only to Statutes of general applica-
13 tion pertaining to municipalities.

14 Now right off you will note at least two rather im-
15 portant differences between that 1954 provision and the old
16 provision of 1945. First the 1954 provision did not command
17 the General Assembly to do anything. It simply authorized.
18 Secondly unlike the old 1945 provision, the provision of 1954
19 did not include counties.

20 Well for the next ten years the General Assembly did
21 virtually nothing about home rule. So, of course, it became
22 a subject for close examination in preparing that new Constitu-
23 tion of 1964. As that Constitution was enacted by the General
24 Assembly it contained separate but almost identical grants of
25 home rule powers for both municipalities and counties. I've

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1 listed it as number three there on your sheet.

2 No sooner was the 1964 Constitution formulated, how-
3 ever, than the Federal Courts stepped in and prevented its
4 placement on the General Election Ballot. So the people of
5 Georgia never got an opportunity to vote on that Constitution.
6 The very next year the General Assembly finally acted under the
7 old authorization in the 1954 provision. What the Legislation
8 did at that time was to extract the home rule provisions from
9 the proposed 1964 Constitution, place those provisions in
10 statutory form and enact them as the Municipal Home Rule Act
11 of 1965. So you can see the 1965 Home Rule Statute was a
12 direct product of the 1964 effort to revise the Constitution.
13 And, of course, it is that 1965 Statute as it has since been
14 amended which is in effect today.

15 Now why do you suppose the General Assembly in 1965
16 did not also enact a Home Rule Statute for counties. Well you
17 see, you're already ahead of me at this point, the Legisla-
18 ture's only authorization for doing anything was the 1954 pro-
19 vision of the Constitution and that provision you remember
20 authorized Legislative action only for municipalities and not
21 for counties. What the 1965 General Assembly did for counties,
22 therefore, was to propose an amendment to the Constitution -
23 number four on your sheet.

24 That amendment also borrowed heavily from the 1964
25 revision effort and provided direct grants of home rule powers

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1 to counties which were almost identical to those powers granted
2 municipalities by the 1965 statute. That amendment was then
3 ratified by the people in 1966 and is, of course, the source
4 of county home rule power today.

5 At this point then we are in a position to appreciate
6 the difference between municipal and county home rule in
7 Georgia. For municipalities the power is authorized by the
8 1954 provision of the Constitution and then enacted by the
9 1965 Home Rule Statute. For counties on the other hand the
10 power is directly granted by the 1966 Constitutional provision.

11 Some might say, therefore, that Georgia features Legislative
12 Home Rule for its municipalities and Constitutional Home Rule
for its counties.

14 In any event the two systems are highly similar. I
15 want try to detail them, but in general here is what the muni-
16 cipal statute and the county Constitutional provision purport
17 to do. They both delegate a few specific powers to local gov-
18 ernments and they both enumerate certain subjects which are
19 reserved for control by the General Assembly. More important
20 they both empower local governing authorities to adopt clearly
21 reasonable measures relating to their property affairs and lo-
22 cal government if general statutes do not deal with those mat-
23 ters. Finally they both provide for the local governments
24 amendment of local statutes without further action by the Gen-
25 eral Assembly.

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1 After 1966 not a great deal happened until 1972. In
2 the general election of 1972 the people ratified still another
3 amendment to the Constitution. Because of this placement on
4 the ballot that year that amendment is popularly known as
5 Amendment Nineteen.

6 What Amendment Nineteen declares is that in addition
7 to that other powers municipalities and counties may exercise
8 powers and provide services in fifteen broadly stated subject
9 areas. When Amendment Nineteen was then brought forward into
10 the editorially revised Constitution of 1976 at least two im-
11 portant additions were made. That's number six there.

12 First it was provided that the General Assembly could,
13 except in regard to planning and zoning, enact general statutes
14 regulating, restricting or limiting the local governments ex-
15 ercise of the granted powers, but could not withdraw any of
16 those powers. Second it was provided that the General Assembly
17 could not enact a bracketed population statute on those sub-
18 jects listed in Amendment Nineteen. If the Legislature wishes
19 to enact population statutes on those subjects it must make
20 them applicable to all the localities above a specified popula-
21 tion or to all localities below a specified population. The
22 1976 Constitution also brought forward both the 1954 provision
23 authorizing the legislature to provide for municipal self-
24 government and the 1966 county home rule provision.

25 Now at the risk of boring you to death, but in sum-

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1 mary and one more time, what does the present 1976 Constitution
2 now contain on local government home rule? First there is the
3 provision which originated in 1964 which authorizes the General
4 Assembly to delegate powers to municipalities for the purpose
5 of municipal self-government. Remember it is this provision
6 which authorizes the Municipal Home Rule Statute of 1965.
7 Second, there is the provision of 1966 which directly grants
8 home rule powers to counties. The language of that provision
9 is highly similar to the language of the statute for municipali-
10 ties and third there is the provision of 1972, Amendment Nine-
11 teen which directly grants additional powers to both municipali-
12 ties and counties in those fifteen broadly stated subject
areas.

14 One other matter in which I thought you might have
15 some interest is a brief indication as to how each of those
16 provisions has fared in litigation before the Georgia Appellate
17 Courts. Actually the report is not too discouraging. First
18 let us consider the 1954 provision which authorizes the Gen-
19 eral Assembly to delegate powers to municipalities for the
20 purpose of providing municipal self-government. Now I have to
21 confess with you, some people know this, I was not always fa-
22 vorably impressed with that provision. It seemed to me that
23 that self-government phrase there was at least capable of being
24 narrowly construed by a Court which might wish to restrict
25 Legislative authorizations to the municipalities. Apparently,

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1 however, it has not happened that way. Not only does the 1954
2 provision serve as the foundation for the 1965 Munciple Home
3 Rule Statute, the General Assembly has also relied upon that
4 '54 provision to delegate considerable powers of annexation to
5 municipalities and when those annexation statutes were chal-
6 lenged the Georgia Supreme Court held them to be sufficiently
7 authorized by the 1954 provisions. The Court liberally viewed
8 self-government to include, encompass important considerations
9 in the administration and development of a city and things
10 which effect the financial, political and environmental struc-
11 ture. The Court said self-government is the control of one's
12 own affairs. Now let me just say you are not likely to get a
13 more permissive judicial approach than that be it Georgia or
14 anyplace else.

15 Second, what about the home rule grants themselves;
16 those for municipalities in the 1965 statute and those of the
17 counties in the 1966 Constitution revision. Well first of all
18 let me give you just a couple of things which, for example,
19 are things the Courts have upheld under those grants. Number
20 one - the Court held that under the 1966 provision a Board of
21 County Commissioners could relocate the County Jail outside the
22 limits of the County seat. Two the Court held that under the
23 1965 statute a municipality could amend its Charter so as to
24 broaden its electoral districts and thereby accommodate newly
25 annexed territory and number three the Court held that under

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1 the 1966 provision a county could by ordinance repeal a prior
2 local statute and establish a new civil service system.

3 Now let me give you a few examples of things which
4 have been denied under those Home Rule grants. Number one,
5 the Court held that a county could not impose a tax. Taxation
6 is one of those subjects expressly reserved for control by the
7 Legislature in both home rule systems. Number two, the Court
8 held that a municipality could not adopt a complete new charter
9 under the home rule grant although charters can be amended.

10 The adoption of a completely new one would touch upon some
11 matters which have been reserved for control by the General
12 Assembly. Number three, the Court held that the County could
13 not amend a local statute which created a public facilities
14 authority although the county can amend local statutes applic-
15 able to its governing authorities, it could not thus deal with a
16 separate political subdivision.

17 Now finally what about those delegations to both
18 municipalities and counties contained in the 1972 provision,
19 Amendment Nineteen. Well, number one, under that Amendment
20 the Court has upheld the Counties' power to establish a Police
21 Department. Two, under that amendment the Court has upheld the
22 Counties' power to contract with a private corporation to provide
23 County fire protection services. Number Three, on the other hand the
24 Court has denied the municipalities' power to establish a resi-
25 dency requirement for Police and Fire Department employees

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1 when general statutes expressly prohibited such requirements.

2 As a final matter, and I promise you I am almost
3 finished, Bob Brinson asked me where I thought we should spend
4 some of our time and effort. Now even I am not presumptuous
5 enough to try to tell this Subcommittee anything like that. I
6 do believe though that you would agree that based upon this
7 history I have tried to present to you this morning there are
8 several basic points which the Subcommittee might appropriately
9 consider. Indeed it seems to me until some of those points are
10 determined time and effort expended elsewhere could be wasted.

11 For example it would seem to me that the Subcommittee must at
12 the threshold determine whether it is basically going to start
with the home rule provisions we already have in Georgia and
14 attempt to perfect them or whether it is going basically to
15 wipe the slate clean and look to other states and other sources
16 for a substitute. Now I might as well go ahead and add my
17 personal view. I favor the former approach. Given the time
18 limitations under which we are working as well as the political
19 nature of some of the issues I think any other approach is ra-
20 ther unrealistic. I must confess even if that were not the
21 case I would still feel the same way. I think that a state's
22 treatment of local government home rule is closely tied into
23 that particular state's individual and peculiar history, needs
24 and conditions. This I believe is particularly true of Georgia,
25 a state which you see now has been actively dealing with this

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1 problem for the last thirty-five years, a state which now has
2 a home rule system in place with which its Appellate Courts
3 are familiar and a state with a system which at least to a
4 degree is working. Given those conditions I simply do not
5 derive great assistance from what other states may or may not
6 be doing. If the Subcommittee should decide to attempt to
7 perfect what we already have, what are some of the points de-
8 serving primary attention. Well it would seem to me that one
9 matter for consideration is whether the municipal and county
10 home rule system should be made the same. If so, should the
11 municipal grant be placed in the Constitution as are the County
12 grants, or should the County grants be placed in a statute as
are the municipal grants.

14 Although I know some persons here would probably
15 differ, my personal preference would be to treat the
16 counties the same as the municipalities; that is to take the
17 1966 county provision out of the Constitution and enact those
18 provisions in statutory form. In my opinion there are a number
19 of reasons for doing this. Number one, one of the stated pur-
20 poses of Constitutional revision is to eliminate non-essential
21 matter from the organic document and handle such matter in
22 statutory form. Second, to have those home rule grants con-
23 tained in statutes would tend to make those grants more flex-
24 ible I believe and would certainly facilitate that Amendment
25 whenever that became necessary. The difference between amend-

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1 ing the Constitution and amending a statute is, of course,
2 considerable. Indeed the Municipal Home Rule Statute has been
3 amended several times since its original enactment in 1965.
4 Third, the Georgia Supreme Court has rather forcibly expressed
5 its own view on this matter. Listen to the Court.

6 We note that the 1954 Constitutional Amendment does
7 not grant Legislative powers to municipalities di-
8 rectly and independently of the General Assembly.
9 It merely authorizes the General Assembly to dele-
10 gate its Legislative powers to municipalities.
11 This is quite different from the Constitutional
12 provisions of some states which grant Legislative
13 powers directly to municipalities apart and in-
14 dependantly of the State Legislature. In those
15 states the Courts tend to place a more restric-
16 tive interpretation upon such Constitutional pro-
17 visions under the reasoning that the people did
18 not by such Constitutional provision intend to
19 entirely negate the powers of the State Legisla-
20 ture over municipalities.

21 Now if the Court is not there saying that it will
22 place a more restrictive interpretation upon a Constitutional
23 grant than upon a statutory grant then I guess I don't under-
24 stand what it is saying. Now, of course, if the 1966 county
25 provision were removed from the Constitution this Subcommittee



1 would have to make two things very clear. First, the 1954
2 provision would then have to be expanded to authorize the
3 General Assembly to provide for self-government for counties
4 as well as municipalities and second, the General Assembly
5 would have to enact the county provision in statutory form;
6 that is a County Home Rule Statute.

7 Another matter for Subcommittee consideration seems
8 to me might be the content of the Home Rule grants themselves.
9 For example you remember that both those systems expressly
10 enumerate certain subjects which are reserved for control by
11 the General Assembly. This Subcommittee might seek to see if
12 it can find out if local governments consider any or all of
13 those enumerations particularly burdensome, and if so to form-
14 ulate some recommendations concerning those.

15 Then just as a final example this Subcommittee might
16 wish to prospect rather carefully the 1972 provision Amendment
17 Nineteen. An examination of each of those fifteen broadly
18 stated subject areas might be productive in determining pre-
19 cisely how much home rule power both municipalities and coun-
20 ties presently possess as well as whether additional listings
21 or retractions should be made.

22 Finally too Amendment Nineteen's treatment of popu-
23 lation statutes and whether it goes far enough might be points
24 for instructive consideration.

25 After all is said and done the effectiveness of home



1 rule in any state depends to a large degree upon the willing-
2 ness of the local governments in that state to experiment with
3 using it. Because the present Georgia home rule systems have
4 been so long in evolving there is still a natural reluctance on
5 the part of some local governments to engage in experimentation.
6 Although, I think, there are some ways to deal with that, it
7 is a matter that must largely be resolved through education
8 rather than through Constitutional revision.

9 Well I apologize for running on so long here and,
10 Mr. Chairman, I thank you.

11 VICE-CHARMAN BARROW: Thank you, Perry and don't
12 apologize. That's certainly a fascinating discussion and I'm
13 sure it brings a lot of thought to the members of the Committee
14 and our visitors.

15 While we've got Perry available and wound up we'll
16 open the floor now for questions. It might help our reporter
17 if the first time around anyway you identify yourself if you've
18 got a statement or a question.

19 PERRY SENTELL: A statement preferably. Could we
20 ask questions?

21 VICE-CHAIRMAN BARROW: Sure.

22 PERRY SENTELL: I guess I'd like to find out from Jay
23 and some of you county folks how turned off they are about my
24 idea about taking the counties out of the Constitution, does
25 that just scare you to death?

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1 JAY RICKETTS: Perry, unless you had eyes in the back
2 of your head you couldn't see the reactions.

3 PERRY SENTELL: I felt them. I felt them.

4 JAY RICKETTS: Well I tend to look at concepts like
5 that not in terms of their absolute pure merit but in terms of
6 the ability to sell such a concept as a political matter. I
7 think that before counties could get very excited about having
8 their Constitutional home rule changed to Legislative or
9 statutory, they would have to be convinced that there would be
10 something more advantageous than simply the possibility that
11 the Court might be less restrictive in its interpretation of
12 home rule. Now you were saying the Court, when it said -- made
13 that announcement was basing it on what had happened in other
14 states and I think it would be very difficult to use that as
15 much of an argument for Georgia county officials.

16 PERRY SENTELL: It is just the only time the Georgia
17 Court had ever talked about it. I thought it was rather new
18 for you.

19 JAY RICKETTS: That's right.

20 VICE-CHAIRMAN BARROW: Can you think of any other --

21 PERRY SENTELL: What about the Amendment point? Does
22 that not give you any trouble at all. If you never need to amend
23 the thing? Isn't it easier to amend it in statutory form than in
24 Constitutional form?

25 JAY RICKETTS: Well I don't think there can be any

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1 question that that's true. But, you know the --

2 PERRY SENTELL: That hasn't proved to be a problem
3 so far?

4 JAY RICKETTS: No, I think, to my knowledge here. Are
5 you aware of any serious proposal in the last uh --

6 PERRY SENTELL: Because I am right; am I not? Hasn't
7 this statute been amended several times?

8 ED SUMNER: Oh, many times. I think one of the
9 problems you've got is that's why it has to be a local Consti-
10 tutional Amendment because they looked at County Home Rule
11 Amendment and some other things and just been afraid that --

12 Oh, I'm sorry, Ed Sumner is my name -- and been afraid, you
13 know, that ain't quite broad enough. So they go back and do --
14 go the local Constitutional Amendment route and such other
15 sections --

16 PERRY SENTELL: I do feel your reaction. That's
17 why I wanted to get as much --

18 MELVIN HILL: Perry, to some extent isn't the county
19 home rule provisions that are in the Constitution a red herring
20 in the since that the General Assembly still has given in those
21 provisions the power to come along and redefine and there's just a
22 general delegation in the Constitution back to the General
23 Assembly to withdraw some of these --

24 PERRY SENTELL: Well be general statutes, but I
25 don't know that you ever want to preclude the General Assembly

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1 from treating matters by general statutory law. Again I guess
 2 I differ from some people, but it seems to me the State has a
 3 responsibility about local government. If it has that responsi-
 4 bility then surely it must have some power to go along with
 5 that responsibility. I don't think you'd ever want to take
 6 for the most part the powers to treat matters by general sta-
 7 tute away from the Legislature.

8 MELVIN HILL: Well that's . . .

9 PERRY SENTELL: But these are perfectly --

10 MELVIN HILL: . . . My point though is that since
 11 the General Assembly under the home rule provision has that
 12 authority, what would be the difference with putting it into the
 13 statute anyway. You see I don't feel that it has any practical
 14 significance under the way that provisions are written. If
 15 the county home rule provision gave direct authority in certain
 16 areas to the counties that could not be withdrawn by Legisla-
 17 ture that's one thing, but it doesn't. It merely depends on
 18 the Legislature or it allows Legislature to come and withdraw
 19 or diminish or restrict the powers that are given so that if
 20 it were in the statute I don't, you know, it's just in support
 21 of your view that putting it in the statute would make it
 22 easier to amend it plus it would not change anything, a
 23 practical standpoint as far as I can see.

24 JIM BURGESS: Perry, my name is Jim Burgess.

25 PERRY SENTELL: Hi, Jim.



1 JIM BURGESS: You mentioned Amendment Nineteen and
2 then further your expansion or reexamination of the enumeration
3 of items there. Assuming that you could perfect the 1954 Con-
4 stitutional grant for both cities and counties and you follow
5 the statutory approach, would it then be necessary to have
6 Amendment Nineteen for --

7 PERRY SENTELL: I think that's the next question.
8 That's not what I'm prepared to try to answer at this point .
9 . .

10 JIM BURGESS: But you really need to have it --

11 PERRY SENTELL: . . . BUT I do think that's the next
12 question. Yes, I would agree with that.

13 JIM BURGESS: You would agree that if we could per-
14 fect the '54 and go statutory we could probably -- you would
15 take it out and revise it?

16 PERRY SENTELL: Well I don't know. I don' know. I
17 just-- I'd have some feelings about that I'm sure once you got
18 into, but I do agree that's the thing that's got to be confront-
19 ed to do anything.

20 JIM BURGESS: Yes, I do agree. The thing that con-
21 fuses me is that if you've got a sound system home rule, why
22 do you need to come back and restate it in an enumerated fa-
23 shion. That's the question I have.

24 PERRY SENTELL: Good. I have the same question. I
25 would be concerned about the same thing.



1 JIM BURGESS: So Amendment Nineteen does tend to
2 violate this responsibility the State Legislature would provide
3 to local governments.

4 VICE-CHAIRMAN BARROW: Anything further? Chairman,
5 Bob?

6 BOB SMALLEY: I'm just an observor thank you.

7 J. DEVEREUX WEEKS: I have one question. I see Ed
8 Sell here among us. Devereaus Weeks. Regarding these lists of
9 things that the Legislature must deal with in the county home
10 rule. The issue came up before you came in was whether this
11 was a problem with counties not being able to amend the Con-
12 stitution as you can the statute. Do you have difficulty with
13 such as defining a criminal offense action and that sort of
14 thing or compensation for the county governing authority. Does
15 this create difficulty because it's Constitutional for the
16 counties that -- where that amendment is needed and so forth?

17 ED SELL: Well we solved that many years ago in our
18 situation. We have a Constitutional Amendment of local applica-
19 tion which gives us the power we need. Were it not for that
20 my answer's yes.

21 J. DEVEREUX WEEKS: It's just a thing that you are
22 ready to do.

23 MELVIN HILL: Let me ask you another question. Do
24 you feel that the Dillon's rule principle was reversed or the
25 intention was that it should be reversed when the Home Rule Act

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1 in '65 was passed?

2 PERRY SENTELL: Dillon's rule to the effect that what,
3 powers are, the grants of powers are strictly construed, no
4 power passed except ones that's expressly granted, that sort
5 of thing?

6 MELVIN HILL: Yes.

7 PERRY SENTELL: Well I think there's some degree.
8 Certinly you are mondifying that principle when you pass a home
9 rule statute such as the '65 -- I won't say you reversed it.
10 I think you're modifying it to an extent. That's always the
11 rub. To what extent, how far do you want to go with it I
12 suppose.

13 JIM BURGESS: I certainly seemed that it was modified
14 to the, perhaps the exception of the taxing power which seemed
15 to be still strictly construed but I would agree that to me
16 there does seem to be a fair amount of modification to the
17 Dilan rule so far as the, by all the express granted powers.

18 VICE-CHAIRMAN BARROW: Perry, we certainly appreciate
19 your presentation, appreciate your serving with us and the
20 questions that you've raised. I don't know if you brought any
21 answers but you brought us a lot of questions.

22 PERRY SENTELL: That's what my students always say.

23 VICE-CHAIRMAN BARROW: It certainly will be food for
24 thought from all the Committee members prior to our next meet-
25 ing.

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1 Melvin, do you have anything that the Chairman has
2 asked you to report to the Committee?

3 MELVIN HILL. No, Mr. Chairman. He had primarily
4 said that this meeting is so I could hear from Perry and to
5 have some general discussion based on that. So I don't know
6 if you want to get into some of the questions that Perry raised
7 now or if --

8 VICE-CHAIRMAN BARROW: I'd like to while we are here.
9 We need to at least develop a since of direction, which way we
10 want to go.

11 PERRY SENTELL: Do you need to make that basic deter-
12 mination that we were talking about? Is the sentiment of the
Committee do you think to scrap what we have and start looking?

14 VICE-CHAIRMAN BARROW: I think that's what we need
15 to determine here today if we possibly can; which direction
16 we're going to move.

17 STEVE ANTHONY: Steve Anthony on behalf of Representa-
18 tive G. D. Adams. At the initial meeting a suggestion was made
19 to appoint each Committee member to report back on each Section
20 that this Subcommittee was charged with and Representative
21 Adams has a memo on Section IV. After listening to Mr. Sentell,
22 the gist of his memo is almost verbatim on the last part of
23 what Professor Sentell talked about about what he felt needed
24 to be looked at. For some of the people here Mr. Adams is the
25 Chairman of State Planning and Community Affairs which handles

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1 virtually all of the local Legislation in the House and the
 2 ones that come over from the Senate. His main concern, being
 3 the Chairman of that Committee and also being a Legislator, is
 4 to see what can be done to reduce the volume and the repetitive-
 5 ness of local legislation.

6 This past Session we've had some five hundred pieces
 7 of local legislation come through that Committee. He has
 8 zeroed in on exactly the same points that Mr. Sentell has and
 9 just to read very quickly determine the need for home rule and
 10 if needed how extensive and whether to rewrite the present
 11 language or to start from scratch again. He has put this in
 12 memo form and he does feel that this is the direction his
 13 particular charge needs to follow. I thought if I could just
 14 get that on the record and pass out the memo it would support
 15 what Mr. Sentell has stated in his presentation.

16 VICE-CHAIRMAN BARROW: Go ahead.

17 STEVE ANTHONY: I think I only have enough for the
 18 Committee members.

19 (Memo was thereupon passed around to members of
 20 Committee.)

21 STEVE ANTHONY: He does feel that whichever method
 22 is agreed -- he's not so concerned with which method is agreed
 23 on, but that something can be -- a concensus can be arrived at
 24 and if it is arrived at and implemented in the Constitution,
 25 then a lot of the indecision and hesitation on the part of

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1 local officials that brings about abundance of local legisla-
2 tion could be resolved and again that's one of his main con-
3 cerns being the Chairman of the Committee.

4 REPRESENTATIVE JACK CONNELL: May I ask Steve a
5 question?

6 VICE-CHAIRMAN BARROW: Yes.

7 REPRESENTATIVE JACK CONNELL: The name's Connell.

8 Don't you find most of the requests for local legis-
9 lation is primarily from the counties rather than the cities?

10 STEVE ANTHONY: We never broken it down, but I would
11 say off the top of my head, yes.

12 REPRESENTATIVE JACK CONNELL: It would never be true
13 in our county where the city of Augusta has a Charter that
14 gives it just about every power it needs.

15 STEVE ANTHONY: Right. Right.

16 REPRESENTATIVE JACK CONNELL: The county does not
17 have that.

18 STEVE ANTHONY: Right. Yeah. Of course, some cities
19 are not in a position that Augusta is, but I think overall that
20 there is more county legislation than city legislation.

21 VICE-CHAIRMAN BARROW. I'd like to see that please.

22 (Whereupon copy of memo was passed to vice-chairman.)

23 MELVIN HILL: We have representatives from the City
24 and County Association here. I wonder if they feel that there
25 are any areas in which they feel the need for greater home rule

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1 authority than they now have. There would be one question that
2 might help us.

3 JAY RICKETTS: You could expand it to include the
4 area of taxation certainly. You may get a little opposition
5 from my friend across the room.

6 Really that is an area. I did not suggest that
7 facetiously. It certainly is a great area of concern to county
8 officials right now. It's a need to expand the revenue base
9 to enjoy the situation which municipalities presently enjoy.
10 But I don't think that's something that this Committee is like-
11 ly to look into.

12 VICE-CHAIRMAN BARROW: Ed?

13 ED SUMNER : I haven't really had too many complaints with
14 five or six limitations that we've got on the '65 Home Rule Act.
15 I think the big problem, I think, is educating people to rely
16 on it and not -- it's just sort of a -- I think there's politi-
17 cal reasons and historical reasons why you like to go to your
18 Legislator to get him to take care of a local matter for you
19 through local legislation or something. Some of those are
20 matters that could easily be covered at the decision point by
21 either admitting their own Charter or by some kind of just a
22 flat out ordinance. But because of history and the due to the
23 fact that city officials keep their Legislature involved and
24 they think they're doing him a favor I think to let him take
25 care of the folks back home; this tradition of going to the

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1 Legislature. But as far, I was looking at it the other day,
2 the five or six limitations and we haven't had, but maybe we
3 had one Court decision, on this election thing that correctly
4 construed what that, what those limitations, how they were
5 going to be read. I think the Court took a very expansive
6 reading there as they narrowly read at least that one exception
7 on the election, form of election. The Court has changed the
8 form of election effecting the governing body. So there's been
9 no outcry like that from the cities needing anything broader
10 on the home rule.

11 There are some problems in some other areas I think
12 that this Committee might want to look at when we think about
13 home rule generally in the issue of do counties and cities
14 need, and is it appropriate for cities and counties to have,
15 exactly the same forms of home rule. Is it appropriate that --
16 do all counties need the exact amount of home rule. I think
17 there are some counties in the state that like DeKalb County,
18 Fulton County and Richmond County that are quite different
19 from Mitchell County. We saw these things pop up. President
20 Barrows, the new president GMA, you know, raised some of these
21 issues of a lot of concern over some duplication that's
22 occurred. And some of the powers that have gotten into an area,
23 the Police and Fire services for example, you have a Police
24 Department inside a city and a Police Department in an unincorp-
25 orated area, Fire Departments in both places. We didn't want to

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1 encourage counties to engage in intensive fire services or
2 intensive police services in some of these real rural areas.
3 I think these are some issues you know that should there be
4 varied levels of home rule. Now you're talking about really
5 making substantial changes. You're talking about exception to
6 certain counties with more home rule than others or certain
7 cities with more home rule than others. That's certainly not
8 GMA policy at the present time, but if your looking at the
9 whole range division those are some other things we want to
10 think about.

11 Do you treat DeKalb County differently from Mitchell
12 County? But so far as an actual amendment to the -- or a
13 statute of limitations on the home rule. If the home rule had
14 no real problems with it at the present time, I think the big
15 problem again is encourage them to use what they've already
16 got. I think we've got a lot of home rule people that don't
17 realize what they've got. I try to encourage the cities to
18 use it as much as possible.

19 PERRY SENTELL: You know there too it's not just that
20 that's unnecessary to use the local legislation law to do that,
21 it may be illegal. I think it is at this point. Chairman
22 Smalley's been long concerned with this matter.

23 ED SUMNER: Mr. Smalley, I think that was your Bill
24 wasn't it that's now sixty-nine-ten-twenty-one. Last year he
25

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1 when he was up here in the General Assembly he passed a law or
2 Section or Amendment to the Home Rule Act that in effect says
3 that, "if it is a matter that can be handled this . . .

4 PERRY SENTELL: By the Home Rule Act.

5 ED SUMNER: . . . by the Home Rule Act that any
6 local legislation taken then that would be invalid; basically
7 a sort statement of attempt to make it through the Legislature.
8 Now that's never -- No one's ever litigated that I know of or
9 attacked a local option in the General Assembly saying that it
10 violated this general law, but I think it's certainly strongly
11 stateed.

12 BOB SMALLEY: Didn't the Supreme Court hold that one
time, Perry.

14 PERRY SENTELL: What?

15 BOB SMALLEY: I believe the Supreme Court has so
16 construed it one time; have they not?

17 PERRY SENTELL: I don't remember.

18 BOB SMALLEY: In fact it was a great many years
19 ago.

20 PERRY SENTELL: I knew you had been interested in
21 that for a long time.

22 BOB SMALLEY: It seems to me there's one issue that
23 we've skirted that needs to be dealt with is the question of
24 local Constitutional Amendment. I doubt today that you'd be
25 quite as blaze as you've expressed yourself if you didn't have

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1 local Constitutional Amendments to rely on. It seems to me
2 that if we are interested in having a clean document; one that
3 is good in principle that we ought to be prepared to do away
4 with local Constitutional Amendments and have a basic Constitu-
5 tion that would be broad enough in its grant of powers that you
6 didn't need them.

7 JAY RICKETS: That's in the abstract, Bob, that's a
8 great idea. I think that there are many county officials that
9 would share that. The problem is that replacing the present
10 system with one which has the capability of providing the same
11 type authority through a political process that is no more
12 politically difficult than the present process. That -- I
13 haven't heard anybody describe any such proposal that meets
14 that criteria. I don't think that the county officials are
15 enamoured with local Constitutional Amendments as technical
16 devices as much as they are the authority that they are capable
17 of conveying. They obviously are not going to be willing as
18 a political matter in trading a process of one level of politi-
19 cal difficulty for a process of greater political difficulty.
20 There's probably no county in the State that's had more ex-
21 perience with local Constitutional Amendment than Bibb county
22 and I suspect that Ed Sell has drafted more Constitutional
23 Amendment than anyone else.

24 ED SELL: I defer to DeKalb County on that. Let
25 me tell you the problem why you have to have Constitutional

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1 Amendments in the view of many people. If you took out the
2 uniformity clause out of the Constitution you'd solve a lot of
3 problems. I know that the Supreme Court of Georgia has held on
4 a number of occasions that the uniformity clause does not apply
5 to the Section on the Constitution of Georgia when it says that
6 the General Assembly can create Boards of Commissioners to de-
7 fine their duties, but these collateral things that every
8 county has to have something a little bit different about it
9 with our unique problems. We are not unique in this thing.
10 We've got a seventeen hundred acre lake in Bibb County that's
11 part of the county recreation system. Well you've got to en-
12 force speed limits on the lake. Now how are you going to do
13 it? The only way that you can do it is by saying that you can
14 call folks up before we say the State Court of Bibb County.
15 We don't have a Recorder's Court or this sort of thing. We
16 don't think we need it. The punishment is a fine of up to
17 \$300 and confinement to sixty days, up to sixty days, either
18 or both, which is pretty standard for Recorders Court limita-
19 tion. Now absent a Constitutional Amendment there's no way in
20 the world that we could control the speed on that lake as a
21 practical matter.

22 The other thing, and that's just one illus -- illus-
23 trative of one of many problems. I -- the Uniformity clause
24 will probably get you in trouble on legislation in that area.
25 As a matter of fact even what Amendment Nineteen says that the



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1 counties -- the local governments can't define any penal
2 offenses or criminal offenses. The other thing is this. The
3 Supreme Court has always followed what I think you gentlemen
4 have been calling Dillon's rule, very strictly construing what-
5 ever the General Assembly does by virtue of legislation, whether
6 it be general or special, because they say it's a delegation of
7 legislative power, this is not favored you are going to strictly
8 construe. So for years the county attorneys have, and I think
9 your observation of local legislation also -- I ought to touch
10 on that just a minute--largely comes from counties. Over the
11 years counties have felt the need of special assistance in
12 this that's not normally provided. On the subject of local
13 legislation, I think I have submitted a local Bill to the
14 General Assembly since the passage of the Home Rule Act,
15 Constitutional Amendment. Because what we already have plus what
16 we've provided there takes care of us. A lot of this is done
17 out of force of habit. I agree with the observation that
18 probably a great deal of it's unconstitutional as well as being
19 unnecessary and I think that sort -- the rule -- the problems
20 with respect to local legislation are a matter of education
21 at the present time. But without our local Constitutional
22 Amendment, I think all the legislation in the world wouldn't
23 help us, given the strict instruction on the legislation given
24 in the uniformity provisions of the Constitution that have
25 always existed.

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1 I want to clarify what you're talking
2 about, you're talking about county government uniformity?

3 ED SELL: It don't apply to the cities at all.

4 JERRY GRIFFIN: When you say uniformity some folks think
5 about tax, uniformity tax basis.

6 ED SELL: No, no, I'm talking about the provision that was
7 in the 77 -- 1877 Constitution and everyone since and maybe
8 before that too that says Boards, Agencies and Boards, Tribun-
9 als, whatever it says, shall be uniform throughout the State.

10 JERRY GRIFFIN: I knew what you were talking about but
11 some other people - -

12 ED SELL: No, that doesn't really apply to you
13 Jerry, you never have been informed.

14 DEVEREUX WEEKS: I was curious picking up one thing
15 Ed said -- Devereux Weeks -- was the -- would there be, if we
16 chose to go the direction of trying to tinker with the language
17 there are there phrases and clauses -- and I am looking toward
18 Perry as well -- that make cities and counties for that matter
19 fearful of operating under the Home Rule; such as the clearly
20 or reasonable. This technical language, do they shy away from
21 it for that reason as well as feeling that the Court's going to
22 interpret it against when they take action?

23 JERRY GRIFFIN: Right.

24 DEVEREUX WEEKS: Well that's something we can address.
25 If that's the route we choose to go.

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1 STEVE ANTHONY: We have heard that expressed in the
2 Committee from legislators that had it expressed to them from
3 the local officials. In the memo it points out what is the
4 language specifically, what are the words that specifically
5 make them hesitant in doing it, but we've had that expressed
6 all the time. Why are you coming up? Well they tell us that
7 they just don't feel that they can operate under the present
8 language. When you try to tie it down you never can get a
9 specific sentence to point it out.

10 MELVIN HILL: Perry, let me ask you to react to this
11 proposal? If the Constitutional provision stated that cities
12 and counties and assuming that we included them together have
13 all powers of self-government unless prohibited by general law
14 or by the Constitution, would that help the local governments
15 understand that they are intended to have as broad a range of
16 powers as possible?

17 PERRY SENTELL: Well that is a direct reversal is it
18 not of the Dillan principle; that's what you propose then. You
19 know there are a lot of people who would agree with that. As I
20 stressed awhile ago I don't know that I would want to go person-
21 ally quite that far.

22 JIM BURGESS: Would your reason, Perry, for not
23 wanting to use that approach be primarily due to the judicial
24 history of the interpretation of the present Constitution?

25 PERRY SENTELL: Yeah, I think so, Jim, more or less

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1 sort of a history of what we have and what we've come to learn
2 to live with and sort of how the Courts sort of feel familiar
3 with what we've got and it seems to me that they are a little
4 more permissive than they were for many many years. It seems
5 to me, as I say, it's working at least to a degree and I kind
6 of hate to disrupt that now and completely reverse the cause.
7 But these are just personal things. I don't want to try to
8 impose anything on the Committee.

9 JIM BURGESS: One other thing I had was, you know,
10 if you don't go, if you don't reach the extent of reversibility
11 throughout there, it's a very dangerous thing and a very
12 touchy thing. You look at changing for example the Home Rule
13 Statute. Now I think there's confusion in it and people don't
14 know what it needs to pass a truly reasonable ordinance effect-
15 ing its affairs of local government etc. Now what is the
16 profit there to local government and everybody. What does it
17 mean by its affairs. Perhaps there's some hesitancy on that
18 part in some cases to act on some certain subjects that they
19 are not sure if that's one of their affairs or not, but again
20 if you change it, what do you change it to and how is the Court
21 going to construe it. Some of the language referring to the
22 Plantation Pipe Line case I think on some of the delegation of
23 some other things that has very broad language. Some of those
24 opinions have a double opinion to them. I think it is a very
25 dangerous thing. I think sometimes we get very careful. I



1 think GMA personally positively supports very broad home rule
2 authority granted to cities. It's a matter of what kind of
3 assurance do we have of how sure we can be of how the Courts
4 are going to read it. You could best point out that if you put
5 it -- I don't know what happens if you put a reversible bill through
6 the Constitution. Would the Court in fact say well we're going
7 to look at it as construed much more strictly, self-government
8 much more strictly than we have in the Plantation Pipe Line
9 thing. There are a lot of unknowns here and we have to approach
10 it very carefully.

11 VICE-CHAIRMAN BARROW: Are there any further comments?

12 MELVIN HILL: Are there any areas in which the local
13 governments should have autonomy from the standpoint of in the
14 associations. Is there any areas in which you've not, you feel
15 the General Assembly should not have the right to impose cer-
16 tain general requirements on you?

17 PERRY SENTELL: Well now you've got that at the
18 present in planning and zoning don't you. Isn't that pretty
19 excluded there?

20 ED SUMNER: Supposedly. I'm not so sure the Court
21 agrees with that. It appears that way when you read it but I'm
22 not sure of some of the cases.

23 VICE-CHAIRMAN BARROW: Perry I think Jay wanted --

24 JAY RICKETTS: I was going to say that the Constitu-
25 tion seems to have the General Assembly out of the zoning

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1 business. I was wondering if the Constitution could get the
2 judiciary out.

3 PERRY SENTELL: I don't imagine in there.

4 JAY RICKETTS: They picked up the slack where the
5 General Assembly left off.

6 PERRY SENTELL: With vengeance.

7 VICE-CHAIRMAN BARROW: I think we are just about
8 going to have to have the reports Representative Adams has
9 made on his Section here today before we can really get the
10 bill out of the Committee. In the absence of the Chairman and
11 Representative Adams I don't think we'll go into those reports
12 today. We'll hold that until our next meeting.

Melvin, anything you want to bring up?

14 MELVIN HILL: Well from the standpoint of the next
15 meeting we had agreed at the last meeting we should meet every
16 two weeks if possible until we find we don't have to meet that
17 often. I don't know if we're going to find that until Septemb-
18 er. What we will attempt to do the staff will try to put to-
19 gether a decision agenda with some of the specific questions
20 outlined based on the discussion we've had so that we can try
21 at the next meeting to resolve some of these issues. We can't
22 even begin drafting anything until we have decided whether we
23 are going to use what we have or try to do something new. So
24 we'll try to work up a decision agenda which we'll send out
25 prior to our next meeting to everyone. Then they can think

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1 over these things and we'll try to make some progress. It's
2 really just a question of setting the next meeting, I would say
3 of the Committee and I would say the week of the 7th or the
4 14th or the 21st of July would be the one we would be looking
5 at.

6 VICE-CHAIRMAN BARROW: We tentatively have the
7 meeting set for the 9th I believe.

8 MELVIN HILL: Oh, that's right. We had already set
9 that and that -- I'm sure that's still --

10 VICE-CHAIRMAN BARROW: Well I have not talked with
11 the Chairman, but as far as I know that's still the date, the
12 9th at 10 a.m.

13 Maybe we'll have time to digest what we've heard
14 here today. I don't get the feel from the Committee at this
15 point on direction. Maybe we're not ready to make that de-
16 cision. Perry brought some interesting points and so have the
17 other speakers here today and we certainly appreciate their
18 input. I think it points up the difficulty that we face and
19 the problems that we are going to have to resolve and just get
20 it off in the direction we want to go, much less solve any pro-
21 blems that lies therein. It's certainly going to be a complica-
22 ted and difficult situation; maybe not quite up to Camp David
23 but we're not going to miss it far. We all realize what the
24 problems are and maybe we know a lot more problems now than we do
25 answers at this point. I am hoping that before the Committee

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1 finishes its work the Chairman, I am sure, can add a lot to
2 this and we will come up with some suggestions that will enable
3 local government to enjoy your functions for the benefit of the
4 citizens, which is what we all want.

5 Is there any further business with the Committee?

6 ED SELL: Mr. Chairman, may I say that my Subcommittee
7 meets at 1:30 in Room 402. I plan on doing some review for
8 that and there is a pretty close correlation between the ques-
9 tion of powers and the question of what you want to allow for
10 taxation. So if anyone is here that is interested is invited
11 to the 1:30 meeting.

12 VICE-CHAIRMAN BARROW: Well these are certainly
13 meetings that we should have all the input into them as we
14 possibly can. I urge any visitor or Committee member that can
15 attend the meeting this afternoon to please do so. I think
16 it'll help educate us all on what we are facing.

17 Anything further.

18 MELVIN HILL: One final thing.

19 VICE-CHAIRMAN BARROW: Yes.

20 MELVIN HILL: The -- only the reimbursement for the
21 people is taken care of on the Committee. I have just taken
22 an attendance record and then once a month we'll take care of
23 the reimbursement.

24 VICE-CHAIRMAN BARROW: All right. The next meeting
25 will be July the 9th and you will be notified of the meeting

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place.

MELVIN HILL: It will be in this room.

VICE-CHAIRMAN BARROW: It will be in this room.

Thank you very much.

(The meeting was thereupon adjourned at 11:08 a.m.)

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I, Mary Lou Stokes, Certified Court Reporter B-361,
do hereby certify that the foregoing 42 pages of transcript
represent a true and accurate record of the events which
transpired at the time and place set out above.

Mary Lou Stokes

Mary Lou Stokes
Certified Court Reporter B-361



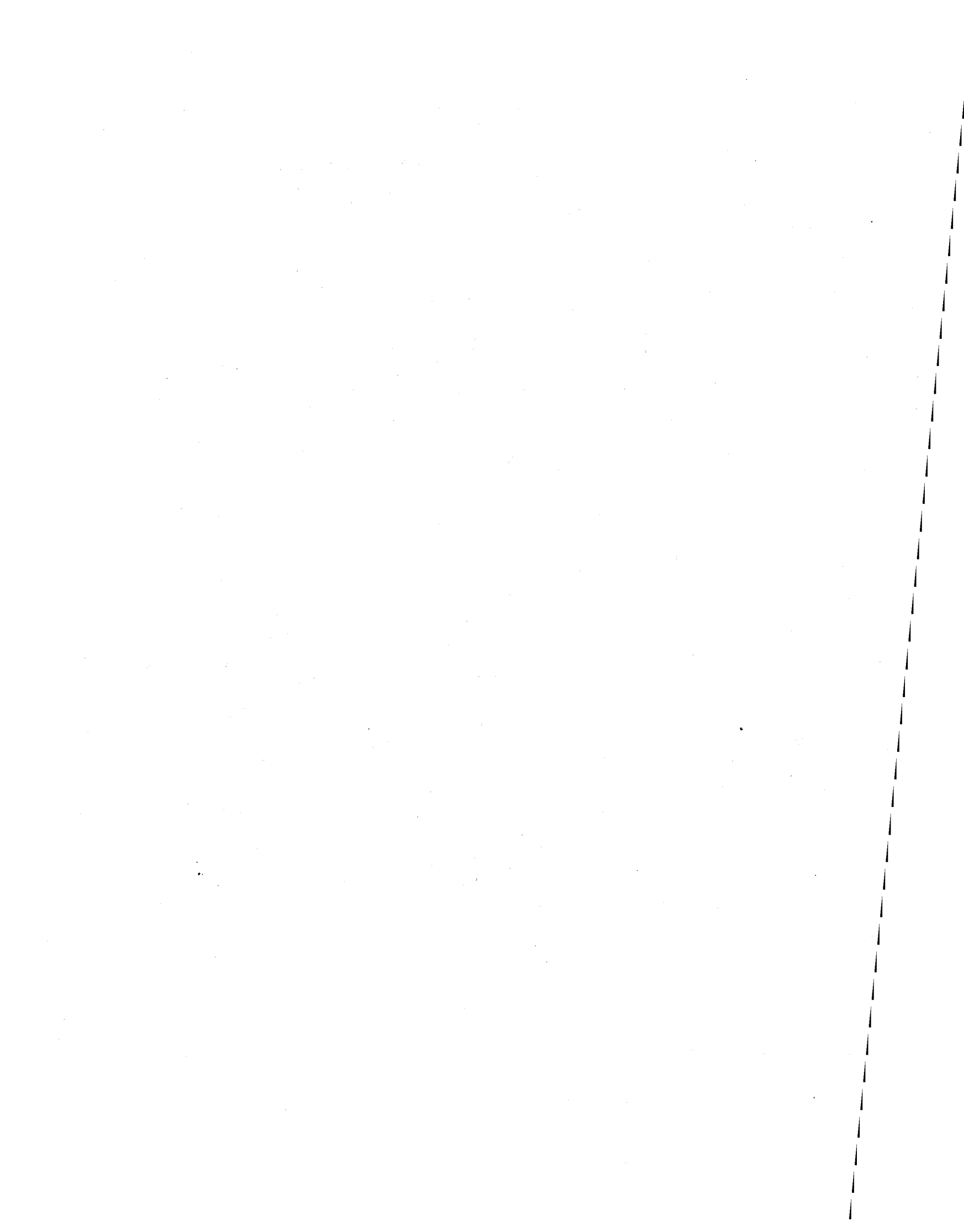
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Committee to Revise Article IX

Subcommittee Meeting Held on June 18, 1980



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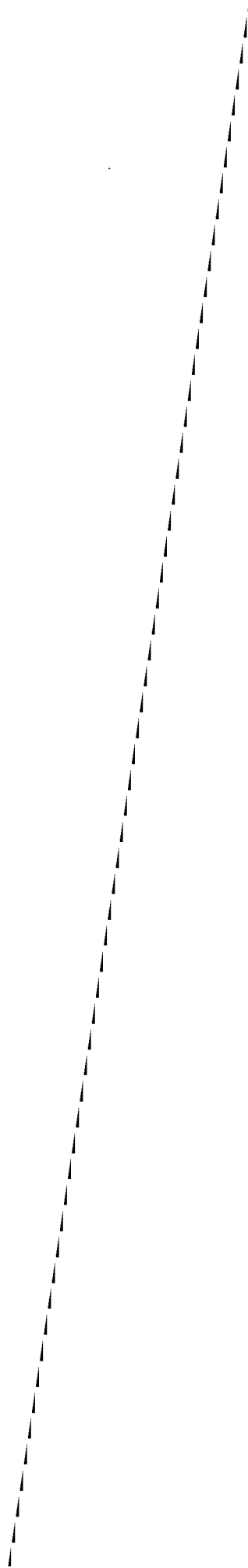
STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

SELL SUBCOMMITTEE ON SECTIONS V,
VII AND VIII

Room 402,
State Capitol
Wednesday, June 18, 1980
1:30 p.m.

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PRESENT:

COMMITTEE MEMBERS:

CHAIRMAN ED SELL

MR. HAL DAVIS

MR. RAY JACKSON

MR. ROBERT H. SMALLEY

ALSO PRESENT:

MELVIN B. HILL, JR.

MICHAEL HENRY

VICKIE GREENBERG

TOM BOWER

JOAN BOYD

JOHN DeRICO

JERRY GRIFFIN

KEN JONES

ED SUMNER

BOB KNOX

JACK MORTON



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P R O C E E D I N G S

1
2 CHAIRMAN SELL: Gentlemen and lady, it is 1:30, so
3 perhaps we should commence.

4 Those of you who are back-benchers and would like to
5 take a seat at the table, we would invite you up.

6 I'm sure that not everybody knows everybody here, so
7 perhaps the first thing to do would be to tell each who we
8 are. Mike, if you will start off.

9 MR. HENRY: I am Mike Henry, I'm with the Select
10 Committee staff.

11 MR. BOWER: I am Tom Bower with the Urban Study
12 Institute.

13 MS. BOYD: Joan Boyd with DeKalb County.

14 MR. DeRICO: John DeRico with the County
15 Commissioners Association.

16 MR. GRIFFIN: Jerry Griffin, Georgia Municipal
17 Association.

18 MR. JONES: Ken Jones, guest of Georgia Municipal
19 Association.

20 MR. SUMNER: Ed Summer, Georgia Municipal Association.

21 MR. KNOX: Bob Knox, Mayor of the City of Thompson.

22 I am not a member of the subcommittee, although there is a
23 possibility I may be a member.

24 CHAIRMAN SELL: Anybody that wants in can join.

25 Some years ago I had a fellow who was a member of an



1 organization, and he was one of the leaders of it, and
2 somebody approached him and said that he understood that it
3 was an organization run by a very small clique, and he said
4 "Yes, that's true, it is, but anybody who wants to join the
5 clique can join it." So this may be a small group, but any-
6 body who wants to join is welcome.

7 MR. SMALLEY: Bob Smalley.

8 MR. DAVIS: I am Hal Davis, I'm Executive Director
9 of South Georgia Area Planning and Development Commission.

10 MR. HILL: I am Melvin Hill with the staff of the
11 Select Committee.

12 CHAIRMAN SELL: I am Ed Sell, I'm Bibb County
13 Attorney.

14 I think Vickie Greenberg will be the lady who will
15 be coming in shortly. She is with the Select Committee also.

16 In order to have something as a basis of discussion,
17 I mailed to those of you who were on the committee, who were
18 on my list of the committee last week a proposed draft of
19 Sections V, VII and VIII of Article IX with which we are
20 concerned. I take no particular pride in authorship, but it
21 just seemed to me that you could do an autopsy better if you
22 had a body to operate on than if you didn't.

23 We can, if you wish, use this as a basis for
24 discussion and going forward. Is there anybody who is here
25 who did not get one of those?

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1 MR. SMALLEY: Do you have an extra one?

2 CHAIRMAN SELL: I don't. Mike, could you find a
3 copying machine? How many would like a copy?

4 (A show of hands.)

5 CHAIRMAN SELL: Five or six.

6 We can use this as a springboard.

7 Do all of you have a copy of the existing
8 constitutional provisions that you can use for comparison?
9 I think that those of you who are on the mailing list
10 probably got something that looks like this (indicating)
11 some months ago that's more legible than the little fine-
12 printed pamphlet.

13 Does the committee have any desire as to how it
14 shall proceed?

15 Well, suppose if we can we do this then: If you
16 will as a matter of sort of parallel reading get your copy
17 of the current Section V of Article IX. We're dealing with
18 Sections V, VII and VIII of Article IX, all of them having
19 to do with local government finance, and when we get the
20 copies of what I had drafted we'll distribute those.

21 While we are waiting on those, let me say that I
22 suppose that without necessarily making a change in substance
23 I suggested a change of approach. The present Section V
24 says "County Government: Taxation Power," and I headed this
25 up "Local Government: Taxation Power." That was the

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CONTINUED



approach I think that was taken by the '64 constitutional draft, that the cities and counties were included in the local -- in the taxation provisions of the constitution.

I have defined local government in two different ways in this draft because it seemed to me that in one instance or most instances local government should mean municipalities and counties, and in another instance we mean it to include school boards as being within the definition because of the reference to school boards and education taxes in one of these sections.

Let's look while we're waiting if we may at the structure of Section V. As you can see, it relates entirely to counties. There are 14 items for which it's said that a county government may levy taxes. In addition to that there is sort of a catch-all clause that indicates that taxes may be levied for other purposes.

I have not, Mr. Chairman, undertaken in this section to deal with the question of the type of taxes local governments might levy, feeling that that was not comprehended within the existing sections and presumably was not within the ambit of our charge; I made no reference to whether it's ad valorem taxes or license taxes. Of course, cities can have statutory powers in their charters which govern them for the most part as to the types of taxes that can be levied. I frankly do not know what counties can levy in some respects.

1 The Supreme Court has had some ambiguous interpretations of
2 local constitutional amendments as to power of counties to
3 levy license taxes. Most of those cases you will recall
4 were the Richmond County over in your neck of the woods, Bob.
5 The Richmond County Business Association I think was the name
6 of the party, and we had one in Bibb County that I lost and
7 never knew why. It's bad enough to lose a case, and worse
8 not to know why, but for that reason I have not dealt in this
9 whole draft with that sort of thing. If we should, that is
10 something we can talk about.

11 MR. KNOX: Let me just ask a question, Ed, if it's
12 all right.

13 CHAIRMAN SELL: Sure.

14 MR. KNOX: As I say, I'm not a member of the
15 committee and I don't want to presume to be, but it may well
16 be that I might be a member a little later on, but I have
17 just tried to look at this myself trying to put it all in
18 context, and I'm just wondering about the basic approach
19 maybe to begin with before we get into some of the specifics.

20 CHAIRMAN SELL: All right.

21 MR. KNOX: I think the basic question I had was
22 whether we would deal with the existing language which appears
23 to me to be somewhat of a way you've done this now with some
24 changes from that existing language, but basically that format
has been pretty well followed in the way you're doing it, or

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whether we want to even back off of that and just take a more general approach and see if there are other general questions that you want to come up with and maybe even change the entire format of this.

I don't know whether we want to continue with the specific purposes of taxation as they're set forth or whether you want to make that more general.

Something that does concern me, frankly, about the way that this proposal is prepared is the fact that municipalities are sort of put into the category of local government and then the specific powers are then put to the local government. It appears to me that that sort of restricts -- I'm looking at it from the standpoint of a mayor purely -- sort of restricts me when now we're sort of -- the courts tend to interpret our powers a lot more liberally when they're not in the constitution, when they're more delegated authorities, and that's something which concerned me a little bit in our charter, and I wondered if we wanted to discuss the basic approach to begin with.

CHAIRMAN SELL: Fine.

MR. KNOX: Whether we wanted to proceed along the line of looking at the existing law or whether we wanted to back off and say "Do you want to make other basic changes, or is the concept of the existing law the way we want to go about it," That's just a question I had to begin with.

1 However the committee sees fit to proceed, that's fine.

2 CHAIRMAN SELL: All right. Do we have any comment
3 on that?

4 I might say for the benefit of those of you who are
5 on this committee and who were not at the meeting this morning
6 of the Section IV -- I think it was Section IV they were
7 discussing this morning, or II or something which deals with
8 powers -- Perry Sentell made quite a lengthy disseration and
9 he has a paper, Mel, that you plan to distribute I believe to
10 everybody, the thrust of which -- maybe you want to tell them
11 what the thrust of it was so far as it relates to Bob Knox's
12 question.

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14 MR. HILL: Perry said the first question that he
15 saw that the committee would have to deal with was just
16 exactly what you raised, whether they want to use the basic
17 format, structure that we have and work on it, try to correct
18 it, or whether we want to start with a clean slate. He said
19 that would be the first question to be resolved, and he said
20 from his standpoint he felt given the timetable that we have,
21 given the history of home rule and developments we have had
22 in Georgia he would not favor a wholesale rewriting, he would
23 much more favor taking a look at what we have and then see
24 what the problems have been and helping to streamline the
25 present language and the present structure, and I think that
was probably the attitude Ed had as well when he drafted this

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provision.

I think, though, within that context there is still a lot of room for the kind of questions you're raising. For example, these purposes, these specific purposes, must they be in the constitution. That's certainly a valid question even in the rewriting or even in an effort to rewrite that is not as extensive as starting from scratch would be.

CHAIRMAN SELL: I think really an ideal, abstractly an ideal provision if you're going to have powers for taxation of local government mentioned in the constitution might be to say that local governments may exercise the powers of taxation for any public purpose or for any purpose which they're authorized to execute, period.

That to me more partakes of the nature of constitutional language than what we have.

Perry's notion was that over the years these phrases had acquired a patina and a judicial gloss that would facilitate construction of language going forward, whereas if we did something radical we wouldn't know what the courts were going to do with it.

Whatever the committee's judgment is on that is what we will do.

MR. SUMNER: One thing too from our viewpoint, depending on whether this is a local government taxation section or whether it's a county taxation section, you know,

1 as far as our civic concern about the way it's written, so
2 that's another issue certainly to decide. Should they be
3 treated in exactly the same way or leave it the way it is or
4 whatever.

5 CHAIRMAN SELL: There is certainly no intention here
6 to impair -- I'm a great believer in home rule, and my theory
7 of government is that local government ought to have almost
8 complete freedom to act, and if the people don't like them
9 then they elect somebody else, but don't regulate them un-
10 necessarily.

11 (Ms. Greenberg joined the
12 meeting.)

13 MR. KNOX: Well, that specific as we get back to
14 this method or the way this was prepared, that was the first
15 thing that struck me was the fact that municipalities are
16 included in the draft.

17 CHAIRMAN SELL: Right.

18 MR. KNOX: Whereas they weren't before, and it just
19 struck me that municipalities in essence may be limited by
20 including them, tying them with these powers of the
21 constitutional amendment a little bit more than they're
22 limited now, and I don't -- that is just obviously a biased
23 thought from me that's being made.

24 CHAIRMAN SELL: Suppose we just start down this
25 thing and you let me know how it strikes you.



We have this distribution.

The young lady who has just come in is Ms, Vickie Greenberg, she is with the staff.

As you can see, Paragraph I is a new paragraph that defines local government as meaning any of the several counties and municipalities of the state.

II, Purposes of Taxation. Local governments are hereby authorized to exercise the power of taxation for the following purposes which are hereby declared to be public purposes and to expend funds raised by the exercise of such power for such purposes and for such other public purposes ... as may be authorized by this constitution or by any general or special act of the General Assembly and no levy need state the particular purpose for which the same was made.

Frankly, it was my thinking that where it said as well as others that might be authorized by general or special act that certainly there would be no deprivation of any existing powers. I certainly don't want to hamstring a -- it would be my view not to hamstring a city.

MR. SMALLEY: It does seem to me that where you essentially track the county powers section in the present constitution that it would be more likely that we would get an interpretation by the court that references back to the historic evolution of this particular section, which is to say that the counties traditionally have been very limited

1 in their powers; they have no powers except those that are
2 expressly given, and while there is a theory of law that
3 before home rule cities only had powers that the charter
4 granted them, still the interpretation by the courts has not
5 been that consistent.

6 In other words, I think historically at this point
7 municipalities are considered to have powers except where
8 limitations are imposed, whereas counties even now under
9 this are just the reverse.

10 CHAIRMAN SELL: I would hope that would not be the
11 construction of this. I have tried to rearrange the language
12 -- you haven't had a chance to see it further down -- I have
13 tried to rearrange it so that that would no longer be the
14 case for counties.

15 I suppose that our procedure is that a motion to
16 substitute specific language for this draft or to substitute
17 an idea for this draft is always in order if the committee
18 wishes to do it.

19 I would point out to you that there is one phrase
20 that is left out that is in the present constitution that is
21 left out of this Paragraph I. The present constitution says
22 that "...nor shall any taxes collected be allocated for any
23 particular purpose, unless expressly so provided by the
24 General Assembly or this Constitution."

25 Frankly, I do not know of -- Oh, wait a minute,

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I'm reading the wrong phrase.

"...no levy need state the particular purposes for which the same was made..." unless otherwise provided.

I do not know of any law that otherwise provides, and it has always worried me that there might be some law somewhere passed back in the dim, dark ages that did make some provision, and so this simply says "...no levy need state the particular purpose..."

I have omitted also the phrase that "...nor shall any taxes collected be allocated for any particular purpose, unless expressly so provided by the General Assembly or this Constitution," and that omission was stimulated by the cases, I think there were five of them involving Richmond County Business League where the Supreme Court held that certain taxes, licenses for example, that are collected in the unincorporated areas do have to be allocated not necessarily for purpose but as to the area in which they are to be spent, and that seemed to me to be an unnecessary incumbrance at the present time particularly in view of those decisions.

Ed, did you have something?

MR. SUMNER: Eliminating that clause causes me some concern personally from the standpoint of removing that general prohibition, the concern being that could you in fact -- maybe this is done already in the general tax matters, but does it make it more accessible to tax

1 county-wide and allocate it for use in a particular area like
2 the unincorporated area, for example.

3 CHAIRMAN SELL: It was intended to have the opposite
4 result. It's intended to be able to make it facilitate the
5 levying in the unincorporated areas and allocate it --

6 MR. SUMNER: You've got that covered further on
7 down with your special taxes, plus Amendment 19. I don't
8 know that -- I'm not sure I understand the full import of
9 letting that thing go, letting that general prohibition go.
10 I think we ought to be very careful before that's taken out
11 to see what impact it might have and what it could lead to.
12 This is just a suggestion. I'm not so sure that's not good
13 to have as a general prohibition as long as you allow the
14 exceptions like you say in the tax district, in the special
15 district. Maybe the real concern, just make sure we don't
16 leave something out and something inadvertently happen;
17 that's always what possibly could occur.

18 CHAIRMAN SELL: Did you have anything specifically
19 in mind?

20 MR. SUMNER: I'm not sure whether you want to leave
21 it out or not. That was my question or concern unless you're
22 really sure of what the import it would have by eliminating it.

23 MR. DAVIS: The part we're referring to now is
24 "Unless expressly so provided by the General Assembly."

25 CHAIRMAN SELL: Right.

MR. SUMNER: The allocation -- you're proposing that you drop all that phrase talking about the allocation?

CHAIRMAN SELL: Right.

You remember there is or was a provision in the state constitution applicable to the General Assembly that had the effect primarily I think of -- had the effect primarily on the gasoline tax.

MR. SUMNER: You can't allocate except gasoline tax.

CHAIRMAN SELL: Yeah, you can't allocate state funds except the gasoline tax.

MR. SUMNER: That's generally been as a general government and GMA policy that you don't favor particular application of particular taxes. I'm not sure, is that a general principle that ought to be carried forward or not to carve out special exceptions or should you keep the general prohibition on allocating taxes, you know.

MR. HILL: It was preserved in the draft of Article III that was completed, and that principle was preserved.

MR. SUMNER: I'm not sure it's a good principle as a general principle to keep the local governments with these exceptions especially. I don't know. There must have been some underlying rationale, you know. I would think there was some underlying rationale about it being in there; we ought to be real careful before we drop them out like that.

CHAIRMAN SELL: I think the purpose was that some

years ago the state found itself in the situation where it had so many allocations that it did not have the adequate flexibility it needed, but again this is purely a legislative matter.

MR. HENRY: Could I suggest one thing right here, just to throw this out to chew on -- here where it has purposes for which the county may tax and spend money on to pay the expenses to do these 14 enumerated things, if you can maybe give thought to consolidating that with the Amendment 19 that they can also tax to provide the services. In other words, you have two separate provisions in here which gives you the purposes taxes can be levied and expended upon, and it seems to me like you have -- I know that one applies only to counties and one applies to both, but maybe there should be some thought in delineating which governmental entity should be able to act for which purposes or combine them all, but it seems like you have a duplication here.

MR. KNOX: Well, you know, let's face it, I think some of that that you have just talked about gets back to the basic concept in some people's minds about the difference in city and county, and of course that is not what we are addressing here; we are addressing taxation here, but I think all these things get back to some of that same basic question, and it concerns me somewhat frankly to see counties getting into the business that some of the cities are in, and the

cities are hamstrung to the extent they can't expand, the areas can't be enlarged so that they go about their purposes I think they were set up to do in the beginning, but that gets into a whole new ball game, and I don't mean to do that, but what I'm saying is that that's what gets back to my first point, Ed, about combining city and county here when we talk about taxation and the powers of taxation. To me there's a distinction and a difference, and that's what bothers me.

CHAIRMAN SELL: Are you saying you would like to have this applicable only to counties?

MR. KNOX: I think so. I think if you're going to proceed along this set-up that we've got we ought to just leave it like it is with the counties.

CHAIRMAN SELL: What is the sense of the committee in that respect?

MR. DAVIS: I'll have to pass. I'm not sure. I'm sorry. I would like to hear some other reasons, pros and cons. I'm not sure. I would have to defer to the people who are more familiar with the laws that relate to it.

CHAIRMAN SELL: Does anybody else have any comment?

MR. SMALLEY: Ed, I perhaps didn't make my point very clearly before, but I would take this Paragraph II as being more restrictive on the municipalities than the present law is. Again I think that construction would be likely because of the section that this corresponding section in the

present constitution replaced, which as you recall was one that required a levy of ad valorem taxes of so many mills for a specific part of state government. For instance, you had to make a certain levy for the courts, the operation of the courts, and a certain levy for public health and so forth, all these things that are enumerated here as generalities were in the article that this preceded -- the article that preceded this were extremely limited.

CHAIRMAN SELL: I'm not familiar with those limitations.

MR. SMALLEY: It was in the mid-sixties when this language was first adopted.

CHAIRMAN SELL: I think you'll find it's basically the '45 constitution. I don't remember any limitations in the '45 constitution. I may be wrong, I don't have a copy of that here.

MR. KNOX: Without having the benefit of the historical background, that same thought strikes me, and again that's the same point I raised earlier, and I'm not trying to --

CHAIRMAN SELL: I have no objections if the cities want to opt out of this, if this is not going to help them. I see no objection to doing it, leaving it purely a question of county taxation if it doesn't help the cities. That was the intent of it.

MR. KNOX: Yes, sir.

CHAIRMAN SELL: If it doesn't, well, I certainly wouldn't argue for it.

MR. DAVIS: It seems that the unknown quantities that are involved here, not knowing what the effect of putting them in, I would be inclined to leave them out, but I'm really not qualified enough in the background to make the decision for sure.

CHAIRMAN SELL: Do we have a motion?

MR. SMALLEY: Let me try an alternative which would be to take something along the lines of the introductory part of Paragraph II and authorize the exercise of the power of taxation for any public purpose.

MR. HILL: As provided by law? Something like that?

MR. SMALLEY: Well, yeah, as may be authorized by this constitution or by any general or special act of the General Assembly.

MR. KNOX: Eliminate the specifics.

MR. SMALLEY: Then, of course, that language has not taken into account home rule, and we would need to tip our hat to home rule in this section also.

CHAIRMAN SELL: You're suggesting that all of Section V be one paragraph, then? Is that what I understand?

MR. SMALLEY: I'm suggesting that all of Paragraph II of Section V -- in other words, I take it to be a limitation

when you enumerate 14 or 15 powers, and if you didn't enumerate any then the grant would have to be accepted as a general grant.

MR. HENRY: One problem with that if I may point out is that the General Assembly can only delegate the power to tax for purposes which itself may tax, and absent these specified purposes the court is able to look to you may have local governments only able to tax for which the state can tax at present which has 14 enumerated purposes but which are much more restrictive than either Amendment 19 or this Section V, and although it says that they can tax for any public purposes as authorized by general law or by the constitution, the courts construed that very narrowly to say that only as authorized by the constitution.

If you were going to expand that, I think you would have to have a corresponding expansion in Article VII of the purposes for which the state can tax, and thereby delegate to counties.

MR. KNOX: You see, that gets back to the same point I made earlier about the difference in a county and a municipality, because the same delegation theory does not fit, and that's why I say if we're going to spell them out I think municipalities ought to be left out and counties ought to be left in just like it has been and proceed. Do you follow what I'm saying?

That gets back to the same argument you just talked about about the delegation, specific delegation from the state to the county.

MR. SUMNER: This comes back to something you related to me this morning that Professor Hill was talking about that sort of relates to that issue of, quote, constitutional versus statutory type thing, home rule, whatever you want to call it and, you know, I think what Mr. Smalley is suggesting is a very broad, broad thing left to statute to carry out, but I think if you did do that Mike has a very good point, it's the sort of thing you'd have to correspond with Article VII and say look, you know, it's one of these difficult areas, we've got to have some coordination between articles. If it's very general, you need to make sure that you want to leave in an article about state taxes imposed.

Of course, if you did that, the tax to repel insurrection and invasion is a state privilege, but I don't know how many counties and municipalities --

You know, initially it was raised that is it better to leave it in a specific list enumerating limitations as Mr. Smalley suggested as compared to just making a very general authority for the General Assembly to delegate and leave the statute to fill in all the details.

It's a very basic concept, are we going to continue

the 1877 constitutional idea, you know, very restrictive language, or are you going to do something else, a broader statutory type.

CHAIRMAN SELL: It seems to me you've got a problem if you have no statute.

MR. SUMNER: Well, no matter what you do you're going to have to have statutes to implement, I think that goes without saying.

Vickie, I think we talked a little bit about that this morning, no matter whether you go this route or that route, it would probably take some statutory correction. I know the big concern if some statutes were not passed you're out in the cold, but it's a --

MR. HILL: As a matter of information, the effective date of this proposed new constitution will be July 1 of 1983. It's going to be voted on by the people in '82, November of '82, and give us the '83 session to work on general statutes, but that's not to say there won't be statutes, companion legislation ready to go when the constitution is introduced so we can show people what the package looks like.

I don't think you should be deterred by the fact that a statute will be necessary. We will have many, many statutes to prepare to take effect whenever the constitution is approved, so I think we should keep that in mind, and if we were in fact to try to put these purposes into statute

that can be done prior to the vote of the people.

CHAIRMAN SELL: What would be the posture of the matter if the specifics were omitted and the statute for some reason didn't pass?

It can be prepared, but I don't know that we have assurance that the General Assembly is going to pass it.

MR. KNOX: I don't think we can ever have that assurance, can we?

MR. SUMNER: On the other hand, I can't hardly see the General Assembly leaving counties out there with no way to, you know, take care of the courts or whatever they do. Of course, it could happen, you could end up with a special session, but I can't see them letting cities and counties for that matter collapse as a final outcome. Maybe some discomfort or something.

CHAIRMAN SELL: All right. Where are we procedurally now?

MR. HILL: I would say in support of Mr. Smalley's idea one of the purposes of the whole revision effort, of course, is to try to eliminate from the constitution as much as we can that can be provided for by statute. This is like a perfect example of the kind of thing that we're trying to do, so it looks like it would lend itself to that kind of a format, but it's up to this committee to decide if that in fact is what it wants to do, and plus the whole committee,

1 the full committee has to approve whatever is recommended.

2 CHAIRMAN SELL: Do we have any --

3 MR. SMALLEY: Let me throw out one further comment.
4 It seems to me that in addition to the concept of having a
5 clean constitution we ought also concern ourselves with
6 reality problems. For example, does this particular
7 Paragraph II cause counties any difficulty presently.

8 MR. KNOX: This is the existing Paragraph II, the
9 specific powers?

10 MR. SMALLEY: Yes.

11 CHAIRMAN SELL: Well, most of your local amendments
12 are amendments to the uniformity provision of the constitution,
13 although some of them perhaps relate to -- I believe Mel got
14 out or Mike got out a list of some of the amendments that
15 dealt with Article IX, but basically these powers together
16 with the local amendments that are applicable to counties
17 and the authority that is contained in wherever Amendment 19
18 is I think are pretty well satisfactory to counties.

19 If you will go back and compare this list of these
20 15 powers, I have changed them a little bit from what they
21 were in the last constitution, and you may not think well of
22 it at all, of an enumeration of the powers.

23 For example, Number 13 is to provide for the support
24 and maintenance of public schools, public education, and
25 activities necessary and incidental thereto including school

lunches, music and band and athletic programs.

I think you'll find that the present status of the law is -- I'm not an education law expert, but I think the present status of the law is that you can't spend public money for bands or athletic purposes under present law, and only by an amendment to this section could you spend money for school lunches.

MR. KNOX: Does that not then get back to Bob's point that we want to try to eliminate that kind of constitutional amendment?

CHAIRMAN SELL: Well, I --

MR. SMALLEY: The present constitution is so specific because of a long history of narrow construction by the courts; we have kept adding and tacking onto provisions every time the court would say you couldn't do something we'd come back and amend the constitution and expressly grant that power, so I think it raises a real question if we did go toward a model type constitution whether the courts would accept it at face value or not or find ways to impose limitations on it.

CHAIRMAN SELL: It's my understanding again with reference to the education, this paragraph 13 that initially the courts said that you couldn't provide school lunches because that constituted a gratuity. Another provision of the constitution prevents the granting of a gratuity to an

individual, so they had to add that. At the present time the ruling is that athletic programs are not an educational purpose, therefore you can't use public moneys for athletic programs. Maybe you don't want to do it, all I'm saying is that --

MR. DeRICO: Not only about this fall as a proposed amendment?

MR. HENRY: That has been amended in Article VII which deals with the power of the General Assembly to tax, and being the power for which the General Assembly can tax, they can necessarily delegate that power to the counties, and in 1968 they had an amendment right after a case which said that eating is not education, therefore you couldn't provide for school lunch purposes, and then subsequent to that they had an amendment which said you can pay salaries of personnel and pay for the utilization of school facilities including school buses for extracurricular and interscholastic activities including literary events, music, athletic programs within individual schools and between schools, and it goes on to do that, then you're right there was an amendment at this latest legislative session which added something new to that, I don't know what it was, but in order to get around some strict construction of that provision.

MR. HILL: It sounds to me as if one or two options are coming forward as either to have a broad statement of

the power of taxation can be exercised for any public purpose as provided by law as we have here covering local governments in general or the specific enumeration but limited to counties. It seems like that is the -- these appear to be the two options that the committee is trying to decide between.

MR. HENRY: Do you want to delineate what services counties should provide and what services cities should provide, and then say they can tax and spend it in order to provide those services.

CHAIRMAN SELL: I think that addresses itself to the powers. That addresses itself to the subcommittee which met this morning on powers. I think we're only talking about -- we're not talking about here creating any powers, except the power of taxation.

MR. HENRY: In a sense that would be dealing with taxation also when they deal with powers under Amendment 19, you can tax and spend in order to provide those services, so they're really dealing with the purposes for which taxes can be raised and expended also although it doesn't specifically state that.

CHAIRMAN SELL: Frankly, my reaction is basically that I hate to leave out this enumeration of --

MR. KNOX: You would rather see that left in?

CHAIRMAN SELL: I would rather see that left in for the reasons that Perry Sentell indicated this morning.

1 It may be that what this subcommittee will do is
2 make an alternative recommendation that if the other
3 provisions of the constitution are adequate to make it clear
4 that what purposes can be, what are the functions and powers
5 of the local government you could get by with a simple
6 declaration that they are public purposes and that you can
7 levy taxes at the local level for that purpose.

8 MR. KNOX: Was there any discussion at all about
9 this this morning? They pretty well listened to Perry and
10 were going to come back with some suggestions later? Is that
11 what I gather was done this morning?

12 In other words, they didn't get into this kind of
13 question at all I gather.

14 MR. SMALLEY: I don't think any decisions were ever
15 made in that committee this morning.

16 MR. HILL: No.

17 CHAIRMAN SELL: I think the upshot was that Mel
18 and his group were going to prepare a statement of, a series
19 of statements of decisions that need to be made. I had frankly
20 hoped to get a little further along than that here.

21 Gentlemen and ladies, we're up against a right
22 tough time schedule because we're going to get shortly into
23 vacation periods and people are going to be hard to corral
24 and we're supposed to finish this by September, and here it
25 is the middle of June, and I presently have no sense of

direction myself as to where we are headed, or even worse that we're headed anywhere, in any direction, and I think somehow we will have to find ourselves and get on with it.

MR. HILL: This may not be fair, but Jack Morton, the Executive Director of the Tax Reform Commission, just joined us, and he may have a responseto this question off the top of his head. If he doesn't, I certainly understand, but what we have been considering in this section on the power of county government taxation is in that Paragraph II that you have there which follows the present language more or less with some modification, basically the present format, whether or not that could be done with a broad statement in the beginning that the power of taxation by local governments may be exercised for any public purpose as provided by law, period, and eliminate the enumeration of specific purposes, and so that is what we are trying to decide. We're wondering if we can go that far, what kind of dangers we would run into if we did that, whether or not we would have a problem in Article VII since the General Assembly, its purposes were limited and it could only delegate to local governments the power to tax for the purposes that it could tax for so that there would have to be another change over in Article VII to allow us to do this if we were going to. So that is kind of what the discussion is, and I wonder if you have any reactions to it.

MR. MORTON: Not really, but obviously I think the two sections have to be reconciled some way. Obviously I think also that you can probably leave this enumeration out. Whether you want to or not is a different question, whether that's good policy is a different question perhaps.

MR. SMALLEY: As we used to say in the legislature, why don't we perfect your language, Ed, and why don't you point out to us the differences that you have made in the enumerations.

CHAIRMAN SELL: All right.

Number 1 is identical.

Number 2 is a little bit broader in that I think it combines some language from one of the other sections relative to recreation areas and systems which I felt were akin to parks and could properly go into this section. I believe I added sanitary or storm sewerage in this area, and a general clause of "and other properties for public use." This all had to do with the acquisition and construction, maintenance, improvement, operation or the aiding of any such activity with respect to public properties generally. I think it is a little bit broader, but essentially it's the same with those additions.

The next one, I have added the payment of claims or judgments against the government. That is nowhere in the constitution that I know of at present time. There is a

statutory provision under which local governments may adopt a policy for the payment of claims or judgments.

The next one, I think the primary change is in providing for the garbage collection services, sanitary landfills, incineration or other plants for the disposition of solid waste, and it's something that every county is having to get in now and there is no authority for it in the constitution.

The present law also says that the counties, that same paragraph, comparable paragraph, refers to the preservation of records and vital statistics. It's my understanding that is all done by the state at the present time, the vital statistics.

MR. SMALLEY: The counties keep a record too.

MR. DAVIS: Yes.

MR. SMALLEY: The state maintains the central system, but they send a copy back to the counties on birth certificates.

CHAIRMAN SELL: I don't think that is a function for which the county levies any tax. It's not my experience it is.

MR. DAVIS: They have an expense involved there. It's not a significant one, but it is an expense involved. You're right, they do that.

MR. KNOX: That would be a function of the probate judge and would all fit under that budget.

CHAIRMAN SELL: Under the courts?

MR. KNOX: Yes.

Number 5, there's no change from the existing law.

Number 6 is broader because of a problem that's worried me. The present paragraph says provide medical and other care and hospitalization for the indigent, sick, and support paupers, and the proposed language is "Provide Medical, hospitalization or other care and support for indigents and paupers, and for children who are wards of the local government or of a juvenile court, or who are otherwise in need."

In Bibb County we're constantly being called on by the juvenile court to do things like send a ward of the court to junior college, and the expense is not great, we're having to look after the child anyhow, it's a question of a little hundred dollars a quarter or whatever the junior college tuition is to send the child to school, and it's an entirely desirable thing I think, but I don't really know of any authority for it anywhere, and so I stuck it in.

The next is -- And I'll have to say the phrase "or who are otherwise in need" is broader than the existing language.

7, to pay agricultural and home demonstration agents and conduct programs utilizing the services of such agents, that's adopted verbatim. I don't know the history of this,

why it's in here, but presumably at one time it was deemed necessary.

8, "Establish and conduct programs of welfare benefits and public assistance." I think the present constitution says that may be provided by law, and I see this draft does not contain that phrase.

9, "Provide fire protection for forest lands, conserve natural resources" is the language of the present constitution. I added to that "and take measures for the purpose of maintaining and improving ecological and environmental conditions."

I think all governments are being called on now to maintain air quality control programs. The Board of Health I know of our county has gotten involved there with these little things around where they measure the number of, the degree of air pollution and that sort of thing, and I don't know of any -- certainly there's no constitutional provision for that -- there may be some power implied by existing statute.

I think the next one on Paragraph 10 is taken verbatim from the existing constitution, except in one respect. If you'll notice down about the fifth or sixth line from the bottom of Paragraph 10 it says "provided, further, that locally adopted programs described in this paragraph shall be amendable by the local government adopting them

from time to time without the consent of any officers, employees, dependents or survivors."

The reason for that is that there are some cases that have held that a pension plan is or may be a contract between the local government and the employee and cannot thereafter be changed either for better or for worse without consent of the participants in the plan, and I think that is highly undesirable; the state has found it undesirable and in recent years has amended the constitution I believe to provide for certain changes in them, in the pension and retirement plans, it may be done unilaterally.

Frankly, we already have that power in Bibb County by a local constitutional amendment, so it doesn't bother me from our own individual point of view, but it does seem to me this is something that ought to be allowed to local governments, and the thing cuts two ways.

We had people under one of our old retirement systems -- they had a lady work for the county about fifty years and she was getting about 25 or \$30 a month and there wasn't anything we could do about it because to change, to increase her retirement would have been to grant her a gratuity or paid her for services already rendered and we couldn't do that. Now we can. We have raised some of those old very low pensions. If the recession comes on hard enough and long enough it may be that the thing will need to go

the other way at some point.

MR. SUMNER: I've got a question about that. I have very serious doubt whether once you grant any kind of benefit you can take it away. You may change it perhaps to better it, but I think you've got federal constitutional issues there. You're talking about a contract, the payment obligation is a contract, and I think you may have some real problems taking it away anyway.

CHAIRMAN SELL: I wouldn't think so. You may be right.

MR. SUMNER: There's been some -- it's not quite as clear in the governmental context as it is in the private sector, but believe me if Charissa passes you won't have to worry about it, you won't be able to take anything away from them.

CHAIRMAN SELL: The history has always been that they needed to go up.

The next one I believe is probably -- no, the next one in the existing constitution is the one which authorizes the establishment and maintenance of a recreation system. As I have indicated above, my language would include that in the park paragraph which mentions parks.

11 would be 12 in the existing constitution, and I have added -- the existing law says to provide for paying the principal and interest of any debt of the county and to

provide a sinking fund therefor. As you can see, this language is to provide for the payment of principal and interest of any debt of the local government or of any revenue anticipation obligation and to provide a sinking fund therefor.

13 is --

MR. SMALLEY: What do you take that to mean in connection with the sentence at the beginning that we are authorized to exercise the power of taxation to retire revenue anticipation obligations? Is that the intent of that?

CHAIRMAN SELL: No.

MR. SMALLEY: It seems to me that's what it's saying.

CHAIRMAN SELL: It's to provide for the payment of principal and interest. We've got a whole section over here dealing with revenue anticipation obligations, and it specifically says it will not be a debt of the local government.

MR. SMALLEY: Why, then, have the language here? It seems to me to say that it isn't.

CHAIRMAN SELL: It may not be necessary.

MR. SMALLEY: It is debt. It seems to me that you would at least be susceptible to the possibility that somebody might mandamus you to levy a tax.

CHAIRMAN SELL: You may have a good point. I was frankly concerned that any listing of authorized activities

here that we're talking about --

MR. SMALLEY: This is to levy a tax for it.

CHAIRMAN SELL: I think your point is well taken.

MR. HENRY: I think the concept you may be looking for, I know with the state revenue bonds is what they call a common reserve fund which can be used to pay the principal and interest on a revenue debt if the anticipated revenues don't come in, but then you automatically have to replenish that with the revenues I believe. Isn't that right, Jack?

A sinking fund I think would imply that you could pay off revenue bonds.

CHAIRMAN SELL: I think I must have been talking when I should have been listening on that. That's true. The more I think about it the more I think it's inappropriate.

MR. SMALLEY: This contemplates general appropriation debt as presently.

CHAIRMAN SELL: I think you're right.

12 is 13 in the existing constitution, except it says -- the existing constitution says to provide for reasonable reserves for public improvements as may be fixed by law. I put here to "Provide for reasonable reserves for public improvements and expenses." That's a broader power I think.

13 in my draft is the same as 14 in the existing constitution with the changes I have already mentioned to you.

MR. SMALLEY: You might almost go with 12 and leave the rest out, mightn't you?

CHAIRMAN SELL: Leave out 13?

MR. SMALLEY: Leave out 1 through 11 and 13.

CHAIRMAN SELL: No, I think that has a different --

MR. SMALLEY: When you take out "as fixed by law" you've sort of left it wide open.

CHAIRMAN SELL: I think it has a different purpose. It is intended to be broader. You may not agree with it, you may not want to approve it, but --

14 is a new one to this section, it has no counterpart in this section. It did have something of a counterpart I believe in Section VIII of the existing article on revenue anticipation certificates. The main change that I intended to make in this is that the existing constitution refers to the revenue certificate law of 1937 as amended by the revenue certificate law, by the amendment of such and such a date of 1939 I believe. Does it mention a subsequent -- Mel, you and I were talking about that, or Mike.

MR. HENRY: No, it's just as amended through 1939. In fact, it's been amended several times all the way up to 1976, which the status of those amendments is unknown I guess.

CHAIRMAN SELL: It may raise a question whether under the present language you could do something that was only authorized by the 1955 amendment to the revenue law.

This just simply says "The Revenue Certificate Law of 1937 as the same is now or may hereafter be amended." It goes on to say it should not be deemed to be debts of the local government, and contains the provisions of the existing Paragraph 8 which says that no obligations under the revenue certificate law shall be issued in connection with an acquisition and so forth of gas or electric generating and distribution systems without a vote of the people. That is in the existing constitution.

Those two functions, gas or electric systems, have apparently been carved out of the general rule that the local governing authority can issue revenue bonds without a vote.

MR. HENRY: I'm unclear on this one. If you can provide a tax for the payment of debt service on revenue bonds, then you have that debt represented by revenue anticipation obligation or repayment of revenue from projects and shall not be deemed debts of local government. It seems like you are providing two sources there to --

CHAIRMAN SELL: I think your comment is well taken. I was just thinking about that. What I was trying to do was to get all the debt service in one section and not have it spread out, but it may be they are such different animals it cannot be done.

MR. KNOX: We probably could keep the dual obligation under the other section.

CHAIRMAN SELL: 15 is new and it has as its primary purpose the preservation of acts authorized by local constitutional amendments, which would continue in full force and effect.

I know there's quite a debate as to whether or not that's what should happen to local constitutional amendments. If you in effect abolish the local constitutional amendments which are outstanding in the state without making some sort of provision you're going to put about six counties in Georgia out of business -- DeKalb, Richmond, Bibb, Fulton and maybe some others.

We have either sixteen or eighteen constitutional amendments of local application in Bibb County upon which we are absolutely dependent to perform many functions we perform. I gave an illustration this morning in the power section. We have a lake that's part of the recreation system, a 1,700-acre lake; if we did not have a local constitutional amendment which authorized the county to exercise certain police powers within certain limits we would have no means of policing for example boat traffic on that lake, and there are many other illustrations that could be given.

Something has got to be done in my judgment towards retaining the powers that local governments and particularly counties have under the constitutional amendments. Cities don't need the constitutional amendments by and large because

you can amend the charter either by state law or under the home rule provisions and accomplish what needs to be done, but that is not true with counties.

I think what we have said here is at a bare minimum we need to move references to revenue anticipation certificates back to Section VIII and get them out of Section VII.

I would be pleased to hear your other comments as to what we ought to do about the enumeration versus a general statement.

I take it the city representatives here definitely want the cities excluded from this section.

MR. KNOX: Yes.

CHAIRMAN SELL: Is there any objection to that?

If there is no objection, then I will take it to be the sense of the committee that cities will be excluded and that we'll go back to the provision for having this section or the sections we're dealing with apply only to counties except to the extent they may already apply to cities.

MR. HILL: In other words, the committee has made the decision to go with an enumeration unless and until we should find that the other article committee or the other committee has covered this matter?

CHAIRMAN SELL: I think first we made the decision that we would not make this Section V in anywise refer to cities; we go back to the format of making it apply only to

counties. That is the decision I understand we made initially.

Secondly, about --

MR. SMALLEY: I think the concensus that I hear would be somewhat narrower than that, which is to say if there is to be an enumeration the cities don't want to be a part of it.

MR. KNOX: If we're going to make it general, then I don't see any problem.

CHAIRMAN SELL: Okay.

MR. KNOX: Maybe you want to come up with an alternative, just to consider.

CHAIRMAN SELL: Let me ask you this. Do you find other than in the respects we have mentioned about revenue anticipation obligations -- and incidentally one thing I wish we could do is to get the language on that cleaned up. The people who deal with those things call them revenue bonds now, and the title of the old '37 law may not have been changed, but we don't issue any more documents called revenue anticipation certificates.

MR. HENRY: The law was changed. The title to them now are revenue bonds. The title to the chapter was formerly revenue anticipation certificates or revenue certificate laws, and that's no longer the title of the act.

CHAIRMAN SELL: It's no longer the title to the act?

MR. HENRY: Right.

CHAIRMAN SELL: Then could we -- when we refer to these animals then can we call them revenue bonds do you think safely?

MR. HENRY: I think in putting together a new constitution you could, yes.

CHAIRMAN SELL: Okay.

Does anybody take exception, if we're going to list the powers to the powers which have been suggested here other than the language relating to revenue bonds?

MR. SMALLEY: I have some trouble with your 15.

CHAIRMAN SELL: All right, We will discuss that.

MR. SMALLEY: I would personally like to give every city and county about ninety days to shape up and then abolish all constitutional amendments.

CHAIRMAN SELL: It's not a question of cities and counties shaping up, it's a question of getting the authorization shaped up. That's got to be done here in Atlanta.

MR. SMALLEY: That's true.

CHAIRMAN SELL: We can't do it locally. If we did, we wouldn't need the amendment in the first place.

MR. SMALLEY: What I'm really suggesting is that as far as our consideration of the article is concerned I would like for us to draft the local government powers broadly enough we don't need local amendments.

CHAIRMAN SELL: That is a possibility, and it occurred to me frankly after I wrote this that this might be more appropriate to the powers section rather than to this section for the simple reason that we have provided elsewhere that if the constitution authorizes it you can levy a tax to do it, and which may be unnecessary. I don't have any problems with that in this context. I think we've got to preserve the powers some place.

MR. SMALLEY: Yes. The one criticism that's universally leveled at the Georgia Constitution is it's statutory in nature, that it deals with matters that are not appropriate to the constitution, and I think historically that's always been true as far back as I have read the Georgia Constitution, it's been patterned along very specific lines.

CHAIRMAN SELL: Of course, the constitutional history has been that unless it was set out in the many court decisions for the proposition at least with respect to counties that unless they're authorized to levy a tax for that purpose they can't do it. We've got the powers of taxation concepts melded together.

Now, in about the '45 constitution they tried to change that around, but the courts didn't pay too much attention to it is the problem.

MR. SMALLEY: My recollection would be that this language in the present constitution was an effort to get

around that limitation where not very many rural counties followed the law, but the law had been construed to say that you had to levy so many mills for each particular governmental purpose, your resolution adopting it had to be that specific.

Of course, this amendment was designed to say that you have all these powers and you can levy taxes to fulfill them and you don't have to state the particular purpose for which the same is made.

CHAIRMAN SELL: I'm not aware -- now maybe Mr. Morton can be of particular help -- I made the statement before he came in that I was not aware of any statute in Georgia nowadays which mandated that a local government state the millage applicable for specific purposes.

MR. MORTON: You are correct.

CHAIRMAN SELL: So that the thing that troubles me about this law, this present provision in the constitution was that I was always afraid there might be some law some place that was enacted in 1854 and was inadvertently not repealed that said you can levy no more than half a mill for road purposes. That was a provision at one time.

But we have always in Bibb County enumerated it down to eight decimal points our millage levy, but many counties -- Richmond County, for example, hasn't itemized in years.

MR. KNOX: That's right.

CHAIRMAN SELL: That was the reason I suggested

leaving it out. I have no --

MR. MORTON: More of them still itemize than don't, however.

CHAIRMAN SELL: I think it's good government to do it, to let the people know where the money is going.

MR. HENRY: Jack, isn't there a statute that says that counties can levy no more than a certain millage rate for county administration of government?

MR. MORTON: As I recall, the statute reads for current expenses or something like that.

MR. HENRY: Yes, and it only applies to counties too, I remember, I think you told me there used to be a municipal limitation, a limitation on municipal millage levy until they recodified the revenue laws.

MR. MORTON: A couple of years ago. I think we did that before 91(a), but it's only been about three years ago.

CHAIRMAN SELL: This has to do with the stated purpose for which they can levy it.

MR. HILL: Let me throw this out. Would there be any possibility of a draft to the effect that the local governments shall be authorized to exercise the power of taxation for any public purpose as may now or hereafter be provided by law, or something that would just allow them to continue to operate and would get us out of having to list them?

CHAIRMAN SELL: Yes, that's certainly a possibility.

The reason why I asked the question a few minutes ago as to whether or not there was any -- whether you found objectionable any of these items as they are listed here was because it occurred to me what we might do is to make an alternative recommendation on Section V to the full Article IX committee which would say something like this: That if it is ultimately found necessary or desirable to list the powers for which -- to list these powers or these purposes for which taxes may be levied, our recommendation is (a) that the list, that the following powers be included if it is ultimately found possible to state, and (b) municipalities be excluded.

On the other hand, if it is possible to state it in general terms as you have just indicated, then --

MR. KNOX: Follow the basic format you've got here?

CHAIRMAN SELL: Follow the basic format of Section II, Paragraph II, in which event municipalities would be included.

MR. KNOX: All right.

MR. DAVIS: All right.

CHAIRMAN SELL: Any comment on that proposal?

MR. SMALLEY: Why don't we try to deal with the language that doesn't enumerate? Wouldn't that be the next step?

CHAIRMAN SELL: All right.

Let me say this: As I understand it, though, Mel,

we haven't taken any votes, but as I understand by consensus we will delete Paragraph 15 or subparagraph 15 as I have it here, and secondly language relating to revenue anticipation, revenue bonds would be put back in Section VIII.

MR. KNOX: You may want to add that to vital stats.

CHAIRMAN SELL: And we want to add back the vital statistics, yes.

Is there any objection to taking that course of action?

I hear none, so suppose we address the specific language then of the alternative proposal as Chairman Smalley suggested.

MR. HILL: Will this be given to the full committee with any preference, or will it just be "These are the options" and then the full committee will have to decide between them?

It's probably not something we can decide until we have done more work with the other committee to see whether we can reconcile them.

CHAIRMAN SELL: Not only that, it may very well be that the Attorney General or someone else who has -- or maybe your own staff, Mel, your own legal staff will want to consider the impact of one as against the other.

MR. SUMNER: One thing I thought about too is we've got a situation where you've got certain purposes -- I guess you would call it purpose of powers to tax here, and you've

got as alluded to earlier Amendment 19 and gives you the right to tax, the powers to tax, you know, for those enumerated services. There was a discussion this morning in the powers section of trying to look at do we need them in the 19 or give them a sufficiently broad home rule provision and, you know, how do we merge that to the powers and taxes together. They're inseparable type things. I just thought of that too. You're going to in fact have two separate -- counties can tax for this purpose here, and then tax for these other powers in another place too. It just doesn't seem to make much sense to separate it all out if you're going to put it in one section.

MR. HILL: One of the reasons for trying to have a deadline of September 1st for all the subcommittees to be done is so the full committee can try to reconcile these things at that time, so these concerns don't all have to be resolved immediately on these questions.

MR. KNOX: Bob had suggested we look at that general language in Paragraph II if you eliminated the specifics.

CHAIRMAN SELL: Let me ask you to consider the paragraph numbered three, which is a part of the same section and which I had drafted which may touch in part on what we're talking about.

I might mention to you that reference to acquisition of real property and real or personal property was included

in the present constitution, and one of the subparagraphs -- I believe it's Subparagraph 2 of Paragraph II, and I have moved it down to Paragraph III.

Bob, would you care to suggest some language as a general--

MR. SMALLEY: Let's do the easy part. Local governments are hereby authorized to exercise the power of taxation for any public purpose now or hereafter authorized by this constitution or as may now or hereafter be authorized by the General Assembly.

CHAIRMAN SELL: Does anybody fault that? Any caveats?

MR. HILL: Well, one point I would make is that on the effective date of the new constitution the old constitution dies, so to some extent we may have to state this as authorized by the constitution of 1976. We might have to -- by saying any public purpose as may now be authorized by this constitution, that will refer to the new constitution as opposed to the one we're looking at now.

Were you anticipating that, or were you thinking we were going to be calling in by reference the 14 purposes that we were just looking at?

MR. SMALLEY: No.

MR. HILL: That we wouldn't be?

MR. SMALLEY: Right. Personally I don't favor calling in anything to the constitution of Georgia by

reference, whether it be the 1937 bond law or the -- I think it was also the 1937 act that gave probate judges jurisdiction over traffic cases; it just always seemed to me a little bit demeaning to refer to a mere law in your constitution.

CHAIRMAN SELL: As I understand Bob's language is intended to mean that to levy taxes for any public purpose as authorized by this constitution or by any law, or by law, and that would mean the constitution of 1980-something.

MR. HILL: Two.

CHAIRMAN SELL: 1982.

MR. SMALLEY: There is a former law which doesn't explicitly say you have to levy by categories, but it's been construed to mean that.

CHAIRMAN SELL: At one time I think it was a very specific requirement, yes.

MR. SMALLEY: My proffered language here in my opinion would be broad enough provided the powers section is broad enough.

CHAIRMAN SELL: Right.

MR. SMALLEY: But with the concept we are trying to follow it seems to me that the only limitation you need on your power to tax is that it be for a public purpose.

CHAIRMAN SELL: Well, as we say, we will have to leave this for case by case adjudication. I think we could distill out of the decided cases what a public purpose is

for the most part. There are always going to be some borderline cases.

How does that suit the Tax Reform Commission?

MR. MORTON: I don't know how it would suit the Commission. I personally would like to see something like that done if it can be done, because I agree with what Mr. Smalley said earlier. Far too often our constitution really is statutory.

It just seems to me that something general such as this would make it much easier to deal with.

CHAIRMAN SELL: Mel, do you have then the language?

Is it the sense then that we submit these as alternatives, alternative proposals to the Article IX committee?

MR. SMALLEY: I have never in my life had something accepted without amendment, so let's don't start that trend.

CHAIRMAN SELL: I don't know whether you can amend your own language or not, but I reckon you can.

MR. HILL: That's alternative Paragraph 2 only? One would stay the same? This would be the alternative to two. Okay.

MR. KNOX: Paragraph 1 in that alternative situation would be back to the language which would include both counties and municipalities.

CHAIRMAN SELL: Right.

I think probably as a matter of draftsmanship if when we submit them we just -- we would only need a Paragraph 1 with the broad language, but we would need to change Paragraph -- well, we really wouldn't need the existing paragraph 1 in my proposal under the other alternative because it would only relate to counties and wouldn't need to define what's meant by local government.

Is there any objection to letting it take that course?

I hear none. We will let it take that direction then, and we will ask the staff if they will prepare proposed language and circulate it to the committee for review.

Paragraph 3 of Section VII as I have drafted it is a combination of language that's --

MR. SMALLEY: You mean Section V?

CHAIRMAN SELL: Excuse me, Section V.

It is a combination of some language relating to real estate that exists in Subparagraph 2 at the bottom of Subparagraph 2 at the bottom of Paragraph 2 of the existing constitution, and really is an expansion trying to get away from the strict interpretation.

MR. SMALLEY: Where is it found now?

CHAIRMAN SELL: The language relative to the acquisition of property rights is the last clause in Subparagraph 2 of Paragraph II.

The language is --

MR. SMALLEY: What section?

CHAIRMAN SELL: Section V, The language is "And to acquire any real property or any interest therein in connection with the foregoing." I have enlarged this in my suggestion to acquire any interest in real or personal property or rights to property and to exercise the right of eminent domain for any public purpose. That of course is also in -- that's at Paragraph 4 of the existing language.

The principal change in this I think is that it would be a broadening of the intent, hopefully so that the courts would not read them so strictly. Obviously if we take alternate (b) this would not be necessary I take it.

MR. SMALLEY: To the extent it would be needed, it would be needed in the powers section.

CHAIRMAN SELL: Yes, to the extent it would be needed, it would be needed in the powers section.

MR. SMALLEY: Certainly something like that needs to be in the powers section.

CHAIRMAN SELL: Do you find any problem with it if we're going to list the powers under alternate (a)?

MR. SMALLEY: It seems to me to raise a question which needs a decision, because at least in the area of property it would imply the repeal of the section that now prohibits one municipal governing board from combining with

the next. That of course has had a very uneven application by the courts, but we bump up against it several times a year in matters of contracting, of trying to lease a computer, trying to buy a fire truck on time. That is to say it has a very unven application in the courts presently. There are some cases uphold some long-term leases and things like that, but I think this would pretty effectively destroy it in the property field, and that may be a very desirable thing to do.

The incumbents in my city would always like to go ahead and do it, but sometimes those who come in relish the right to renege on something the prior commissioners have done.

CHAIRMAN SELL: This may very well be a paragraph that should more be appropriate to the powers section than to this section. I can certainly see that.

MR. SUMNER: It depends on the issue, the courts have unfortunately mixed together the other things and the binding contracts, and it's different concepts too, and I think when you look at it in conjunction with the two, you mentioned the long term debt, the fire truck, the five years -- I get a call on that at least once a month from somebody, how can we assure the bank we can borrow \$100,000 and pay it back in five years, you know, 20,000 at a time.

CHAIRMAN SELL: I think that's the powers section. Another thing I would like to see the powers people talk about

that I have made a note of to try to stick it in and decided it was totally irrelevant, but we're being called on all the time by the State of Georgia to acquire land for the purpose of donating it to the State of Georgia. Now, the Attorney General approves it, but I don't know of any authority for doing it.

In Bibb County we gave them 167 acres for a prison site, we gave the Board of Regents 180 acres for a junior college, now we're getting ready to give them land for a crime lab. I would like to have that legitimated, but I think that's the powers section too.

MR. HILL: In some of our other committee work we have found that if the committee felt that it was a matter that really fell within the jurisdiction of the subject matter of another committee it just told that other committee that they had a new section to consider, so if you just want to pass the ball that would be -- with or without a recommendation, that would certainly be possible.

CHAIRMAN SELL: Is there any objection to suggesting or recommending to the Bob Brinson's committee -- I think that's Sections II, III and IV, a request that they consider some such language as this for their -- under the powers section?

MR. KNOX: That's fine

MR. SMALLEY: I think that's very well taken, and

if they don't heed us we can bring it up in the general session later.

CHAIRMAN SELL: Right. If there is no objection, then, we will let it take that direction.

That last paragraph of Paragraph 4 is one which is, which touches on the same subject matter as Paragraph III of the existing constitution, but it reverses the thrust of it.

Under existing Paragraph III the tax district may not be established without a vote of the people. Mike has called to our attention the provisions of another section of the constitution which is a part of Amendment 19 I believe which indicates that for certain purposes at least you can have a districting without a vote of the people. The thrust of this is to permit a vote of the --not to provide for a vote of the people for the establishment of districts, service districts primarily.

MR. SMALLEY: I think from the municipal standpoint there is another unintended plus here. The word "only" in the last sentence --

CHAIRMAN SELL: Well, yes, one of the purposes is to provide that -- Again, in Bibb County, for example, we had a demand for fire service. We have worked out an agreement under which the City of Macon is the county's fire department, and we levy a tax only in the unincorporated area. Again,

we've got a local constitutional amendment which permits us to do it, but I suspect if we told the people that in order to do that you have got to be assessed four mills, which they are for that service, we would have had a hard time getting it through. Frankly, that's one of its purposes is to assist in that sort of thing.

Incidentally, the mayor has come up with such -- Again, this may be more directly addresses itself to the powers rather than taxation, but it's in the existing taxation section.

MR. SMALLEY: It seems to me also that it is legitimately here. We're talking about taxation really.

CHAIRMAN SELL: That's true, it does refer to levying a tax on the taxable property in the district.

MR. HILL: It seems to me --

MR. SMALLEY: How does this interact with the Section IV? Are we being coextensive in our definitions or not?

MR. HENRY: In your present provisions what you've got is your Paragraph 3 at Section -- I'm sorry. Paragraph 3 at Section V is a more restrictive way to create the special districts, because it provides for a --what really happened, it preceded Amendment 19, and 19 didn't take it into account.

MR. SMALLEY: It's a recurring problem.

CHAIRMAN SELL: One of the problems is, I think Amendment 19 for example does not mention why this occurs. Some small difference --

MR. HENRY: Electricity and gas is the only thing it doesn't mention, so you could tell them to put -- or whether you want to or not -- electricity and gas generating and distribution systems seem to have their own little place in the constitution throughout the finance, so it's been given special consideration in most provisions where it's been mentioned, but this is -- There is an Attorney General's opinion on this which says that you can do it, you can create special districts either under Paragraph III for these five enumerated services, or you can create all but electricity and gas systems under Amendment 19 special districts.

Amendment 19 special districts can be created by ordinance, and you can tax for that, so there's an easier route than having the General Assembly create or have the vote on the creation of a special district.

CHAIRMAN SELL: Just yesterday in Macon the Mayor came up with a proposition which the county commissioners seemed -- to which they seemed to be somewhat agreeable, and that is the county would take over all of the garbage collection for the city and county, and I'm not exactly sure what sort of authorization we have, I haven't had a chance

to look at it, for that purpose, but that is another variation of the same thing because there the taxing district would be the entire county inclusive of the city, and that would be put on the ad valorem tax.

MR. HENRY: So a special district is coextensive with county boundaries.

CHAIRMAN SELL: Well, yeah. I think you would have to -- I don't know how long you have to be county attorney before you learn the answer to this question, but sixteen years is not long enough. To what extent can the city render services inside the county -- I mean the county render services inside the limits of a municipality?

I know that under Amendment 19 you can do those things by contract, but it seems to me that contemplates the city will pay something for those services which are rendered. In this context it's not going to be paid, the --

MR. SMALLEY: Your Paragraph IV should be synthesized with what we laughingly refer to as Amendment 19, it seems to me.

MR. KNOX: Yes, I think so, but where do you do that?

MR. HILL: As Michael said, there are only two things that are not covered in Amendment 19 that are covered here, electricity and gas, and if those were added -- well, we don't know what they are going to do with that section,

but if they decided to continue to list and allow for the districting of special taxation, then if they were added I don't see how we would have a need for this really. It's a dead letter, it appears to be a dead letter in the law to some extent.

CHAIRMAN SELL: Bob, did I understand it as your suggestion then that Paragraphs Number III and IV in the draft which I had proposed be referred to the powers committee with the request they take appropriate action to incorporate these in the powers section?

MR. SMALLEY: It would seem to be appropriate, yes.

CHAIRMAN SELL: Do you have any comments about that?

MR. DAVIS: Would a general statement that Bob proposed then allow the special taxing -- I mean I can't recall how it was worded again -- could there be any limits in the way you stated it to not cover the special districts except for any public purpose?

MR. SMALLEY: At some point we need the district language.

MR. DAVIS: That's what I was wondering.

MR. JACKSON: Maybe could you give them everything in Paragraph III and ask them to shift that other over to us?

MR. SMALLEY: You mean Amendment 19?

MR. SUMNER: That's primarily powers, Amendment 19. There's one little section on taxes.

MR. JACKSON: That's what I say, that portion of it.

MR. SMALLEY: I'm almost at the point of doing an 180-degree turn. It seems to me that the Paragraph IV belongs here, and that any superfluous materials ought to be deleted from powers, which is to say that we might tighten up the language a little bit by not enumerating, but we do need the power to create taxing districts.

MR. DAVIS: I was afraid what you said before wouldn't be broad enough to cover the taxing needs for a special district. That's the only question I had. I'm not a lawyer.

MR. SMALLEY: Well, if we're content with the powers enumerated in Section IV which deals with service areas and areas for which special levies may be made, or if we feel that it simply needs to have electricity and gas added to it to make it complete, then it seems to me that the language which is included in the present Paragraph IV dealing with taxing districts, et cetera, ought properly to be brought down into our paragraph.

CHAIRMAN SELL: Let me make one alternative suggestion. Let me ask you this, Bob. Do municipalities have any need for service districts?

MR. SUMNER: They have been used. They have been used by the City of Augusta to do their downtown development thing, they carved out two city blocks as a downtown

development district or something. What they did was to redo that broad vista, that Broad Street and that parking deck, they levied a special mill or two mills tax on the property owners on those two streets, and we have had some other people inquire about doing that.

CHAIRMAN SELL: What we need to do is to make sure this applies both to municipalities and to counties.

MR. JACKSON: Chatham County has something like that.

MR. KNOX: I think several cities have used the redevelopment angle.

MR. SUMNER: If you look at all those enumerated you've got, parking and all the other things enumerated in Amendment 19, I think we need to keep that. This is heavily used in Illinois and in other states.

CHAIRMAN SELL: Of course, the existing paragraph of the existing constitution refers only to counties. This section --

MR. SUMNER: Yeah, but Amendment 19 refers to both cities and they use the Amendment 19 for a special tax or special district language to do this.

CHAIRMAN SELL: Let me make this suggestion, then, that perhaps we can refer the first -- well, really the first sentence of Paragraph IV to the powers committee, and the second sentence changed to read something that whenever a service district is established by a municipality or a county

the government shall be authorized to levy a tax and so forth, and maybe that could be put up as -- No, that would have to be kept separate.

MR. SMALLEY: I think I'm on the same track with you except whenever a service district is established as contemplated in -- and refer back to the section where the powers section is -- in other words, nail it down specifically to the Amendment 19 services.

MR. HENRY: If I could just summarize for a second what I think has happened here is that it was suggested that you put in that local governments are hereby authorized to exercise the power of taxation for any public purpose as authorized by general law or by this constitution.

Now, the purposes for which taxation can be levied you envision is for the services the governments are to provide, which is a powers matter which has to do with these amendment 19 services plus perhaps incorporates some of these into that enumeration, and whether you want to distinguish between which ones counties should provide and which ones cities should provide is a matter for the other subcommittee, but the authority in here to create special districts and to tax therein is authorized for the provision of any of these services, and if you added these other things, which you may or may not want to, then it seems to me you could totally revise this portion of the constitution down to the sentence

which you said, and you wouldn't even need a county government taxation section. You could just say they could tax to provide the services, and you have authorization in here to create special service districts and to tax in that district alone. You can create a special district in an unincorporated area of the county under this, you can create a special service district in a city, because this is --

MR. SMALLEY: I don't agree with that construction. The language that I suggested for Section V would be broad enough in my opinion that you could have a county-wide tax levied to provide services in a narrow area of the county unless you make that limitation in the powers section or here.

From an organizational standpoint, it seems preferable to me to make it in the taxation section.

MR. HENRY: That the tax to provide the service in the special district only be levied in the special district?

MR. SMALLEY: That's right. It doesn't need to be said again in Section IV, but it does need to be said somewhere.

MR. HENRY: You can create the special district to provide services that you otherwise have the authorization to provide?

MR. SMALLEY: Right. Well, something like Paragraph II of Section IV is what we're talking about, adding any additional services we want to make available, but then the

language which we have in the remainder of that Paragraph II in some parts it seems to me needs to be in Section V instead of Section IV.

MR. HILL: You may want to carve out an entire section relating to special districts that relates to both the power to create them and the power to tax within them as opposed to -- I don't know, it's just a matter of organization how it would fall out there. That is an important matter.

MR. KNOX: That is a good thought just to create a special section to deal with it, to deal with the districts.

MR. SMALLEY: That's essentially what we have now.

MR. HILL: Section II relates to both powers and also to taxation

CHAIRMAN SELL: I think we need to make this distinction. If we adopt that which is (a) and which is (b), but the broad form short, we still need something in here about special districts because we want that to apply to municipalities as well, and by the same token if we have the other, the enumeration we still want to have something in here -- the rest of the section would presumably apply only to counties, but we still need something here or somewhere which specifically authorizes municipalities to levy the tax only in the special district.

MR. SMALLEY: The last unnumbered paragraph in Section IV is the one that deals with the creation of

the districts and limitation of the taxing power. Now --

MR. HENRY: I think you could do what you want to do, put in that sentence you're talking about put in addition to powers of taxation and assessment, instead of may put shall be exercised by any county or municipality or any combination of, and then where it says within any such district put only within such district as broad powers in order to provide such services.

CHAIRMAN SELL: Where are you reading from, Mike?

MR. HENRY: The last --

CHAIRMAN SELL: Section IV?

MR. HENRY: The last section of that (indicating).

MR. SMALLEY: Well, my recommendation would be that something like the last sentence in Ed's Paragraph IV draft be included as Paragraph II in Section 5, even though it probably would be somewhat repetitious. In my judgment if we have the broad language in Paragraph I, then we need a corresponding Paragraph II to limit the services, and I'm not at all satisfied that putting it back in Section IV in connection with that enumeration of powers would effectively prevent the levy of a county-wide tax for a particular service area, or to put it another way that it would prevent a county from providing service only to a few of its residents under a general levy.

CHAIRMAN SELL: All right. Then let's go back just

a minute.

Paragraph III now we're definitely going to refer to the powers committee.

Paragraph IV, you have heard Bob's suggestion which basically is to refer the first sentence in the proposed Paragraph IV to the powers committee, and to retain as a part of this committee the substance of the second section sentence making specific reference to the other provisions of the constitution.

MR. SMALLEY: To the one section where Paragraph 19 is dealt with.

CHAIRMAN SELL: We don't know that number yet.

MR. SMALLEY: Well, we have a poorly organized article at the present time, but hopefully the Brinson Committee will remedy that by enumerating the needed powers for counties and municipalities, something that isn't done at all for municipalities in the present constitution.

MR. HILL: One of which would be Paragraph II, districts and to provide services.

MR. SMALLEY: Right. It seems to me that the limit of our jurisdiction in this subcommittee is to put the limitation on the taxing power.

CHAIRMAN SELL: What is the reaction to that? Is there concensus as to that? Shall we just leave that with the staff then to draft the language and submit it for

1 ratification by the subcommittee?

2 MR. SMALLEY: I'm personally satisfied with your
3 language, with the addition of a specific reference to the
4 paragraph that it refers to.

5 CHAIRMAN SELL: All right.

6 MR. HILL: All right. I understand.

7 CHAIRMAN SELL: Ladies and gentlemen, there is one
8 more thing that needs to be said about this Section V, and
9 that is if you will look in your book on the existing
10 constitution there is an unnumbered paragraph following
11 Paragraph 14 which says that the grant of powers contained
12 in this paragraph and in Paragraph IV of this section shall
13 not operate to prohibit the General Assembly from enacting
14 laws relative to the above subject matter or to prohibit the
15 General Assembly by general law from regulating, restricting
16 or limiting the exercise of such powers. The whole thrust of
17 this section on this paragraph is as to powers, not as to
18 taxation, and I have totally deleted it from my draft, and I
19 just wanted to call your attention to the fact that that
20 language is not in this draft and get your direction as to
21 what action, if any, should be taken with respect to it.

22 MR. SMALLEY: I'd just as soon forget it myself.

23 CHAIRMAN SELL: I suspect that others would --

24 MR. SUMNER: If you specifically enumerate all these
25 purposes, do you in fact prohibit the General Assembly from



operating in those areas if you don't have something like that? That was the fear in Amendment 19, that's where the thing kind of came up, they were afraid they would knock the General Assembly out of regulating Amendment 19 enumeration powers. You don't need it to take the broader approach because everything is going to be defined by law anyway.

I don't know, that's just a question to throw out anyway.

CHAIRMAN SELL: My primary thought about it was that this whole paragraph addresses itself to the question of powers, and not the purpose, not to taxation. I thought it was not germane to this section anyway, but I didn't want you to find out later that I deleted it and I had not mentioned it.

MR. SUMNER: This section grants powers to tax to the county. Should they be subject to regulation. That's a question that might be addressed to the legislators themselves.

CHAIRMAN SELL: I suspect the legislature will have, some of them will have very strong ideas.

MR. SUMNER: Louis Harvey I think may have been behind some of that rewrite as it was rewritten in '76. He wrote in that language in Amendment 19. This pretty much tracks it as far as general law type stuff, I don't know what his reasons were.

CHAIRMAN SELL: Frankly I don't know what it means.

MR. SMALLEY: When did that get into the

constitution?

MR. HENRY: What's that?

MR. SMALLEY: That last unnumbered paragraph after 14.

CHAIRMAN SELL: It's not in the '45 constitution.

MR. HENRY: I think it was put in here and in Amendment 19.

MR. SUMNER: They had a particular reason, and I don't know what it's there for either exactly, but I know why they put it in Amendment 19 specifically.

CHAIRMAN SELL: The reason why it's confusing to me, it says that the General Assembly can limit the powers but can't withdraw them. It seems to say you can have a partial withdrawal maybe, but not a total withdrawal, and I don't know when one ends and the other one begins.

MR. SUMNER: Amendment 19 says they can regulate, restrict or limit, and I think they tried to make sure the General Assembly has the -- One of the concerns that came up about Amendment 19, for example, was in the area of police or fire, you know, was the General Assembly -- In fact, there was some question about the POST law, the police officers training law, could they even do anything as far as operation of the police departments in the state, the fire departments, and they got very nervous, in fact -- what's the fellow that wrote an article in '75 on Georgia law to deal

with home rule, and he raised the issue of whether -- oh, Alan Howard -- Alan Howard wrote an article under the '72 draft to Amendment 19 where the General Assembly had in fact given cities and counties all kinds of power in these areas, and some read that, and they got real nervous and put this language back in to make sure that it was not autonomous and the General Assembly could in fact come back in and regulate it. Now, whether they still feel that way --

You might could find out why it was there. What your point is is should it be here or over.

CHAIRMAN SELL: Should it be here or in the powers section, yes.

MR. HILL: I would suggest that we send this paragraph to Brinson's committee too because the language is almost identical in the population provisions to Amendment 19, and it's my recommendation to send this over to Bob's committee as well and ask them to work with this.

MR. SMALLEY: I think that would be appropriate.

CHAIRMAN SELL: Any dissent from that?

If not, it is so ordered.

MR. SMALLEY: While we are passing off, let's suggest to him that he get the legislature back into zoning.

CHAIRMAN SELL: It seems to me that as chairman of this overall committee it's within your power to make that reference on your own if you wish it made.

We have yet to deal with Sections VII and VIII. Section VII deals with limitations on local government indebtedness, and Section VIII as I had revised it related only to revenue obligations, but it's obvious we need to take some of the stuff I put in Section V, we have already put that in Section VIII, we have already given that direction.

What is your pleasure? It is quarter to four. Do you want to go on a while?

MR. KNOX: I've got to run right now. In fact I'm a little late for an appointment. I appreciate your letting me sit in.

CHAIRMAN SELL: We are delighted for you to come. We enjoyed being with your father a couple of weeks ago.

(Mr. Knox withdrew.)

CHAIRMAN SELL: Do you want to go on to Section VII, or would you like to take up Section VIII which is relatively short, and leave Section VII? Do you want to postpone consideration of both for another meeting?

MR. SMALLEY: It seems to me we have been making some pretty good progress, I would hate for us to lose this momentum if the committee is willing to work a few minutes longer.

CHAIRMAN SELL: I told my wife to fix me a sandwich and I'd be in Macon when I got there, so I'm at your disposal.

Shall we keep going?

All right. Let's take up Section VII.

Now, here I changed the definition of local government in my draft to include boards of education, because in most counties of this state boards of education do in fact authorize the issuance of general obligation bonds. Whether that is wise or desirable in view of the other language, but as far as I know the omission of board of education from this comparable section never caused any problem, but it just occurred to me -- It's never caused any problem?

MR. MORTON: Not that I'm aware of.

CHAIRMAN SELL: So maybe if it ain't broke, don't fix it, as a friend of ours is wont to say.

What is the thought about that?

MR. SMALLEY: I would agree with that suggestion.

CHAIRMAN SELL: Delete it?

MR. SMALLEY: (Nodded.)

CHAIRMAN SELL: Is there any objection to deleting board of education from this proposal?

Ed, now we're dealing here with, we're defining -- this would leave the definition of local government including municipalities.

MR. SUMNER: I think in the present code it's listed counties and municipalities.

CHAIRMAN SELL: The limitation on county and

municipal debts.

MR. SUMNER: As I look through it all you did was make it editorially shorter I think.

CHAIRMAN SELL: Well, they are sort of governed by a different procedure, I don't really know what it is for board of education.

MR. HENRY: Do they issue their own bonds, or do they have the county issue the bonds for them?

CHAIRMAN SELL: I don't know. I'm not an authority on that. It's my understanding that in most counties they call for the election, 156 I think.

MR. HENRY: I asked that -- I would ask Jack, they don't have any taxing power, so --

MR. MORTON: The board of education? They do in most counties.

MR. JACKSON: About 156 of them.

MR. HENRY: They have to have the county commission levy the tax for them, don't they just certify what amount they need?

MR. MORTON: The county commission levies the tax, but they recommend the tax.

CHAIRMAN SELL: Well, up to 20 mills in 156 counties or whatever it is Ray says. As long as the levy does not exceed 20 mills or any greater millage that's been authorized by a vote, it's mandatory that the board of

commissioners levy the tax, but that's M&O money, it's maintenance and operations.

MR. SMALLEY: It's a semantics problem. Technically the county commissioners levy the tax, but they don't have discretion not to do it once the board, the county board recommends it.

MR. HENRY: But if you got a tax bill and it was sent out by the county board of education, you don't get a tax bill sent out by the county board of education. The county is the only political subdivision that has been given the authority or been delegated the authority to tax, and the county board of education presents their budget, certifies their budget to the county commission -- you know, you all work in this area, but that was my understanding was the --

MR. SMALLEY: How did this question arise? What question are we trying to answer?

CHAIRMAN SELL: I started it because I stuck the phrase board of education in this limitation on local government section, not exceeding --

MR. SMALLEY: I think it's within the limitation of it by virtue of what has been said.

CHAIRMAN SELL: I think the 20 mills now is M&O money, not -- Jack, do you know of any board of education that floats their own bonds?

MR. MORTON: I don't know who floats the bonds,

quite frankly.

MR. JACKSON: I know who does in our county. As I say, we've got a separate thing on it.

Do you know, Mr. Sell?

CHAIRMAN SELL: It was my impression, and I really don't know -- it was my impression the board of education calls for the election and --

MR. MORTON: I think you're right.

CHAIRMAN SELL: -- and they're board of education bonds in most counties, they issue in the name of the board of education.

MR. JACKSON: Should they be restricted the same as the other ones?

MR. SMALLEY: I'm sorry, I can't answer that. Let me see.

MR. HENRY: The reason I brought that up is because wouldn't think they could issue bonds unless they could tax to pay for them if they were general obligation bonds.

MR. JACKSON: Can they or can they not tax, Jack?

MR. MORTON: I don't know. I think it's a question of semantics. To me, if they can require the governing authority of the county to levy up to 20 mills that virtually is the same thing as taxing.

MR. JACKSON: In some counties they draw up their own levies and submit them.

MR. SMALLEY: We come to Article VIII, Section VII --

CHAIRMAN SELL: It says the fiscal authority of the county, shall annually levy a school tax for the support and maintenance of education, --

MR. SMALLEY: Not greater than 20 mills per dollar.

CHAIRMAN SELL: -- as certified to by the county board of education upon the assessed value, not exceeding 20 mills, which indicates that the board of education does not make the levy.

MR. SMALLEY: That's right.

CHAIRMAN SELL: It may be the better part of caution is since we're not dealing with education to leave out any reference to it.

MR. SMALLEY: I would think that we wouldn't make any waves by leaving it out as we might by putting it in, that we could pass that one on to the Select Committee.

CHAIRMAN SELL: Paragraph II of my draft here states basically that unless otherwise provided by the constitution the debt limit is ten percent of the assessed value of all the taxable property, and except as in the constitution provided no local government shall acquire, shall incur any new debt without the assent of the majority of the qualified voters and so forth. That generally follows the existing language.

"All constitutional provisions, general or local

laws in conflict with this paragraph shall hereafter be null and void but the validity of any bond issue validated prior to the date of ratification hereof shall not be affected hereby."

Now, that is a much shorter version of the existing language. The existing language says that the debt limitation shall exceed ten percent, then it goes on, the existing language says no county, municipality or subdivision shall incur any new debt for a temporary loan or loans not to exceed one-fifth of one percentum of the assessed value of the taxable property therein without the assent of the qualified voters.

What I did in my draft here was to turn that around, and if you'll look at the first paragraph of Paragraph III, it authorizes the local governments to incur debt to the extent of one-fifth of one percent as being one of the exceptions. I have not had any intention to change the substance of this, but simply to -- this thing is replete with exceptions, and I have just tried to pull the exceptions out and state when they apply.

There is some language in this existing law providing special registration of the voters, municipal corporations of such counties or municipal corporations or other political subdivisions declared to be null and void. I have left that out as probably being long since

superseded.

MR. SMALLEY: It would be a good point to check, nonetheless, to see if there -- I don't know of any bonds that would still be out from before the '45 constitution.

CHAIRMAN SELL: There is an existing provision in the existing constitution that the General Assembly shall hereafter have no power to pass or enact any law providing for such special registration.

It seems to me that that was surplusage because Paragraph II states that no new debt can be incurred without the assent of the majority of the qualified voters entitled to vote in elections for local government officials. It seems to me -- I may be wrong about that, but it seems to me that would preclude a special registration.

But with the exception of leaving out those references to special registration, we pretty well followed the language of the existing section and pulled out the exception as to one-fifth of one percent and put it down into the list of exceptions.

MR. HENRY: I would think that -- I'm sorry. Go ahead.

MR. SMALLEY: No, my thoughts aren't formed. Go ahead.

MR. HENRY: I would think that dealing with special registration for bond elections would probably have been

declared null and void by the voting rights act. I think that may be the reason that's in there is that they had special elections only for property owners or something like that. I know there's a whole election law and cases that have grown up around that, but I could check that out and make sure we are not dropping anything that --

CHAIRMAN SELL: I had speculated that because lots of times the real old constitution provisions required that the election must -- you not only must have a majority of the registered voters to vote, but you must have a majority of the registered voters to vote affirmatively, which means if you had 50,000 people, you had to have 25,001 to vote for a bond issue, and a good many years ago that was changed to read a majority of the voters voting in the election, and I think probably my speculation was some of these special registration laws may have been designed to get around that majority of the entire voters rule, but I don't know that.

Paragraphs, Subparagraphs II, III and IV are really extracted from various paragraphs of this Section VII. I have not intended to change any substance of any of these, but they're all scattered about through the section.

There is a paragraph which is denominated as Paragraph III in the existing Section VII which refers to additional debt authorized when, and that provides for an additional indebtedness of three percent above seven

percent, and since we are already providing for a ten percent limitation I saw no reason to retain something that authorizes seven plus three.

MR. HENRY: Cities and counties right now can incur debt up to 13 percent, and that seven percent was supposed to have been changed to ten percent when they amended Paragraph I over here, but they didn't. There's an Attorney General's opinion on that specifically.

MR. SUMNER: That they mean 13?

MR. HENRY: That you can go up to 13, yes, because it says in addition to the debt authorized in Paragraph I which is ten percent. Then it says in the next sentence seven percent of assessed value, but I will get that Attorney General's opinion so you won't think I am trying to pull a fast one on you.

MR. HILL: They wouldn't think that.

MR. HENRY: The Attorney General says this provides, for two different methods of incurring debt, in Paragraph I and in Paragraph III are two separate methods for incurring debt and you can presently go up to 13 percent of the assessed value of the property.

CHAIRMAN SELL: Obviously if the intent of Paragraph III is to authorize 13 percent, then maybe we've got to do something about it.

MR. HENRY: Well, three percent over and above ten

percent.

CHAIRMAN SELL: Yes.

MR. HENRY: In other words, you can go up to ten, and then in order to go up to 13 you have to go through the special procedures here, which I take it are more onerous than the procedures in Paragraph I.

MR. SUMNER: Has anyone ever used that to anyone's knowledge? Has anyone ever used that additional debt? Does anybody know if there has been a referendum held under it?

MR. HENRY: Somebody was asking the Attorney General if they could use it to go up to 13 percent, so somebody has.

CHAIRMAN SELL: It looks like to me the provisions for this are identical in substance to the basic authorization. What more onerous provisions are there? It's to be paid within five years?

MR. HENRY: Five years.

MR. SMALLEY: Have a special tax set aside for it which would be the same.

CHAIRMAN SELL: You've got to do that anyhow.

MR. HENRY: That would be probably the exception to the earmarking, the exception to the prohibition against earmarking.

MR. SMALLEY: When was this Paragraph III added? It's not particularly new.

MR. MORTON: It's been there a long time. I don't

know how long.

MR. SMALLEY: Where did you get the saving clause language?

CHAIRMAN SELL: I suspect that's --

MR. HENRY: The Attorney General's opinion, if you want to check it out, is Attorney General's opinion U-77-13.

CHAIRMAN SELL: I can tell you about where I got part of it; some of it is mine.

It does not appear to have been in the '45 --

MR. HENRY: Yeah, it was in the '45 I'm pretty sure. In fact, it may have come in during the --

CHAIRMAN SELL: Should we put that back in, then, changing the word seven to the word ten or --

MR. HENRY: We had done that in the Select Committee meeting. When we revised the first five articles of the constitution as presented to the legislature we pointed out the fact that there had been an error made there, that it should actually be ten percent in that paragraph, and they went along with it, and the constitution had it gone through the General Assembly this past session would have passed out of the General Assembly with that change made in it.

CHAIRMAN SELL: If we change the word seven in here to the word ten, then we would --

MR. HENRY: That would fix it.

CHAIRMAN SELL: Thirteen percent sounds like an

awful lot to me.

MR. SUMNER: That's 13 percent of the assessed value, and that's 13 percent of forty percent; that's not 13 percent of the fair market value. They construe the assessed value being forty percent, right? So it's not that much, really.

CHAIRMAN SELL: It's a lot of money. You've got a half billion dollar digest, there's a lot of folks there -- I mean assessed value.

Frankly I had deleted it because seven and three added to ten, and we already mentioned ten; that's why I deleted it. So whatever you gentlemen think ought to be done about it --

MR. SUMNER: One other change that was made in here I noticed in Paragraph II, I don't know what the purpose was, you left out the part about approving contracts for equalization in evaluation have to be approved by the Revenue Commissioner and carried out pursuant to his rules and regs. I don't know if there is any -- I can imagine why Ed may have left that out, being a county attorney, but I don't know if that would cause problems for the revenue people or not, if there's some need for that.

MR. SMALLEY: You mean re-evaluation?

MR. SUMNER: It gives them the right to -- where is the language -- the counties to incur debt to undertake

re-evaluation and equalization program provided that it's paid back in seven years, and there's a provision in the present constitution which requires that, further provides that any contract the county signs to undertake re-evaluation has to be approved by the State Revenue Commission, has to be carried out pursuant to its rules and regulations. I believe that's -- you know, that's in that same section here. It's right at the top of page 81.

Is it ever used? Is there anything to it? Does it mean anything?

MR. SMALLEY: It was used a whole lot in the late sixties.

MR. MORTON: It was used in the late sixties and the mid sixties.

MR. SUMNER: It's a dead letter now is basically what you're saying?

MR. SMALLEY: I'm not sure that it is. The counties are mandated now to undertake continuing re-evaluation programs.

MR. SUMNER: It's right at the top of page 81, that section right there.

MR. HENRY: Do they have rules and regs on that?

MR. MORTON: Yes.

MR. SMALLEY: I'm sure if you check with the Revenue Commissioner that he's got several counties with loans

outstanding now.

MR. SUMNER: That may or may not be a significant oversight the revenue commissioner would like to keep.

MR. JACKSON: Was that in basically to make all counties use the same format or procedure for re-evaluation?

MR. MORTON: The second part of the language probably was. The first part, of course, was to allow them to finance the cost of the program a three or four-year or five-year period.

MR. SMALLEY: Without having an amendment on it?

MR. MORTON: Right.

MR. HENRY: That was the subject of at least one constitutional amendment, local constitutional amendment that I'm aware of in St. Marys, they did it by local constitutional amendment before the provision was --

MR. SMALLEY: What, made a loan?

MR. HENRY: Got the loan for the property re-evaluation before this went in.

MR. SMALLEY: I think that needs to be included as an exception. We don't need all this language perhaps.

CHAIRMAN SELL: I think probably that stems from some litigation they had in DeKalb County many years ago when they had what they called the cadastral survey which after some inquiry disclosed had something to do with the property, the re-evaluation. They held that that was not

something they could incur a debt for, and this was --

MR. SMALLEY: Specifically they couldn't incur that debt without following the provisions of this constitution without having a referendum.

CHAIRMAN SELL: Maybe they couldn't sign a contract.

MR. SMALLEY: Well, Arthur Bolton was the chief sponsor of the re-evaluation legislation, and it was his thing in the early sixties, and he sponsored not only the statutory requirements for re-evaluation but this amendment was authored by him I'm almost certain.

CHAIRMAN SELL: There's one thing that I left out of this provision that is in the existing constitution -- I take it you're on the evaluation and equalization -- it says that -- I can't even find it in here now -- that the State Revenue Commissioner has to approve the contract.

MR. HILL: Page 81 at the top.

CHAIRMAN SELL: I have left that out. Frankly I don't know why -- maybe at the outset the State Revenue Commissioner wanted to get in on the act, but the fact of the matter is all these contracts that I know we've let in Bibb County at least we don't let them until we talk to the State Revenue Commissioner, and it just strikes me that this was not an appropriate thing to put in the constitution, wasn't needed really, but I've left it out. If it shouldn't be left out --

MR. SMALLEY: I think the question that needs

addressing is whether we need to create an exception to be number 3 which would permit the making of loans for tax re-evaluation purposes.

CHAIRMAN SELL: Number 3 is to be paid back in one year. This is the old loan to supply a casual deficiency in revenue.

MR. SUMNER: You've got exception number two, paragraph 2, you've already got the exception for the property re-evaluation.

CHAIRMAN SELL: Right. That's the only thing I left out of Subparagraph II. Bob was talking about Paragraph III. I didn't realize that.

MR. SMALLEY: I'm sorry, but I'm unable to see it.

MR. MORTON: I don't see the authorization to incur the debt.

MR. HENRY: There's two numbers two.

CHAIRMAN SELL: I'm sorry. We've got Paragraph Roman Numeral III and subparagraph Arabic Numeral 3. Paragraph Roman Numeral III starts off by saying the provisions of Paragraph II shall not apply to the circumstances below.

Oh, you are missing a page? Well, no wonder.

MR. SMALLEY: I would like to see that Number II say something like borrow money for the purpose of paying for property re-evaluation and equalization programs as may

be provided by law.

CHAIRMAN SELL: One of your problems is that my secretary has misnumbered these paragraphs. We've got two Paragraph Number Twos. The one about property re-evaluation should be 3. I didn't catch that.

There is a preliminary phrase which applies to all of these, Bob. The local government may (3) borrow money for the purpose of paying in whole or part --

MR. SMALLEY: I don't have any problem with that.

My suggestion was instead of putting all these limitations in here that we just say as may be provided by law.

CHAIRMAN SELL: I see what you mean. Suppose there is no provision by law.

MR. SMALLEY: There will be. You've got to have faith.

CHAIRMAN SELL: How would you propose this section read, then? Three we're talking about.

MR. SMALLEY: The property evaluation and equalization programs? As may be provided by law.

CHAIRMAN SELL: I'll tell you what I'd rather do, I'd rather leave it in here as it is if your point is that perhaps the General Assembly ought to have the right to regulate this, I would rather add at the bottom of this subject to such restrictions as may be provided by law.

MR. SMALLEY: Why?

CHAIRMAN SELL: Well, I am of little faith. I don't know that the General Assembly is going to -- a lot of fine legislation has failed to pass for one reason or another in the General Assembly, as you well know, including some of your pets I suspect.

MR. SMALLEY: Well, you can sell almost anything in the name of housekeeping, and if you simply go to the legislature in 1983 and say this is one of the myriad bills that is needed in order to conform to the existing constitution, it does not make any substantive changes, bam, it's passed.

MR. HILL: There will be a myriad of bills.

MR. SMALLEY: We're not tippy-toeing around thinking that legislation is not going to be required by any constitutional revision.

CHAIRMAN SELL: I have no -- if that seems to be a reasonable probability.

MR. SMALLEY: The second point that I would make is that if you just cut it off and don't say as provided by law, then you're not really opening Pandora's box to any degree by permitting the borrowing of money for this purpose.

CHAIRMAN SELL: No, that's true. It's a finite obligation.

MR. SMALLEY: I would have no trouble with this just cutting it off at that point and don't say as provided by

law.

CHAIRMAN SELL: That would be better I think.

MR. SMALLEY: Then, of course, if the legislature chooses to do, as I'm sure it will, they could put limitations on it by general law.

CHAIRMAN SELL: They have always got means of doing it.

MR. SMALLEY: The idea of having all these limitations in here was to see to it that there was consistency. The whole thrust of the re-evaluation program is to get property values the same across the state -- still is, of course.

CHAIRMAN SELL: That's the thrust of some of this litigation that Marson Donaway has instigated and is going to file in Bibb County.

MR. SMALLEY: They tore up the Spalding County digest, we don't have a digest now.

CHAIRMAN SELL: I talked to Jim Owen yesterday.

MR. HENRY: Jack, under the equalization law does the Revenue Commissioner ever tell the county that they have to go in and re-evaluate their digest? He just keeps making percentage increases, he never will say --

MR. MORTON: He's not authorized to do anything except factor them.

MR. HENRY: Can he get to a point where he says

"You all have just messed this up so bad you need to re-evaluate?"

MR. MORTON: He has no power to do that.

CHAIRMAN SELL: If there is no real objection, then, let's put a period at the word purposes and delete the rest of that subparagraph 3.

MR. HILL: Meaning programs?

MR. SMALLEY: No, ad valorem tax purposes.

MR. HILL: Oh, ad valorem. Okay.

CHAIRMAN SELL: Okay. How about IV?

MR. SMALLEY: I would think the language should be a little cleaner if we said for property re-evaluation and ad valorem tax equalization programs.

Now, the temporary loans, did you cover all the bases on that?

CHAIRMAN SELL: I think that's verbatim from the -- with some slight modification of the language. I really think it's verbatim from the existing constitution.

MR. SUMNER: I have a very strong suggestion for change on that section.

MR. SMALLEY: You have left out the language about the resolution and so forth.

That whole second sentence it seems to me is left out -- that's not to say that it shouldn't be, but the sentence that reads -- I think the last two sentences are

left out.

CHAIRMAN SELL: I can't even find it in the original constitution now.

MR. SMALLEY: On page 82, that paragraph that begins on the preceding page.

CHAIRMAN SELL: Yes. All right.

Now, this is one reason why I had put in board of education in the preamble to this, because this refers to board of education. This says "In addition to the obligations hereinbefore allowed, each county, municipality, political subdivision of the state authorized to levy taxes, and county board of education..."

MR. SMALLEY: But definitionally it isn't necessary to define the board of education as a local government in order to have it in here.

CHAIRMAN SELL: But our preamble to this section, though, defines a local government as meaning now a municipality or county.

MR. SMALLEY: All that says really though is that when you want to include the board of education you have to do so specifically, and if you do it the other way you have included the board of education in all of this.

CHAIRMAN SELL: I see what you're talking about, Bob.

MR. SUMNER: If it says or the political subdivisions as the present ccde says, that automatically gets boards of

education, doesn't it?

The present provision says counties, municipalities or political subdivisions, and a board of education has been found to be a political subdivision, so aren't they covered by that anyway?

CHAIRMAN SELL: If they are, I would think so.

MR. SUMNER: I mean there are court cases that say they are, I think they're covered under it anyway whether you name them specifically or just leave it the way it is now saying political subdivision.

CHAIRMAN SELL: Bob has pointed out -- Excuse me. Go ahead.

MR. SMALLEY: I would say that it would be hard to fit that into the language which refers to the ten percentum of the assessed value of the taxable property therein.

MR. SUMNER: I see what you're saying.

MR. SMALLEY: What it probably says is the phrase "or political subdivision" ought not to be in Paragraph I. Ed's draft was correct.

CHAIRMAN SELL: While we are chewing this over, then, let's give the reporter a break.

(A brief recess.)

CHAIRMAN SELL: First, I understand on this Section IV then we do think that boards of education ought to be worked back into this so as to make this Section IV

applicable to them. We have now deleted boards of education.

MR. SMALLEY: The section numbered III that ought to be numbered IV?

CHAIRMAN SELL: Right.

MR. SMALLEY: I would be more comfortable just to leave boards of education named there rather than named in the definition section.

CHAIRMAN SELL: That's what my thought was. We will ask Mel, then, if you will work up some language which will permit boards of education to utilize Section IV here, whatever form it's ultimately reported out.

I think that while the reporter was out we generally agreed that the penultimate sentence in that Section IV could be changed to read "All such loans shall be payable on or before one year from the date on which made," or some such language as that.

MR. HENRY: That would extend it --

CHAIRMAN SMALLEY: Past December 31st.

Bob Smalley's point was that no longer do local governments operate on a January 1st-December 31st fiscal year, and even if they do they don't get their money at December 31st, and a city that borrowed money in the summer really needed to have -- if they got the taxes in the following January or February really needed to have until then to repay it.

MR. JACKSON: Also you would have a case like you

were speaking of while ago when if a county got sued on its tax digest and collected money for six or seven months and would have to borrow money to take care of that.

MR. SUMNER: That's a real big problem I think.

MR. SMALLEY: Spalding was able to get past January 1 before it had to borrow money, but if they don't get the digest approved this year they're going to be in trouble. Of course, they don't have any approved digest at all now, they're collecting under the '78 digest.

Let me make one comment. This particular exception that we're dealing with is tied almost entirely to the ad valorem tax. In other words, we're talking about a loan of up to 75 percent of the total gross income of the county collected in the last preceding year.

I guess I'm wrong, it doesn't tie it entirely to the ad valorem tax, does it? What about the hundred percent limitation?

CHAIRMAN SELL: That is not in this paragraph that I have. It's total anticipated revenues is the language, the hundred percent limitation.

MR. SMALLEY: Okay. So I don't see anything wrong with making it twelve months.

CHAIRMAN SELL: If there is no objection, we'll let it take that direction.

Paragraph V I think is verbatim from the disaster

loans. Let's see, maybe it isn't.

MR. SMALLEY: You left out some of the limitations.

CHAIRMAN SELL: I'm not sure I have left out limitations, Bob, I have reworked the language.

Well, I did leave out the phrase "of a municipal operation character" which is at the bottom of that.

It seems to me that the essence of these is that they can borrow up to 25 percent of the anticipated revenue for the fiscal year in accordance with the federal Disaster Relief Act of 1974, and there are two major provisions. One is loans can be cancelled in the event the revenues during three fiscal years following the major disaster are insufficient to meet the operating budget. That is one limitation.

There is another one --

MR. SMALLEY: I'm not sure your language quite does that. You see, the present constitution says that it shall be subject to the requirements -- no, subject to the condition that requirement of repayment shall be cancelled.

CHAIRMAN SELL: Well, my language here, "provided that any such loan shall be cancelled." I see what you mean. All right.

Okay. Let's go back to the original language.

MR. SMALLEY: I believe it would be a little --

CHAIRMAN SELL: Do you know what we're talking about

there, Mel?

MR. HILL: Yes.

MR. HENRY: The original language as exists in our present constitution?

CHAIRMAN SELL: Right, yes, insofar as it relates to cancellation.

MR. HENRY: Oh. Okay.

CHAIRMAN SELL: You can put the rest of it in if you want to give the statute cite. I don't know that that's --

MR. SMALLEY: I would think -- How about if that Number IV or V just said obtain federal community disaster loans in an amount up to 25 percent of the anticipated revenue of the fiscal year for such local government in which the disaster occurs, period.

Most of these other limitations could be written into the federal disaster loan program, the cancelability and all those things.

CHAIRMAN SELL: I think if you're going to get the money you're going to have to dance to the federal government's tune on it.

MR. SMALLEY: And you only qualify if they determine you've had a disaster. It might be sort of like the insurrection section that overrides everything else.

CHAIRMAN SELL: Allright. If there is no objection, then we will let it --

MR. HENRY: I think being tied to a federal law it would be dependent on federal rules and regulations as to how you could do this.

I think maybe sometimes when we adopt provisions or amendments to the constitution that appear to allow us to get funds under federal law it appears to be overkill in that they just don't spell out the entire federal law in the constitution itself, but the people who wrote that thought that, you know, it needed to be in there. I don't know the reasons why, what constitutional limitations made them put those in there but I'll check into that and see.

MR. SMALLEY: This came up the way most legislation does when somebody could have gotten a disaster loan but for the constitutional limitation, so they said "We'll correct that." It doesn't necessarily suggest any particular thought was given to the language that was used.

CHAIRMAN SELL: We can put a period after 1974, then.

MR. HILL: After "occurs." That's where I have the period.

CHAIRMAN SELL: Okay, "occurs." All right.

MR. HENRY: Maybe "the Federal Disaster Relief Act of 1974, as amended."

MR. HILL: I would rather not reference anything.

CHAIRMAN SELL: We're leaving out the reference to

the act as being federal disaster.

MR. SMALLEY: I somehow let us get past Paragraph II without voicing a quite considerable concern I have -- Section VII, Paragraph II.

My first concern is not too great, and that is I haven't really studied this language to see if it in fact accomplishes everything that the present language does, but I'm very concerned about the last sentence.

CHAIRMAN SELL: In my suggestion, Bob? Is that what you're talking about?

MR. SMALLEY: Yes.

For example, literally construed it would obliterate Paragraph III.

CHAIRMAN SELL: I think you would have to construe the two provisions in para materia, they are all in the same document.

MR. SMALLEY: Admittedly that would be a reasonable interpretation, but --

CHAIRMAN SELL: You think we ought to leave out all reference to constitutional provisions?

MR. SMALLEY: Well, let me beg the main question. Why do you need to say anything?

CHAIRMAN SELL: Because the existing section had some similar language in it. It suits me to take it out.

My guess is that the purpose of this was to at least

indirectly state that you weren't trying to upset any bond.

MR. DAVIS: Do you need the last part of the sentence where it says the validity of any bond issue validated prior to the date of ratification hereof shall not be affected? Do you need that?

MR. SMALLEY: Possibly.

I think the language you're dealing with was all that saving language from the '45 constitution.

CHAIRMAN SELL: Yes, that's right, and of course they've got in the '76 one over on page 81 there is an undesignated paragraph that says all existing local constitutional amendments adopted prior to November 5th, 1974 relating to maximum bonded debt limitation shall continue to be in full force and effect, not be affected by this paragraph, so they had a saving provision, a grandfather clause there, but I left that out.

MR. SMALLEY: Maybe it ought to be put back in in the general assembly section if somebody realized it.

It would be interesting to know which counties have exceeded it by local amendment.

MR. HENRY: I think one thing that this thing tells us is that -- and now it's coming back to me -- it was it was changed from seven to ten percent in 1974, and of the local amendments that I studied which was only from 1959 to 1979 there was only one county that raised its limitation by local

constitutional amendment, and they did it two successive years, passed the same local amendment two successive years, and that was Rockdale County, they raised their bond, their indebtedness to ten percent of the assessed value of the property, and prior to that -- I don't know, I haven't looked at those, but I would imagine what they would do was raise it from seven to ten percent -- I'm not sure.

MR. SMALLEY: If that be true, then it could be left out, it should certainly be left out, but --

CHAIRMAN SELL: Let's leave it out because I don't think as a matter of constitutional law we can impair the obligation of any bonds.

MR. HILL: The second part of the sentence you are suggesting we can omit?

CHAIRMAN SELL: I have no objection to leaving it in, but I don't think we could affect the --

MR. HENRY: I think once the bonds were validated in a judicial proceeding, I think that is conclusive for ever more.

CHAIRMAN SELL: As a matter of fact, that's what the law presently says.

MR. MORTON: But no one has attempted to go beyond ten.

MR. HENRY: You mean to thirteen on this, beyond ten under this?

MR. MORTON: Right. They have or have not, or have you looked, by local amendment?

MR. HENRY: By local amendment there has not been any since 1959 go above ten.

CHAIRMAN SELL: What shall we do, then, strike the first part of the sentence?

MR. SMALLEY: Are you back in Paragraph II now?

CHAIRMAN SELL: Yes.

MR. SMALLEY: Well, I would strike the whole sentence.

MR. HENRY: Is this a restatement of this, this unnumbered paragraph?

CHAIRMAN SELL: No, it's not. I thought when I first started reading it it was, but it's not, but it is a restatement to the extent that it says the validity of any bond issue heretofore validated shall not be affected.

Shall we leave out that sentence? Okay. Let me point out to you --

MR. SMALLEY: That would be my recommendation subject to one cautionary statement that you check with some bond attorneys or somebody and see if it would create any problems to do that.

MR. HILL: My impression is the bond attorneys just as a Pavlovian response will say it's dangerous, don't take it out.

CHAIRMAN SELL: There was one, this Paragraph Number II, Roman Numeral II, in the -- on page 81 of the old constitution I did leave out through inadvertence, and the reason why I left it out, I was cogitating about whether this thirty ought to be changed to forty, and I never went back and dictated anything on it, but I rather think this ought to go in in some form.

What happens when a local government issues a bond, a general obligation bond. They want you to levy a tax for the entire period of time sufficient to pay the bonded indebtedness, and this paragraph authorizes that. As a matter of fact, it says they shall, and I think it ought to be in there, but now since -- it's my understanding now the maximum limitation on bonded indebtedness is now forty years when it used to be thirty? Am I correct in that? I never got a chance to look back at it.

MR. SMALLEY: I don't know how it could be forty unless this is misstated here.

MR. HENRY: This is definitely a limitation. I don't see how you could modify --

CHAIRMAN SELL: Maybe revenue bonds only are forty years.

MR. HENRY: I think it is forty. I don't think you can modify the constitution.

CHAIRMAN SELL: I was thinking that -- Well, okay,

I just didn't get a chance to check it, but I really do think this paragraph Roman Numeral II on page 81 ought to be in to satisfy the bond buyers.

MR. SMALLEY: Yes. There's some question in my mind whether it's in the right place.

MR. HILL: Where this is on page 81, the first full paragraph?

CHAIRMAN SELL: Yes.

MR. HILL: "All existing local..."

CHAIRMAN SELL: No. I'm sorry. Paragraph Number II "Levy of Taxes to Pay Bonds."

MR. HILL: Okay.

MR. HENRY: It's forty years on revenue bonds.

CHAIRMAN SELL: Okay. The next paragraph is Roman Numeral IV which provides for a sinking fund, and this is verbatim as I recall from the existing constitution, but it was located somewhere else. This was in Paragraph V of Section VIII which has to do with revenue obligations, but it says all amounts collected from any source for the purpose of paying the principal and interest on any bonded indebtedness, and I moved it out of revenue anticipation section into this section and shortened it up a bit. I have adopted what I think is the basic language.

MR. HILL: You omitted the last sentence of that which is about violation of the provisions you're guilty of

malpractice in office.

CHAIRMAN SELL: Yes, Right. I think the General Assembly could do that by statute without it being in the constitution.

Any question about that?

MR. SMALLEY: Ed, I think the Paragraph V is the one that you lifted and brought up. Is that right?

CHAIRMAN SELL: That's right.

MR. SMALLEY: I don't construe that as dealing with anything except revenue anticipation certificates.

CHAIRMAN SELL: It refers to bonded indebtedness of any county, municipality or subdivision, or to pay for the retirement of such bonded indebtedness, and I just thought it got misplaced somewhere along the line.

MR. SMALLEY: I haven't read the whole section that carefully.

MR. HENRY: I think revenue bonds by their definition are not bonded indebtedness of the county, municipality or subdivision.

MR. SMALLEY: All right. I think you're right.

CHAIRMAN SELL: The savings clause in Paragraph V is partly my idea and partly something that appears in the existing constitution. We talked about this a little bit earlier today.

Again, I preserved local amendments, amendments of

local application or acts of the General Assembly enacted pursuant thereto which is substantially --

MR. SMALLEY: What is the '45 1023?

CHAIRMAN SELL: That is an act which created the Brunswick Ports Authority, and that's in the existing constitution for reasons -- Mike and I discussed this earlier as to why that was in there, and I didn't know why it was in there, but I didn't want to inadvertently repeal the Brunswick Ports Authority. I did not do any research obviously at that stage.

MR. SMALLEY: Why don't we move the Brunswick Port Authority to another article?

MR. HENRY: Before you do that, I would invite you to carefully scrutinize Georgia -- 214 Georgia 332 which says specifically that the 1945 Georgia law, page 1023, as amended by 1958 Georgia laws, page 82, is constitutional as to the purposes for which the bonds were issued, as to tax exemptions granted to the property of the authority, and I have talked to some people about it and no one could really tell me why it was retained in the '76 constitution, but they did tell me that there was a move to take it out, but that certain people who were involved in the authority itself came up and for reasons that I have not been explained yet that it was retained in there, but there's a case, a 1958 case directly saying the Brunswick Port Authority Act is constitutional;

it was attacked on several grounds.

CHAIRMAN SELL: Would it be agreeable with the committee if we deleted the last sentence in Paragraph V subject to the research on the part of the staff as to whether or not they find it to be necessary to preserve it, the Brunswick Ports Authority?

That appeared on page 83.

MR. SMALLEY: Well, where are the other authorities dealt with?

MR. HENRY: They are local amendments to Article -- to the revenue bond section, and in 1968 you had a general law which is, the authority for which is in Paragraph, Section VIII, Paragraph II, which allows the General Assembly to create development authorities, but up until 1968 in the period I studied you had I think somewhere around 37 percent of the local constitutional amendments created or provided for the creation of local development authorities.

MR. SMALLEY: I'm sorry, I intended to be asking about things like the state school building authority.

CHAIRMAN SELL: The Savannah Ports Authority maybe which is --

MR. HENRY: Okay. The state authorities, the bridge-building authority, the state school building authority, that was I believe held that was a public purpose, the state could create authorities to create public corporations to carry out

this purpose, and the revenue bonds issued by them were first, last and always bonds of a public corporation and debts of the corporation and not of the state.

MR. SMALLEY: Until '62.

MR. HENRY: The local authorities --

MR. SMALLEY: Let me get back to the thrust of my question which is simply why do we need Brunswick to be here?

MR. HENRY: Well, because the people who were involved in the Brunswick Port Authority had enough clout to get it put in there I assume.

CHAIRMAN SELL: I take it that really when it was first put in the constitution the constitutionality of the act was doubtful so they put it in the constitution. Subsequent to that time we now have a court decision -- is that right?

MR. HENRY: My understanding is it came in after the court decision.

CHAIRMAN SELL: After the court decision?

MR. HENRY: For reasons that I -- you know, I don't know, I don't know why it came in. I suggest, you know, if you call Mr. Gowan -- I think he was involved with it, and I think he could tell you why it needs to be in there much better than I can.

MR. HILL: Let's talk to somebody that can tell us why it can be taken out, if we can find somebody.

CHAIRMAN SELL: Charlie is going to say leave it in.

MR. HENRY: I would invite you to read the case and make your own decision.

CHAIRMAN SELL: 214 Georgia?

MR. HENRY: That was my conclusion was that it could be taken out. 214 Georgia 332, 1958.

CHAIRMAN SELL: Can then we tentatively -- can we say that the sense of the committee is that they would prefer to leave it out, but if a good reason appears to put it back in or leave it in and let the staff sort of look at that and report to you later?

MR. SMALLEY: Well, at some place in the constitution I would like to find language which would permit all things like the Brunswick Port Authority to be left out of the constitution.

CHAIRMAN SELL: I agree with you.

MR. HILL: Perhaps we should think about including a provision authorizing the creation of port authorities by the General Assembly more generally.

MR. SMALLEY: I think that's what we need.

MR. HILL: There is no further need --

MR. HENRY: Do you all have one in Griffin?

MR. SMALLEY: No.

CHAIRMAN SELL: Of course, this act -- this was not a local authority, I take it this was a --

MR. SMALLEY: It's a state supported authority, we

appropriate to it.

CHAIRMAN SELL: A state supported authority. Maybe there's somebody in the state government that could give us a --

Well, they're going to close up the building and the parking lot in a little while. If it is all right with you, we will leave -- in the draft we'll submit to you we'll either leave it out and tell you why it's left out or put it back in and tell you why we think it ought to be back in, and then the committee can make a judgment on it.

On Article VIII, the revenue obligations, we have already decided what needs to go from Section V -- I don't mean Article VIII, I mean Section VIII -- we have already decided on what has to be put back into Section VIII from Section V.

Incidentally, this language which is from the existing constitution authorizes the General Assembly to create development authorities to promote and further such purposes or authorize the creation of development authority by any local government, so maybe that's broad enough now. That's in the existing constitution.

MR. SMALLEY: I'd say we need to save that.

CHAIRMAN SELL: The only other thing that was left out of my draft of this article -- of Section VIII, excuse me, is two fairly lengthy sections which appear on page 84 of

your existing book which refer to refunding bonds, refunding bonds to reduce an indebtedness. It simply says what the General Assembly is authorized to do with respect to creating refunding bond commissions, and I left it out because frankly I never heard of it being done and, as a matter of fact, that's not the way you refund bonds in this day and time, you issue a new obligation to pay off the old obligation, and it just seemed to me this was an anachronism which could well have come from the depression days. That's Paragraphs III and IV of Section VIII.

MR. SMALLEY: Well, if it hasn't been used or if it currently isn't being active, I certainly agree with you. I just don't know.

CHAIRMAN SELL: I wonder if it would be possible then without specifically taking action on that, since I don't know either, after reading it would seem to me to be --

You haven't run into it?

MR. MORTON: No.

CHAIRMAN SELL: If you will, let's ask the staff to look into this and we will make a recommendation to the committee.

As I see it now, what we will need to do is to prepare a revised version immediately of things that were done here today, the changes that were made, and submit it to the committee, and we will need to have at least one other

committee meeting for the purpose of reviewing those. I take it it would take us about two weeks to get it, get this information out to the committee, and they ought to have some time to look it over, and how about putting Mr. Morton on your distribution list because what we're doing directly impacts his work, or vice versa.

MR. HILL: I would recommend the week of the 14th or the 21st of July.

CHAIRMAN SELL: I can't make it on the 21st, but if you would like to have a meeting on that date there's no reason why I have to be here.

MR. HILL: The week of the 14th or the 21st -- I mean the whole week.

CHAIRMAN SELL: I can't do it -- Oh, the week of the 14th?

MR. HILL: Any day that week or the following week, or the week of the 28th. If you think you only need one or two more committee meetings, given the progress you have made today, probably would be enough and you wouldn't have to meet until the end of July.

CHAIRMAN SELL: How about July the 29th?

MR. HILL: Okay.

CHAIRMAN SELL: Wait a minute. I'm sorry.

July the 27th is a Sunday, the 29th would be --

MR. HILL: A Tuesday.

CHAIRMAN SELL: -- a Tuesday, the 30th would be a Wednesday. Ed?

MR. SUMNER: I'll line up whenever you all say go.

MR. SMALLEY: Wednesday is a fairly good day for me.

CHAIRMAN SELL: Wednesday sounds like a fairly good day.

MR. HILL: That's fine.

CHAIRMAN SELL: Would you prefer to meet in the morning?

MR. DAVIS: It doesn't matter to me.

MR. SMALLEY: It suits me better to meet at 1:30.

CHAIRMAN SELL: I can make it at 1:30. All right. Let's say 1:30 then on Wednesday the 30th in Room 402.

MR. HENRY: Has this committee considered Section VIII? Have you all passed on that today, or are we going to consider that on the revenue obligations? I don't want to bring it up at this late hour.

CHAIRMAN SELL: What I had in my draft from Section VIII was essentially what's there, and then we were going to move back in Section V some of that language that was decided should more appropriately be in Section VIII, and the only other thing that was left out that was of any consequence was this refunding, and we'll take a look at that.

MR. HENRY: I would like to take your draft and maybe talk with Perry Michael over at the Attorney General's

office or someone about the entire thing on the bonding issue, and also on the general obligation issues. Time permitting, I would like to go through my local amendments and see if there's a trend, you know, maybe we could foresee the trend of the next general amendment in that area and maybe some particular purpose if there is something like that, unless they're just all different purposes, I'm not sure in that area.

CHAIRMAN SELL: Nothing is set in concrete. If you find something that we need to reconsider, we not only should but we will.

MR. HENRY: I'm not a committee member.

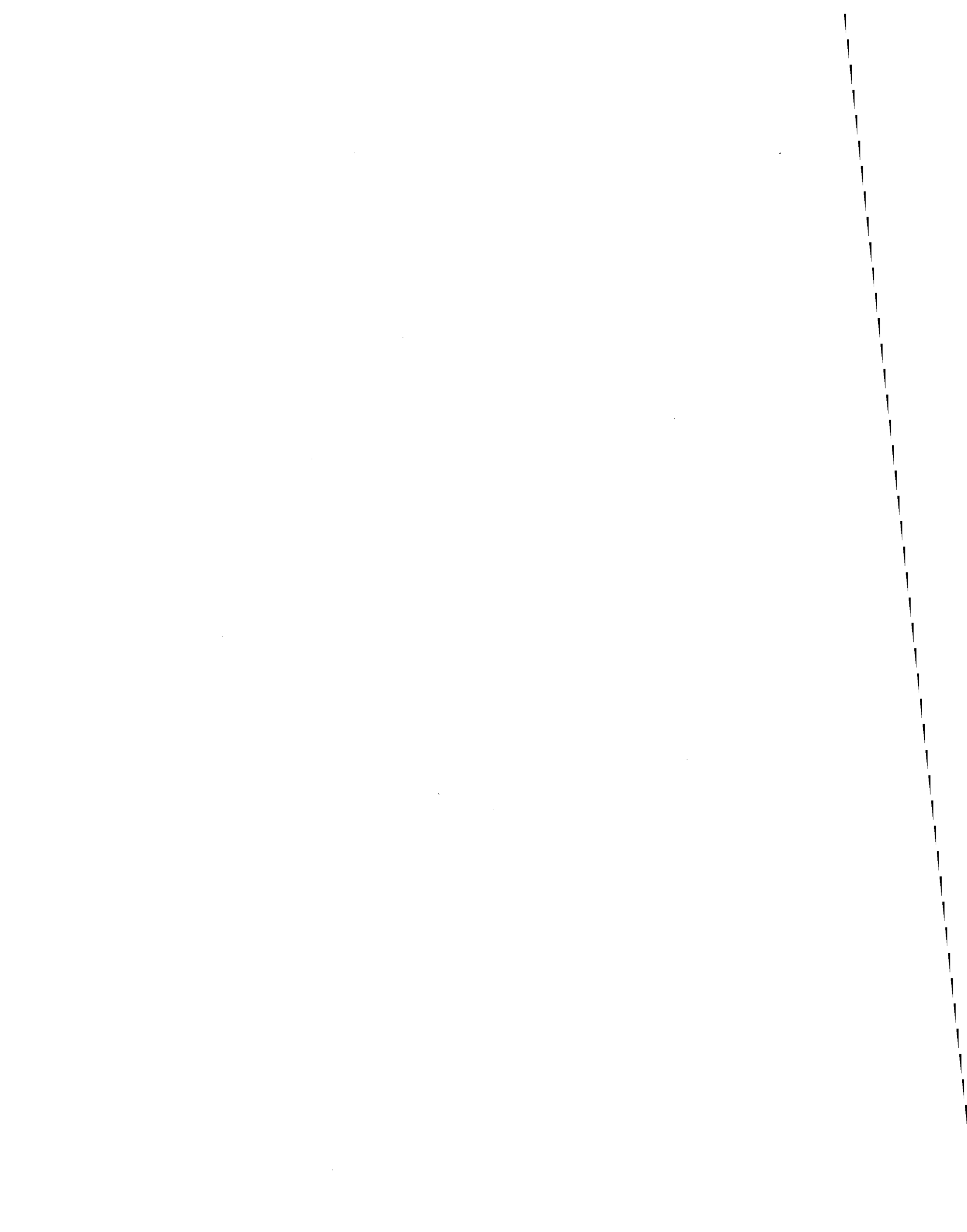
CHAIRMAN SELL: We depend on you to help keep us straight.

MR. HENRY: I don't know if I can do that either.

CHAIRMAN SELL: I thank you all for coming.

(Whereupon, at 5:25 p.m. the subcommittee meeting was adjourned.)

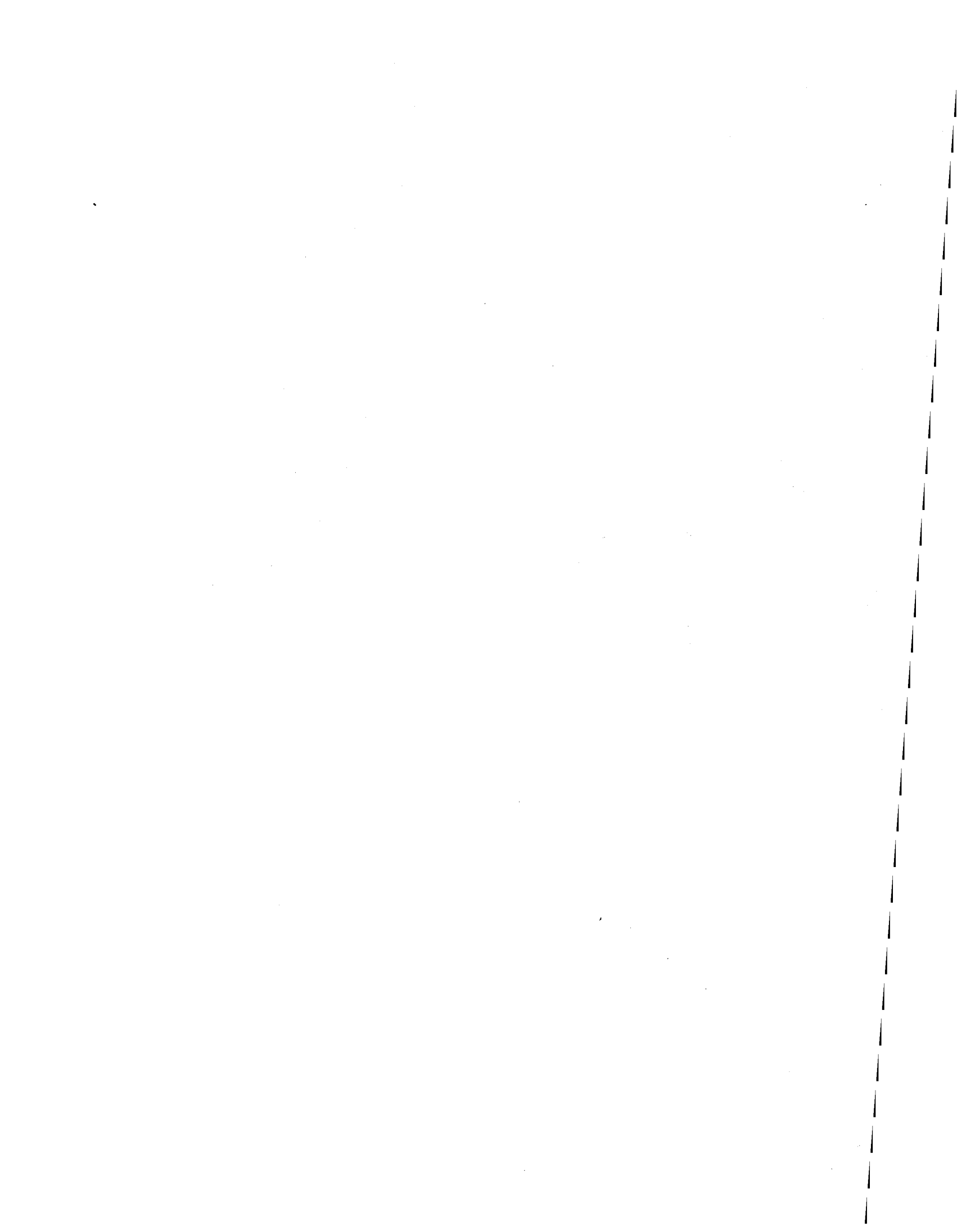
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Subcommittee Meeting Held on June 18, 1980



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STATE OF GEORGIA
COMMITTEE TO REVIEE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

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COVERDELL SUBCOMMITTEE ON
GOVERNMENTAL REORGANIZATION

Room 401-A
State Capitol
Atlanta, Georgia

Monday, June 23, 1980
10:00 a.m.

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PRESENT :

COMMITTEE MEMBERS :

CHAIRMAN PAUL COVERDELL

MR. JAMES BURGESS

REP. WARREN EVANS

REP. GRACE HAMILTON

MRS. ELINOR METZGER

ALSO PRESENT :

MELVIN B. HILL, JR.

VICKIE GREENBERG

MICHAEL HENRY

ED SUMNER

JAY RICKETTS

MARY VAN AMBERG

HARVEY FINDLEY

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P R O C E E D I N G S

1
2 CHAIRMAN COVERDELL: Let's get started, the hour
3 having arrived.

4 We would still be waiting for Merrill Greathouse
5 and Woodson Daniel --

6 MR. HILL: And Ms. Hamilton.

7 CHAIRMAN COVERDELL: -- and Ms. Hamilton.

8 MR. HILL: We haven't heard from any of them,
9 although Woodson Daniel asked to be relieved of his committee
10 assignment, and he was going to send someone in his place
11 until that happened, so he may not be here.

12 CHAIRMAN COVERDELL: That's certainly an indicator
we might not expect him to be here. He has asked to be
14 relieved?

15 MR. HILL: He has asked if he could be relieved
16 himself, and so I think he will be replaced. The Select
17 Committee will meet next Monday.

18 CHAIRMAN COVERDELL: All right. So we have myself,
19 Jim Burgess, Representative Evans, Elinor Metzger. I think
20 that is sufficient to proceed.

21 Melvin, why don't you, according to the discussion
22 we had prior to the meeting, brief our subcommittee on what
23 occurred in the other subcommittee meeting -- what is it,
24 Dr. Sentell, Professor Sentell?

25 MR. HILL: Professor Sentell.

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1 CHAIRMAN COVERDELL: -- Professor Sentell, and then
2 we will proceed.

3 MR. HILL: Okay. At the meeting of the subcommittee
4 on County and Municipal Powers which was held last Thursday,
5 Perry Sentell, who is a professor of law at University of
6 Georgia and has written extensively on home rule, came with
7 a presentation about home rule and the Georgia Constitution,
8 and a copy of his remarks is enclosed in your packet.

9 Now, the subject of home rule relates to that
10 subcommittee definitely, it's certainly within their ambit,
11 their jurisdiction, because they're the County and Municipal
12 Powers subcommittee, but it also relates to this subcommittee,
13 and in a discussion that Senator Coverdell and Jim Burgess
14 and I had a couple of weeks ago we had decided that --well,
15 no, it was Harvey Findley, Jim Burgess and I -- we had thought
16 that the topic of home rule, the whole issue of home rule
17 permeates the work of all the subcommittees and that it would
18 probably be worthwhile to have this committee as well as the
19 other committee to give its views on home rule and the basic
20 approach that should be taken by the Article IX Committee in
21 dealing with this whole topic, so for that reason we have
22 included the remarks of Perry Sentell made at the subcommittee
23 meeting, and Paul and I had thought that we would give the
24 committee members a chance to go through those remarks, give
25 you about five minutes just to look through what Perry had

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1 to say, and then I could summarize anything else if you had
2 any questions about anything in there, and then we would be
3 able to proceed to a decision agenda which is in your packet
4 which tries to set forth some of the questions that this
5 committee will be addressing, or that the full committee to
6 revise Article IX will have to resolve respecting this whole
7 matter of home rule.

8 Senator Coverdell had asked us to do this; this is
9 not a staff prerogative totally, we were asked to prepare such
10 a decision agenda, and we were hoping to work our way through
11 at least home rule today and try to get some reactions from
12 the committee about their feelings on these matters.

13 CHAIRMAN COVERDELL: All right. Why doesn't every-
14 body then take just a few minutes -- we won't be able to get
15 through all of it, but if you can get through page 9 I think
16 you will have gotten a good sense of what Professor Sentell
17 is saying to us.

18 Why don't we take a few minutes and let everybody
19 scan that.

20 (Pause.)

21 CHAIRMAN COVERDELL: Depending on where you are, at
22 the top of page 13, Section V, read rather carefully those
23 last four pages.

24 (Pause.)

25 (Representative Hamilton

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1 joined the meeting.)

2 CHAIRMAN COVERDELL: Okay. Melvin, why don't you
3 summarize and highlight your interpretation of the discussion
4 with Perry for us, please?

5 MR. HILL: I think Perry set forth very succinctly
6 exactly how the development has progressed. We reached the
7 point I think that one of the major things to be stated at
8 the outset is that we do have a difference between county
9 and municipal home rule in the sense the county home rule
10 powers are in the constitution directly exactly as they are,
11 and the municipal home rule powers are a matter of legislative
12 grace you might say, so we do have that distinction. That's
13 one of the first issues that we'll have to decide, whether
14 that should continue or not.

15 As Perry said, there are some reasons why he felt
16 that there is no need for that distinction to be maintained,
17 and this committee may differ with him, but he tried to make
18 the point that the counties by having their powers in the
19 constitution directly do not gain much benefit from the --
20 under the way the constitution has been construed, the way
21 these powers have been construed the counties have not gained
22 a great deal of benefit from having it there. If it were by
23 statute -- in other words, if it were changed and made
24 statutory as are municipal powers it probably would not
25 affect anything, so Perry has his bias that comes out in



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1 this paper.

2 Were there any questions about the history of the
3 development of this? I don't know that there is any needed,
4 but --

5 Ms. Metzger?

6 MS. METZGER: I have not read all the way through
7 this, but what would be the advantages of having it the other
8 way? It seems to me there are clear advantages of having it
9 by statute. What would be the advantages of putting it back
10 the other way, having it all in the constitution? Are there
11 any advantages?

12 MR. HILL: I personally don't feel there are any
13 advantages. Because of the way that grant is written, the
14 grant of authority to the counties in the constitution makes
15 it clear that they are still subject to legislative overview
16 and oversight, so I don't see there really is any practical
17 difference. I have not been shown one, so I don't believe
18 there is any advantage to having it in there, but I think you
19 can expect the county association, the county officials would
20 probably feel there is an advantage because it's there in
21 black and white and it's spelled out in three pages exactly
22 what they can do and what they can't do, so you may get
23 opposition, but I don't personally feel that that opposition
24 would be well founded from a legal standpoint or a practical
25 standpoint, but that is my own opinion. We'll just have to

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1 see.

2 I think the first question is what Perry brings out,
3 should the distinction continue to be maintained in the
4 constitution between county and municipal home rule powers.
5 It's Question Number 7 on this checklist that we tried to
6 put together. I think that is one of the more significant
7 things the committee will have to decide at the outset.

8 CHAIRMAN COVERDELL: Okay.

9 Let's move on, then, to our decision agenda and,
10 Jim, I notice you participated in the preparation of this
11 along with Harvey and Melvin.

12 I wonder if we should hop, in light of the direction
13 of this presentation, to the seventh question. It seems to
14 be a clear point to start. We will work backwards.

15 "Should a distinction be maintained in the
16 constitution between county and municipal home rule power?"

17 Jim, you brought this up at our last meeting, and
18 I think it's your view that the distinction should not exist
19 between the two. Why don't you open the discussion?

20 MR. BURGESS: I really don't see the need to
21 continue the distinction on a legal basis as far as home
22 rule is concerned.

23 THE REPORTER: A little louder, please, sir.

24 MR. BURGESS: I personally don't see the need to
25 continue the legal distinction as to the authorization of



1 home rule powers within the constitution.

2 I think Professor Sentell enumerated the advantages
3 by having a broad grant of power in the constitution and then
4 having that grant executed by statute enacted by the General
5 Assembly. Those advantages are in his paper.

6 I think the important consideration is the fact the
7 courts have given broader treatment when it is dealt with on
8 a statutory basis. That seems to be the history of the
9 holding of the courts.

10 So I concur with what Professor Sentell has put
11 forth in this paper that if we're going to take out non-
12 essential things from the constitution, one of our objectives
13 is to try to clean it up, to put the responsibility in the
14 General Assembly so far as enacting the appropriate statutory
15 authorization I think it would be desirable to treat counties
16 and cities the same way.

17 I can certainly appreciate the argument that would be
18 made against this, that once you have something in the
19 constitution that's a sovereign expression of the will of the
20 people and it is beyond -- it can't be changed except by a
21 vote of, a referendum of the people. In other words, the
22 legislature cannot come around and change on its own the
23 constitutional grant of home rule power in the counties, and
24 I think that can be argued as a distinct advantage if it is
25 in fact an advantage.

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1 On the other hand, if the courts intend to interpret
2 or construe more strictly that kind of grant of constitutional
3 home rule power, is that really an advantage? Is that not
4 offset by the fact that you can amend the statute as has been
5 the case with municipalities, that you do get a broader
6 interpretation as has been shown historically in the court
7 decisions when it is granted by statute?

8 It seems if you go on that line of reasoning that
9 it really is -- it's more desirable to use the municipal
10 approach.

11 CHAIRMAN COVERDELL: Well, that's --

12 MR. BURGESS: I think that there's got to be some
13 education, or people are going to have to be made to under-
14 stand that they're not really losing anything if you follow
15 Sentell's suggestion. That really also would be a gain.
16 You're gaining greater flexibility, and the grant of power
17 then could be adjusted to changing circumstances in the future
18 to make it even better, whereas now as far as counties are
19 concerned you've always got to come back to the people to
20 modify it, the constitutional grant of power.

21 My own feeling is that the constitution should be a
22 basic, broad enabling kind of document and its provisions
23 should be executed by general laws through the legislature.

24 CHAIRMAN COVERDELL: Okay. We really have two
25 questions here, the first one being should they be treated

1 separately; the second one being, if not, then how?

2 Is there more discussion with regard to should they
3 be treated separately? Is there anybody who wants to argue
4 the case that they ought to be treated separately?

5 MR. FINDLEY: Mr. Chairman, I don't want to argue
6 the point, but I think in this action there may be an
7 observation that might be in order.

8 CHAIRMAN COVERDELL: We will entertain that.

9 MR. FINDLEY: The evolution of county government
10 from administrative districts of the state into full blown
11 municipal type governments which has happened in varying
12 degrees, particularly in the bigger counties, has created
13 some kind of a problem that I think that the constitution
14 would need to address probably from the standpoint of
15 providing authority to the General Assembly, but as counties
16 evolved into municipal type governments and provide
17 municipal type services, then the taxing power of counties
18 remained like they were in the old administrative units.

19 For example, the counties historically have run
20 the courts and they've provided roads, they have provided
21 health services, and there is really no problem with counties
22 exercising countywide taxing powers for those kinds of
23 services because everybody needs the courts, all the
24 citizens in the area benefit from the operation of the courts.
25 The same thing with the county road system -- points could

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1 be argued about that -- but the same thing with health
2 services. So as long as counties have this limited role that
3 they used to have historically then there was no problem with
4 counties taxing countywide to provide those services, but as
5 they evolved into municipal type governments, and many of our
6 counties as you know are really municipal, more municipal in
7 nature than they are in the old traditional county role,
8 Amendment 19 addresses that voluntarily, and I think Amendment
9 19 is intertwined in this conversation because some powers
10 are indeed constitutional for municipalities and counties
11 and they are granted, so municipalities do have some
12 constitutional home rule under Amendment 19.

13
14 Amendment 19 had far more impact on counties because
15 it hastened this evolution, it made them full blown
16 municipal type governments without really resolving the
17 matter of the taxation, except to the extent of giving the
18 counties the authority voluntarily to address his matter,
19 and the counties with the exception of Chatham County I
20 think who has made a tax differential to give the city
21 dweller a tax break, I think Glynn County has -- if there's
22 been any others, I think perhaps Jay knows about them, but
23 Richmond has made a tax break, so there's been relatively
24 little use of this authority given to counties voluntarily to
25 make a tax differential and tax only within the unincorporated
area for municipal type services.



1 You have evolved into a situation where it's kind of
2 like the City of College Park taxing the City of Hapeville
3 for services because in the county as it evolves into a
4 municipality and starts acting like a municipality then its
5 taxing authority shouldn't be the same as it was when it just
6 used to run the courts, and this is a problem that I think
7 the committee will have to address one way or the other.
8 It's going to be the power that many, many local constitutional
9 amendments -- it's already generated local constitutional
10 amendments, and I think it's reasonable to predict that it
11 will generate many, many more, and --

12 CHAIRMAN COVERDELL: Several of the authors are
13 present.

14 MR. FINDLEY: And several of these constitutional
15 amendments, the ones you're interested in were authorized by
16 the General Assembly so they won't be inflexible, but some of
17 them are going to cast them in concrete; the problem to
18 resolve that difficulty is difficult I think, and my own view
19 is that this taxing power of the county has been overblown in
20 some respects, but it is a problem and it continues to be a
21 problem, it's going to generate local constitutional amend-
22 ments.

23 It seems to me that the uniformity of taxation
24 provision of the constitution is what Amendment 19 abridges
25 in authorizing the General Assembly -- I mean authorizing

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1 the counties directly to make this tax differential. I
2 think that's involved in the discussion as to whether or not
3 the constitution should make any distinction between counties
4 and municipalities, at least from the standpoint of authority.

5 I think that if you want to avoid a bonanza of
6 local constitutional amendments during the next ten years it
7 seems to me that that's going to have to be addressed.

8 MR. BURGESS: Do I understand your point then is
9 by having say Amendment 19 or the self-executing grant of
10 home rule powers in the constitution that leads to an
11 inflexibility that requires additional local constitutional
12 amendments to deal with specific situations in the future?

13 MR. FINDLEY: That's right.

14 MR. BURGESS: One additional concern I had is that
15 it seems to me that the legislative body of the state is a
16 policy body, it makes policy for the general health and
17 welfare of the state as the county commission does for the
18 county, as the city council does for the local municipal
19 community, and any time you lock into the constitution
20 something that takes away the prerogative of the legislature
21 to deal with something involving a policy standpoint you have
22 really, you have just created a system that is just not good
23 for the state.

24 In other words, if you have a problem you ought to
25 be able to take that problem to the General Assembly and say



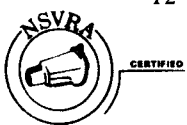
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1 "We need assistance in the form of legislation to deal with
2 the situation." Right now it appears to me that the
3 constitution precludes us from doing this. It certainly
4 precludes us from doing it in the area of planning and
5 zoning because they took away from the General Assembly --
6 in other words, counties and municipalities have been
7 elevated to the same level as the state legislature. It's
8 just like a local governing body, there's no distinction
9 between the local governing body and the members of the
10 General Assembly. I believe when it comes to the zoning or
11 at least the local governing body has now sovereign power
12 where formerly that power was vested in the General Assembly,
13 but now the General Assembly has been bypassed in that area.
14 I'm not comfortable with that kind of inflexibility there.

15 I would like to see levels of government, the
16 legislature exercising broad statewide policy role of saying
17 "Well, these are problems that we need to address within the
18 state" as a result of input from localities being able to
19 deal with those. I don't think the legislature can do that
20 today. The legislature of Georgia is very hamstrung as a
21 result of the legal system that has been developed within the
22 state over the last fifteen or twenty years.

23 MR. HILL: That relates to the question Number 5
24 which you might want to take a look at. I don't know if we
25 have to resolve any of these issues today, really, but

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1 "Should cities and counties be given autonomy..." to do just
2 exactly what Jim is asking, and at the present time they do
3 have autonomy in the area of planning and zoning.

4 CHAIRMAN COVERDELL: I suspect as we answer these
5 questions and move on the impact of answering Question 9 will
6 take us back to Question 3, but I still think that in order
7 to maintain some motion we'll try to get -- nothing we're
8 doing obviously is in cement, we understand we're going to be
9 coming back to the questions, but I think it will begin to
10 shape direction for us, so I think on this question of whether
11 there should be a difference or not I'm sensing by and large
12 the committee feels that if it were possible that it would
13 prefer that there not be a difference, recognizing there are
14 inherent problems throughout our discussion we'll have to
15 come back to, that that's the general direction of this
16 subcommittee at this point.

17 Is that true or not?

18 If it is the case, I think Question 8 here that I
19 have written in under my 7, constitution or statute, in the
20 discussion of 7 we had a good bit of discussion about already,
21 Professor Sentell and I think Jim have argued a strong case
22 that the powers in the constitution should be broadly stated
23 and that the system by which home rule, quote-unquote, be
24 granted to municipalities is more favorable conceptually of
25 the two rather than trying to enumerate them specifically in

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1 the constitution.

2 Is there other discussion regarding that? Is there
3 an argument for, or a strong case somebody would like to make
4 that they should be narrowly stated in the constitution,
5 I mean outside of certain existing jurisdictions I agree
6 with you will be a concern, and continue to be our general
7 direction?

8 If not, it would appear to me that the nature of the
9 subcommittee is to state that there should be conceptually
10 a broad statement in the constitution with policy powers
11 being in the hands of the General Assembly.

12 Yes?

MR. BURGESS: I would like to make this statement:

13
14 I think it would be desirable for the committee to have a
15 statement of the argument for having the grant of powers in
16 the constitution as opposed to being by statute just so we
17 can see what the arguments are. There are arguments for
18 putting it in the constitution.

19 I think we have seen the arguments for taking it
20 out of the constitution, and we really haven't seen the
21 arguments for leaving it in the constitution. I would like to
22 know what those are. I'm sure there are some.

23 REPRESENTATIVE EVANS: We've got a couple of fellows
24 here, one from the Municipal Association and the County
25 Commissioners Association, who are directly concerned about

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1 this. I would like to hear from them to get their feelings
2 if they would care to express them, not necessarily to be the
3 official voice of their association, but to get some feeling
4 from them because we want to do -- you know, we want to draw
5 a new constitution, we want to be in a position to help the
6 two bodies that we're talking about, municipalities and
7 counties.

8 CHAIRMAN COVERDELL: I'm certain we will not have
9 gone through the whole of this without hearing very
10 emphatically from both.

11 REPRESENTATIVE EVANS: I'm sorry they kept quiet
12 this long, really.

13 CHAIRMAN COVERDELL: You're asking for an official
14 statement similar to --

15 MR. BURGESS: We ought to have this as a part of our
16 record, both arguments.

17 What we have is the arguments on the statutory side
18 from the real authority, the foremost authority.

19 CHAIRMAN COVERDELL: Who would be the individual we
20 would most like to go to to get the other argument? Any
21 recommendations?

22 MR. RICKETTS: I think first of all that's a staff
23 function. We would be delighted in addition to respond as
24 well. I would like to respond to Representative Evans.

25 CHAIRMAN COVERDELL: Please do.

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1 MR. RICKETTS: I was present during Professor
2 Sentell's presentation, and if I understood and understand his
3 argument it boils down simply to some argument based on the
4 apparent belief that the courts typically construe statutory
5 grants of home rule authority more broadly than they do
6 constitutional, and I responded at that meeting, you know,
7 trying to sell county officials on the notion that home rule,
8 county home rule ought to be a matter of statutory law as
9 opposed to constitutional provision would at this point seem
10 to be a very difficult proposition because I think county
11 officials and the average person believes that there's
12 security in being in the constitution as opposed to merely
13 being at the whim of the General Assembly. Whether that's
14 right or wrong is hard to say, but I think that that at least
15 would be the perspective, the typical perspective.

16 I think the average county official would view such
17 a proposal that way.

18 I think that some consideration might be given to
19 changing the constitution, and I haven't thought this out, to
20 changing the constitution to authorize the General Assembly
21 to increase the amount of authority given to counties and
22 limit the ability to decrease it, but authorize the General
23 Assembly to expand it. That may be a thought that this
24 committee might want to consider.

25 REPRESENTATIVE EVANS: Can I ask a question?

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1 CHAIRMAN COVERDELL: Sure.

2 REPRESENTATIVE EVANS: Taking Amendment 19, how has
3 that worked as far as the county association and the
4 municipalities? How is that working?

5 What additional home rule powers or authorities do
6 the counties or the cities need that they do not already have
7 in Amendment 19?

8 MR. RICKETTS: I think the one area in which county
9 officials have universally suggested there needs to be some
10 major changes is in taxation.

11 We do not receive many requests for changes in
12 Amendment 19. In fact, the status of county taxation is
probably more of a concern than anything else.

14 I'm not sure that broadening the taxing authority of
15 counties is foremost on most county commissioners' minds.

16 REPRESENTATIVE EVANS: Your turn.

17 MR. SUMNER: I think the basic posture question
18 you've really got in this underlies the whole discussion, the
19 whole revision of all ten articles I guess, Article X or
20 whatever number they are, and that is how much do you think
21 the people of Georgia trust the legislature, and I guess
22 we're seeing in the present constitution -- I guess I
23 characterize it as reflecting the best thinking of the 19th
24 Century, we have carried forward the thinking from the 1877
25 constitution which is the gravest distrust of the legislature,

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1 and therefore we just specifically spell out what they can
2 do, and they're limited from doing anything else basically.
3 YOU know, that's your basic underlying posture question.

4 The more you trust the legislature, the more you're
5 going to give them the broad discretion to carry out the
6 policies, the broad policies in the legislative home rule
7 area.

8 From the standpoint of how much any greater home
9 rule -- from the standpoint of cities I think that we're
10 basically satisfied. Again, I think our home rule is
11 broader than the county home rule; at least the courts have
12 indicated they might more narrowly construe a direct
13 constitutional grant of home rule than they would the
14 legislative variety, and I think we're really happy with
15 what we've got up to now. Certainly we don't want to go
16 backward.

17 We're quite interested in looking into the Question
18 Number 1, that is the reversal of Dillon's Rule, and Dillon's
19 Rule I guess simply stated would be that municipalities have
20 only the authority granted to them by the General Assembly
21 or the legislature. If you reverse that, you say that
22 municipalities have any authority except what is taken away
23 from them by the General Assembly, and I think that we
24 certainly would support the broad statutory type approach
25 as opposed to limiting this in the constitution, but I think

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1 the other thing I wanted to touch on or to stress, I think
2 Mr. Findley earlier touched on the one underlying issue
3 which was causing the greatest amount of conflict between
4 cities and counties right now today, and that is -- and Jay
5 touched on it briefly, because as you mentioned his statement
6 of what counties are interested in, broadening their taxing
7 power to reflect the new grant of authority which they have
8 now under Amendment 19, and I think to really sum it up
9 Harvey stated in a lawyer-like fashion, I think to sum it up
10 that the big issue with the city officials and the city
11 residents is that municipal residents do not want to be taxed
12 twice for the same service, and if you've got -- as long as
13 the counties are doing the courts and doing the roads and
14 doing public health, which is basically countywide with some
15 exceptions I guess countywide type of services there was no
16 problem in countywide taxation, but when you get into a county
17 fire department or traditional police type problems, not just
18 the sheriff but someone actually out patrolling and having a
19 police patrol, some of the other type services, even
20 recreation for example, you have a very similar example in
21 the city management in Savannah, the municipal resident pays
22 a tax for his recreation service, he also pays a county tax
23 for a county recreation department, he has the use of both
24 departments, city and county; the unincorporated resident
25 pays a county recreation tax, one tax, and he has the use of

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1 both, so he pays one tax and gets the use of two. The city
2 resident pays two taxes and gets the use of two.

3 That's the type of thing I think that's causing the
4 greatest conflict. If you give the counties broad home rule
5 authority either legislatively or constitutionally I think
6 you'll have to address the issue of -- this is a term that
7 makes the county officials see red, but we call it double
8 taxation, that is a municipal resident paying twice for one
9 service. It just ought not to be that way.

10 CHAIRMAN COVERDELL: Let me insert a question here.

11 In terms of the concept of a broad statement in the
12 constitution addressing both, does that do violence -- I don't
13 see that as interfering with the subcommittee and/or the full
14 committee ultimately addressing taxation questions. Do you?

15 MR. FINDLEY: I think that the point I was making
16 is that you would need the flexibility if you decide not to
17 address it in the constitution, then you would be sure of the
18 language used and give proper authority, that the General
19 Assembly had the authority to address it legislatively
20 because the uniformity of taxation provision over in Article
21 VII of the constitution will give you a headache and give you
22 consitutional hangups if you don't get the authority to
23 address that, if you're going to address it statutorily.

24 In other words, you -- I think that some specific
25 mention if you take a broad approach to home rule insofar as



1 authorizing the General Assembly to provide by law or maybe
2 reversing Dillon's Rule, you could weigh the two. You're not
3 really stuck with these two options, you could grant a self-
4 executing grant of authority over say local affairs -- put
5 that in quotation marks -- with the proviso that the General
6 Assembly could by general law restrict and limit the
7 exercise of those powers. In other words, reverse Dillon
8 so the constitution grants the power and they wouldn't have to
9 look for authority to take an action, they would have to look
10 for a prohibition.

11 REPRESENTATIVE EVANS: That's what we did in the
12 revised Constitution for planning and zoning.

13 MR. FINDLEY: Planning and zoning you made
14 municipalities and counties in effect sovereign, but that's
15 basically the approach in the first part of county home rule
16 now is an attempt to reverse Dillon I think, and that could
17 be another approach with the revision of authority of the
18 General Assembly by general law to control and exercise these
19 powers, but insofar as the taxation thing I think whatever
20 approach you take that the uniformity provision of the
21 taxation over in Article VII will give you authority to work
22 that out statutorily unless the constitution makes it clear
23 that it has the authority to abridge the uniformity of
24 taxation provision of the constitution.

25 MR. RICKETTS: Harvey, are you taking the position



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1 that under Amendment 19 the General Assembly can establish a
2 tax service district by local act?

3 MR. FINDLEY: I don't think they can, Jay.

4 MR. SUMNER: I do. I think they could. I think
5 that's -- you know, there's some question we discussed before,
6 but one of the problems we've got I guess from the standpoint
7 of municipal thing is that it's more or less a voluntary type
8 thing right now. Counties can, if they're going to place
9 fire and these other enumerated municipal type services, they
10 can if they desire by -- and some now do have -- can establish
11 a special service district for taxation I think they call it
12 in the unincorporated area, but it's just not happening.

CHAIRMAN COVERDELL: There's not a rush.

14 MR. SUMNER: There's not a big rush.

15 If you're going to give them that same authority,
16 municipal type authority, maybe there ought to be some
17 specific requirement that it be -- or at least the General
18 Assembly given authority to address it in legislation, and say
19 the same bill gives authority to go into police service says.
20 "Well, these enumerated services you've got to fund by the
21 people to get it," but, you know, the city residents have
22 already paid for police, why should Atlanta residents pay for
23 Fulton County police which they're doing right now today,
24 they're paying for Atlanta city police and Fulton County
25 police.

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1 There was a four-three vote I think of the Fulton
2 County Commission which would have established a special
3 service district for the unincorporated area of Fulton County
4 for Fulton County police, it fell by a four-to-three vote.
5 You know, the unincorporated people like it because they're
6 getting service.

7 CHAIRMAN COVERDELL: Go ahead, Jay. I don't want to
8 cut you off.

9 MR. SUMNER: That's a big decision in counties today.
10 That sums it up.

11 MR. RICKETTS: Ed and I have agreed not to agree on
12 the subject.

13 Right now the General Assembly, as we all know very
14 well, can propose local constitutional amendments to set up
15 special tax service districts. In fact, a number have been
16 proposed.

17 I don't know -- Well, obviously our association
18 oppose, you know, giving the General Assembly unrestricted
19 authority to set these districts up without a vote of the
20 people. I mean we think that that is -- you know, if there
21 is a service distribution, service equity problem in a
22 particular jurisdiction, then the voters there can decide, if
23 the General Assembly or the local delegation thinks there is
24 one, then the voters in the election can either agree or
25 disagree, and giving the delegation that much authority

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1 would be a step backwards.

2 CHAIRMAN COVERDELL: I'm going to argue one point
3 on that, coming back to Jim's view -- the policymaker I think
4 on questions of that nature has to be elevated from fray
5 about it. To expect a single jurisdiction or two jurisdic-
6 tions within a city or a county really kind of boils down to
7 whose ox is being gored, and you can predict the vote
8 depending on population and several other questions how those
9 things turn out.

10 It seems to me that a general rule, a general
11 operating procedure ought to be established above these
12 local jurisdictions and the battles that are going to occur
between them so that it's spelled out very clearly.

14 You had something?

15 MR. SUMNER: My main response, and maybe I can
16 summarize what you're saying, is I think our position would
17 be that tax equity is a statewide concern and not something --
18 I think there ought to be some statement, but I think you did
19 that with the statutes on equalization, the property ought to
20 be assessed equally -- whether it is or not is another issue,
21 but it ought to be, you know -- everybody that lives in a
22 \$40,000 house in the county ought to pay the same tax, it's
23 the same type issue, tax equity is statement issue and
24 shouldn't be left like you say to the local citizenry to
25 provide -- in one county you've got more than half the

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1 people living in the unincorporated area, obviously they're
2 going to turn it down. You know, it's going to vary from
3 county to county type thing.

4 I think eventually Fulton County is going to come
5 around in their tax district because there more people inside
6 the city of Atlanta.

7 CHAIRMAN COVERDELL: It doesn't necessarily mean
8 that is the fair rule, it's just that that happens to be the
9 numbers.

10 MR. SUMNER: It's a numbers type thing.

11 The General Assembly ought to have the authority to
12 decide what's fair for the state, you know, and make the
policy.

14 CHAIRMAN COVERDELL: Okay.

15 Well, coming back to this question at least for the
16 moment, restating the position, it would appear that the
17 subcommittee is moving -- and we'll get this argument for the
18 constitutional enumeration as best we can -- it would appear
19 the committee is moving for a uniform doctrine for
20 municipalities, counties and (b) broadly stated in the
21 constitution in policy being set by the General Assembly.

22 Let's come back to Question 1. I'm going to tell
23 you so you know, I would at least like to get through
24 Questions 1 through now 8 today if we possibly can.

25 I think that this very quickly spells out for us



1 the number of meetings that may be necessary for us to hold
2 is going to be increased.

3 MR. BURGESS: I would just make one final comment
4 on this.

5 Could we possibly get the staff some way to have
6 somebody prepare a written paper of legal arguments, not
7 promotional or theoretical arguments, but of legal arguments
8 for continuing with the constitutional provisions enumeration.
9 In other words, you've got --

10 CHAIRMAN COVERDELL: Not the separation, you're not
11 asking for arguments for enumeration in the constitution?

12 MR. BURGESS: Professor Sentell's legal arguments
13 for going on a statutory basis, a broader basis.

14 I would like to have a companion piece that would be
15 the legal arguments for continuing it so we've got it in the
16 record and we know what those other legal arguments are, and
17 including any cases that might help, because he's given us
18 cases on the other side. We ought to have them so that when
19 we have to defend this we can say we have looked at both sides
20 from a legal standpoint, not an emotional one, that we have
21 looked at it.

22 CHAIRMAN COVERDELL: All right. We will request the
23 staff to do that. And secondarily, of course, written comment
24 is welcome at any time from any citizen and/or organization,
25 so, Jay, if you all want to put a statement in --

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1 MR. RICKETTS: All right.

2 CHAIRMAN COVERDELL: Before we move to Question 1,
3 I would like to -- on page 13 of Professor Sentell's state-
4 ment he basically makes the argument that the concept of
5 throwing the baby in the wash out and starting over does not
6 suit him.

7 His view is we should simply deal with Georgia
8 constitutional law and statute as it now exists and deal with
9 this question in the form of modification, and historically
10 versus taking the Kansas plan and inserting it.

11 Harvey, do you want to comment on that? Do you
12 have feelings one way or the other?

13 MR. FINDLEY: I think that in the context that
14 Professor Sentell made that observation you'd have to put that
15 into context of his recommendation from a policy standpoint
16 that he in giving the history and the evolution of home rule,
17 the present provision we have in the constitution, municipal
18 home rule where the General Assembly is specifically delegated
19 the authority to give municipalities the powers, that that's
20 the side that he came down as far as the basic approach to
21 home rule, so either take that as a point of departure as I
22 understood his remarks and use that as the basis for home
23 rule --

24 Now, he didn't make a determination of whatever
25 else you needed to take out of the constitution as a result

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1 to do that -- I think that would necessarily follow
2 whether or not you still need Amendment 19 or any part of it,
3 or whether that completely takes the place --

4 I assume from his standpoint it would have completely
5 taken the place of the so-called county home rule provision
6 in the constitution if you modify the grant to the General
7 Assembly to delegate its powers to include both counties and
8 municipalities, then he didn't reach a determination on
9 Amendment 19, he said that would necessarily follow that you
10 would have to analyze Amendment 19 and see what was there,
11 but I think that was his approach. It's not that you'd take
12 everything that was there, I think it depends on what you
decide as to what would need to be eliminated.

14 If you took his approach, then it would eliminate
15 county home rule as such, but you would still have to make a
16 determination probably on what you need to do with Amendment
17 19.

18 CHAIRMAN COVERDELL: Grace, do you have a view on
19 that comment?

20 REPRESENTATIVE HAMILTON: No.

21 CHAIRMAN COVERDELL: Anyone?

22 MR. BURGESS: I would say insofar as throwing
23 everything out, it impressed me -- I guess probably originally
24 I was leaning toward throwing it all out and starting from
25 scratch until I heard his argument, and I think he made a

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1 good point that you've got a history of judicial interpreta-
2 tions that we can rely on. If we throw it all out and start
3 all over, we're going to have to have a whole new history of
4 judicial interpretations. At least we've got the interpretat-
5 tion that's very favorable to us on the municipal side, and
6 he says why not take that and build on it.

7 Frankly, I personally really started out with the
8 presumption we would just start from scratch and write a
9 better provision than I think the sort of cumbersome detailed
10 approach that's now in it, but I have backed off. I think
11 his argument is salient.

12 CHAIRMAN COVERDELL: Something else that will
13 reinforce your thinking, if you've had a chance to scan the
14 states that were provided by Vickie, it's not terribly
15 comforting in terms of each individual assembly's efforts to
16 try to deal with this. They become very quickly unique as
17 Professor Sentell has stated to the historical development in
18 that particular state. It's very difficult to reach over and
19 take anything other than the broadest concept.

20 I was conceptually most interested in Kansas.

21 MR. FINDLEY: That's a coincidence, because that's
22 what caught my eye.

23 CHAIRMAN COVERDELL: You won't have time to go
24 through all of these documents, but I have marked the home
25 rule page for each of them at least through Utah, and before

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1 we leave I'd be glad to enumerate the page for you to save a
2 little time, but just if you can, on page 21 of the
3 Constitution of Kansas, subparagraph (b), Cities Empowered
4 to Determine Local Affairs, that one paragraph is an
5 interesting paragraph. It is page 21 on the Kansas
6 Constitution, you might want to take a look at that in fact
7 right now, Subparagraph (b).

8 Jay, do you have a copy of this?

9 MR. RICKETTS: Do you have an extra one?

10 CHAIRMAN COVERDELL: You can read mine, if you'll
11 return it.

12 (Pause.)

13 CHAIRMAN COVERDELL: All right. Essentially what
14 they have done is granted home rule except that the General
15 Assembly reserves the policymaking right of general applica-
16 tion. They may treat cities and counties in a general form,
17 not in a separate form.

18 Let's move from that into Question 1.

19 Melvin, I'm going to ask you as a matter of
20 procedure read each question, and then to make a comment if
21 you would. We'll open it up then for dialogue.

22 I think we'll use that as a procedure as we go
23 through each of these now and hereafter.

24 MR. HILL: Okay. The first question is "Should the
25 presumption of Dillon's Rule be reversed in the constitution,



1 and cities and counties be given all home rule powers that the
2 legislature might confer upon them, subject to legislative
3 limitations, exceptions and exclusions?"

4 As Ed has explained already, the concept of Dillon's
5 Rule is you have to find a specific ground of authority in
6 order for a city or county to be able to do any particular
7 thing; if you can't find it, the presumption is they can't
8 do it.

9 So the idea in this question is that that would be
10 reversed and the cities and counties would be presumed under
11 the constitution to have all powers of self government that
12 they could have, that the legislature could confer upon them
13 unless they can find that the legislature has taken away the
14 right to do that and, of course, the General Assembly would
15 be given the authority to take away at any future time, you
16 know, at any point powers that they had given or that a city
17 was presumed to have, by general law, of course.

18 That's the nature of that first question.

19 CHAIRMAN COVERDELL: Jim, would you comment on that?

20 MR. BURGESS: I would favor the reversal of Dillon's
21 Rule. The experience I've had in writing city charters in
22 Georgia, one of the concerns is we're always faced with the
23 empowerment of the city, and out of an abundance of caution
24 we would always enumerate the powers of the city because of
25 the fact that we felt that Dillon's Rule did in fact apply

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1 in Georgia and that you only had those powers expressly
2 granted or those which were necessarily implied in express
3 grants of power.

4 I guess we have written fifteen or twenty charters
5 in Georgia, and in most of those cases we did enumerate the
6 powers, including the new Atlanta city charter, although we
7 started to take a chance there because I feel like under home
8 rule that a good argument can be made that Dillon's Rule has
9 been reversed, but we would always back away from it.

10 Only in the Columbus Charter did we take a chance,
11 and I think there because we were using the special
12 constitutional grant and in that situation just said that the
13 Columbus city government, city consolidated government would
14 have all powers granted by the constitution and laws of
15 Georgia as now or hereafter amended, and they never had any
16 problem with that, however, they could be challenged on that,
17 but with that exception we almost always put in a long
18 laundry list of powers. In the Atlanta charter it runs over
19 a hundred enumerations, and it's inflexible in that if Atlanta
20 attempts to do something and you can't find that on that list,
21 the court would say "Well, since you didn't put it on the
22 list you really didn't intend for the city to have that power,"
23 and that's just exactly what Dillon's Rule does to you, and
24 I think we ought to knock it out or reverse it myself so that
25 you can really write a charter more like a corporate charter;

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1 you know, it's a broad enabling document, it just says the
2 government or the coporate entity has all powers authorized
3 by law, and go no further. But you can't do that in Georgia,
4 at least you can't do it safely.

5 Those are the reasons I submit we should consider a
6 yes answer to Number 1.

7 CHAIRMAN COVERDELL: Okay. Any other comment?

8 MR. SUMNER: I just want to mention one thing that
9 I think Professor Sentell brought out, and I kind of -- on
10 page 10 there the construction that the court put on the
11 phrase "self government", and he expressed some concern and,
12 youknow, got me thinking like he always did when I was in law
13 school about what would happen if you changed the way it's --
14 the wording of the constitution that said something to the
15 effect except as specifically limited by law or by this
16 constitution municipalities and counties shall have the power
17 of self government, period. Would the court look at that and
18 redefine what self government meant? I don't know in that
19 context.

20 You know, I think he was indicating you have to be
21 careful, and I think it's true, because he made the point here
22 that the current wording of delegation of municipality has
23 been construed to be very liberal. He said he couldn't
24 imagine a much more permissive judicial approach than that,
25 and I think he did point out that we have in fact -- at least



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1 we have modified Dillon's Rule to what we have now in cities,
2 and I think -- you know, I don't know if anybody, the staff
3 can come up with a definitive legal memo, you know, that would
4 change it, great, but I don't know -- it's really a very
5 serious issue.

6 If you change the phraseology in the present
7 constitution and you combine with what he wrote here on page
8 10 with what he wrote over here on page, the bottom of page
9 14 about the Georgia Supreme Court view on constitutional
10 home rule, would they view that as a more direct grant in
11 the constitution and therefore, you know, tend to be limited.
12 I don't know.

13 When you combine what he said at the bottom of page
14 14 with what he said on page 10 you're playing with fire --
15 and Harvey is grinning, I think he knows what I'm driving at.

16 CHAIRMAN COVERDELL: Harvey?

17 MR. FINDLEY: I think that the point that Ed made
18 is certainly well advised. It might be worth pointing out,
19 though, that home rule advocates were very, very fearful of
20 that self government phrase because it could be construed as
21 very limiting. They've gotten a favorable reaction from the
22 court with general laws on annexation, and it's very, very
23 questionable whether a grant of authority from the General
24 Assembly to grant powers of self government to municipalities
25 including annexation of territory, it would be hard to construe

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1 that as being self government when they're taking in
2 additional territory, and I'm very, very fearful the annexa-
3 tion laws will be upheld, but they were in a very favorable
4 kind of liberal interpretation of self government.

5 I don't know, though, that I would completely share
6 Ed's concern, but you might could come up with better
7 language there that would perhaps reassure the court, because
8 self government can be -- I think it could have gone the other
9 way -- the court could change it.

10 MR. SUMNER: I'm not saying you need to change it,
11 I'm saying if you just changed the wording it stillleaves
12 -- use the phrase self government -- we like the construction
it gives us is what we're saying, we want to keep it, or
14 that's a question --

15 MR. FINDLEY: Maybe you could phrase it where it
16 would be at least that, and then --

17 MR. SUMNER: In the guise of thinking we give
18 ourselves more authority, we don't want the court to say --

19 CHAIRMAN COVERDELL: For the purposes of what we're
20 trying to do here today, there's going to be a lot of time
21 for crossing Ts and and dotting Is. I think I would like to
22 get the general concept direction as spelled out by the answer
23 to the question. The committee should not feel it's signing
24 off on constitutional law by framing a general consensus of
25 what we would like to do.

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1 When we are confronted with the actual construction,
2 or somebody else is, all these questions will come to light
3 and they again will modify what's been done, but I think it's
4 very useful if we could at least establish a direction here.

5 MR. BURGESS: Let's move on, then.

6 CHAIRMAN COVERDELL: Okay. I think on Question 1
7 there seems to be a consensus here unless I hear an objection
8 that that would be a yes.

9 Question 2.

10 REPRESENTATIVE EVANS: When you say yes, now you mean
11 without spelling out in the constitution specific home rule
12 powers?

13 CHAIRMAN COVERDELL: What you're basically doing --

14 REPRESENTATIVE EVANS: I'm not convinced we ought to
15 -- I would want some more time myself to think about it, but
16 I'm not convinced that we ought to have it just completely
17 broad. There may be some area or some enumeration of certain
18 specific things of home rule powers.

19 CHAIRMAN COVERDELL: There will be again an
20 opportunity to refine this as we get down to the exact
21 language.

22 Basically when we have as I say a consensus of yes
23 is saying this would be the general view, then we would like
24 to reverse the Dillon's Rule in theory. Now, when we get into
25 the actual language that may be debated further.

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1 Yes, Jay?

2 MR. RICKETTS: I realize the reaction of the General
3 Assembly to whatever is proposed in this process is down the
4 line, but I would like to ask you and Representative Evans
5 whether or not you think -- also Representative Hamilton --
6 what the reaction of the General Assembly would likely be
7 to this particular concept.

8 It seems to me that every member would view it as
9 somewhat radical.

10 CHAIRMAN COVERDELL: That would be my --

11 MR. SUMNER: You have almost done this to cities.
12 What you've done with cities, you've given us broad home rule
13 in one section -- in fact, we've got the power by ordinance to
14 amend our charters, and in the next section you're specifically
15 limited except in six areas; you cannot change your charter,
16 so you've almost done that, you've given us very broad home
17 rule in 69-1017, and then in 69-1018 you've given us some
18 specific limits, you cannot affect these six areas, and that's
19 what we're talking about doing here. I don't think it would
20 be that radical at all.

21 MR. HILL: You know, frankly, my own feeling is that
22 this was what was intended to be done; this was what was
23 attempted by both the county home rule provisions and the
24 municipal home rule provisions, but the way it was drafted it
25 left some question as to exactly how much and how far, but



1 it appears given the fact that there was this one broad
2 statement of authority that cities and counties have, and
3 then a set of specific exclusions, it appears to me this was
4 already attempted, and to some extent I feel Question 1 has
5 already been answered yes, it was answered yes in '65 and '66
6 by the people, but we have not been able to really accomplish
7 the objectives there because of the way it was phrased. That's
8 my own attitude.

9 MR. FINDLEY: If I might just make an observation on
10 that. I agree with Mel, I think that was the intent was to
11 reverse Dillon, and I think the attempt has been successful to
12 a fairly great degree. Folks can argue about that, but the
13 offer of a - - one of the principal sponsors of the home rule
14 provision in the constitution was Bob Smalley who's the
15 chairman of the full committee. One of the first articles
16 that appeared on home rule after that was added to the
17 constitution was written by him in the Georgia Bar Journal,
18 and he worked on it, and it was his point that it was a new
19 day in Georgia because of reversal of Dillon's Rule, so that
20 was certainly the effort, that was what it was all about was
21 to try to reverse Dillon, and I think it has been -- I think
22 it has successfully done that to a very great extent myself.
23 Folks can argue about it, but essentially it reverses Dillon.

24 MR. SUMNER: The alternative is always to go to the
25 legislature for a constitutional amendment, a local

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1 constitutional amendment which you all would have to get.

2 MR. BURGESS: I think even on the other committee
3 meetings that I sat in on, the feeling of some of the
4 legislative members was we needed to get away from all the
5 local legislation; and this would help to do that.

6 This really puts the determination of policy back at
7 the local level except in those areas where in terms of broad
8 statement of concern the general assembly would have to come
9 back -- I really don't think it's that radical.

10 CHAIRMAN COVERDELL: Have we answered Question 3 in
11 advance of Question 1? Have we answered question 3 "Should a
12 list of specific examples of home rule powers be included in
the constitution?"

14 We have answered that no?

15 MR. BURGESS: Yes, I think you should answer it no.

16 CHAIRMAN COVERDELL: Yes, no.

17 REPRESENTATIVE EVANS: I'm not sure is what I'm
18 saying. I'm not sure that we shouldn't put some specific
19 examples.

20 MR. HILL: I'm not sure that these are mutually
21 exclusive now. I feel myself that it would be possible to
22 state that local governments shall have all powers of self
23 government which shall include but not be limited to the
24 following as examples of specific home rule -- for sure, you
25 know, things that we definitely feel are within that ambit.

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1 I mean I don't know that they are mutually
2 exclusive. I think there would be room for a yes to both
3 questions, but to some extent a yes to 3 would undermine 1.

4 CHAIRMAN COVERDELL: Okay. Now, let's stay on
5 Question 3.

6 You know, it seems to me that to the extent we can
7 conceptually it would be better if that would remain a no.
8 Does anybody care to argue that it should be a yes?

9 Now, I recognize, you know, that when you get into
10 the actual language that you may in fact choose to enumerate
11 as you have suggested, but conceptually aren't we saying that
12 that's a no?

13 MR. BURGESS: I'm not sure I understand. When you
14 say enumerate examples of home rule powers, are you talking
15 about enumeration of such subjects as operations, affairs,
16 or are you talking about specific functional areas?

17 I have a hard time --

18 CHAIRMAN COVERDELL: This is like a 19? Isn't that
19 what your question suggests?

20 MR. HILL: Yes. that's right. That's exactly right.

21 MR. BURGESS: Is this 19?

22 CHAIRMAN COVERDELL: That's 19.

23 MR. BURGESS: I would say no, very definitely,
24 because 19 --

25 CHAIRMAN COVERDELL: With a maybe.



1 REPRESENTATIVE EVANS: I would lean toward putting
2 it in.

3 MR. BURGESS: You mean you would lean toward putting
4 19 back in?

5 MR. RICKETTS: You're saying put in some of the
6 powers that are listed there?

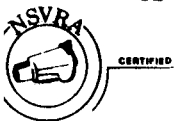
7 REPRESENTATIVE EVANS: As Mel said, including but
8 not limited to.

9 MR. BURGESS: If you list, you know, police, fire,
10 water, sewer and redevelopment authority, that's going right
11 back to what we've got now.

12 I mean I don't -- for example, I don't think a 19
13 except for maybe some of the other provisions is really
14 different from municipalities, because they already have
15 authority under the constitution to carry out those municipal
16 type services.

17 19 really makes counties municipalities. It really
18 didn't help municipalities. I think it's muddied the water
19 really in some respects. It did give them a so-called
20 constitutionnal grant of home rule authority, but if you go
21 with Professor Sentell's approach 19 would be in my opinion
22 inconsistent with -- it's just like putting apples and
23 oranges in the constitution, you're putting two different
24 legal systems in the same document. I just don't see it;
25 I don't think it's practical.

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1 I don't think it's even necessary if you broadly
2 grant home rule in the constitution as carried out by statute,
3 why do you have to come back and enumerate that same grant
4 of power in specifics?

5 CHAIRMAN COVERDELL: I think any form of enumeration,
6 even the inclusion of the words "but not limited to" has the
7 effect of calling for evaluation by the court as to whether
8 or not this particular service is --

9 MR. FINDLEY: When you enumerate -- In other words,
10 you can say "including, but not limited to," then you list
11 police services, and then what police services means then is
12 what the court says it is, and you would not know, and with it
13 enumerated the chances are of it being enumerated in the
14 constitution you might get a strict construction of it.

15 By way of example, the minute you list those things,
16 and I think each one of those things listed then would be
17 when the constitution itself grants it, that each one of those
18 things that's listed would depend on court interpretations to
19 finally determine what they meant.

20 REPRESENTATIVE EVANS: Couldn't it also be the same
21 reasoning, if it's not enumerated in there the court can still
22 construe it any way they want to as to what police services
23 would be if it's not in the constitution.

24 MR. FINDLEY: No, sir. I think conceptually if you
25 reverse Dillon and grant directly to -- and this is not -- you



1 wouldn't have a statutory enumeration of powers, you would
2 have a statutory statement, a general public policy of where
3 a political subdivision could not act or how it would be
4 limited.

5 In other words, if you reversed Dillon so the
6 constitution grants the power directly over local affairs,
7 whatever language, the best language you can come up with,
8 then the power is vested by the constitution itself in the
9 municipalities, but then the language -- and what we're
10 talking about -- and opinion varies on this -- should grant
11 the General Assembly then the power by general law to
12 regulate, limit or withdraw those powers depending on the
circumstances, so the counties and municipalities then would
14 have a broad grant of authority and they would never have to
15 look for authority to do something. What they would do is
16 look for a limitation provided by the General Assembly.

17 MR. BURGESS: For example, I serve as attorney for
18 Fulton County, and we provide police protection -- well,
19 using Amendment 19 it says police, therefore we have the
20 authority to do that, and there's a case in another juris-
21 diction that said yes, that was a proper interpretation,
22 we use this approach. We wouldn't have to go and search the
23 specific authority, we would say "Well, Fulton County as a
24 corporate entity can do whatever is necessary to serve this
25 community," as with police, fire, redevelopment, housing,

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1 public assistance, what have you, unless the General Assembly
2 says "No, you can't do that, we don't want you in that
3 particular thing, we reserve that, we're not going to let you
4 work in that area."

5 CHAIRMAN COVERDELL: Or establish limits.

6 MR. BURGESS: Or establish limitations. That's the
7 beauty of this system is that it gives the local government
8 so much more flexibility.

9 The trouble with Fulton County right now, in
10 representing them in the General Assembly last year we had
11 this great huge package of local laws trying to get
12 additional authority for that local government, whereas if
13 we had the same system that the municipalities have we could
14 just -- we would have the authority to do so many things to
15 meet urban type problems that we don't have right now, we've
16 got to come back to this rigid approach and go through the
17 checklist and see if it's actually given there, and I think
18 that's the beauty of this system as opposed to enumerating
19 them.

20 If you enumerate, to me that just sort of would
21 negate the grant, a broad grant. A court could even come
22 and say "Well, since you've got enumeration this is all you
23 can do, and the other grant really doesn't mean anything,"
24 particularly if you do it for both counties and municipalities.
25 I really think it puts a severe limitation from a judicial



1 standpoint.

2 CHAIRMAN COVERDELL: In establishing an operational
3 procedure here, I think what I'd better do is state at the
4 outset we have a quorum present at this subcommittee, and I
5 think I'm going to state what it appears the consensus would
6 be.

7 Any member of the subcommittee can call for a vote
8 on that question if they choose to do so, everybody has the
9 prerogative of calling for a vote on any given question, but
10 I would hasten to say once again we are in a very preliminary
11 stage of direction and nobody is really in a position of
12 establishing their final view on any given policy.

13 REPRESENTATIVE HAMILTON: You're not asking for that
14 at this point.

15 CHAIRMAN COVERDELL: I'm really not, but I do believe
16 we are beginning -- even at this we ought to have the option
17 even as members to get some, to get ourselves on record or
18 something like that if I have stated this in a manner that
19 causes you to feel we ought to reduce it to a vote.

20 I clearly feel the consensus here is that the
21 answer to Number 3 is no.

22 MS. METZGER: May I ask one question? Am I clear
23 that in enumerating these powers we would then tend to
24 create an inference situation in enumeration itself sort of
25 like a court would --



1 CHAIRMAN COVERDELL: I think generally it's felt
2 that by enumerating you tend to set that as the parameter,
3 and therefore that is all that is granted, and by reversing
4 Dillon you're saying it's all granted except the General
5 Assembly obviously would periodically set caps, limits and
6 parameters, but they're seeking out only what they cannot do
7 versus trying to take this limited checklist in terms of what
8 they can do.

9 MS. METZGER: So if it's enumerated it's inflexible,
10 it is more set, and the other way it is much more broad?

11 CHAIRMAN COVERDELL: And it's in the constitution.

12 Okay. Let's take Question 2. Melvin, would you
13 read that?

14 MR. HILL: Okay. Question 2: "Should a statement
15 be included in the constitution encouraging liberal judicial
16 construction of home rule powers?"

17 This question comes from some of the constitutional
18 provisions we have already looked at. There is such a state-
19 ment in a number of those constitutions, and given the
20 restrictive interpretation that the courts may impose or may
21 adopt if we change the language we feel a statement like this
22 could go in some way toward alleviating that.

23 CHAIRMAN COVERDELL: What's an example of -- Try
24 to state it in your own language as to what the statement
25 would be.



1 MR. HILL: Powers of local government which are
2 intended to be conferred by this constitution shall be
3 broadly construed, or liberally construed.

4 CHAIRMAN COVERDELL: Is that a common statement that
5 we see in other constitutions?

6 MR. HILL: In a few, I wouldn't say it's universal.

7 MR. BURGESS: It means absolutely nothing. It's
8 pure junk is what it really is. It's just junk theory.

9 MR. FINDLEY: The courts have in some other
10 jurisdictions -- on this point Mel is making -- have leaped
11 on that phrase and used it to give a broader decision on the
12 existence of home rule powers. It's kind of like "and for
13 other purposes" in the title of a bill. The "and for other
14 purposes" is not going to cover the substance of that bill,
15 but it will help you, and it has helped on occasion which is
16 always why it's in the title of a bill. The court will use
17 that phrase for certain limited purposes, and the court has
18 used it, and I think that in some states this kind of phrase
19 in a constitution has indeed helped. Hasn't that been the
20 upshot of your research?

21 MR. HILL: Yes.

22 REPRESENTATIVE EVANS: The courts a lot of times are
23 looking for an out. This is an out.

24 MR. HILL: If it's a close question, this gives them
25 their out, right.

1 MR. BURGESS: I have a problem with it.

2 CHAIRMAN COVERDELL: I don't know why my instinctive
3 view is against that kind of language.

4 MR. HILL: I would say this. If you say yes to 1 --
5 it depends again on the language you use in 1, but that could
6 in fact do what Number 2 is intended to do.

7 CHAIRMAN COVERDELL: That's where I think it should
8 be done rather than saying -- to me it's almost like saying
9 we don't have the ability to grant this properly, therefore
10 you should know that when we do start trying to do it this
11 is the way we want you to do it.

12 MR. FINDLEY: This is what we really meant.

13 CHAIRMAN COVERDELL: Right.

14 MR. BURGESS: I think it's also a presumption --
15 there may be issues when we would hope the court wouldn't
16 construe it liberally. We may not want them to have this
17 kind of power. It seems to me the court ought to take each
18 issue and judge it on its own merits without trying to look
19 to some instruction a committee might give it.

20 It really doesn't mean anything. We can't instruct
21 the court what to do. Those people make those decisions.

22 REPRESENTATIVE EVANS: It wouldn't be the committee
23 doing it, it would be the constitution doing it. There's a
24 difference between the committee and the constitution.

25 MR. BURGESS: Yes, the committee is putting it in

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1 and the people approve it, I agree.

2 REPRESENTATIVE EVANS: The people are telling the
3 courts the way it should be done.

4 MR. BURGESS: I don't think the people ought to tell
5 the court how to run its business. In the ultimate sense I
6 think the court ought to be objective and impartial. While
7 there may be issues when -- It just seems to me that the
8 ultimate construction, judicial interpretation is on the
9 court, not a document which tells it it should do. I think
10 it's more theoretical.

11 REPRESENTATIVE EVANS: Had the people not told them
12 what to do on the sales tax it probably would have been
declared unconstitutional.

14 The feeling of the public on that issue was the
15 greatest factor in it being declared constitutional.

16 MR. BURGESS: That wasn't in the constitution.

17 REPRESENTATIVE EVANS: Maybe it should have been
18 and we wouldnt have had the problem.

19 MR. FINDLEY: I think it might be constructive
20 for those cases where that phrase has helped -- put helped
21 in quotation marks -- assuming you want broad home rule in
22 those cases in those other jurisdictions maybe for the staff
23 to give some precise examples of how the court has treated
24 that phrase and what the effect of that phrase in the
25 constitution was in these other jurisdictions, because I

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1 agree with you this kind of instruction is kind of like a
2 declaration of purpose, all that business in the beginning
3 of a statute which again is useless because the statute is
4 going to mean what the court says it means regardless of,
5 quote, recitations of the General Assembly in some kind of
6 essay they put in the beginning of the statute.

7 But in this case in other jurisdictions the courts
8 do follow other jurisdictions when they're construing new
9 language, and some of those cases might be constructive before
10 you make a final decision on that.

11 CHAIRMAN COVERDELL: Yes, Mike.

12 MR. HENRY: Senator, perhaps if the final decision
13 of this committee is to reverse Dillon's Rule, and you have to
14 put that in so many words, that this concept of liberal
15 construction could be implied from the words used in the
16 reversal of that rule --

17 CHAIRMAN COVERDELL: That would be my preference.

18 MR. HENRY: -- rather than telling the courts what
19 you want them to do. That might have the reverse impact,
20 they may say "This is our prerogative, we're here to construe
21 the constitution," and --

22 CHAIRMAN COVERDELL: Let me state I feel the
23 consensus there is a no, but I think the suggestion of Harvey
24 is a good one, that it would be useful to review some of these
25 other examples of language and what the court interpretation

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1 was as a result of that.

2 okay. Let's move to 4. Melvin?

3 MR. HILL: Question Number 4 is "Should a list of
4 specific exceptions to home rule powers be included in the
5 constitution?", and "If yes, what exceptions should be put
6 in there?"

7 We do have such a list of exceptions in the present
8 constitution with respect to county home rule provisions, but
9 it would appear to me that given our decision on Number 3
10 we would be leaning toward a no on this one as well, and leave
11 it up to statute completely.

12 CHAIRMAN COVERDELL: In other words, it would
13 specify as above that authority was vested in the General
14 Assembly to withdraw certain powers something like the Kansas
15 statement, so long as the General Assembly was uniform in its
16 practice.

17 Now, there is the kicker.

18 MR. FINDLEY: That's a difficult thing as it was in
19 Kansas, and it would be even more difficult in Georgia. To
20 what extent would you have the authority to classify, or would
21 the General Assembly have the authority to classify.

22 CHAIRMAN COVERDELL: Representative?

23 REPRESENTATIVE EVANS: I didn't have anything.

24 CHAIRMAN COVERDELL: Jim?

25 MR. BURGESS: Do you want to consider possibly, if



1 you put a no here, say no, it shouldn't be in the constitution
2 but if there are exceptions they should be enumerated in the
3 home rule statute? Would that be your answer on this?

4 In other words, there may be certain exclusions that
5 the General Assembly would want.

6 CHAIRMAN COVERDELL: I feel more inclined here that
7 they may be **very**, very limited. I don't have what's listed
8 in the exceptions now?

9 MR. HILL: Adoption of any form of taxation beyond
10 that authorized by general law --

11 MR. BURGESS: There's another one that I have some
12 concern about local government on its own motion being able
13 to change the form of government. It seems to me that's
14 something that should come back to the people, and that is a
15 current limitation, or the manner of election.

16 MR. HILL: Action to find any criminal offense or
17 provide for criminal punishment, action affecting excessive
18 power of eminent domain, action affecting any court or the
19 personnel thereof, and actbn affecting any public school
20 system.

21 MR. BURGESS: Those are statutory provisions.

22 CHAIRMAN COVERDELL: Go ahead.

23 MR. FINDLEY: I would think that certainly I think
24 the General Assembly would find, if we put it in the
25 constitution would find here there should be some exceptions

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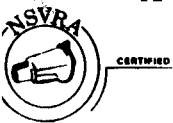


1 to it. The question is whether or not the constitution should
2 list those exceptions or whether it should be done by statute,
3 and when you list the exceptions, for example, not take any
4 action relative to the courts or the personnel thereof, that
5 exception to municipal home rule is a little bit more
6 specific, except courts having exclusive jurisdiction over
7 county -- I mean municipal ordinances. The effect of that is
8 they can't even make arguably even the most innocuous kind of
9 home rule change in a recorder's court or a mayor's court or
10 something like that, because all of those courts have some
11 jurisdiction above just a municipal ordinance. In other
12 words, that's an ill considered limitation I think, and that's
13 the thing -- if you put them in the constitution wouldn't you
14 run into some problems where you need, just like that
15 exception municipal home rule I think needs modifying right
16 now because there are certain actions municipalities can take
17 on home rule regarding municipal courts that would certainly
18 not -- certainly be reasonable it seems to me or if the
19 general law limits it, but since it's in the general law,
20 though, when the General Assembly does take a look at that
21 then they can change it. If you put it in the constitution
22 you're stuck with it.

23 CHAIRMAN COVERDELL: So we're arguing following our
24 theory that essentially it's a no.

25 All right. Five.

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1 MR. HILL: "Should cities and counties be given
2 autonomy (absolute freedom from legislative control) in any
3 areas of 'local concern'?" And, if yes, then in what areas,

4 My own feelings, and this was already stated earlier
5 by someone else, Jim I guess, that there should be no areas in
6 which the city or county is considered sovereign. The General
7 Assembly should always have the authority to come in and
8 provide by general law for the uniform regulations, uniform
9 restrictions or whatever.

10 REPRESENTATIVE EVANS: Other than planning and
11 zoning, now what areas are they really sovereign in?

12 MR. HILL: That's it. That's the one area they're
sovereign.

14 REPRESENTATIVE EVANS: I have no hangup with that
15 because I don't think the General Assembly ought to tell the
16 cities and counties about planning and zoning.

17 MR. HILL: Not even the procedure they should follow
18 in reviewing zoning decisions?

19 You know, there were two general laws on the books,
20 there are right now two general laws on the books establishing
21 procedures for planning and zoning review and whatnot, a
22 uniform procedure that would apply statewide, and these are
23 very important matters, and at the present time the Attorney
24 General has ruled those two statutes are invalid, the General
25 Assembly has no authority to speak in the area of planning and

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1 zoning, and it seems very, you know, ill considered --

2 MR. RICKETTS: Mel, let me ask a question. What
3 problem in your mind is created by virtue of the fact the
4 '57 and '46 planning acts no longer control the procedures by
5 which cities and counties plan and zone?

6 MR. HILL: I think it creates greater opportunity
7 for violation of due process in procedures that are followed
8 at the local level, it creates more opportunities for
9 lawsuits against the local governments themselves and, you
10 know, to have the state write itself out of such an important
11 decision as that, completely write themselves out of such an
12 important decision to me is very ill considered, but that is
13 my own personal bias and a matter this committee has to
14 resolve.

15 CHAIRMAN COVERDELL: Ed?

16 MR. SUMNER: One point that I'm -- I'm not so sure,
17 you may have an example there of how the court has limited
18 that autonomy. Maybe it's sort of Sentell's argument about
19 constitutional grants being narrowly construed, because there
20 are some cases where there's some other language over in the
21 other part of the constitution which says the state can
22 protect vital areas. There's a case involving the Chattahoo-
23 chee River here, you know, the court I think rejected the
24 argument they were totally -- or at least they very narrowly
25 construed the definition of planning and zoning to be



1 strictly the R-1/R-2 classification type thing, so I don't
2 know, we've got mixed emotions.

3 In fact, today at 2:30 we've got our annual City
4 Attorney's Subcommittee meeting at the convention, we've got
5 a young fellow who's going to be presenting hopefully a
6 printed document on really what the problem is, and that may
7 be the reason why the courts are so heavily involved in
8 zoning now. I don't know if that has anything to do with it.

9 I don't know. Hopefully he's going to give us some
10 ideas on should the cities in fact come forward and recommend
11 some changes. You know, I think it's very -- Dave
12 mentioned today he wishes the courts were out of planning and
zoning, which is really the problem I suppose, but --

14 MR. RICKETTS: They've gotten a lot more active
15 since the General Assembly got out than they were before.

16 MR. SUMNER: But they started in '74. They
17 originally thought the General Assembly was completely out of
18 all those enumerated powers in Amendment 19, that was in 1976,
19 so they've been active ever since Amendment 19 was put in.

20 MR. HILL: That's exactly the point.

21 MR. SUMNER: That may be a valid point, I don't know.

22 MR. HILL: If the General Assembly cannot come in
23 and establish some kind of uniformity of procedures the court
24 will do it, so who would you rather have setting policy for
25 the state in this area, the courts or the General Assembly?

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1 MR. RICKETTS: I don't know -- you can make the
2 argument if you look through some decisions since Hamby
3 that, you know, had the '57 or '46 acts, you know, been in
4 operation that those decisions would not have come to pass.
5 They deal with more of the quality of the decision rather
6 than the process by which the decision, the zoning decision
7 was or was not made. I don't think that that argument
8 necessarily holds.

9 MR. SUMNER: Let me clarify what I said. That was
10 strictly a personal observation, and that did not reflect the
11 GMA policy. We're not calling for the General Assembly to get
12 back into planning and zoning.

13 I think it's something for you to look at because
14 it's an issue we've got. In fact, this is partially funded
15 by the Governor's office, the program, and it's kind of run
16 by some lawyer downtown, some big law firm. I hope it's going
17 to be good. I don't know, I haven't seen it, but we'll
18 provide that to the committee if any of you need copies of it.

19 CHAIRMAN COVERDELL: It strikes me as totally
20 bereft of the General Assembly to place the sovereign power
21 on this --

22 MR. BURGESS: I really wonder if the General Assembly
23 could do it.

24 CHAIRMAN COVERDELL: It does not make a great deal
25 of logic.



1 REPRESENTATIVE EVANS: You mean on the planning and
2 zoning. That's exactly what we were doing, that was one of
3 the big hangups on the whole -- we ran into a big problem on
4 that when we got ready to present the redrafted constitution.

5 The judiciary committee knew what it wanted, I don't
6 know about the rest of the membership.

7 CHAIRMAN COVERDELL: This was born out of the vital
8 area bill.

9 REPRESENTATIVE EVANS: It was well discussed and
10 cussed and --

11 MR. BURGESS: It intentionally got out of the
12 planning and zoning?

13 MR. FINDLEY: If you read that language there's no
14 mistaking about it.

15 CHAIRMAN COVERDELL: You've got a situation where
16 we went through the period of these certain interests in the
17 state trying to establish land use, and the response of the
18 General Assembly was to establish a procedure that would
19 prohibit these people from placing their view over a local
20 jurisdiction; this was the response.

21 I think the response, however, had the sense of a
22 mirror in it. I guess that can be resurfaced, but it's
23 totally removed the General Assembly. Maybe this could be
24 dealt with in a manner that would eliminate those fears and
25 yet not displace a sovereign authority with no room for

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1 legislative input.

2 MR. RICKETTS: You know, the irony of the whole
3 situation is that the piece of legislation that gave rise to,
4 you know, the constitutional change -- I think the vital
5 areas act, Jerry Horton's bill at least in my view could still
6 be enacted under the General Assembly's remaining authority
7 in this area. Do you agree with that, Harvey?

8 MR. FINDLEY: I think so, because there was a swap-
9 off which Representative Evans will remember, that giving
10 the -- and I think what Jim was talking about, that earlier
11 prior to the 1976 constitution that the exclusive power over
12 planning and zoning had been by -- I don't think the General
13 Assembly in proposing that language in the county home rule
14 power really intended to do that as well as all the rest of
15 those powers in Amendment 19, but in the 1976 constitution
16 though there was a considerable give and take as Representative
17 Evans pointed out of the entire section, and a swap-off
18 between giving the exclusive -- shifting the state's
19 sovereignty in effect is what you've done here on planning
20 and zoning for a clear authority for the General Assembly to
21 enact controls of the use of land for the protection of the
22 natural resources of the state, so both those provisions are
23 in the constitution, and I do think the vital areas type
24 legislation would be authorized under that; otherwise the
25 language would have to be meaningless, and I don't think it's

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1 meaningless, but that's when the state sovereignty was
2 deliberately shifted from the state to the political sub-
3 divisions was by a decision knowingly made in the '76
4 constitution.

5 CHAIRMAN COVERDELL: Let me deal with an
6 administrative problem.

7 The committee has -- we've got several choices here.
8 The Chairman has another engagement locked into. We can break
9 for a lunch and return, I could delegate the meeting to
10 Representative Hamilton here, and we could proceed and I
11 would return as soon as possible, and/or we can continue
12 where we are and set another meeting say next week.

13 What is the general view of the committee? Do you
14 want to keep moving today? Would you like to --

15 MR. BURGESS: You only have two items to go.

16 CHAIRMAN COVERDELL: We just have 5 and 6.

17 MR. BURGESS: Why don't we try to finish those up?

18 REPRESENTATIVE EVANS: I think we ought to try to
19 finish those today.

20 CHAIRMAN COVERDELL: Then set another meeting. All
21 right.

22 I am going to relinquish the chair to my colleague,
23 Representative Hamilton. If you will, please carry on through
24 these other two questions and I'll get back to you.

25 MR. HILL: Before you leave, could we set -- Do

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1 you have your calendar handy?

2 CHAIRMAN COVERDELL: I don't. Just go ahead and try
3 to set one. I would like to do one next week if we possibly
4 can, like Thursday.

5 Is that going to be possible? What does Thursday
6 look like to everybody?

7 MR. HILL: It's fine with us.

8 REPRESENTATIVE EVANS: What is next Thursday?

9 MR. HILL: The 3rd of July.

10 CHAIRMAN COVERDELL: Okay. Jim?

11 MR. BURGESS: It's okay with me.

12 CHAIRMAN COVERDELL: Grace, would Thursday be all
13 right?

14 REPRESENTATIVE HAMILTON: Thursday of next week.

15 MS. METZGER: Same time?

16 CHAIRMAN COVERDELL: I think 9:30.

17 REPRESENTATIVE HAMILTON: What is that date?

18 CHAIRMAN COVERDELL: The 3d of July,

19 I'm going to try to get everybody out around noon
20 or 12:30 on these meetings.

21 Suitable? Okay.

22 MR. BURGESS: That was the 3rd of July?

23 MR. HILL: Yes.

24 CHAIRMAN COVERDELL: Grace, if you would please keep
25 moving --



1 REPRESENTATIVE HAMILTON: We are ready to move on
2 to --

3 CHAIRMAN COVERDELL: My view is we ought to be very
4 careful in proposing now about removing from any review or
5 placing any sovereign power out of the scope. I'll leave it at
6 that.

7 (Chairman Coverdell withdrew.)

8 MR. BURGESS: Ms. Chairman, let me just --

9 I think in most states historically that the total
10 police power is always vested under the constitution in the
11 legislature, but you don't vest the police power in a subunit
12 but it's an exclusive -- in other words, the police power is
13 exclusively the province of the General Assembly, and that's
14 the power under which you adopt zoning regulations.

15 There is no reason, however, that if you do that you
16 can't authorize the General Assembly to delegate some of that
17 power to local governments to adopt planning and zoning
18 regulations, and therefore the General Assembly gets out of it
19 to that extent. At least if at a future date they could pull
20 back if the needed to do so, whereas now they can't do so
21 and let's say that, you know, you begin to develop an
22 irresponsible approach in certain areas to planning and
23 zoning, and if the General Assembly needed to get back into
24 that area, needed to deal with the situation you can't do it
25 now, the courts have got to come in and do it. I'm not



1 saying it's wrong.

2 REPRESENTATIVE EVANS: Again if we wanted to get
3 back into it. I'm trying to look back and see wherein the
4 legislature has wanted to get back into the business of local
5 planning.

6 MR. BURGESS: I don't think you want to get back
7 into it, but let's say ten years from now the situation in
8 Georgia becomes somewhat like the situation in New Jersey
9 where there is such unbridled growth, uncontrolled development
10 that there really is a need for local legislation to control
11 growth and to limit it, but right now there is no way in
12 Georgia I believe the General Assembly could come in work
13 with local governments for example in encouraging them to
14 adopt these timing development ordinances or controlled growth
15 ordinances, as for example was done in New York State where
16 they said you've got to have the utilities, the public
17 facilities before you can just develop an area, you've got to
18 have sufficient financial resources to provide services before
19 you can just go out and rezone the area.

20 I don't think we're at that point, but I'm saying
21 we could be at that point. It just frightens me when there
22 is no way for the General Assembly to come in and deal with
23 broad critical policy questions that might come up in the
24 future. You've got to then go back and undo the constitution
25 to get back into it.

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1 We're not really -- I don't see really -- if you
2 continue with the idea of the police power of the state ought
3 to be in the legislature exclusively, then give the legisla-
4 ture the power to delegate the power down to the local level
5 don't you really accomplish the same thing? You can still
6 delegate -- you can delegate very broad planning and zoning
7 authority.

8 REPRESENTATIVE EVANS: That's putting a real broad
9 interpretation on police powers. Planning and zoning is --
10 I'm arguing with you more from the standpoint of trying to
11 clear some cobwebs out of my mind.

12 The main thing is that your broad interpretation of
13 planning -- I mean of police powers is planning and zoning to
14 me goes --

15 MR. BURGESS: You see, historically the police power
16 in this state and I believe in most other states is one
17 hundred percent -- the constitution actually says the police
18 power is in the General Assembly, then we came along in 1972
19 and said the police powers of the General Assembly **except**
20 for planning and zoning, and there it's in the county
21 commissions or it's in the city council. I think that was the
22 effect of what we did. Am I not right?

23 MR. FINDLEY: The evolution of planning and zoning
24 has been different. It is a part of an exercise in police
25 power in every jurisdiction other than Georgia, but historically

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1 in Georgia when we first started, first tried to plan and zone,
2 restrict a man's use of his own private property, the court
3 said that we couldn't do it, period. You could abate a
4 nuisance, you have certain laws on nuisances, but you -- so
5 there was no planning and zoning power in Georgia, the court
6 would not recognize it as a legitimate exercise of the
7 planning and -- I mean of the police power. The police power
8 did not include planning and zoning according to the Supreme
9 Court of Georgia in the early development of this thing, so
10 before we could have any planning and zoning at all we first
11 had to amend the constitution because it was not a part of the
12 police powers.

13
14 Then I think the distinction though is important
15 between perhaps a recognition that planning and zoning power
16 is indeed a local government function, the General Assembly
17 should not be restricting the use of property within the City
18 of Atlanta, the City of Atlanta should decide the use of that
19 property.

20 The question is whether or not the City of Atlanta
21 should exercise what is admittedly, and I think most people
22 would agree is a local government power in conformity with the
23 general public policy to protect the due process standards and
24 so forth, or whether or not the state should shift its
25 sovereignty or the constitution should shift its sovereignty
from the state to the local jurisdiction. That is the question.



1 It seems to me the question is not the General
2 Assembly getting into planning and zoning, it's never been;
3 there has never been a constitutional provision that authorizes
4 the General Assembly to actually restrict the use of property.
5 The courts have so held on any number of occasions.

6 That is not really the point. It is a local
7 government power, but should that power be exercised free of
8 any regulation or control by the General Assembly, I think
9 that's the basic question.

10 MR. BURGESS: I'm just not sure.

11 MR. RICKETTS: Are you not of the opinion that under
12 the vital areas authority in the constitution the General
13 Assembly could not restrict the use of a particular piece of
14 geography?

15 MR. FINDLEY: Yeah, I think they could. As a
16 matter of fact, that language perhaps is unfortunate because
17 it may be that only the General Assembly could by the language
18 that's used there -- it might not could set up -- arguably
19 you couldn't set up a vehicle which is in fact the way that
20 will be done, it will be DNR or some agency created that will
21 actually pursue the criteria set by the General Assembly who
22 will actually do the regulation pursuant, or the restrictions
23 on the use of the property, and that language arguably might
24 require the General Assembly to do it, which I don't think
25 was ever intended.

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1 I think the intention was to have the General
2 Assembly with clear authority to set up a vehicle to restrict
3 the use of property, but planning and zoning, though, Jay,
4 I still think that there is a question as to whether or not
5 that power should be exercised free of the state as if you
6 were down in South America somewhere.

7 Should the state have the authority to regulate the
8 use --

9 MR. RICKETTS: On a bannana plantation?

10 MR. FINDLEY: That's right, to regulate what is
11 admittedly a local government power. It is a local government
12 power, but should the state be -- should it have the authority
13 to regulate that power, make sure that a man's property was
14 not arbitrarily taken or that the use of his property was not
15 arbitrarily restricted, and that's where the courts have got
16 into this quite heavily lately, and I do think there -- my own
17 view is that while there is not a cause and effect relation-
18 ship between and a direct cause and effect relationship between
19 those decisions and what the General Assembly has done, I do
20 think there is definitely a relationship that those court
21 decisions are indeed a product of the General Assembly
22 shifting its sovereignty of the people, by constitution
23 shifting the state's sovereignty to local governments.

24 MR. RICKETTS: Harvey, those decisions have come out
25 of counties which for all intents and purposes are still

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1 operating under the -- you know, the '57 Act in fact, so that,
2 you know, if they are following to the letter the procedures
3 which are spelled out in that act and are still, you know,
4 running afoul of the court, then you could make an argument
5 that it doesn't really make any difference that the General
6 Assembly no longer has the authority to enact that kind of
7 act.

8 MR. FINDLEY: I think it's the general feeling,
9 though, Jay, as I remember of the folks directly involved in
10 planning and zoning, it's the general planning enabling acts,
11 principally the 1957 act was in bad need of revision and
12 update, and it was the deficiency of that act I think that has
13 partly led to some of these decisions to the extent those
14 jurisdictions -- Fulton County is still exercising its power
15 under the general planning enabling act as you pointed out,
16 but I think that there was a general consensus I believe that
17 the general planning enabling act needed complete revision,
18 it needed the attention of the General Assembly to update it,
19 modernize it and so forth.

20 Now the General Assembly has no authority to do that,
21 they can't do anything with the general planning enabling act
22 or any other planning and zoning law.

23 MS. METZGER: It would seem to me terribly
24 important that the state retain some control as Melvin says
25 over something as important in areas of statewide -- the



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1 issues of statewide concern.

2 Now, if we say yes to Number 4, then we're just
3 getting into a great deal of other things, we could get into
4 other things in the same way we have the planning and zoning.

5 As you mentioned, they can still be delegated, but
6 there ought to be some way that the state can deal with this
7 critical issue in areas that transcend local importance.

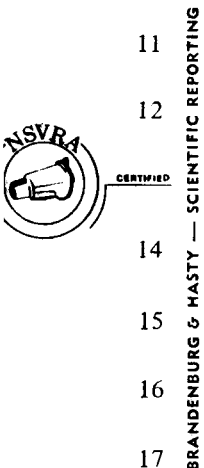
8 I don't think it should be given away completely,
9 there has to be some way to act if necessary.

10 MR. HILL: I also feel the local governments would
11 not object -- I mean as Jay pointed out they're operating
12 under the guidance of the '57 act, and so I don't think they
13 ought to object to the General Assembly establishing some
14 guidelines for uniformity; it's only in certain ways the
15 General Assembly would act that they would object to, but as
16 Harvey said there's never been any intention or never been an
17 effort to actually get down and do the planning and zoning
18 at the local levels, mainly to establish more of the overall
19 framework.

20 REPRESENTATIVE EVANS: When you say uniformity, you
21 mean uniformity in procedures?

22 MR. HILL: That's right.

23 REPRESENTATIVE EVANS: They might not object on the
24 basis of that, on the procedure part -- that is the actual
25 planning and zoning where we tell them "You've got to zone



1 this or do that," that's not the state's business to do that.

2 MS. METZGER: I don't think it was the state's
3 intent to do that.

4 MR. BURGESS: If you follow the approach as you say
5 in other states, the power to plan and zone then would be
6 already in the local government; right?

7 MR. FINDLEY: Yes. Well, I take that back because
8 historically under the Kansas law in planning and zoning --
9 the staff can look at these if they haven't already, and I
10 don't remember, but planning and zoning in Georgia was not
11 recognized as an exercise of the police power. It is a
12 separate power that exists solely because of the constitution.
13 If the constitution doesn't authorize it, there would be no
14 planning and zoning in Georgia. That was the position of the
15 court back in the twenties when they first looked at that, so
16 the constitution may still have to say something about planning
17 and zoning, whether or not it --

18 MR. BURGESS: That's what I'm saying. Maybe the
19 constitution should explicitly state the power to plan and zone
20 is vested in local governments, subject to general uniform
21 procedural regulations.

22 MR. FINDLEY: Which was the pre-county home rule
23 provision. That's the way it always was ever since we first
24 started putting in particular provisions as to particular
25 jurisdictions back in the twenties, and finally in the '45

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1 constitution all those particular provisions were taken out
2 and language just like you've put in was put into the
3 constitution where it was made clear that it's a power to be
4 exercised by counties and municipalities, but subject to a
5 procedural --

6 MR. BURGESS: Why don't we let that be our answer to
7 Number 5?

8 REPRESENTATIVE EVANS: That would probably be
9 acceptable.

10 REPRESENTATIVE HAMILTON: Are we all agreed on that?

11 MR. BURGESS: I don't know that that's true.

12 REPRESENTATIVE EVANS: It would be better, though,
13 than --

14 MR. RICKETTS: You know, what was the Hicks case?

15 MR. FINDLEY: Johnson versus Hicks.

16 MR. RICKETTS: In that case the challenge was a
17 local act of the General Assembly attempting to change the
18 procedure by which DeKalb County zoning process occurred.
19 Of course, that was the first case in which the Supreme Court
20 construed the '72 amendment and said the General Assembly
21 doesn't have any authority in the area insofar as the county
22 zoning power was concerned.

23 Let me ask you Harvey, aren't there local acts --
24 and I'm thinking of one in Fulton County -- which attempt --
25 I don't know whether in the constitution, that attempt to

1 restrict the use of particular pieces of property?

2 I thought I saw one one time that attempts to
3 restrict the use of property on the north side of the Candler
4 Building for the view of the Candler, or the view from the
5 Candler Building could be impeded.

6 MR. FINDLEY: I think there's been legislation
7 like that passed. My memory is the court summarily declared
8 it unconstitutional inasmuch as the planning and zoning power
9 was exclusively a county or municipal power, and it's always
10 been that way.

11 The question is whether or not the General Assembly
12 prior to the county home rule provision, and then subsequent
13 to the '76 constitution, the General Assembly had always
14 regulated the use of that power through the general planning
15 enabling acts of '46 and '57.

16 I do think legislation like you're talking about was
17 passed. My memory is it was declared unconstitutional because
18 the legislature was involving itself in the restricting of the
19 use of property, and they said whatever planning and zoning is
20 done, the authority to do it is vested in the local governing
21 bodies, not in the General Assembly.

22 MR. BURGESS: Ms. Chairman, I move or suggest that
23 Question Number 5 is a no, and fill in the space below it with
24 the qualification -- the qualification would be something to
25 the effect that with regard to planning and zoning powers

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1 appropriate revision be made in the constitution to clarify
2 that those powers are local, the exercise of those powers, and
3 would be subject to only general law, procedural regulations
4 as we were talking earlier, so that while we're saying no, no
5 absolute autonomy, but we do want them to have maximum
6 autonomy in planning and zoning except for this broad
7 procedural type statutory provision.

8 REPRESENTATIVE HAMILTON: Does that represent
9 pretty much the sense of the committee?

10 MS. METZGER: I have a question. If that were the
11 case, would the procedural exceptions there enable the state
12 to act in the state's best interest in situations that might
come up in the future such as you were describing?

14 If we say just procedural things, do we limit our-
15 selves so that the state cannot act in a planning or zoning
16 situation that could come up in the future where the best
17 interest of the state might be to have flexibility to have
18 perhaps a way other than procedurally?

19 What I'm asking I guess is if you narrow it just to
20 procedural --

21 MR. BURGESS: I have the same concern.

22 MS. METZGER: -- have you really got the same thing
23 you've got right now as far as planning and zoning is
24 concerned? That's my only concern in that area.

25 REPRESENTATIVE HAMILTON: Did you want to say

1 something?

2 MR. HENRY: While our committee was in its Lazarus
3 phase I helped Jim Connell do a study in this area as to what
4 the state could do right now given the fact that planning and
5 zoning has been delegated to local governments and they have,
6 quote, local autonomy in this area, and it was done in con-
7 junction with the study you're to hear about today I think,
8 and under the final area's amendment to Article III the state,
9 and even without that still has the power to license and
10 regulate.

11 Take, for instance, in Hall County where they want
12 to build an industrial park along the Chattahoochee River, and
13 the state or the DNR didn't go up there and say "This land
14 has to be zoned like this, " but they did say that "If you
15 build this park you're going to have silt, and you're going to
16 have surface water runoff which will pollute the river," and
17 in South Atlanta where a big industrial concern wanted to come
18 in and locate there because of the proximity to transportation
19 and the other features of Atlanta, but the DNR said "no, you
20 can't locate there, we don't have enough water to supply you
21 for your needs," so they can get in in those areas where they
22 can come in and protect state interests like the water supply
23 or environmentally sensitive areas, they can come in and do
24 that under their police power or under the vital areas, and
25 I think in the river protection, the metropolitan river

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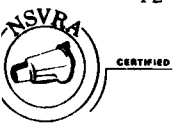
1 protection case. They didn't -- they said that in addition to
2 this vital areas concept you have, you can limit the use of
3 the land around the Chattahoochee River because you're
4 protecting the water supply for all the people in the state,
5 and they said while one tennis court won't do a lot of damage,
6 you know, a whole series of tennis courts all the way down the
7 river would do a lot of damage to the river, and we're
8 protecting the interest of the people who get their water
9 supply from the Chattahoochee River, so they can come in on
10 broad issues like that.

11 MS. METZGER: We know that doesn't always happen,
12 it doesn't automatically happen that the police powers are
13 exercised by the DNR. We're going to have -- it's not going
14 to be just that issue, we're going to have enormous issues of
15 waste disposal; we've already got them, they're going to get
16 a lot worse.

17 If the local government has total control and the
18 state has no way to exercise this power we may find ourselves
19 in very great difficulty.

20 REPRESENTATIVE HAMILTON: Maybe the work is not --

21 MR. BURGESS: Let me suggest we say no, but in the
22 area of planning and zoning this could be a direct, an
23 appropriate constitutional grant of planning and zoning powers
24 to local governments, subject however to general laws on the
25 regulation of the exercise of that power.



1 MS. METZGER: That's much broader than what you said
2 before.

3 MR. HILL: It's going to be a very delicate drafting
4 problem.

5 MR. BURGESS: Just the idea is all.

6 REPRESENTATIVE HAMILTON: Does this last statement
7 pretty well represent the consensus, recognizing the language
8 will be tricky?

9 MR. FINDLEY: I was just thinking, I just mention
10 for your consideration, that the -- I think the fly in the
11 ointment on planning and zoning it seems to me came about
12 with the -- first of all with county home rule amendment to
13 the constitution which has a separate paragraph dealing with
14 Johnson versus Hicks, the point that Jay made, the leading
15 case construing it, then that situation created by the court
16 at that point was aggravated by the -- depending on your view-
17 point by the '76 constitution, so if you go back to the 1945
18 constitution and you take the planning and zoning language
19 that was in it at that time, then that language made it clear
20 that this was a local government power granted and regulated
21 by the General Assembly.

22 In other words, the General Assembly by general law
23 granted it, so this would not preclude or didn't preclude at
24 that time an arguably wouldn't even preclude it now these other
25 uses of the police power as opposed to planning and zoning.

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1 Planning and zoning is not included in the police
2 power, but these other powers that Mike has just pointed out
3 are.

4 MR. BURGESS: In the interest of time, let me
5 suggest that you say no, but use with regard to planning and
6 zoning the pre-1945 constitutional provision. How about that?

7 MR. FINDLEY: Or the 1945 approach.

8 MR. BURGESS: Yeah, say no, but with regard to
9 planning and zoning use the 1945 constitution.

10 MR. RICKETSS: Harvey, is this not correct, the
11 basic concept, the basic theme of the '57 or '46 acts is not
12 directed at the uses that particular pieces of land are put
to, they're directed at the process by which those uses are
14 determined?

15 Okay. Now, what is being discussed here, we're
16 really talking about two things today.

17 Number one we're talking about trying to give the
18 General Assembly, or making sure the general assembly has the
19 authority to control the process by which land use decisions
20 are made, and under the present constitution they're going to
21 be made primarily by local governments. Okay.

22 On the other hand, there is concern expressed by Ms.
23 Metzger that the General Assembly and the state ought to have
24 the authority to influence, as Jim suggests by incentives as
25 others -- you know, it might be by mandates or by whatever

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1 actual land use a particular piece of geography --

2 Now, to a certain extent the General Assembly has
3 that authority now under the police power and also under
4 vital areas section of the constitution, but I would just
5 make one suggestion -- this is an enormously complicated area
6 and whatever decision the committee makes today ought to be
7 made very, very generally so as to give the committee maximum
8 flexibility, you know, to explore the full implications of
9 whatever it does.

10 REPRESENTATIVE HAMILTON: I think that is really
11 their objective to state as broadly as possible what the
12 feeling of the committee is at this point.

13 Is the suggestion that Jim made generally agreed to
14 with regard to 5? I mean taking into account the limitations
15 that have to be considered?

16 REPRESENTATIVE EVANS: Let me say this. All the
17 arguments that have been advanced here today and all the fears
18 and the apprehensions and so forth were the same things we
19 brought up, you remember, Harvey, back in the '76 revision.
20 I mean I'm just hearing everything over that I heard then,
21 and the procedure, what we adopted was satisfactory to GMA
22 and to the County Commissioners' Association, and it seemed
23 to work all right.

24 My point I think I'm trying to make is we've always
25 got to always keep in the back of our minds that one very



1 important fact is that whatever we come up with we've got to
2 get it through that group of which I'm a member downstairs
3 and so forth, plus we're going to need the help of different
4 organizations.

5 We can always -- You know, I don't think we can
6 ever look at the constitution and say that we're going to
7 adopt a constitution that's not ever going to be changed.
8 You know, at some point in time we're going to have to change
9 it, and I think we're going to have to keep that in mind, and
10 if something comes up down the road we'll address that when we
11 get to it, but we've got something now that seems to be working
12 all right, and I think it's something we can get through the
13 legislature and I daresay if we don't go to messing too much
14 with it we're going to open up a real can of worms and so
15 forth, and possibly --

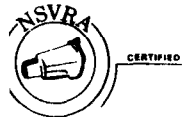
16 MR. HILL: Would you say yes, then, to Question
17 Number 5, that cities and counties should have autonomy in
18 the area of planning and zoning and still have --

19 REPRESENTATIVE EVANS: I think probably with the
20 possible exception of the uniform procedure --

21 MR. HILL: You agree with what Jim was saying?

22 REPRESENTATIVE EVANS: His first suggestion. His
23 second suggestion I wouldn't agree with, because I don't think
24 as far as procedure it would make any difference as far as
25 due process and so forth whether you're talking about --

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1 My county is McDuffie which has 20,000 folks, and
2 Fulton County has a million. As far as procedure, they ought
3 to have the same due process in a 20,000 population county as a
4 million county.

5 MR. RICKETTS: The way it was, Representative Evans,
6 the county or city had a choice. They could operate under the
7 '57 act or the '46 act, or any local act creating a variation.
8 Isn't that true, Harvey?

9 MR. FINDLEY: I think that was just an unfortunate
10 development in evolution of the law. One of those acts, the
11 '57 act was -- the '46 act preserved some local laws, then the
12 '57 act was stacked on top of that, and it preserved the '46
act, a confusing hodgepodge mess as far as I'm concerned.

14 MR. RICKETTS: I mean it wasn't a mandated uniform
15 system statewide. You had at least three and possibly many
16 more different local systems under the situation with the
17 General Assembly having the authority to control the
18 procedure.

19 MR. FINDLEY: That's right. That's why there was a
20 general consensus I believe that the planning and zoning laws
21 needed to be revised and updated.

22 REPRESENTATIVE HAMILTON: Let us move on to 6, if we
23 have said all we can say at this point on 5.

24 MR. HILL: Question Number 6 is this: "Should
25 cities and counties be given more latitude in determining their

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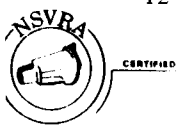
1 own form of government?"

2 For example -- and this is (a) and (b) are some
3 examples -- well, (a) is an example of this -- "Should they
4 be authorized to set up charter commissions to frame their
5 own city charter or county local act?" is one possibility.

6 Question (b) relates to this, "Should the General
7 Assembly be directed to provide by general law for optional
8 forms of municipal and county government which could be adopted
9 by petition and referendum in the particular locality?"

10 These questions came from the feeling on my part we
11 do need somewhat more latitude -- in working with cities
12 counties we do need some more latitude to allow them to work
13 on changing the form of government, but this may be a
14 judgment that's not shared by the committee, but there are a
15 number of states that authorize local charter commissions to
16 set up and work on a charter for their own city which could
17 be submitted directly to the people for a vote, and there are
18 some states that do provide for optional forms of municipal
19 and county government by local law which can be adopted by
20 general petition in the locality, but I point out the 1947
21 municipal home rule law and the 1951 municipal home rule law
22 which was subsequently declared unconstitutional as Perry
23 Sentell pointed out had provided that procedure, had provided
24 for the establishment of local charter commissions to draft
25 the charter and submit it to the people, so we had such a

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1 procedure in the statutory form in Georgia at one time, and we
2 do not have that any longer, and these questions all relate to
3 that issue as to whether the form of government should be --

4 REPRESENTATIVE HAMILTON: Jim, do you want to comment
5 on that?

6 MR. BURGESS: Well, I can't argue against their
7 being given more latitude in determining the form of
8 government.

9 I think that maybe they should be given latitude in
10 initiating the determination of the change in form of
11 government. The change in the form of government should be
12 again with participation of the public in the local community.

13 As I recall, in Georgia when we change a form of
14 government usually we have to create a charter commission,
15 there has to be a local act for example when we change a form
16 of government in Atlanta we had a local act setting up a
17 charter commission to do it. The other way to have done it
18 would have been to go back to the General Assembly, have the
19 General Assembly change it, which the General Assembly
20 authorize the creation of a charter commission.

21 In other words, there is -- If by more latitude
22 you mean letting them have more initiative to do it, I don't
23 see anything wrong with that, provided they deal with the
24 mechanism for approval or input from the local community.

25 It seems to me the change in form of government

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1 ultimately in a policy question that the local community
2 should resolve.

3 I guess it seems a little cumbersome to have to go
4 back to the General Assembly or go back and get a charter
5 commission set up.

6 If we had a general law that would authorize
7 cities to appoint charter commissions to change the form of
8 government --

9 REPRESENTATIVE HAMILTON: That would simplify it.

10 MR. BURGESS: -- that would simplify it.

11 As to just how practical optional forms of local
12 government might be, I have mixed emotions on that.

13 REPRESENTATIVE HAMILTON: It looks as if some members
14 of our committee have had to disappear, so what shall we --

15 MR. BURGESS: I would defer this one.

16 REPRESENTATIVE HAMILTON: We will just defer 6 until
17 the next meeting.

18 Weren't you discussing 7 when I came in?

19 MR. BURGESS: We took care of 7.

20 REPRESENTATIVE HAMILTON: I think we best close the
21 meeting and defer further consideration of Number 6 until
22 next week.

23 MR. HILL: Okay.

24 REPRESENTATIVE HAMILTON: So thank you all.

25 I apologize for my limitations as a presiding

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officer.

Thank you all for coming.

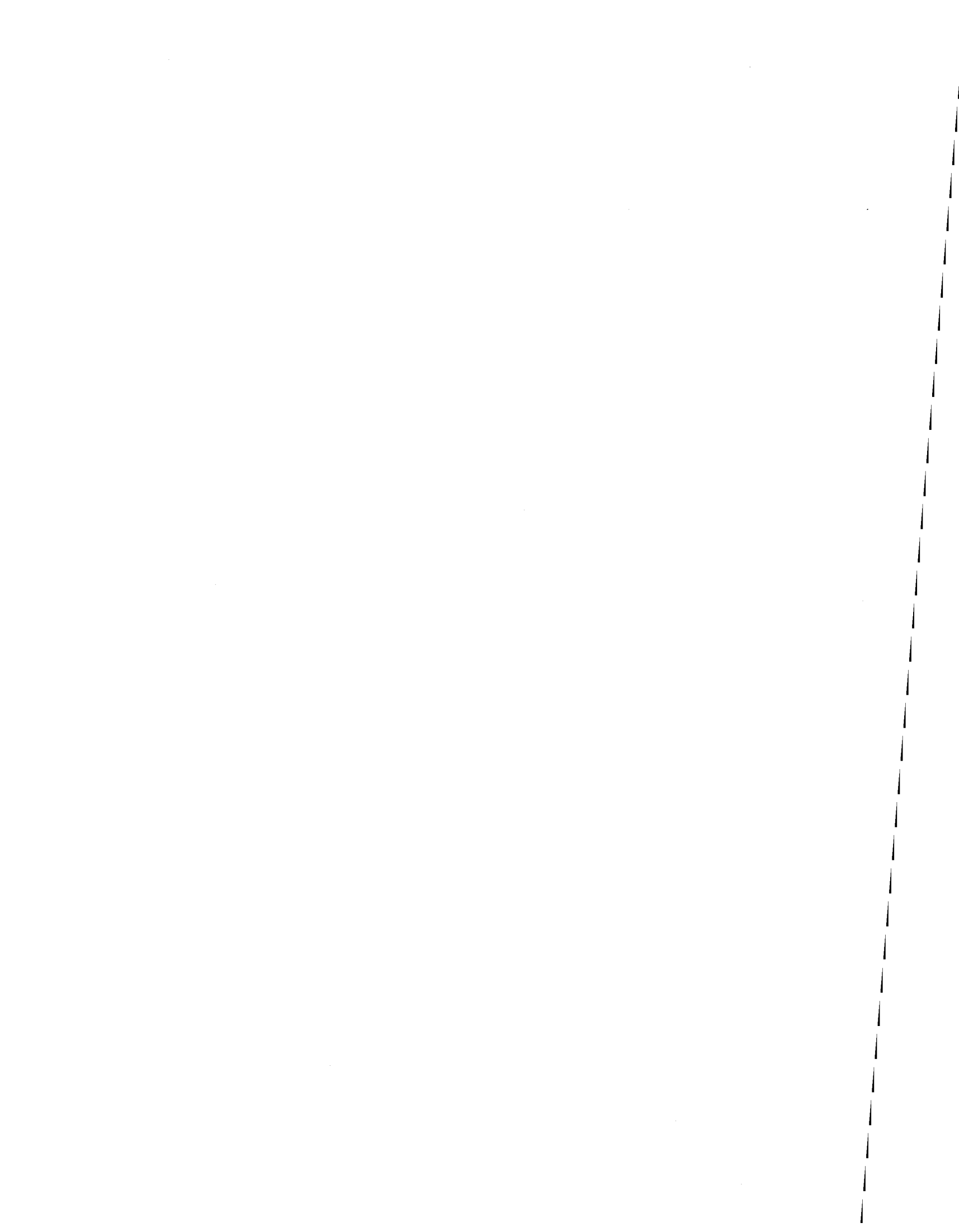
(Whereupon, at 12:25 p.m. the committee meeting was
adjourned.)

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Committee to Revise Article IX

Subcommittee Meeting Held on June 23, 1980

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II: Home rule for municipalities. pp. 8-65, 83-86

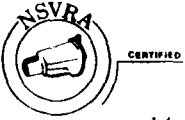
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STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

COVERDELL COMMITTEE ON
GOVERNMENTAL REORGANIZATION

BRANDENBURG & HASTY — SCIENTIFIC REPORTING



Room 401-A
State Capitol
Atlanta, Georgia

Thursday, July 3, 1980
9:30 a.m.

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PRESENT :

COMMITTEE MEMBERS :

CHAIRMAN PAUL COVERDELL

JAMES BURGESS

REP. GRACE HAMILTON

ELINOR METZGER

ALSO PRESENT :

MELVIN B. HILL, Jr.

VICKIE GREENBERG

MICHAEL HENRY

HARVEY FINDLEY

JERRY GRIFFIN

JAY RICKETTS

TOM BAUER

DOUG CARLYLE

MARY VAN AMBERG

LOU LITCHFIELD

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P R O C E E D I N G S

1
2 CHAIRMAN COVERDELL: We might as well get started.

3 I was going to restate what we accomplished at the
4 last meeting; I don't think it's necessary.

5 Let's just move ahead on Section 2, Legislative
6 Issues, and we're going to make every effort to complete this
7 section this morning, and if we have time we'll move into
8 the next category, so let's begin with the first question.

9 MR. HILL: Senator, you hadn't finished completely
10 the Home Rule Question Number 6. That's still to be decided.

11 CHAIRMAN COVERDELL: All right. Let's begin there.
12 I think looking at that question --

13 MR. HILL: The question is this. Do you want me to
14 read it for the record?

15 CHAIRMAN COVERDELL: Please.

16 MR. HILL: "Should cities and counties be given more
17 latitude in determining their own form of government?"

18 "Should they be authorized to set up charter
19 commissions to frame their own city charter or county local
20 act," or "Should the General Assembly be directed to provide
21 by general law for optional forms of municipal and county
22 government which could be adopted by petition and referendum
23 in the particular locality?"

24 CHAIRMAN COVERDELL: Okay. Let's start with the
25 general precept, should cities and counties be given more

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1 latitude in determining their own form of government.

2 I'm inclined to think the answer to that is yes.

3 Jim, do you want to comment on that? If we're going
4 to follow with what we have been saying throughout the other
5 questions, it would seem to me that that would be where we
6 would be on that. What's your view?

7 MR. BURGESS: My opinion is they should be given more
8 latitude, provided that the other changes in form of government,
9 the mechanism for citizen input and citizen approval. I'm
10 not sure I'm comfortable with the city council or county
11 governing body on its own motion changing from say a strong
12 executive to a weak executive. It seems to me these are
13 policy or political questions that should be determined by
14 the electorate, and I think that so far as a statute that
15 would authorize cities, for example, to create a charter
16 commission or to authorize some sort of initiative action
17 by the public to consider a change in government, if you're
18 talking about latitude in that sense I think it would be
19 desirable.

20 CHAIRMAN COVERDELL: In other words, you're saying
21 that those changes should not bypass the constituents which
22 are served by those --?

23 MR. BURGESS: Not the form of government, no.

24 MS. METZGER: Does that in fact happen? I don't
25 know.

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1 MR. BURGESS: At the present time cities can change
2 their form of government by amending the charter. That can
3 be done by going back to the legislature and getting an
4 amendment. It can't be done under home rule since it's one
5 of the exceptions.

6 Or they could come to the legislature and get a
7 special act as Atlanta did creating a charter commission
8 which came up with a change in the form of government, but
9 their latitude was restricted in the sense they had to come
10 back to the General Assembly to broaden that to allow it to
11 occur locally. You could have a general law that just
12 authorizes cities to create a charter commission of so many
members with certain kinds of representation and empower that
14 commission to draft a new charter which could then either be
15 submitted back to the legislature for adoption or could be
16 submitted to local referendum.

17 MS. METZGER: You want to build in the citizen
18 approval of this?

19 MR. BURGESS: I think that ought to be an alternative.

20 In the case of Atlanta, the citizens did not approve
21 the city charter, there was no referendum. The commission was
22 set up that drafted the charter, it brought it back to the
23 legislature which approved it, but there was provision in the
24 law creating the charter commission that did invite hearings
25 throughout the community on that charter, so at least there

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1 was involvement of the citizens.

2 I'm just saying something along that line, just not
3 a complete carte blanche authority to change the form of
4 government.

5 CHAIRMAN COVERDELL: You've really opened the
6 discussion under (a), should they be authorized to set up
7 charter commissions and frame their own city charter or
8 county local act, and you really have covered your view on
9 that point as well.

10 There should be some enabling position authorizing
11 the local charter commission, some system by which it's done,
12 and I think we have referred to the sovereign power.

13 You know, the way that question is written, without
14 the caveat that there is some system by which it's approved
15 it would tend to be a no, but I think it has inherent in it
16 the idea that would be forthcoming.

17 Does any of the staff members have anything to --?

18 MR. HILL: I might point out that in 1947 the
19 municipal home rule law that was adopted at that time, and
20 then again in 1951, the municipal home rule law had a
21 provision in it to set up a charter commission that allowed
22 each city to set up a charter commission, and it did set forth
23 the procedures, so it's not as if this hasn't been tried even
24 as yet.

25 It was not part of this 1965 home rule act. I'm not

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1 sure why. I'm not sure if it was just a question of debate
2 or whether it was just omitted. In any event, the home rule
3 act we're operating under now does not allow for this system,
4 but this question really came from that '51 home rule
5 provision that did allow that, so it wouldn't be even that
6 novel in Georgia to have such a thing.

7 MS. METZGER: I notice in Professor Sentell's paper
8 he points out that under the home rule grant the court had
9 held the municipality could not adopt a complete new charter.

10 MR. HILL: It can't under the present home rule
11 provisions because that's a specific exception. It says in
12 an earlier version of the home rule act that there is specific
13 authorization to set up a charter commission and a direction
14 of how the commission will be composed and the hearings you
15 would have to have and that kind of procedure.

16 Perry was speaking I think to the latest home rule
17 act, the '65 home rule act which prohibits changes in form of
18 government locally.

19 CHAIRMAN COVERDELL: If he said "Should the cities
20 and counties be given more latitude determine their own form
21 of government," we say yes. Then we say "Should they be
22 authorized to set up charter commissions to frame their own
23 city charter or county act," and we said yes with optional
24 approval systems.

25 Then we came down under (b) and said "Should the

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1 General Assembly be directed to provide by general law for
2 optional forms of municipal and county government which could
3 be adopted by petition and referendum in a particular
4 locality?" We said yes.

5 Would we be moving toward a consensus of our
6 subcommittee?

7 Let me state that I would be inclined to put in
8 terms of this question under (b) a period after -- or just
9 something else other than by petition or by referendum, just
10 be adopted by -- in accordance with statutory law rather than
11 specifying right here exactly how the adoption process might
12 be set forth.

MS. METZGER: That would be less limiting.

14 CHAIRMAN COVERDELL: That's right, and I guess what
15 I'm saying there, Elinor, is that probably any number of
16 systems by which the adoption could occur and I would think
17 it would be extensive discussion about that both in this
18 subcommittee at a later date and certainly by all those that
19 go through the process of finally signing off these things.

20 I guess what I'm trying to avoid was setting out
21 our consensus on exactly how the adoption should be.

22 MR. HILL: My own feeling about this question, if
23 I might add it, is that when a city or county decides it
24 would like to change its form of government it is faced with
25 the prospect of setting up a commission and going through a



1 lot of procedures, and that may be very worthwhile to have
2 that all happen, but I feel in a lot of cases we're
3 reinventing the wheel as opposed to if we had in place in
4 general law optional forms of government, city manager form,
5 mayor, whatever you want to decide to put in it as a number
6 of states do, then that work would have been done and all the
7 citizens would have to decide is which of these five options
8 or however many there are they would like to adopt, and then
9 they wouldn't have to have all the study and education of all
10 of the charter commissions every time they want to make a
11 change.

12 Now, as I've said, there are certain benefits in
13 that. It does bring the citizens' awareness up about what
14 these are, those kinds of things.

15 Jim and I talked about this, and he feels that we
16 might be better off just having a local charter commission
17 and let them decide on their own, plus they can tailor make
18 a charter to their own needs as opposed to having to take one
19 of these five, so there are two sides to the coin, of course.

20 CHAIRMAN COVERDELL: Harvey, you're being awfully
21 quiet.

22 MR. FINDLEY: It seems to me that in a way -- I
23 don't know that Mel intended the question to be that way,
24 and I may be wrong, not necessarily so, but in practical
25 application it seems to me that if you answer (a) yes then



1 you really don't need (b), that would be no, that if you're
2 going to set up a mechanism for them to adopt their own
3 charters, set up a charter commission and change their form
4 of government pursuant to some comprehensive general law
5 that set out criteria as to how they would select it, either
6 with or without a referendum, et cetera, then you really
7 wouldn't need optional forms. I really don't believe
8 optional forms would work. Maybe it has to some degree in
9 other states, but we've had authority under the constitution
10 to have optional forms of city-county consolidated government
11 for years, and the effect of it has been a big fat zero.

12 MR. BURGESS: Let me just comment on the optional
forms thing. I have some problems with it.

14 South Carolina uses that system, and they were
15 required by law within a certain time frame to adopt one of
16 five optional plans of government, and I felt like they just
17 had to pull these things down off the statute and buy them
18 locally, and I think in some cases they were forced to
19 apply -- they applied, you know, in most cases the correct
20 option depending on what they wanted, but there were features
21 of it that just didn't fit the community.

22 For example, they have one county there that has a
23 seven-member legislative body, but as a result of having to
24 choose one of the options they ended up with a 13-member
25 legislative body, and they really didn't want that, but

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1 that's what they had to take if they took that option in
2 order to get that particular planning done, and it really
3 created some problems.

4 Whereas if you give them the latitude to change the
5 government, let them change it and really determine those
6 kinds of issues locally as to the powers of the mayor versus
7 the council, how many members, how they're elected, this kind
8 of thing. There are just too many internal decisions on forms
9 of government that you just can't -- it would be very
10 difficult to cover it all in a system of options which you
11 pull down.

12 CHAIRMAN COVERDELL: If the question were to read
13 "Should they be authorized to set up charter commissions to
14 frame their own city charter or county local act under --"
15 Let's see.

16 MR. BURGESS: Aren't you really saying just have a
17 general law or statute, have a general statute that would set
18 forth the procedure --

19 CHAIRMAN COVERDELL: That's what I was trying to come
20 to, say they should be authorized, et cetera --

21 MR. BURGESS: -- that would set forth procedures
22 under which they would change their form of government.

23 CHAIRMAN COVERDELL: What we're trying to say is
24 under criteria as established by the General Assembly.

25 MR. BURGESS: Don't say charter commission, because



1 it could be a charter commission in one case and it might be
2 another mechanism.

3 CHAIRMAN COVERDELL: There is one other point, I
4 think we're saying the General Assembly ought to be directed
5 to establish, and I was trying to get that word "directed"
6 in there and it just didn't flow, but -- in other words,
7 should the General Assembly be directed to provide for the
8 options -- just say should the General Assembly be directed to
9 provide general law in order for (a) to be carried out.

10 That's probably a little confusing on the recorder
11 there.

12 MR. HILL: It's not the first time.

13 CHAIRMAN COVERDELL: Let's see if we can't state --
14 we'll eliminate (b) according to Harvey's suggestion, and
15 restate (a) in final language.

16 Jay, you help me here.

17 Should they be authorized to set up charter
18 commissions to frame their own city charter or county local
19 act under --

20 MR. RICKETTS: -- under criteria which must be
21 established by the General Assembly, or which shall be
22 established by the General Assembly.

23 CHAIRMAN COVERDELL: -- shall be established by the
24 General Assembly. Yes, no?

25 The consensus I would believe of this subcommittee

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1 is yes.

2 All right. Is there any other discussion regarding
3 the questions 6(a) and (b)?

4 Do any of the guests have any comments?

5 All right. Let's move on, then.

6 For the record, Mel, did you want to state the
7 first question under Legislative Issues?

8 MR. HILL: Okay. "Should cities and counties be
9 authorized to act concurrently with the state in areas which
10 are matters of both state and local concern, provided that
11 such local action is not inconsistent with state law or does
12 not undermine state policy?"

13 I think I may have mentioned before the situation
14 that we're in right now with respect to this whole preemption
15 issue, whether the state in fact can or should preempt an
16 area by virtue of addressing it in statutory law.

17 At the present time we have as I think an excellent
18 example of what I'm trying to say here a statute on litter
19 control. There is a general law that governs litter control
20 in the state of Georgia, but by virtue of that law it makes
21 it a misdemeanor to litter in the state, by virtue of that
22 general law cities and counties are precluded from adopting
23 litter control ordinances locally, and this happens in many,
24 many areas that are matters that legitimately -- as far as
25 I'm concerned legitimately are local and state matters,



1 something that both should be able to address, and to continue
2 the situation we have where as soon as the state even touches
3 the area it wipes out any local control over that subject,
4 I feel that's not a wise system to continue, so that's my
5 feeling about this question.

6 CHAIRMAN COVERDELL: For debate purposes I can
7 lean the other way, simply because in our discussions of last
8 week as we moved toward home rule we tended -- and in
9 reviewing the other home rule statutes to establish the
10 concept that the state would divest itself of home rule
11 except when it went into something that it was endeavoring to
12 do by general application.

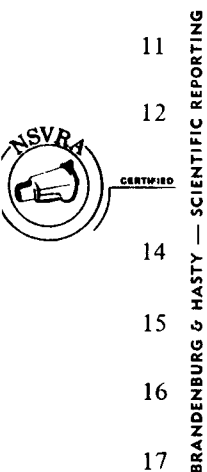
13 Now, if the state endeavors to do something by
14 general application and then finds that every municipality
15 and county can undo that general application, where would we
16 be?

17 MR. CARLYLE: Wouldn't there be a compromise area
18 where you could establish a minimum standard by the state and
19 allow more restrictive standards by local?

20 CHAIRMAN COVERDELL: I think that would be a natural
21 outflow of the direction that I was headed.

22 Not to be humorous, but I wouldn't want to create a
23 dozen litter traps around the state with these unique litter
24 laws.

25 Comment over here from local jurisdictions?



1 MR. GRIFFIN: I was just wondering, you know, not
2 being a lawyer of course, but during the past several years
3 there have been several statutes which we have amended to in
4 effect give us authority to deal with local levels.

5 For example, the uniform rules of the road as an
6 example. That's a state statute that is enforced by adopting
7 by reference. We did the same thing with -- you all did the
8 same thing as far as with marijuana and the courts overturned
9 that one, but we do the same thing on motor vehicle inspec-
10 tions, motor vehicle registrations, all of which has been
11 granted to municipal courts in the last two or three years.

12 Is that a way around part of this?

13 CHAIRMAN COVERDELL: Could I get a lawyer's comment,
14 either of you?

15 MR. FINDLEY: I think maybe it's worth observing
16 on that question that the court itself -- it's kind of a hard
17 question because the Supreme Court of Georgia has been very
18 confused on it. Doug has looked into this at some length.
19 It comes about by the provision in the constitution that says
20 laws of a general nature shall have uniform operation through-
21 out the state, and no local or special law shall be passed
22 where provision has been made by general law. That's in the
23 current constitution, and the court has had two series of
24 cases; one holds that the effect of that language is if the
25 General Assembly speaks to the subject at all that it acts

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1 as a preemption. Another line of cases holds that the local
2 act has got to conflict with the general law, and they said
3 they were going to resolve that in favor of preemption here
4 about a year ago, and then six months later they decided a
5 case on the conflict I believe it was, wasn't it, Doug --

6 MR. CARLYLE: Right. I can't remember, but they
7 flipflopped in six months without settling the previous case.

8 MR. FINDLEY: The court has been quite confused on
9 it.

10 I think it relates directly to that other provision
11 in the constitution which is found in Article III, and it can
12 be dealt with and dealt with effectively in Article IX, but
13 I think that's what you're dealing with, whether or not the
14 local governments will be authorized to act if it is not in
15 conflict with the state statute as opposed to allowing them
16 to -- if the state law, just a statement on the subject, the
17 general law acts as a preemption to prohibit any local act,
18 that's one question, or whether or not the local act has
19 actually got to conflict with it.

20 CHAIRMAN COVERDELL: Doug?

21 MR. CARLYLE: Then don't you have the question then
22 of whether -- if the local act is more restrictive it seems
23 like you need to say that that is not the conflict we're
24 talking about.

25 MR. FINDLEY: Some states have resolved this kind

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1 of question in granting authority over local control. I
2 don't know how practical that is. It would be kind of
3 interesting to look at, someone has mentioned this literature
4 that you've put out, Mel, that puts a duty on the General
5 Assembly to state its intention in each local act -- I mean
6 in each general act -- does that general act state in that
7 act if the local government is authorized to act in that area
8 and, if so, then to what extent. It seems to me that that
9 wouldn't be unduly burdensome for the General Assembly to be
10 aware of that and to deal with it in each general law, but
11 I don't know whether it would be wise to put such a provision
12 in the constitution which has been done in some states.

13
14 CHAIRMAN COVERDELL: Well, going back again, when we
15 set out the premise that we were going to divest ourselves of
16 many of these duties -- let me see the question we answered --
17 "Should a list of specific exemptions to home rule powers be
18 included in the constitution", we've said no as a consensus,
19 we have moved those away, but we have left to the General
20 Assembly I think in concept the right to establish general
21 standards that would apply to all cities.

22 Then if we come over here and say are they authorized
23 to act concurrently, it's not a consistent position.

24 MR. HILL: Not necessarily because of what Doug had
25 said.

CHAIRMAN COVERDELL: If you moved a step further

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1 and state either that it must be made clear by the General
2 Assembly its intent one way or the other, then I would think
3 that would cover the question.

4 I don't think Doug's position necessarily covers it.
5 We're only using the litter law because it's been used
6 symbolically here or figuratively, but let's just say the
7 General Assembly passed a statute that stated that a fine
8 for dispensing litter on public streets of the state of
9 Georgia is \$25, and Macon decides it ought to be 150, and it
10 may very well be that would be appropriate under the statement
11 you made, but it might not necessarily be the attitude of the
12 General Assembly when they set forth that it should be \$25,
they didn't want it to be 150.

14 MR. FINDLEY: Exactly.

15 MR. BAUER: You run into the problem in forcing the
16 General Assembly to almost look at every section you have
17 involved. I'm thinking of the condominium act that was
18 amended this year by the legislature at the impetus of the
19 city of Atlanta that was having a condominium conversion
20 problem. There wasn't anything in the Georgia condominium
21 act about the structures being fit for conversion to
22 condominiums.

23 I'm wondering whether if you have a general state-
24 ment of intent in the legislation whether that's going to be
25 specific enough to cover a situation that wasn't covered in



1 the act or whether the legislature would have to get at its
2 intent in every piece or every section of a complicated piece
3 of legislation.

4 CHAIRMAN COVERDELL: What's your response to that,
5 Harvey?

6 MR. FINDLEY: It may be that would be -- I'd like
7 to see how it works, and some states have tried it. It may be
8 it would be too burdensome.

9 I wouldn't think -- certainly I don't see why you
10 would need to amend every section. If you've got the Georgia
11 condominium act and it's intended to preempt that field,
12 then at the end of the act you could put a statement, add to
the law a statement to that effect.

14 In other words, it seems to me you take the general
15 subject of the act rather than each section of it as to
16 whether or not it was a preemption of the law, of the field.
17 It may be that the General Assembly would be hard pressed to
18 remember to do that. I've got some problems about putting it
19 in, arguably they could do that right now, put it in the
20 constitution as a mandate to the General Assembly might cause
21 some problems. I don't know.

22 MR. HILL: Maybe it's a question of presumption
23 again. You know, we're talking about the presumption in
24 Dillon's Rule and whether to reverse that; maybe there should
25 be a statement that it will be presumed that the state law

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1 will govern in any case and that no local law shall be passed
2 in any case for which the General Assembly has spoken, that
3 it would be presumed unless otherwise provided by law, and
4 then the burden would be on the General Assembly to open up
5 to local -- It really goes back to Jerry's initial comment
6 that we have done that, we've gone to specific laws, we've
7 come in and said "Well, the local governments can in fact
8 adopt this by reference or adopt their own more stringent
9 requirements." With the building codes it's the same way,
10 they can adopt them by reference, more stringent requirements.

11 Maybe it's a question of getting it clear in the
12 constitution what presumption we want to operate under so
everybody understands it.

14 CHAIRMAN COVERDELL: All right. We have two
15 alternatives here. I would say that as the question is
16 written I would come down on a no with some form of caveat
17 or something. Do you want to restate the question? It might
18 be clearer.

19 Give us a question, Melvin, that would deal with
20 your last suggestion. Can you do that?

21 MR. HILL: Well, it really gets over to Article III's
22 provision, and really a statement to the effect that the
23 general law shall have uniform application, and no local law
24 shall be passed in any case for which provision has been made
25 by general law, providing that the General Assembly may

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1 authorize local governments to act in certain areas so long
2 as such action is not inconsistent with that statute.

3 MR. RICKETTS: That's kind of a reverse idea of your
4 presumption. I thought you could put in there that if there
5 is no indication --

6 MR. HILL: It depends on which way you want to come
7 down.

8 MR. RICKETTS: That's exactly right. I'm thinking
9 in terms of you put a statement in the constitution to the
10 effect that unless an act indicates otherwise, you know,
11 intent to totally preempt a particular field that it would be
12 presumed that the local government has the authority to act
consistently or in a fashion consistent with the act. I
14 mean that just changes the --

15 CHAIRMAN COVERDELL: Yes, Jim.

16 MR. BURGESS: This question isn't that critical if
17 we develop a proper grant of home rule authority to cities
18 to govern their own local affairs except in areas -- the
19 exceptions would be where the state would adopt a general law --

20 CHAIRMAN COVERDELL: That's the heart of this
21 question.

22 MR. BURGESS: That's right.

23 CHAIRMAN COVERDELL: We're saying now even in that
24 case, if we answer this yes, even in that case they can
25 preempt state law, and if you --

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1 MR. BURGESS: No, they wouldn't be able to preempt
2 state law under home rule.

3 CHAIRMAN COVERDELL: But under the question should
4 cities and counties be authorized to act concurrently with
5 the state in areas which are matters of both state and local
6 concern -- for all practical purposes that's all matters --
7 provided that such local action is not inconsistent with
8 state law. That's the policy question.

9 MR. RICKETTS: The technical question is how, which
10 direction to take it.

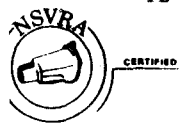
11 CHAIRMAN COVERDELL: Or does not undermine state
12 policy.

13 It seems to me the only way we could work around
14 should cities and counties -- should the General Assembly
15 -- I think we're addressing the General Assembly here in
16 these questions and not cities and counties -- should the
17 General Assembly be required in the constitution to set forth
18 in its law of general application whether it may be broadened
19 by local jurisdiction or not?

20 Does that state the question?

21 MR. FINDLEY: We've got lots of statutes on the
22 books that authorize their abridgment by local law, general
23 laws. There has always been a question really whether --
24 There's a good many of them on the books, but there is a
25 question as to whether or not that's really legal. Perry

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1 Sentell has written a piece on that very question.

2 And yet its desirable -- for example, let's take --
3 it's desirable for the General Assembly to have that flexi-
4 bility if it's not illegal.

5 Let's take the election boards for example. They all
6 have to be created by population act because Title 34
7 preempts the field of elections, so when you all wanted to
8 create a board of registration or elections in Fulton County
9 because the general law preempted it you had to go under the
10 guise of a general law by using the population act to create
11 your board of elections.

12 It would be desirable it seems to me for the General
13 Assembly to have the flexibility to say that a board of
14 elections could be created by local act notwithstanding
15 Title 34 which is the General law.

16 Like I say, there's lots of examples of that having
17 been done, and I don't know that anything has been stricken
18 on that particular point, but there's always the question as
19 to the legality of it, so either in Article IX or Article III
20 it seems to me it would be fine for the General Assembly to
21 have that flexibility and then resolve this matter
22 statutorily. As the question indicates, this is a statutory
23 question, but just to make that provision in the constitution
24 dealing with preemption or conflict of general law as to
25 local laws clear as to the General Assembly having the



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1 flexibility to allow a general law to be abridged under
2 certain circumstances.

3 CHAIRMAN COVERDELL: All right.

4 MR. LITCHFIELD: There's also two different aspects
5 of this, whether general law can be abridged or altered by
6 local acts passed by the general Ass^em^bly or under home rule.
7 Are you going to take the same -- is it going to be the same
8 in every case? Are they going to be handled the same?

9 Are we talking about home rule abridgements of
10 general laws and local acts of the General Assembly abridging
11 general laws in this question?

12 CHAIRMAN COVERDELL: I think in the previous
13 session we have essentially dealt with -- Well, we haven't
14 come to that question, it's further down in the report of
15 Sentell's.

16 MR. FINDLEY: I think if the General Assembly had
17 the flexibility to deal with it that it could authorize both,
18 whether it be granted by home rule to allow its abridgement
19 of the general law or by local act. It would preferably be
20 home rule. Why do a local act if the matter can be dealt
21 with, just let them do it, home rule, but if the General
22 Assembly has the flexibility to do that -- they may have now
23 because we have certainly got lots of statutes on the books
24 doing just exactly that. It will be a complete statement of
25 general law, and then it will have the provision to the

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1 effect that a local law could be passed on the subject, but
2 that worries a lot of people.

3 MR. HENRY: Harvey, isn't that what they're doing
4 by saying that, they're saying "We're not preempting the
5 field," but you couldn't have a local law that would conflict
6 with a general law. Is that --

7 MR. RICKETTS: The question is whether or not the
8 General Assembly can put such a statement in the general act.

9 MR. FINDLEY: That's right. It can authorize the
10 abridgement of a general law, and I think that's questionable
11 under the present language of the constitution.

12 CHAIRMAN COVERDELL: So we're restating this
13 question to say "Should the General Assembly have that
14 authority under the constitution to make its intent known
15 about laws of general application?" Yes, no?

16 I get the feeling that the consensus of the sub-
17 committee is yes, and if that be the case that we restated
18 which we have on the record the Question 1, substituting for
19 this question, and we have answered it yes.

20 Any other comment on that?

21 MS. METZGER: Could you read it through once again?

22 CHAIRMAN COVERDELL: As I restated it?

23 MS. METZGER: As you restated it.

24 CHAIRMAN COVERDELL: I was afraid somebody was going
25 to suggest that.

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1 MR. HILL: I think I tried to take it down.

2 "Should the General Assembly be required under the
3 constitution to set forth in general law the --" No, I'm
4 sorry.

5 MS. METZGER: That's as far as I got, then I got
6 lost.

7 CHAIRMAN COVERDELL: Go ahead. Try again.

8 MR. HILL: " -- authorized in the constitution to
9 set forth in general law the exceptions for local governments
10 in order to -- "

11 CHAIRMAN COVERDELL: Let me try it.

12 "Should the General Assembly be directed in the
13 constitution to set forth in each act of general application
14 as applies to local jurisdictions its intent as to whether or
15 not it could be abridged and/or broadened?"

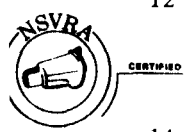
16 MR. CARLYLE: That makes the presumption we come
17 down on Jay's side, then, doesn't it? If they're required to
18 set it forth rather than authorizing them to set it forth, it
19 would come down on Mel's side.

20 In other words, if they didn't make any statement
21 it's presumed that the local can do it.

22 CHAIRMAN COVERDELL: My view in that case would be
23 on Mel's side as opposed to Jay's.

24 MR. CARLYLE: I thought it might, that's why I
25 thought you might want to reconsider that statement.

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1 CHAIRMAN COVERDELL: Let's just restate it.

2 MR. FINDLEY: If you just said authorized instead
3 of required, I think that would be the difference.

4 CHAIRMAN COVERDELL: Okay. Yes, no?

5 MR. BAUER: It seems like abridge is an awfully
6 strong word.

7 MR. BURGESS: How about a statement like this:

8 "Should the General Assembly be authorized by
9 general law to -- "

10 MR. RICKETTS: No, not authorized by general law.

11 CHAIRMAN COVERDELL: By the constitution.

12 MR. BURGESS: "Should the constitution authorize
13 the General Assembly to enact statutes under which the
14 state and localities can act concurrently--" just make that
15 broad statement -- "on subjects affecting their mutual
16 interest?"

17 MS. METZGER: That's different.

18 MR. BURGESS: It broadens it out. Why not just --

19 CHAIRMAN COVERDELL: I think it covers the point,
20 does it not?

21 MR. FINDLEY: I believe it would. It seems to me
22 it would.

23 CHAIRMAN COVERDELL: I think it's concise, clearer
24 than anything the Chair has come up with, that's for sure.

25 MR. HILL: Actually these questions anyway will give

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1 us direction.

2 CHAIRMAN COVERDELL: I think that states the point
3 very well.

4 MR. RICKETTS: But you can act concurrently in a
5 consistent and conflicting fashion.

6 MR. BURGESS: There's some question now as to whether
7 you can, as Harvey pointed out. I think we're really trying to
8 get clarification really should the constitution be amended so
9 as to authorize the General Assembly to pass legislation under
10 which the state and its localities may act concurrently on
11 subjects affecting their mutual interest. I believe that's
12 what you're trying to get at. You're trying to get around the
same subject matter test.

14 CHAIRMAN COVERDELL: So we don't have to state it
15 again, that's on the record with an answer yes/no, and the
16 subcommittee consensus being yes.

17 Okay. Any other discussion on that point?

18 All right. Mel, why don't you bring Question 2?

19 MR. HILL: All right. "Should population be able
20 to be used as a basis for classification of cities and
21 counties?" That's the overriding question, then there are
22 some other questions under it.

23 "Should the general laws of local application,"
24 so-called population statutes, "be prohibited?"

25 Secondly, "Should the General Assembly be directed

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1 to classify cities and counties on the basis of population,
2 and then be prohibited from legislating with respect to them
3 except by general law according to class?" This too comes
4 from other state procedures, and that's the way other states
5 are doing it in many cases.

6 (c), "More generally, should the General Assembly
7 be prohibited from legislating with respect to cities and
8 counties except by general law?" That too is from other
9 states where that is in fact part of their constitutional
10 provisions. There are no local acts in many states.

11 CHAIRMAN COVERDELL: This is the heart of the
12 matter.

13 Jim, do you want to open up the discussion on that?

14 MR. BURGESS: I really have mixed emotions. I'm
15 really not sure about this population thing.

16 I can see some argument for it now in Georgia since
17 there is a wide, or there has evolved a fairly wide difference
18 in the demands placed on say more urban local governments than
19 the rural local governments, and they need certain unique
20 powers that may not necessarily be appropriate for say purely
21 rural type of governments, and so I think a classification
22 system perhaps would give the General Assembly a greater
23 flexibility in dealing with individual needs of localities.

24 The concern I have with it, it just can result in
25 such a confusing system of laws -- I think in Pennsylvania

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1 where they've got six or seven classes of municipalities,
2 six or seven classes of townships, they've got all kinds of
3 burroughs, then they've got a city of one class, the city of
4 Philadelphia where they passed laws just for Philadelphia;
5 for example, the income tax with regard to suburbanites
6 which no other city has that authority. Yet if you were
7 operating under a general law system there would have been no
8 way that Philadelphia could have gotten that particular
9 authority, so in a way you're sort of backing in and coming
10 back in with a local system of legislation, and at this time
11 I just don't honestly know what the best answer to this one
12 is.

13
14 CHAIRMAN COVERDELL: Mel, do you want to comment on
that question 1? I mean on Question 2.

15 MR. HILL: Again, this is something that other
16 states do with greater or less success. I think Pennsylvania
17 has been the most extreme example of where it's been
18 proliferated out of control, but in other states I think it
19 probably has worked well.

20 Many state constitutions limit the number of
21 classes you can create, it says limited to three or four
22 classes, that is the most you can create in cities and
23 counties.

24 I just felt that in Georgia working with cities and
25 counties my experience, do we have to have Echols County and

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1 Fulton County always be under the same general statutes
2 relating to counties. It just seems somewhat ineffective.

3 MR. BURGESS: I could almost see it more for
4 counties than for municipalities on this.

5 MR. GRIFFIN: The thing that classification of
6 cities, and it's normally by population, presupposes is that
7 the needs of a city of 20,000 are the same regardless of
8 where they're located, and that's just not the case because
9 Decatur is a city of what, 13,000, and their needs are
10 entirely different than Griffin which is 20,000.

11 MR. BURGESS: On the other hand, if the charter of
12 that city is drafted for a city of 20,000 to have the powers
13 it needs, where a city of half million, for instance Atlanta
14 has the powers that it needs, but with regard to municipal
15 government you don't have the same -- the cities seem to be
16 empowered in a flexible sense in order to deal with the
17 situation.

18 MR. GRIFFIN: Maybe you ought to class by counties.

19 MR. RICKETTS: Are we talking about classification
20 just from the standpoint of the powers the entity has, or are
21 we talking about from the standpoint of legislation --

22 CHAIRMAN COVERDELL: Legislation.

23 MR. RICKETTS: -- requiring certain acts?

24 MR. BURGESS: We're talking about legislation, not
25 necessarily requiring but empowering.

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1 For example, I know DeKalb County would like to have
2 certain powers that are more similar to the flexibility that
3 municipalities have in their empowerment, whereas Echols
4 County probably doesn't desire, wouldn't even want that kind
5 of power.

6 MR. RICKETTS: The General Assembly would also have
7 the power to impose requirements by category as well as
8 empowering by category; is that not true?

9 MR. BURGESS: If that's the way it was drawn.

10 MR. RICKETTS: That's kind of the direction you're
11 shooting at.

12 MR. BURGESS: I'm not shooting at any direction,
13 I'm not --

14 CHAIRMAN COVERDELL: Not yet.

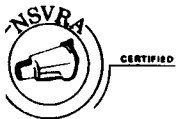
15 It seems to me that this is practicality and theory
16 beginning to butt heads. You're saying here should laws of
17 general application, population statutes be prohibited, and
18 then you recognize there are certain instances and problems
19 like the Philadelphia one that require certain things, then
20 you reach over here and try to reach a system by which to
21 deal with that type of issue coming before us.

22 MR. BURGESS: It's another system of population acts.

23 CHAIRMAN COVERDELL: That's right, reversing one from
24 the other.

25 Harvey?

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1 MR. FINDLEY: I think what makes this subject this
2 difficult is the fact that there are legitimate population
3 acts, there's legitimate ways that the General Assembly can
4 classify on the basis of population, so the answer to (a)
5 would certainly be no it seems to me as far as a flat
6 prohibition of all population acts.

7 The minimum salary laws are an example where you've
8 got classifications of -- you pay people according to
9 classification, so it is the abuses of the population act
10 that you're really trying to deal with, and how can you
11 effectively deal with the abuses of the population act in the
12 constitution, then it's hard to do, and I'm not sure it can
be effectively done. Perhaps it can.

14 We have worked on it before, but the abuses where
15 you forget to advertise or you don't want to advertise --
16 for example, if you're going to give your board of
17 commissioners a raise, so you come to pass a population act
18 to give the board of commissioners of Pinetree County a raise;
19 that is an abuse of the population act because it should have
20 been done by local law where the constitution requires it to
21 be advertised, et cetera, so there are many more abuses of
22 population acts than there are legitimate uses of population
23 acts, but there's still legitimate grounds as the court
24 recognized over the years where you can legitimately
25 classify on the basis of population, so you don't want to

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1 eliminate that, but on the other hand it would be highly
2 desirable to eliminate the abuses of population acts, the
3 flood of population acts which you all have every session
4 which really should be done by local acts or not done at all.

5 MR. CARLYLE: The problem as far as population acts
6 is they're not only to get around the advertising requirements,
7 but are used to vary the general law, which gets us back to
8 the first question as to the home rule authority and
9 authorizing the General Assembly by general law to allow
10 exceptions to that general law.

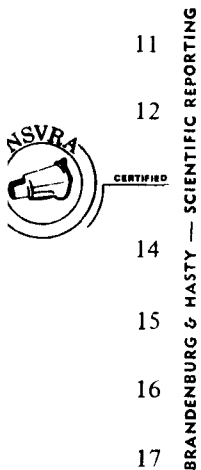
11 You know, if you authorize population acts, then
12 what kind of general law can authorize those exceptions?
13 Can you amend 84-9 by a population statute to authorize
14 exceptions to 84-9 or whatever.

15 CHAIRMAN COVERDELL: Let's stay on the litter law.

16 MR. CARLYLE: Okay.

17 CHAIRMAN COVERDELL: All right. We have an act
18 that says that the fine is \$25 let's assume, and obviously
19 one course would have been to not have any language, we
20 did not exercise our authority to allow the concurrent
21 action of local jurisdictions in litter laws of statewide
22 application. Now, that's fairly clear.

23 Now, let's come over to the second option and we
24 said that except, however, local jurisdictions shall have the
25 authority to enforce violations of this act that are more



1 severe than the \$25.

2 Now, as I would interpret it, Macon could institute
3 a litter law of \$50, it would not be in conflict with the
4 intent of the General Assembly.

5 Now let's come to the General Assembly. Under the
6 authorization, would that include the fact that we could have
7 a population act or something to that effect to allow the
8 legislators, the legislative delegation of Bibb to impose
9 a different litter law, or have we prohibited them from
10 doing that, or do we want to?

11 MR. CARLYLE: My concern would be that situation,
12 if we have a general law, the General Assembly doesn't say
13 anything, the presumption is that the locals can't say
14 anything on it, but that the local delegation gets an
15 amendment, a population amendment to the general law
16 authorizing more restrictive or less restrictive litter law,
17 it seems to me like you have that problem if you authorize
18 population acts, that if you don't have a statewide consensus
19 saying that you can have these, the variations from the
20 general law, through local courtesy you have a population act
21 that varies the general law.

22 CHAIRMAN COVERDELL: Jim?

23 MR. BURGESS: I think -- I just have a hard time
24 conceiving of situations where the locality may not have to
25 get a variance in the general law, to get an exception or



1 have it -- you just can't lock it in, I don't believe you can
2 create a totally inflexible system of law.

3 I don't like population statutes because as you say
4 of the abuse, you've got to revise them, move them in and out
5 of the categories.

6 You may want to consider an approach that North
7 Carolina used which is a general law state, however cities
8 and counties up there may amend the general laws as to the
9 application of that general law to that jurisdiction. In
10 other words, the General Assembly enacts as a matter of
11 policy what it wants to do statewide --

12 CHAIRMAN COVERDELL: Stay on that, stay on the
13 litter law.

14 MR. BURGESS: Let's take the litter law. There is
15 no reason that Burlington or Greensboro or Charlotte couldn't
16 come in and amend the litter law, and the amendment is right
17 in the litter law itself, it says that Charlotte shall be
18 authorized to -- notwithstanding the provisions of the statute
19 Charlotte is authorized to impose by ordinance a fine of \$50
20 for enforcement of the statute.

21 Another example, North Carolina has unilateral
22 annexation statute -- this is what I don't like about it, this
23 system in the sense that some counties can come along and --
24 I mean some cities can come along, and some cities have come
25 along and have exempted themselves from that unilateral



1 annexation statute, not many of course, but a few have, but
2 at least you've got a system of generalized law, however still
3 to find out what the law on a given subject is you've got to
4 go back to each general statute and see what cities have
5 amended that statute, so it's somewhat similar to our
6 population situation, although I think --

7 CHAIRMAN COVERDELL: You've basically stated in
8 consensus an objection to that system.

9 MR. BURGESS: That's right.

10 CHAIRMAN COVERDELL: Now, the question is how to
11 deal with legitimate exceptions.

12 MR. HENRY: I think the basic premise that this
13 subcommittee resolved in its first meeting was they wanted to
14 grant a reverse presumption and grant greater home rule
15 powers.

16 I think one question you may want to address or you
17 may want to skirt is whether you want the Macon delegation
18 to be able to come up here and enact a law, or whether you
19 want -- or an ordinance setting a higher fine for litter, or
20 whether you want the Macon city council, you think that is
21 properly in their bailiwick and should not be addressed by
22 the local delegation, and then with an added -- Okay, so
23 you have a litter law, you allow concurrent action in the law,
24 you have an annexation statute, you say "We have preempted the
25 field, we don't want local ordinance to except itself from

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1 this."

2 CHAIRMAN COVERDELL: Taking that, are we saying that
3 we're treating -- it's the question you were raising a moment
4 ago -- when we authorize concurrent action is it a dual
5 authorization, I mean is there a way we can structure that
6 where the general assembly passes this litter law and it's
7 decided that it does not want that preempted that it preempts
8 local act and it preempts local amendment, and if it authorizes
9 a broader interpretation it grants it concurrently to the
10 local jurisdictions and to the local delegation, which gets
11 back to this burden we're exploring whether it's possible
12 and feasible for the General Assembly to accomplish that.
That's the question you were raising.

14 It seems to me that if that's the cross point.
15 Once you decide that it may be, not abridged but broadened
16 or modified that you do that in a dual fashion, that there are
17 two procedures by which that could occur, the local delegation
18 and local government.

19 MR. HILL: But not necessarily by population -- it
20 really has nothing to do with population, it's just that's the
21 only method of exception that we would allow.

22 MR. CARLYLE: You see, if somehow in the wording
23 of the constitution on the provision itself it were to refer
24 or exclude population acts somehow in the authorization of
25 the general assembly to provide by law for exceptions to the



1 general law, because the problem with population acts is they
2 are general law, and so --

3 CHAIRMAN COVERDELL: And I'm discussing it as if it
4 were not, I mean as if it were of local application other
5 than population, but it is; that's the system that's been
6 designed, it's a general law.

7 MR. CARLYLE: So if the General Assembly by a true
8 general law, not a population act authorized variance it seems
9 like that's one question.

10 If the General Assembly came back by a pseudo-general
11 law, a population act and authorized a variance, that's another
12 question.

13 MR. RICKETTS: What you're proposing, Doug, is to --

14 MR. CARLYLE: Eliminate the population acts.

15 MR. RICKETTS: -- is to eliminate the parody of
16 population acts with general bills. In other words, you're
17 saying that a general law can provide that subsequent
18 population acts cannot or may not vary the provisions of the
19 general law or can be silent on the subject.

20 you're saying that a general bill can preclude
21 subsequent population bills on a certain subject.

22 MR. CARLYLE: Correct. It would have to be a true
23 statement by the --

24 CHAIRMAN COVERDELL: Stop right there. What group
25 decides whether it's true or not?



1 MR. CARLYLE: Well, what decides whether it's true
2 or not is whether it's a population act.

3 MR. RICKETTS: If in the general act there is no
4 reference to population, I think what Doug is saying, then
5 that's a true general bill.

6 MR. CARLYLE: That's a true general law.

7 CHAIRMAN COVERDELL: I'm confused.

8 Using the example of the sheriff's salary, we refer
9 to population in that.

10 MR. FINDLEY: Doug is not -- I believe what he's
11 contemplating is having constitutional authority to preclude
12 population acts, population amendments to a general law
13 that so states, that says there will be no population amend-
14 ments to this law, and have -- The problem with that is
15 because the population act is a general law as he points out
16 and has equal dignity with any other general law, so the
17 constitution would have to specifically authorize that -- and
18 it would be hard to do, although it can be done --

19 MR. CARLYLE: We have prohibited them before with
20 the language.

21 MR. FINDLEY: Right, come up with some language to
22 do it, but that would -- I think it would seem to me would be
23 a good solution, if you could raise a general law that was
24 truly general without any population classification above --
25 gave it a greater dignity than a general law that does

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1 classify on the basis of population, and then in each general
2 law you could state if the constitution authorizes it there
3 would be no population amendments to this law, then that would
4 leave you with legitimate population acts, for example the
5 minimum salary laws. There's all sorts of legitimate ways to
6 classify on the basis of population, and a flat prohibition
7 of them would be just full of mischief.

8 MR. RICKETTS: The minimum salary law I don't think
9 would be a population act within the meaning that Doug was
10 talking about, because it covers the entire state, it uses
11 population as a device for arranging provisions of the act,
12 but it doesn't merely apply to a subsection of the state as
13 does the true population act we're trying to get at.

14 MR. CARLYLE: Some of the draft language Harvey and
15 I have come up with to eliminate population acts, there are
16 exceptions, those kinds of exceptions, and I think we also
17 included open-ended population acts as exceptions.

18 CHAIRMAN COVERDELL: We have kind of worked our way
19 around to a group of questions rather than a specific question.
20 We are really dealing with this heart issue Number (c), more
21 generally should the General Assembly --

22 (Representative Hamilton joined
23 the meeting.)

24 CHAIRMAN COVERDELL: You arrived at an appropriate
25 moment.

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1 I was about to read this question (c).

2 Okay. Now, let me state this: More generally,
3 should the General Assembly be prohibited from legislating
4 with respect to cities and counties except by general law?

5 We're just not unilaterally saying -- we're not
6 saying yes to this, we are coming with a new suggestinn.

7 Harvey, state the suggestion. Restate the dignity
8 of the general law. The constitution will have to set out as
9 I understand it that authorization, then the General Assembly
10 is authorized to establish dignity that prohibits population
11 acts to that general law, or not?

12 MR. FINDLEY: It seems to me that would be my own
13 feeling. A better approach to it than the constitution having
14 to describe which general laws are okay -- I mean which
15 population acts are okay and which population acts are not
16 okay, and if the General Assembly had the authority or give
17 the General Assembly the authority in the constitution to by
18 statute prohibit population acts, population amendments to any
19 general laws where it so stated there would be no population
20 amendments --

21 MR. HENRY: What would be the obstacle to someone --
22 Okay, you've got a statute on litter control or on annexation
23 which says that you can't have a population act which amends
24 this law or which excepts from this law, what is to prevent
25 someone from going in and amending the act to take that



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1 sentence out, and then at the same time amending the act to
2 have a population act?

3 MR. FINDLEY: The big difference would be the entire
4 General Assembly by a constitutional majority would have to
5 take the sentence out, whereas the delegation can pass a
6 population act that would go through on local courtesy.

7 CHAIRMAN COVERDELL: But it would be a valve that
8 might be useful. I mean the entire General Assembly --

9 MR. FINDLEY: As a practical matter Mike is exactly
10 right, you could just take that sentence -- if that became
11 troublesome you all would have the authority to take it right
12 out, and you'd be right back to square one, but it would be a
13 decision -- you could not put that amendment to that general
14 law through on local courtesy.

15 CHAIRMAN COVERDELL: Mel?

16 MR. HILL: How about the possibility of amending
17 Article XI which sets forth the legal heirarchy to be the
18 supreme law, the constitution, the general laws, the second
19 authorities and local laws as the third -- that's the way the
20 heirarchy is now -- amending that to establish a fourth
21 classification in the heirarchy which would be under the
22 general laws which would be general laws limited by popula-
23 tion classification, and then they would in fact be
24 recognized as, you know, another level and actually given
25 constitutional authorization.

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1 MR. CARLYLE: It seems like you might need some-
2 thing more than that, something --

3 CHAIRMAN COVERDELL: Let's not try to work the
4 language out right here. Let's see how we will --

5 MR. RICKETTS: In effect you're doing that, so you
6 may as well recognize the fact that you've done it.

7 CHAIRMAN COVERDELL: Let me take (c). Should the
8 General Assembly be prohibited from legislating with respect
9 to cities and counties except by general law, and we're
10 saying no, and we're adding a question (d) "Should the
11 constitution authorize the General Assembly to set forth
12 in general law which may not be amended by population act?"

MR. FINDLEY: There you go.

14 CHAIRMAN COVERDELL: Yes/no, and the consensus is
15 yes.

16 All right. Now --

17 MR. FINDLEY: Worry about the details later.

18 CHAIRMAN COVERDELL: Yes, the T crossings and the
19 I dottings.

20 Let's come back up to (a) "Should general laws of
21 local application (i.e. population statutes) be prohibited?",
22 and based on what we have just said it's no.

23 MR. FINDLEY: Lou just made a point. This gets
24 into the technicalities of drafting, but perhaps it shouldn't
25 be in the question, it shouldn't be confined to the General

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1 Assembly having the authority to pass a general law which
2 could not be amended by a population act, but to pass a
3 general law the subject matter of which could not be changed
4 by a population act, because you could easily see a loophole
5 that you could drive a truck through; rather than amending
6 the population act the delegation comes along with a separate
7 act that in effect supersedes the general law.

8 CHAIRMAN COVERDELL: Restate the question that
9 covers your concern so that we have the recording of it.

10 This is Subquestion (d). "Should the General Assembly -- "

11 MR. FINDLEY: "-- have the authority to provide in
12 a general law that the subject matter of that general law
could not be changed by a population act?"

14 CHAIRMAN COVERDELL: Okay.

15 Now I am on question (b). "Should the General
16 Assembly -- " I'm sorry.

17 Come up to the main Question 2. "Should population
18 be used as a classification basis for general law?"

19 I tend to be in disagreement with that concept.
20 I don't feel the consensus in the --

21 MR. GRIFFIN: I agree with you, but what about all
22 the things that are on the books that we've got now, like
23 your pension system I think for example is a general popula-
24 tion statute, and we've got a bunch of other things like that,
25 don't we?



1 MR. FINDLEY: If it outlaws the ones on the books
2 it would be an absolute catastrophe.

3 CHAIRMAN COVERDELL: We'll all have to get in the
4 life boat I'd think.

5 MR. HENRY: Would it be a prospective prohibition?

6 MR. FINDLEY: I think it would almost have to be.
7 There's a lot of them on the books that the state would be
8 better off without if they were indeed eliminated, but there
9 are some on the books that are absolutely crucial -- three
10 pension systems for the City of Atlanta are an example.

11 CHAIRMAN COVERDELL: I'm interpreting this question
12 differently. I don't interpret the question to be applicable
13 to necessarily population acts, but I was taking it in the
14 sense that we would establish broad classifications of
15 municipalities and counties of all these various populations,
16 and any time the General Assembly passed a law it would have
17 to direct which of these or all it applied to; in other words
18 separating Echols through a system from Fulton County. We're
19 almost doing it in reverse.

20 MR. FINDLEY: Wouldn't it be possible, since we've
21 stated that other question and answered it in the affirmative
22 that then you could leave -- that would give the General
23 Assembly the flexibility to deal effectively with prohibiting
24 population acts where they thought it was necessary or
25 desirable to prohibit population acts? Then you could leave

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1 other population acts where they are like we've always done
2 with them.

3 CHAIRMAN COVERDELL: I agree.

4 MR. FINDLEY: But the General Assembly would have
5 the authority to preclude population acts in those areas where
6 the general law should indeed be a statewide general policy.

7 CHAIRMAN COVERDELL: They're essentially trying
8 eliminate an abuse, and not necessarily try and create a new
9 system by the system we've outlined.

10 MR. HENRY: Would you have to -- Okay. Take a
11 general law that's on the books right now, you wanted to put
12 this concept into that general law after this constitution
is passed. Would it take a constitutional majority to make
14 an amendment to that law of that nature?

15 MR. FINDLEY: I hadn't contemplated it would. It
16 would be done by a majority of the General Assembly, a
17 constitutional majority of the General Assembly.

18 MR. HENRY: To take it out?

19 MR. FINDLEY: Yeah.

20 MR. HENRY: But not to put it in?

21 MR. FINDLEY: Yeah. In other words, you're saying
22 it could be put in by a delegation? It would be put in by the
23 General Assembly or taken out by the General Assembly is
24 what I'm thinking.

25 MR. HENRY: Okay. I see.

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1 CHAIRMAN COVERDELL: In conjunction with the state-
2 ment you made a moment ago, Harvey, wouldn't we come down
3 then onto question 2 with a no?

4 MS. METZGER: The kind of classification you were
5 talking about, Paul, is a little bit different is it not?

6 CHAIRMAN COVERDELL: Yes, I think that's what this
7 question anticipates, an affirmative step towards a new system
8 of categorizing cities or counties for kinds of actions,
9 and I think Jerry's point is well stated, I don't think those
10 are necessarily the criteria by which needs are determined.

11 MS. METZGER: Our consensus would be no?

12 MR. HILL: By the same token, do you feel the
13 present system under which every city and every county must
14 be covered by general statute is really the best system that
15 we should have?

16 MR. RICKETTS: Mel, if we went on and did what we're
17 talking about doing, what was agreed to earlier, the General
18 Assembly could specify a particular act if it wanted to that
19 the provisions of the act could be amended by local act or
20 by act of the individual cities and counties, so you could
21 except -- you know, you can provide for variation through that
22 method.

23 MR. BURGESS: If you could do it through that --
24 let's take the situation of DeKalb County, let's say counties
25 in excess of 300,000 population wanting to have authority to

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1 impose an insurance license tax, you know, that's -- if you
2 could set up a classification to grant that authority to those
3 counties -- in other words, if the General Assembly would be
4 more responsive to the needs of that county because of being
5 able to distinguish on population where it might not want to
6 give that authority to every county in the state, can you
7 do that with your system that you're talking about?

8 CHAIRMAN COVERDELL: That's a question I had.

9 MR. BURGESS: I don't think you could.

10 MR. FINDLEY: I think that the insurance premium
11 tax as an example which is set out in Title 56, you could
12 preclude under what I'm talking about, you could preclude
13 population as indeed -- that act now states flatly that it
14 preempts the field, then authorizes municipalities to levy
15 the tax and flatly prohibits counties from levying the tax,
16 but you could I think put in that statute -- it already
17 preempts, but you could put in that statute there would be no
18 population amendment to that law or that subject matter, it
19 couldn't be dealt with by a population act.

20 MR. BURGESS: Could you go further and say
21 "However, the provisions of this act shall apply to counties
22 in excess of 300,000 population"?

23 CHAIRMAN COVERDELL: That was my question, under
24 the system we established could the General Assembly in a
25 sense deal with classifica -- there shall be no population



1 acts for counties under 100,000, or over --?

2 MR. FINDLEY: I think so.

3 MR. BURGESS: I'm talking about a population that
4 applies generally --

5 MR. FINDLEY: You get right down to the language and
6 have to think about it.

7 CHAIRMAN COVERDELL: In concept would the
8 authorization you envision be broad enough to allow the
9 General Assembly that type of authority in addition to simply
10 stating there may be population acts that affect this law
11 or there may not be?

12 MR. FINDLEY: What I contemplated is the General
13 Assembly would have the same flexibility it has right now in
14 population acts, except it would have the additional
15 authority to preclude population acts in certain areas where
16 the General Assembly decided to preclude them by placing such
17 language in the general statute.

18 MR. BURGESS: Why not preclude the purely local
19 delegation population acts, which I think is what you're
20 trying to do, but certainly not preclude the General Assembly
21 from acting on the basis of population where it's in the
22 interest of the state to do so, so as to recognize different
23 needs from one area of the state or one kind of government in
24 one portion of the state to another?

25 This prohibits strictly local population acts which

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1 the abuse, which is the way it's circumventing the general
2 law, that's what it's used for.

3 MR. RICKETTS: You wouldn't want to add that it's
4 prohibited.

5 MR. BURGESS: Yes, just prohibit it. It's strictly
6 a device to circumvent the general law and give the General
7 Assembly another means of having the flexibility.

8 MR. GRIFFIN: But the alternate means that you're
9 talking about is going to be to give them a whole class of
10 counties that would come in under population.

11 MR. BURGESS: That's exactly right.

12 MR. GRIFFIN: Harvey is going to take care of that.

13 MR. BURGESS: They don't need both. If they've
14 got -- In other words, let them elect under home rule the
15 general local affairs, it's only in the areas that the General
16 Assembly has a general law --

17 CHAIRMAN COVERDELL: Now wait a minute.

18 MR. BURGESS: -- that needs to be adapted.

19 CHAIRMAN COVERDELL: Where you're headed is that
20 there be no local courtesy, and --

21 MR. BURGESS: Local population acts by delegation.
22 Yes, local courtesy.

23 CHAIRMAN COVERDELL: Basically they're general law,
24 they're passed -- so there would be no local courtesy, and I
25 would think that if the General Assembly expressed itself

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1 on a given act that it authorized population adjustment, the
2 General Assembly could not, one -- and once it's granted that
3 authority it recognizes that there are matters of local
4 application which it doesn't understand as well and doesn't
5 want to, if we took yours now they would be dragged into that
6 mire, and I also think, you know, that the question of
7 individual knowledge would be gravely diminished.

8 I mean, you know, you find yourself trying to
9 explain the internal affairs of Decatur and why it was
10 necessary for this population act to be dealt with. I would
11 think the delegation would remain the convenient process if
12 the General Assembly had expressed itself that that was
appropriate.

14 MR. RICKETTS: But under Harvey's concept, you know,
15 the General Assembly could shut the door absolutely.

16 CHAIRMAN COVERDELL: Or it could shut it in class.

17 REPRESENTATIVE HAMILTON: By class.

18 CHAIRMAN COVERDELL: By class, that's right, in
19 other words say there would be no population acts for any
20 jurisdiction with a population of less than 100,000; in
21 other words, it feels it's not applicable to Echols, or the
22 reverse. As long as we have that authority I think we can
23 establish broad local application and at the same time giving
24 the state the authority to choke it down where massive
25 abuse is occurring.

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1 MR. FINDLEY: It wouldn't eliminate the abuses.

2 CHAIRMAN COVERDELL: No.

3 MR. FINDLEY: But it could go toward that. It would
4 depend on the General Assembly as to how effectively it used
5 it, because under what I'm talking about you have the same
6 flexibility that you have right now dealing with population
7 acts, but you have the additional flexibility to eliminate
8 population acts in certain areas where you decide to do so,
9 and then it would take the entire General Assembly to make a
10 change in that concept where you had elected that authority,
11 but you could still pass an act that applied to all counties
12 having a population of 300,000 or more just like you would
right now.

14 Then if you wanted to say in that act that there be
15 no amendment to this act or dealing with this subject matter
16 for any municipality or county having a population of less
17 than the 300,000 established --

18 CHAIRMAN COVERDELL: I think that's a good --

19 Excuse me, Elinor.

20 MS. METZGER: Assuming you're using the population
21 act to prohibit further abuse of the population act.

22 CHAIRMAN COVERDELL: Let's stay on the litter law.

23 The constitution has been authorized so as to grant
24 the General Assembly in a sense a new power, and it passes
25 the litter law, it would be able to preclude which would put

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1 the burden on the General Assembly to preclude any population
2 act to apply to it, you see, because as has been pointed out
3 population acts are general laws, so we're setting them aside
4 as a category of general law to be blocked by another general
5 law, or if we did not do that then the population act of
6 somebody trying to set a different fine would be in order, by
7 either the delegation of the local municipality or county.

8 The General Assembly, to take it a step further,
9 could initiate classification under this authority. In other
10 words, it could state there shall be no population act by a
11 jurisdiction of under 100,000 to this act, could have left it
12 open for larger cities and counties in that case to be able
13 to, and then when the architects of that language get through

14 Well, in any event, let me take you into this
15 question (b) then, which says "Should the General Assembly be
16 directed to classify cities and counties on the basis of
17 population, and then be prohibited from from legislating with
18 respect to them except by general law according to class?"

19 We have preempted that question, and we come down
20 on it no, and I frankly think we should just eliminate
21 question 2 and do some renumbering because we've covered
22 question 2 in (b), so that this section would read -- the
23 subquestion (a) would become 2, subquestion (b) would become 3,
24 subquestion (c) 4, and we have added a subquestion (d) which
25 would be enumerated 5, and then our last question would become

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1 6 which we're about to now put on the record.

2 Mel, would you set in the record the new Question 6?

3 MR. HILL: Question 6 is "Should local constitutional
4 amendments be prohibited in the future? Should the present
5 ones be repealed?"

6 MR. BURGESS: Why don't we just say yes to both of
7 those?

8 MR. RICKETTS: Didn't the General Assembly speak on
9 this subject the last session?

10 MR. BURGESS: We will just say yes.

11 CHAIRMAN COVERDELL: Who wants to open up?

12 MR. BURGESS: I think we've got a consensus.

13 CHAIRMAN COVERDELL: Wouldn't we have the same
14 mischief problem if we repealed --

15 MR. FINDLEY: It would be fairly difficult, Senator,
16 to repeal the present constitutional amendments. I think with
17 enough studying, though, it could be done it would seem to me
18 by making local constitutional amendments unnecessary.

19 The Article X committee did, it repealed all local
20 constitutional amendments dealing with retirement, and since
21 it was dealing with the article it could prohibit constitutional
22 amendments because that's over in another section of the
23 constitution, but local constitutional amendments should have
24 been unnecessary on that subject because the constitution
25 simply was flexible enough to allow the General Assembly

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1 or counties and municipalities for granting sweeping home rules
2 there, or whatever, to deal effectively with the subject of
3 retirement without the necessity of local constitutional
4 amendment, but all together we've got 900 or so, haven't we,
5 Mel?

6 MR. HILL: At least.

7 MR. FINDLEY: And to try to eliminate those 900
8 local -- There was 13 at the time that the Article X
9 committee was working, there was only 13 amendments there they
10 had to deal with, so I think it would be very difficult to
11 try to eliminate them.

12 CHAIRMAN COVERDELL: Mike?

13 MR. HENRY: Senator, I think once you reverse this
14 presumption, as you -- you know, if the local government
15 doesn't write a prohibition in here then they can do it. If
16 you effectively do that in your constitution I think you're
17 going to find a lot of them will be unnecessary and you could
18 tell the local people that "Look, you don't need this, we're
19 going to repeal it or make it legislation," and as you well
20 know the General Assembly going back to this concept you were
21 just discussing could speak until it's blue in the face and
22 there would be no exceptions to this general law based on
23 population, and this written in concrete and nobody can do
24 anything, and all they've got to do is come in with a little
25 old local constitutional amendment and take themselves out

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1 of general law.

2 MR. RICKETTS: Speak with reverence when you talk
3 about those things.

4 CHAIRMAN COVERDELL: Let's say there was a county
5 called Camelot, and it --

6 MR. RICKETTS: That's down in the Caribbean.

7 CHAIRMAN COVERDELL: This is really a struggling one.
8 I mean academic -- I think logic suggests that
9 particularly the first one should be answered yes, and the
10 second one probably you would say it ought to be, but somebody
11 else should do it.

12 There are some management problems that it does
13 address, it gets to things that, Jim, you and I have worked
14 on a long, long time.

15 I guess we're in the situation here we have to look
16 at the greater good, and, Grace, I think you and I have to
17 feel the greater good would suggest local constitutional
18 amendments are not in the general interest of the state.

19 MS. METZGER: Isn't one of the points of revising
20 the constitution to get rid of all this stuff that just takes
21 up so much of your time and keeps you from dealing with more
22 important matters?

23 CHAIRMAN COVERDELL: Well, if we said there shall
24 be no local constitutional amendments except, we could call
25 for a dueling system which local jurisdictions could resolve --

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1 Well, is there any other comment on this?

2 MR. BURGESS: I was just going to ask you, if we
3 went yes on the first one, on the second one really, you
4 know, from a serious standpoint it would involve a lot of work
5 to clear those off, but would there be any -- would it be
6 worthwhile considering that on the second one that we look at
7 the -- there be some analysis of those amendments, and from
8 that analysis you might be able to find that many of them
9 could be repealed because as you draft a new constitution
10 where you're giving authority that would replace many of
11 those local amendments and the amendment would be no longer
12 necessary.

13 If you did that, let's say if you just get off half
14 of them you've really cleaned it up that much, and then there
15 may be four or five hundred others that you couldn't do it.
16 I'm thinking of the Bibb County Planning and Zoning, that's
17 probably one we couldn't wipe off the books unless -- it would
18 be hard, you'd have to put language in the new constitution
19 that would enable Bibb County to do that planning and zoning
20 thing in order to get rid of that local amendment, isn't that
21 right on that?

22 MR. FINDLEY: It would be hard. I think what Jim
23 is saying if I understand it, notwithstanding Jay Ricketts --
24 I hesitate to say this, but the desirable answer to both of
25 those (a) and (b) is yes, it would be better not to have

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1 local constitutional amendments.

2 MR. GRIFFIN: Academically speaking.

3 MR. FINDLEY: Should they be prohibited in the
4 future?

5 I think the constitution it seems to me could
6 effectively address that subject and eliminate local
7 constitutional amendments in the future.

8 As for the existing local constitutional amendments,
9 he's saying that they should be eliminated to the extent
10 research proves it's practical.

11 Mike made a good point that a lot of them have
12 become unnecessary as you reverse Dillon's Rule, so there's
13 kind of a tentative yes it seems to me to number 2, the (b)
14 part as well.

15 CHAIRMAN COVERDELL: Is there any example of
16 repeal, you know, take the -- we have recently seen a federal
17 example of preempting state usury laws with the caveat that
18 the state has the authority to reenact them, trying to clean
19 the books, and I think hoping that a uniform system might
20 prevail, or at least diminish the unnatural restraint.

21 Would there be any way that they would be repealed,
22 and these would be the only ones that would have some form of
23 replacement?

24 MR. FINDLEY: There's been some thought to repealing
25 them as constitutional amendments, but bringing them forward

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1 as statutes.

2 I think the Article VII committee has given this
3 some thought, haven't they, Mel?

4 MR. HILL: Yes.

5 MR. FINDLEY: They would be eliminated as part of
6 the constitution, but brought forward and continued in effect
7 as statutes and could be statutory law and then could be
8 subsequently amended and changed to statutory law.

9 If that could be worked out practically, that might
10 be a possible solution to it.

11 I think Jim's point is well made that some of them
12 -- in Macon-Bibb County they've got a commission that has the
13 final authority over planning and zoning matters, and the
14 general provisions of the constitution vest that power
15 solely and exclusively in local governing bodies, not in --
16 the commissions are all advisory except there, and to elimi-
17 nate that constitutional amendment would eliminate that system,
18 but it could be.

19 The problem with bringing them forward statutorily
20 is that if you bring a statute, if you eliminate it from the
21 constitution and bring it forward as a statute, then if it's
22 unconstitutional when you bring it forward then I don't know
23 what you've done, but I don't know how they plan to handle
24 that.

25 MR. HILL: That's a very good question, Harvey.

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1 They haven't gotten much further than just thinking
2 that would be a great way to do it if they could. They haven't
3 gotten much further, but my thought was that if you would just
4 say that the authority that the cities and counties have on
5 June 30th, 1983, say that the new constitution shall continue
6 on the effective date of this constitution and thereafter may
7 be modified by statute, that you could handle it that way.

8 I mean I think if you just said that the authority
9 that they have on the day before the new constitution goes
10 into effect that they shall continue to have, but thereafter
11 -- in other words, you've just brought everything forward,
12 boom, and then you have authorized the General Assembly to
13 deal with it as they want to do or will in the future, but
14 there will be no more local amendments, but whatever authority
15 they had they will have, and then henceforth they would have
16 to get it from the General Assembly through the system of
17 laws that we have.

18 MR. RICKETTS: Could the constitution be changed
19 such that some of the authority which right now is conveyed
20 by means of local constitutional amendment could be -- would
21 all of that be conveyed by means of statute? I mean is that
22 what you're envisioning?

23 MR. HILL: I'm not saying by statute. The
24 constitution itself would recognize, you know, we have
25 provision over here --'

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1 MR. RICKETTS: Okay. You take care of it. Your
2 proposal takes care of everybody that's got a little
3 constitutional amendment right now, but doesn't do anything
4 for those who would like to have some of the authority, you
5 know, after the constitution takes effect.

6 MR. HILL: Of course that's certainly the bottom
7 line question, are we going to give it to them or not, and
8 obviously the people that -- I mean if we say yes then as a
9 practical question how do we go do it without creating chaos
10 in the state, how do we make sure that we haven't created
11 such a disruptive situation that we couldn't live with it?

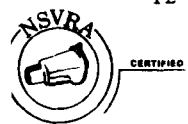
12 But, you know, they did this back here in Article
13 VIII. You know, this came to me here on the State Board of
14 Education, it said that the board shall have such powers and
15 duties as provided by law and existing at the time of the
16 adoption of the constitution of 1945, together with such
17 further powers and duties as they shall have.

18 Now, I feel that same philosophy could be
19 incorporated in this local amendment question.

20 I don't know -- I haven't talked to Harvey about
21 this -- I don't know how the office of Legislative Counsel
22 would feel about it, but I almost feel that we're going to
23 have to do it in a broad stroke manner and then try to deal
24 with it later when we have the time to deal with that.

25 There is so much to be done with this constitutional

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1 revision process, and this is one whole other tremendous
2 piece of work that has to be done.

3 CHAIRMAN COVERDELL: Grace, did you have anything?

4 REPRESENTATIVE HAMILTON: I was agreeing if it were
5 possible to do it in a broad enough way it seems to me would
6 help it greatly, because it sounds to me as if it would
7 require a fairly extensive research to be sure that we don't
8 miss something that's already in being.

9 MR. HILL: Plus every city and county attorney in
10 the state would have to be contacted and they would have to
11 approve this and review it and -- I mean we're really talking
12 about a massive effort to do it right.

13 MR. HENRY: That's what I was going to try to say.
14 You contact city and county attorneys and you say "Okay, we
15 have reversed this presumption, we have given you these
16 powers, now do you agree that you don't need this local
17 constitutional amendment," and where the locals still have
18 problems which cut across constitutional grants then you would
19 have to resolve that possibly by retaining that local
20 constitutional amendment, but I think you've attacked the
21 cause of the problem, and get that resolved, then I think
22 you could legitimately go to a city or county attorney and
23 say "Look, you know, you can do this now, do you still need
24 that constitutional amendment?"

25 CHAIRMAN COVERDELL: I don't think there's a one

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1 that's going to say "No, we'll go ahead and -- "

2 All right. I think really maybe the first comment
3 somewhat facetiously, yet it remains accurate, that the first
4 part of question 6 is yes, and the second part is basically
5 to be reviewed and considered and just understand it is a
6 massive problem, whereas it might be ideally stated that
7 would be a good thing to have happen, no one quite knows how
8 to do it.

9 I don't know that this committee wants to go beyond
10 that on that question. The other people with the Select
11 Committee and the legislature itself -- It's a real tangle.

12 Does anyone want to challenge, to be more specific
there, the specific recommendation yes?

13
14 MS. METZER: I feel like every time we vote on its
15 face to put these long lists in the constitution, that just
16 people don't know and never care, and it's just too
17 complicated and too unwieldy a system; we need to get rid of
18 that excessive constant revising, and why clean it up and get
19 right back into it?

20 CHAIRMAN COVERDELL: Okay.

21 I think that that -- I think that considering the
22 hour we might stop.

23 I think the subcommittee has done very well today,
24 we've got to the section on legislative issues, and we will
25 call a meeting in -- it would have to be some time after



1 July 16th. I'll be out of the city during that period of
2 time.

3 MR. HILL: Do you have your calendar handy?

4 CHAIRMAN COVERDELL: I don't, and it's a mess. I'll
5 get back to you before I leave, though, and we will set
6 somewhere in that period.

7 MR. HILL: The week of the 21st or 28th, something
8 like that.

9 What we would like to do next time is have the drafts
10 based on the decisions we have tentatively arrived at for the
11 first two sessions.

12 Now, the thing is this committee, these questions
13 we have been dealing with are relevant to you and to the
14 whole committee, and so I think it's certainly been helpful
15 and worthwhile to you, but it's not really a new jurisdiction.
16 The whole issue of home rule is more in the jurisdiction of
17 Bob Brinson's committee, so until they meet and go through
18 the whole decision process we are not going to know exactly
19 where to go with the draft.

20 CHAIRMAN COVERDELL: Let me make this suggestion.

21 There have been several, at the last meeting more
22 than this, suggestions for staff review -- I don't recall
23 those, but they were noted during the course of the meeting.

24 Instead of the language at the next meeting, because
25 obviously it takes almost the entire meeting to work our way



1 through the balance of these questions, why don't we deal with
2 any literature that has been accumulated that was requested
3 from the first meeting --

4 MR. HILL: And any other staff research.

5 CHAIRMAN COVERDELL: We'll spend our time going
6 through this, and then between the next meeting and the one
7 following that we will have an opportunity to have some of
8 Brinson's work and get into some language.

9 MR. HILL: All right.

10 CHAIRMAN COVERDELL: Does that sound suitable to
11 everybody?

12 Any other business?

13 If not, we stand adjourned. I thank everybody for
14 your time.

15 (Whereupon, at 11:30 a.m. the subcommittee meeting
16 was adjourned.)

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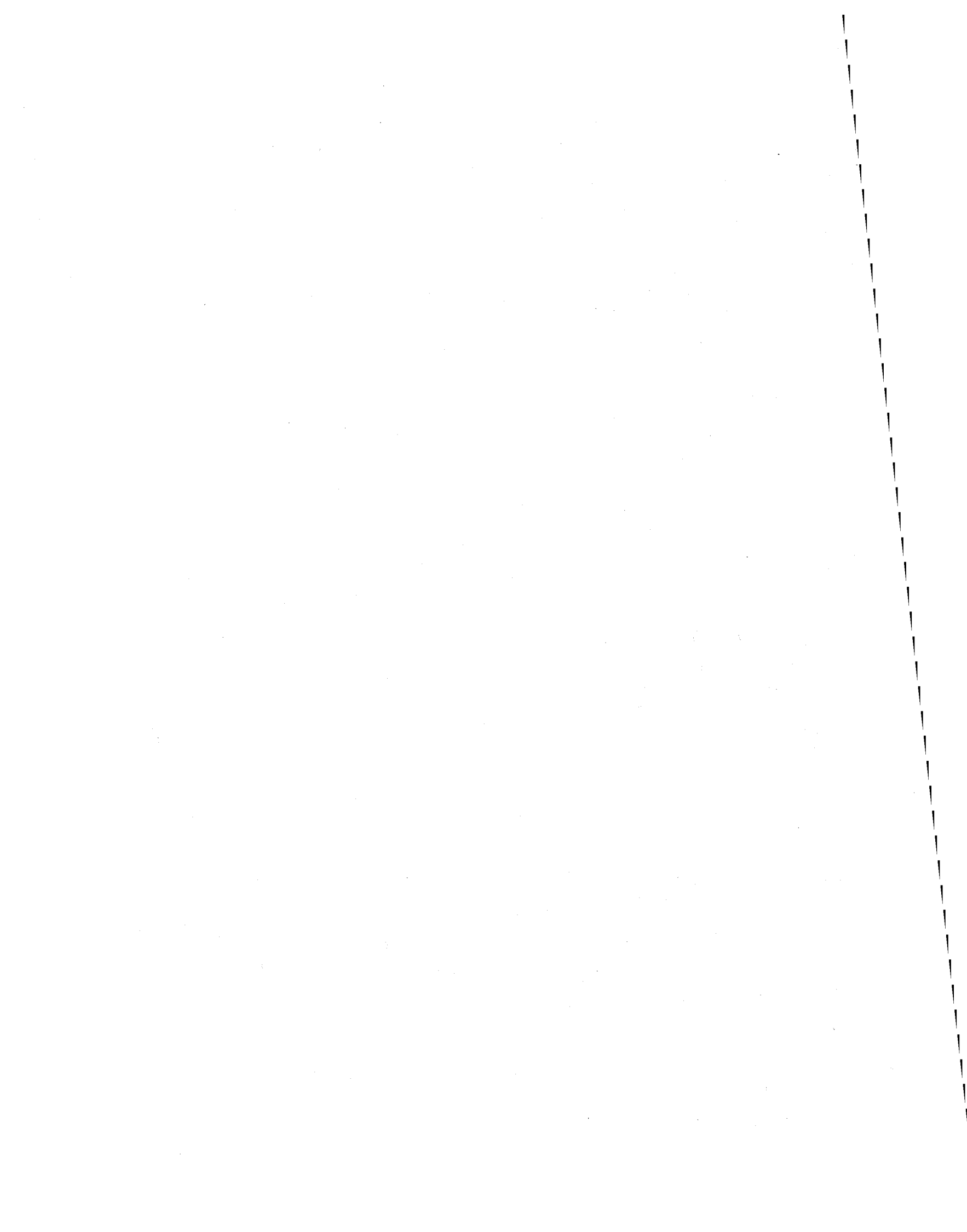
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STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

SUBCOMMITTEE ON COUNTY AND
MUNICIPAL POWERS

BRANDENBURG & HASTY — SCIENTIFIC REPORTING



Room 401-A
State Capitol
Atlanta, Georgia

Wednesday, July 9, 1980
10:00 a.m.

1 PRESENT :

2 COMMITTEE MEMBERS :

3 CHAIRMAN ROBERT BRINSON
4 REP. G. D. ADAMS
5 DAVID T. BARROW
6 ROGER RUPNOW

7 ALSO PRESENT :

8 MELVIN B. HILL, JR.
9 VICKIE GREENBERG
10 MICHAEL HENRY
11 CHARLES TIDWELL
12 ED SUMNER
13 BILL ALEXANDER
14 NORMAN SLEWSKY
15 STEVE ANTHONY
16 MARTHA BROWN
17 CATHY CRAWFORD
18 LOU LITCHFIELD
19 DOUG CARLYLE
20 RICHARD BRAY
21 JAY RICKETTS
22 JOAN BOYD
23 DAVID GODFREY

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P R O C E E D I N G S

1
2 CHAIRMAN BRINSON: I think we are virtually all
3 here.

4 I am Bob Brinson, Chairman of the subcommittee.
5 I was not here last time. I believe I recognize most of the
6 faces here from the committee, and I believe we have some
7 visitors.

8 I see one notable absence, and that is Professor
9 Sentell. I suppose he's entitled to a vacation also.

10 I would like to know who the guests are if you
11 would be so kind as to give us your name, those who are not
12 members of the committee.

13
14 MR. ANTHONY: Steve Anthony, with State Planning and
Community Affairs.

15 MS. BROWN: Martha Brown.

16 MS. CRAWFORD: Cathy Crawford, State Planning and
17 Community Affairs.

18 CHAIRMAN BRINSON: Over on this side?

19 MR. CARLYLE: Doug Carlyle, Legislative Counsel.

20 MR. BRAY: Richard Bray, Georgia EMC.

21 MR. RICKETTS: Jay Ricketts, County Commissioners'
22 Association.

23 MS. BOYD: Joan Boyd, DeKalb County Planning
24 Department.

25 MR. GODFREY: David Godfrey, Department of Natural

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1 Resources .

2 MR. TIDWELL: Charlie Tidwell.

3 CHAIRMAN BRINSON: Thank you.

4 At the first meeting of this subcommittee we tried
5 to establish what the charge of the subcommittee is and,
6 generally speaking, it's to get something great big down into
7 manageable form.

8 As you know, we divided up some responsibility at
9 the last meeting which I missed. We had asked Professor
10 Sentell to present to us for educational purposes just where
11 we are with respect to home rule and county and municipal
12 powers.

13 He did a fine job, and I know that I read his
14 presentation, and I hope that those of you who did not make
15 the meeting also read it prior to the session.

16 It has become clear from the first two meetings that
17 the first thing we're going to have to decide before we can
18 really get any direction, we're going to have to decide what
19 we want to decide.

20 There are those who are of the school possibly that
21 we ought to wipe the slate clean and start from the beginning
22 to try to get a brand new constitutional provision on county
23 and municipal powers, and there are those at the other end
24 of the scale who are of a feeling that we ought to preserve
25 what we have and refine it.

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1 I think in that connection the principal objective
2 of this meeting will be to make some decisions to give us
3 some direction for our future action and our future
4 objectives.

5 To assist us in that regard, Mr. Hill has prepared
6 and I believe you all have -- if not, there are other copies
7 of a document entitled Decision Agenda. I hope that we can
8 get some substantive remarks when we go over this one by one
9 as well as simply the answers to the questions yes or no.

10 Mr. Hill has I think intended to cover all the
11 spectrum with respect to the two extreme positions on what
12 we should do, and hopefully we should come up with a
13 consensus as to just what direction the committee will take
14 and what sort of product we will come up with.

15 Before we get into the decision agenda, I would like
16 to ask if there is any old business to come before the
17 subcommittee, or any new business or remarks. We welcome
18 them at this time.

19 That being the case, let's get onto the principal
20 objective of today's meeting, and I will ask Mr. Hill if he
21 will to proceed to conduct the decision agenda and explain
22 as he goes according to the topics he's outlined. Melvin,
23 if you will.

24 MR. HILL: Thank you, Mr. Chairman.

25 First of all, I would like to explain to the



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1 committee where this decision agenda came from, how we
2 arrived at it.

3 We were working with three subcommittees of this
4 committee, and Senator Coverdell had asked us to prepare a
5 decision agenda for his group similar to this so that it
6 would help direct some discussion, and so we did that for
7 Senator Coverdell, and it worked well in his committee in
8 terms of focusing discussion and whatnot, so we decided to
9 try to do the same with your group.

10 Certainly this is not intended to preempt any other
11 questions, it's just to get the ball rolling so that we will
12 have a point of departure.

13 At this point I will just go through these
14 questions. I don't know if you would like to have full-
15 fledged discussion on each one or if you would like to go
16 through the whole section first.

17 CHAIRMAN BRINSON: Why don't you go through the
18 sections and sort of give an overview, then we'll go back to
19 the questions. That is, the home rule first, then we'll go
20 back to the questions on that.

21 MR. HILL: Okay. I think in the area of home rule
22 we have a couple of major decisions the committee is going to
23 have to make. First of all, from the standpoint of the
24 philosophy of the constitution are we going to continue to
25 operate under the presumption of Dillon's Rule which is what

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1 we're operating under today, or are we going to try to ~~to~~
2 reverse that presumption.

3 By the presumption of Dillon's Rule I mean that
4 local governments are presumed to have all powers -- are not --

5 Let me rephrase that. Under Dillon's Rule local
6 governments are presumed not to have any powers of self
7 government unless they are specifically given to them,
8 specifically delegated authority.

9 Under the reverse presumption local governments
10 would be presumed to have all powers of self government unless
11 the General Assembly would by general law or local act
12 restrict the powers they have.

13 So that is really one of the major questions and
14 the first one here, it's essential in answering the whole
15 home rule issue; it's how much home rule authority are local
16 governments going to be presumed to have.

17 Now, my own feeling, and Bob has said that we have
18 two basic decisions to make, whether or not we're going to
19 start from scratch or whether we want to go with, whether
20 we're going to take what we have and modify it.

21 Well, my own feeling is that we attempted in 1965
22 with the municipal home rule law and in 1966 with the county
23 home rule provisions to reverse the presumption of Dillon's
24 Rule, because if you read those provisions it says that local
25 governments are given powers, legislative powers to adopt



1 clearly reasonable ordinances, resolutions and regulations
2 relating to their property, affairs of local government
3 which are not otherwise prohibited by the general law, and
4 then it goes on to specifically list exceptions to the home
5 rule grant of authority, so my own feeling is this was an
6 attempt, that this first question was already answered yes
7 by the General Assembly and by the constitution with respect
8 to county home rule provisions, but then it's not been
9 interpreted that way by the courts because it's not been
10 clear enough.

11 Now, I wish Perry were here so he could react to
12 that statement and see if he agrees with it or not, but that
13 is my own feeling about that question, and what it would do
14 if you would say yes and try to clarify it in the constitution
15 is this: It would put every city and county attorney in a
16 position of saying "We do have a power of local self
17 government unless the General Assembly has said that we don't
18 have it," and so that is an overriding question that has to be
19 resolved.

20 Another overriding question is whether we should
21 continue to maintain the distinction in the constitution
22 between municipal and county home rule powers.

23 At the present time, as Perry pointed out so well in
24 his memo, we have county home rule and we have legislative --
25 we have constitutional home rule for counties and we have

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1 legislative home rule for cities. As a practical matter I
2 don't think it really has much effect, but the question for
3 the committee is whether you want to maintain that distinction
4 or whether you want to treat for the purposes of home rule
5 authority cities and counties the same. So that is another
6 big question. That is question number 7, another important
7 one.

8 Then the third important question is whether there
9 are any areas in which local governments should be given
10 absolute autonomy. The constitution could in fact give local
11 governments autonomy, complete freedom from legislative
12 control in an area or areas if it chose, so chose, and so
13 that's another question, should they be given autonomy.
14 That's question number 5.

15 I feel I have talked about enough about this without
16 some reaction from the committee. Those are three very
17 important questions, the rest of these will fall from the
18 answers to those.

19 CHAIRMAN BRINSON: Representative Adams --

20 Let me say this. I think now is the time for the
21 committee members to speak, and please speak freely because
22 I personally feel stupid in a lot of these places, but I'm
23 going I hope to get some free and open discussion about this
24 matter, these matters, and certainly I welcome free discussion
25 at this time, and now is the time; then we'll get into the

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1 specific questions 1 through 7 that Melvin has outlined,

2 Representative Adams?

3 REPRESENTATIVE ADAMS: What I would like to say,
4 Mr. Chairman, is that if we outline the specific power of
5 home rule in the constitution I would like to see the
6 counties and cities use that power.

7 Now, they bring -- I have been dealing with local
8 legislation now for the last six years, and we have bill after
9 bill that could be implemented through local governments, but
10 yet they come back wanting us to handle it. Sometimes it's a
11 subject matter that's not real popular, they want us to make
12 the decision or the legislators representing that district to
make the decision.

14 We had a real controversial bill in our committee
15 last year which turned out to be general legislation, but it
16 could have been handled through the home rule act that the
17 counties or the cities now have dealing with powers in the
18 particular area of Fulton County.

19 I would like to -- you know, if we specifically
20 state the powers of the municipalities and counties, then I
21 would strongly encourage the General Assembly to stay away
22 from those areas.

23 CHAIRMAN BRINSON: Do you think there ought to be a
24 statement to that effect, exclusivity of the procedure should
25 be included?

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1 REPRESENTATIVE ADAMS: If we give them the power,
2 then we are giving it to them. I think maybe in some areas
3 if we want to restrict the powers we should look at that also.

4 I think dealing with the charter of municipalities
5 the General Assembly should be the one to regulate the
6 charters, but if we specifically like give them police
7 authority or parks authority or whatever or planning and
8 zoning and things of that nature I don't think it should be --
9 In other words, we're getting more legislation every year now
10 than we can possibly handle, and if we're going to streamline
11 the thing and give them more home rule I think we should
12 impress upon them to use that power rather than coming back
here.

14 Now, there's been cases where the city of Atlanta
15 has failed to do something the members of the General Assembly
16 wanted them to do, yet the city could have done it, and then
17 the city -- and then the delegation has implemented a piece
18 of legislation which would require them to do it.

19 Am I making myself clear? I mean if they regulate
20 pensions, for instance, and then the General Assembly don't
21 think they've taken proper action, then the Fulton delegation
22 can come back and say "You will increase the benefits to the
23 old retirees," whereas certain employees in Atlanta for
24 instance go back beyond the year '62, some of those people
25 have been retired for twenty years and they're not included

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1 in the fringe benefits that they update from year to year in
2 the pension plan, and so just this last year we passed, it
3 didn't have to be a constitutional amendment but we made it
4 a constitutional amendment which would go back and pick up
5 some of the old retired people and increase their pension by
6 \$100 a month, so what I'm saying is that if we're going to deal
7 with and give them those broad powers we should expect to,
8 you know, use that instead of coming to the legislature with
9 numerous bills every year bogging down the local legislation
10 and the general.

11 CHAIRMAN BRINSON: Yes, sir.

12 MR. RUPNOW: The question I would have then is could
13 you, if you're going to mandate that the cities would not come
14 to the legislature could you also mandate that the legislature
15 would not deal with those city issues?

16 REPRESENTATIVE ADAMS: That is the intent of my
17 remarks is that we would expect them -- and what I guess I'm
18 saying is that we should make the powers given to the cities
19 and the counties broad enough to where they could deal with
20 it and leave us to make the decisions regarding charters and
21 to deal with general legislation affecting the state of
22 Georgia.

23 CHAIRMAN BRINSON: Let's see what Legislative
24 Counsel has to say.

25 MR. CARLYLE: Representative Adams, with that

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1 housing authority bill, was that a population act?

2 REPRESENTATIVE ADAMS: It was a population -- yes,
3 it was dealing -- Well, it did --

4 MR. CARLYLE: Is that how it started?

5 MR. ANTHONY: It would have applied to the state, but
6 it was for one area.

7 REPRESENTATIVE ADAMS: But the end result was that
8 Fulton County could have implemented a program without
9 legislation.

10 MR. CARLYLE: Because both the enumerated home rule
11 powers as well as the general ones, the General Assembly is
12 specifically prohibited from acting in those areas except by
13 general law, and also under the municipal home rule act there
14 are certain things the General Assembly just can't do, and
15 our office gets requests often to do bills in those areas
16 and there is already a specific prohibition from the General
17 Assembly acting in some of those areas except by general law.

18 Now, if they use population acts to get around it,
19 that's another problem that would have to be addressed.

20 The county home rule provisions in Section II,
21 Paragraph I, the last sentence says the General Assembly shall
22 not pass any local law or repeal, modify or supersede any
23 action taken by county governing authority under this
24 section except as authorized under Subparagraph (c) which
25 lists some areas that are not subject to home rule.



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1 REPRESENTATIVE ADAMS: I think you probably know
2 this, we had information from Washington -- I forget the young
3 lady that works on the legislation with us, Nancy Roberts --
4 that they had decided that it could have been handled without
5 legislation and it would not have affected any federal moneys
6 involved from Washington.

7 You remember the legislation. I'm just using that
8 as an example.

9 MR. CARLYLE: Right, but I'm just --

10 REPRESENTATIVE ADAMS: We spend a lot of hours every
11 year, and you spend a lot of time drafting bills that could be
12 eliminated if the counties would use that home rule, or the
cities would use theirs.

13
14 MR. CARLYLE: Of course, often since the bill would
15 be unconstitutional if it's a local act trying to deal with
16 these matters that are specifically prohibited from being
17 dealt with by local action then we would generally give the
18 member a letter or just tell them, you know, informally that
19 they ought not introduce that legislation and, of course,
20 usually the members are glad to get that kind of information
21 because they would rather not act in those areas, in some of
22 those hot political areas that the localities, the local
23 governments are given exclusive authority to act in unless
24 the general law provides otherwise.

25 I'm just saying that there's already a specific

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1 prohibition against acting, the General Assembly's acting in
2 some of these areas.

3 MR. SLEWSKY: I would like to continue on that
4 analyzing what it is right now. When you look at the language
5 of the present legislation and the constitutional provisions
6 that Mel was talking about, the way I picture the language
7 which is clearly reasonable is a limiting factor. In other
8 words, I don't see that the -- well, that the constitution
9 and the legislation under home rule attempted to reverse
10 Dillon's Rule. I think it was attempting to give certain well
11 defined powers to local governments, and I think the presump-
12 tion of Dillon's Rule still exists very strongly in the courts.
13 I think they would enforce that, and I think one thing that
14 we have to remember is that as Representative Adams was
15 talking about anything we do we want to be used by local
16 governments. In other words, we want to try to eliminate
17 all these local acts or a large number of these local acts,
18 and I think we have to try to come up with legislation, come
19 up with a constitutional provision which very candidly
20 enumerates what powers local governments can have.

21 A good example of that might be a state like Texas
22 which has I think 45 powers listed in its constitution saying
23 that these are the areas in which local governments can
24 operate. Texas might go a little too far for people in
25 Georgia and say that Texas courts operate under the



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1 presumption of a pretty far reversed Dillon's Rule saying
2 that unless the legislature has very definitely preempted
3 this area local governments can operate.

4 In other words, I think we have to look at what are
5 local attorneys going to use, what are local governments going
6 to use and how the courts can interpret it given how the --
7 In other words, we might have a new constitution but the courts
8 are not going to make a break, they're going to look at the
9 old language and, of course, the attorneys have used it on
10 occasion, and I think we have to try to clarify what home
11 rule powers local governments can use and make those firm.

12 CHAIRMAN BRINSON: Is it not true that there is also
13 another, at the other end of the scale considering -- I think
14 there are questions of sovereignty involved myself as viewed
15 under the federal constitution, and the Supreme Court
16 recently decided the city of LaFayette case where they gave
17 some -- they continued the Park adoption on antitrust
18 immunity for state mandated or state controlled powers
19 delivered by local governments and removed some of that
20 immunity for those powers that were retained by local
21 governments and exercised by local governments and held that
22 local governments would have antitrust liability.

23 Therefore it seems to me that what that's going to
24 mean is that a lot of cities are going to say "Wait, let's
25 just let the state pass a law and say that we can do that

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1 and make it a state controlled power to be delegated to and
2 exercised by local governments."

3 It seems to me that at the opposite end of the scale
4 you have the desire to put a lot of local autonomy, and on the
5 other hand the local governments need the protection and the
6 sovereign immunity of the state which does not extend to the
7 cities with respect to antitrust activities. I don't know
8 under any other liability questions. As you all probably
9 know that the 1983 liability is wide open now. I don't think
10 it makes any difference there because both state and local
11 governments are subject to that, but in the antitrust field
12 I think that control is going to be desired by local
governments, that sovereign immunity of the state protection.

14 You might know more about that, Ed, and you can
15 comment.

16 MR. SUMNER: The 1983?

17 CHAIRMAN BRINSON: No, on the LaFayette antitrust.

18 MR. SUMNER: I read a few more things. That's still
19 developing. There's some mixed emotions how you establish a
20 state policy saying if you're going to do something that
21 that's restrictive on competition you have clearly the
22 municipalities' attitude on state policy and, you know,
23 there's some discussion as -- I think there was one case that
24 had a statute that the city relied on, the lawyers came down
25 of course and said that statute really didn't say restrict



1 competition, so there's just a broad grant, even statutory
2 grant from the state to do something in a particular area,
3 not necessarily enough to establish a state, that you can
4 have a state policy.

5 I've got some other comments on your discussion if
6 you're ready for them.

7 CHAIRMAN BRINSON: I don't want to muddy the waters
8 with that, but I do think it's something that's going to have
9 to be considered.

10 MR. RICKETTS: Is it likely the holding in LaFayette
11 is going to be extended beyond the public utility area?

12 CHAIRMAN BRINSON: Yes, very definitely. It's even
getting into zoning, franchises.

14 MR. SUMNER: Airport concessions, golf pro
15 concessions, municipal and county parks, golf courses and --

16 CHAIRMAN BRINSON: It's got a pretty broad effect.
17 What other general --

18 MR. SUMNER: My general comment I made to some of
19 the other committees, I think some of Senator Coverdell's
20 committee are familiar, the only comment I have is a concern
21 that any time you enumerate something like Texas, any time
22 you enumerate something you in effect are putting in limita-
23 tions.

24 For example, if you have a list of powers and it
25 says it can exercise all these things, if you say police, fire

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1 and whatnot you're getting into a court situation, the court
2 is going to look at "Well, what do they mean by police
3 services?" and do police services just mean patrolling the
4 streets and protecting people, or does it mean community
5 relation type things where you want the police and citizens'
6 committees. You know, you get into those type problems any
7 time you enumerate, I think you get a real problem of
8 limitation. I think that's been a problem we've had
9 historically in Georgia with the constitution, Robert Toombs'
10 document on that, getting into the limitation of things you
11 can do and can't do, and the courts have historically treated
12 it very restrictively, for instance in the education area
13 where they said tax for education purposes, they read that not
14 to include school lunches program I believe back once.

15 We have had to come back with constitutional amend-
16 ment after constitutional amendment dealing with -- either
17 local or otherwise to keep enumerating all these powers we've
18 got, and I would hope that the committee would try to get
19 away from the enumeration type idea and go to something very
20 broad, and maybe the second question on here would address
21 that a little bit.

22 If you had a very broad statement of home rule power
23 and you really found it necessary to send the courts a message
24 you could perhaps include a statement following that that it's
25 the intention of the people of Georgia that this provision

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1 shall be liberally construed in the broadest possible
2 situation. I hate for them to have to do that.

3 I think one comment was made, Mel made it, and
4 Senator Coverdell or somebody on that committee said "Well,
5 if you do that then you're admitting you can't draft something
6 broad enough." I don't know.

7 There's no guarantee that if you gentlemen could
8 come up with something that's very broad that the courts are
9 going to see it that way, but if there's any possible way I
10 would encourage you to stay away from enumerating a lot of
11 things in the constitution.

12 Again Mr. Sentell's comment in his paper, work
13 paper I think that was sent out to the various -- the court
14 has indicated already in one of its decisions that they would
15 narrowly construe the constitutional grants of home rule
16 powers, so therefore it would seem to me that the wiser
17 course since the courts have told us they're going to do that
18 would be to have a broad provision in the constitution and
19 leave it up to statutes to flesh it out.

20 CHAIRMAN BRINSON: Any other comment? Mel?

21 MR. HILL: Another question that Senator Coverdell
22 added to this list, and it relates to what Ed was saying,
23 was should the home rule authority be provided for in the
24 constitution or in the statutes, and that was based on this
25 research that Perry had found that showed the strict

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1 construction of constitutional grants. There was some feeling
2 that the home rule, legislative home rule would be broader
3 than constitutional form in judicial construction, from a
4 judicial construction standpoint.

5 MR. CARLYLE: Could the legislative home rule get
6 around some of the liability problems in the LaFayette case?

7 CHAIRMAN BRINSON: I don't believe so. I don't
8 know.

9 MR. SUMNER: You know, cities have now what Perry
10 has termed legislative home rule, and I don't know, I think
11 you would have to get legislatinn that was very specific to
12 get around that. No one really knows exactly what that means
yet, what it means by establishing -- how do you establish
14 state policy, to enumerate state policy which allows them to,
15 you know, engage in anticompetitive activities in granting
16 franchises or something.

17 There may be someone in the AG's office who is more
18 knowledgeable on antitrust. I'm certainly not an antitrust --
19 that issue is still up in the air, they're still writing
20 articles on what it means and how you establish a state
21 policy.

22 I think you can probably possibly do it through a
23 statute saying in this area counties don't have to be or
24 whatever if it became necessary.

25 MR. CARLYLE: I just wondered in that particular

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1 area whether it matters whether the constitution or legisla-
2 tive home rule --

3 CHAIRMAN BRINSON: I don't believe it does.

4 MR. SUMNER: I think you'd have more flexibility if
5 you did it by statute. Again, if it was in the constitution
6 the only way you can change it is by another amendment, to
7 use and election and that type of thing.

8 That's one problem that Dave Barrow here, he's a
9 judicial rep for cities, I think the cities would be very
10 disturbed if something was done to put home rule back in the
11 constitution where it would be construed more narrowly.

12 We like what we've got, at least what we've got, no
13 less than what we've got and maybe if you want to make it
14 broader or something to that effect the GMA policy strongly
15 supports home rule.

16 They passed a resolution at the convention this
17 year, one of three things they addressed, they looked at the
18 constitutional process, and one of them was to guarantee the
19 broadest possible home rule for local government.

20 MR. RUPNOW: How do you deal with that question,
21 though, of allotting broad home rule powers in light of what
22 Representative Adams made about the cities coming to the
23 legislature for help? How do you --

24 MR. SUMNER: We've already got an act that the
25 provision of municipal home rule says now that it's a matter

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1 that can be addressed by -- under this home rule act by local
2 ordinance it shall not be addressed by local by local
3 legislation and to do so would be a violation of the
4 provision of the constitution of no local law on a matter
5 covered by general law.

6 There is a statement in the constitution now, none
7 of these local acts to my knowledge have ever been attacked
8 under that grant. Whether that would apply or not, I'm not
9 sure the court would buy that as a proper interpretation of
10 the constitution, but there is a statement in the municipal
11 home rule law right now of the Georgia law, of the Georgia
12 Code -- 69.1021 is the Georgia Code Annotated cite to it I
13 think that Representative or Senator Smalley was the author
14 of that particular revision in an attempt to encourage city
15 attorneys to use the municipal home rule in every way
16 possible.

17 I think we've got a possibly lot broader home rule
18 now than many people realize, because there's another section
19 of municipal home rule act, Section 10,918 which specifically
20 limits six areas where you cannot act, and my argument would
21 be that since they have limited six areas where a city cannot
22 act they can almost -- they can act in anything else unless
23 you find some other specific limit in the constitution, so I
24 think we've got very broad authority and I don't know what to
25 do other than what they've already tried to do and that is to



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1 put something in as you follow the legislative home rule
2 technique in that act.

3 And I'll stress again something like Mr. Smalley
4 did and perhaps make a more forceful action by the legislators,
5 by Legislative Counsel to say "Look, we're not going to handle
6 this local legislation, number one, because you can do it, and
7 number two if we did do it it would be unconstitutional."

8 We've got a statement like that already in the law
9 that says you can do it by local ordinance, it cannot be done
10 by local legislation, at least as applies to cities. I don't
11 think counties have the same thing.

12 CHAIRMAN BRINSON: The counties have something --
wasn't that what you just read in the constitution?

14 MR. CARLYLE: I read the constitutional provision.

15 The same provision appears in the municipal home
16 rule act that I read from the constitution, but the municipal
17 home rule act has an additional statement of legislative
18 intent that you refer to.

19 But still in both cases I think counties and
20 municipalities continue to -- and that's a real problem; that's
21 a matter of education and --

22 I don't know, you know, as far as drafting
23 additional language I don't know how it could be a lot
24 clearer than it is in municipal home rule act, that
25 prohibition.



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1 CHAIRMAN BRINSON: Did you have something else,
2 Representative Adams?

3 REPRESENTATIVE ADAMS: Yes. Well, just a comment.
4 We have some provisions here like county, a
5 municipality or a combination or the General Assembly may
6 create special tax districts. There's an area there where
7 you know, if the cities and the counties don't do it we can
8 come in and do it, and I'm sure all of you remember the
9 Atlanta-Fulton County study commission that was created three
10 or four years ago and all the recommendations were defeated,
11 but every one of those particular items could have been
12 handled by the city or the county, but they didn't do it,
13 so the General Assembly came in with their recommendations.

14 The other thing I was talking about, and Doug spoke
15 to this, is the issue I was talking about last year with
16 trying to regulate zoning and planning under Section II of
17 this synopsis here. It says the General Assembly cannot
18 regulate, restrict or limit the power to plan and zone, and
19 that particular legislation that I was saying was
20 unconstitutional to come in, and again it's a violation of
21 the home rule the counties presently have.

22 MR. CARLYLE: Which legislation?

23 REPRESENTATIVE ADAMS: Where they wanted to
24 restrict the housing in north Fulton. That was the point I
25 was trying to make is that we sometimes try to implement

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1 legislation which is unconstitutional, and we have given this
2 power to the counties and cities already.

3 MR. CARLYLE: If that's construed as planning and
4 zoning, but since the public housing is a specific number 8
5 in the supplementary powers you might could argue that
6 public housing is not planning and zoning in the list of
7 powers.

8 REPRESENTATIVE ADAMS: It has to be zoned in order
9 to get public housing in there, so there was a borderline
10 question there and I think in a lot of cases those should be
11 cleared up.

12 CHAIRMAN BRINSON: Any other general comments on
this section under the decision agenda?

14 MR. BARROW: I think Representative Adams' comments
15 about the mass of local amendments that come before them is
16 very true.

17 A lot of times we do kind of shift the burden
18 over to the legislature on unpleasant subjects, but the main
19 reason we come to the legislature is a doubt in our mind what
20 we have the authority to do, the doubt in our city attorney's
21 mind usually. We depend, of course, almost entirely on our
22 city attorneys to rule in these matters as to which way we go.

23 I think the aim of the subcommittee should be to
24 make recommendations to the committee for the very simplest
25 document possible with as broad a home rule provision as

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1 possible.

2 I tend to agree with Ed, when you start enumerating
3 you limit yourself tremendously and we should stay away from
4 enumeration if possible.

5 We don't like to come to the General Assembly with
6 local amendments, I think I have once in twelve years, but I
7 was advised at that point by our attorney that it was
8 necessary in fact, but we like to play it safe.

9 CHAIRMAN BRINSON: There was a period of time when
10 city attorneys -- I can speak for myself -- just didn't know,
11 just didn't have any confidence in passing local -- I've
12 forgotten exactly what case it was that came down about that,
13 but it was a case that came down that held it couldn't be
14 done locally, it had to be done by local amendment, and that
15 short of shook the confidence of city and county attorneys.

16 I don't know that that still exists. I think after
17 Amendment 19 some of the other things were clearer.

18 Any other general comments?

19 Why don't we then in order to get a consensus for
20 purposes of getting something drafted to critique, why don't
21 we go down the decision agenda one by one and take a vote on
22 these first seven questions under home rule unless there are
23 any more general comments.

24 MR. TIDWELL: Mr. Chairman, I would like to make one
25 suggestion.

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1 CHAIRMAN BRINSON: Yes, sir.

2 MR. TIDWELL: Our friends at the county government
3 and municipal government have an understandable desire to be
4 turned loose, --

5 MR. RICKETTS: We're not friends.

6 (Laughter.)

7 MR. TIDWELL: You're my friends.

8 -- to be unfettered in areas where they would like
9 to operate without state interference, and that's under-
10 standable, but the committee should be mindful of some of the
11 areas in which the General Assembly and the people have
12 inadvertently turned the counties and the municipalities
loose without the power of the General Assembly to intervene.

13 I'm talking about Amendment 19 as to acting in those
14 fifteen areas under a self-executing grant of authority.
15 They were absolutely -- the General Assembly prohibited
16 action, not only I think a well recognized legitimate need
17 for the state to be in some of those areas but a compelling
18 reason they should for airports, solid waste matter. I
19 think the General Assembly recognized this and they went back
20 in and corrected that area, so without -- if you create 159
21 counties, sovereign counties -- and how many municipalities
22 do we have? -- it's going to be an absolutely chaotic
23 condition.
24

25 In some implications legitimately some of the

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1 counties and municipalities ought not to have to come to the
2 legislature in some areas, but in these areas where
3 continually the federal government is saying thus and such
4 will be done unless a state plan is developed -- I'm talking
5 about air pollution, for instance -- and in that state plan
6 you cannot have any exceptions, counties and municipalities
7 can't have exceptions, or if you don't pass that state plan
8 then they're going to come in and regulate pollution, and
9 you will see industrial development almost cease to exist
10 in this state.

11 I think those sort of considerations should be kept
12 in mind that there are legitimate needs for the state to
13 maintain some control in some of these areas. We may differ
14 on which ones, but I think the counties and municipalities
15 sort of have seen the error of this being completely free.

16 MR. SUMNER: I want to make sure, I hope my remarks
17 won't be misunderstood. I don't think I was calling for, I
18 didn't mean to call for total autonomy, I don't think Dave
19 did either. We realize there are certain concerns that ought
20 to be a statewide nature, and I think what we were driving at
21 was the broadest possible home rule of local concerns, and
22 in those areas where the state believes we ought to have
23 state laws -- for example, tax equalization, it's not under
24 this particular article, but if you want to have tax
25 equalization it ought to be done by general law with uniform

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1 assessment laws across the state.

2 Let us have the broadest home rule possible on
3 local affairs, and then General Assembly decides this is no
4 longer a local affair then let them regulate it.

5 I hope I wasn't misunderstood to say we're looking
6 for the free state of Rome or the free state of Bowden or
7 whatever.

8 CHAIRMAN BRINSON: I think the remark is well taken.
9 This goes to those things I think beyond the wherewithal of
10 cities and counties. Certainly that together with the
11 considerations I mentioned about possible antitrust proposal
12 I think may be the opposite end of the scale as far as
limitations are concerned.

14 Let's go on with the questions, then, and just a
15 show of hands from the committee members.

16 "Should the presumption of Dillon's Rule be reversed
17 in the constitution, and cities and counties be given all home
18 rule powers that the legislature might confer upon them,
19 subject to legislative limitations, exceptions or exclusions?"

20 Is there a consensus? Mr. Barrow?

21 MR. BARROW: Yes.

22 REPRESENTATIVE ADAMS: Yes. You're on 1?

23 CHAIRMAN BRINSON: Yes.

24 REPRESENTATIVE ADAMS: Yes.

25 CHAIRMAN BRINSON: Can you speak for Mr. Weeks?

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1 MR. SLEWSKEY: No.

2 MR. RUPNOW: I would say yes.

3 CHAIRMAN BRINSON: Number 2. "Should a statement
4 be included in the constitution encouraging liberal judicial
5 construction of home rule powers?"

6 If you have a question or comment about it when I
7 ask you for your vote, why don't you speak out; otherwise
8 just vote.

9 What do you think, Mayor Barrow?

10 MR. BARROW: No.

11 REPRESENTATIVE ADAMS: On 2, no.

12 CHAIRMAN BRINSON: Mr. Knowles?

13 MR. RUPNOW: I would raise a question from a legal
14 mind in the sense of what impact this would -- what impact
15 would be created by such a statement in the constitution.

16 Is it going to have any positive or negative influence,
17 your reference earlier to that sort of thing? Or I guess I
18 would go back and ask Representative Adams why he felt no in
19 a sense.

20 REPRESENTATIVE ADAMS: The only thing being that,
21 you know, I just don't want to turn everything over to the
22 judicial system as liberal as that might be. I think we
23 should retain some power over them and we should retain some
24 power over what rule or how much home rule we want to give
25 local governments.



1 CHAIRMAN BRINSON: Since it's not clear I'm going to
2 put a question mark by that one.

3 REPRESENTATIVE ADAMS: It really isn't a clear
4 question, and so to be safe I'd say no. You know, I could --

5 MR. HILL: I might point out that this question
6 really came from the research of other state constitutions,
7 and there are a number of constitutions that have such a
8 statement in there that the powers granted to cities and
9 counties shall be broadly construed, powers given by the
10 constitution or by statute shall be broadly construed in a
11 direct attempt to have the judicial branch look at it other
12 than -- and it's usually in states that have a presumption of
Dillon's Rule where they're trying to reverse Dillon's Rule.

14 On the other committee if you're interested,
15 Senator Coverdell's committee decided no on this question
16 because they were afraid that the judges when they see some-
17 thing like that are just as likely to go to the other extreme
18 and say "Look, the judicial construction is our business
19 and we'll construe it any way we think is proper," so that's
20 the other side of it.

21 REPRESENTATIVE ADAMS: When you have a panel of
22 seven judges and four of them vote one way and three of them
23 another, they're undecided, or vice versa, three one way and
24 four another so, you know, I think we should retain some
25 power in the General Assembly.

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1 I guess specifically what I want to do is just name
2 the home rule powers they would have and there wouldn't be a
3 legal question.

4 MR. RUPNOW: In those states that have done this
5 has it had any impact or effect?

6 MR. HILL: I can't say. I haven't researched to
7 see what effect it's had. I don't know that would have any
8 effect in Georgia anyway.

9 MR. RUPNOW: I know, I can recognize that.

10 CHAIRMAN BRINSON: We will leave that one as a
11 question mark.

12 "Should a list of specific examples of home rule
13 powers be included in the constitution?"

14 Mr. Barrow?

15 MR. BARROW: No.

16 CHAIRMAN BRINSON: Representative Adams?

17 REPRESENTATIVE ADAMS: I'd say yes.

18 CHAIRMAN BRINSON: Mr. Knowles?

19 MR. RUPNOW: I would say no.

20 CHAIRMAN BRINSON: No?

21 That brings us to the second part. "Should a list
22 of specific exceptions to home rule powers be included in the
23 constitution?"

24 Mr. Barrow?

25 MR. BARROW: I think there's going to have to be.

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1 CHAIRMAN BRINSON: Representative Adams?

2 REPRESENTATIVE ADAMS: Yes.

3 CHAIRMAN BRINSON: Mr. Knowles?

4 MR. RUPNOW: I would say yes.

5 CHAIRMAN BRINSON: Are we far enough along to know
6 which exceptions at this point?

7 REPRESENTATIVE ADAMS: I think this question right
8 here would be something that we would work on later, you know,
9 as we make a decision as to whether we think they should be
10 listed.

11 MR. BARROW: I would agree that there are some
12 areas statewide in impact that you cannot give cities and
13 counties carte blanche power over, and I think as he says
14 we would have to talk about those, enumerate them.

15 MR. HILL: Of course the question for the committee
16 is whether the exceptions should be left to the legislature
17 to determine as it sees fit or whether they should in fact be
18 listed.

19 MR. RUPNOW: One of the questions that comes to my
20 mind is whether -- I recognize there are statewide concerns,
21 but could you in a sense set a, since it's a statewide basis
22 establish a floor, a minimum of quality with the provision
23 that a city or county could if they wanted to have higher air
24 quality they could mandate it if it met the state standards
25 which might be slightly less, as an example. You could do

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1 something in that sense that there's a minimum floor level,
2 you know.

3 MR. BARROW: To be politically realistic I don't
4 think that any recommendation we might give here is going to
5 be accepted without some limitations on it, some specific
6 limitations and exceptions. I don't think politically it's
7 feasible.

8 CHAIRMAN BRINSON: When the question hits the floor
9 there are going to be people bring up exceptions, so I think
10 what Mr. Tidwell says, it would be a good thing to put down
11 at least our recognition that federally mandated laws and
12 minimum standards and those of statewide impact would have to
be listed as exceptions.

14 Yes, sir.

15 MR. HENRY: I was going to point out that these
16 questions, "Should a list of specific examples of home rule
17 be included in the constitution, and specific exceptions in
18 the constitution," that doesn't preclude having it in the
19 statute.

20 In other words, by answering this question yes or no
21 you know, if you want to deal with it by legislation that may
22 be the proper area to deal with it. That's one of the --

23 CHAIRMAN BRINSON: Rather than the constitution?

24 MR. HENRY: The thrust of this question I think is
25 basically do you want it in the constitution or statutory?

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1 MR. HILL: We intend to have a legislative package,
2 we'll have to have a legislative package ready that will
3 complement the constitution, so the question really is where
4 should this go.

5 I don't think there's any question that exceptions
6 are going to be necessary, but the question really is where
7 should they go. Should they be in the constitution or should
8 they be in the statute? So maybe that question isn't clear.

9 CHAIRMAN BRINSON: Is there any difference in the
10 way you want to vote given that caution?

11 Why don't we leave it yes with these general
12 exceptions that I've put on my particular one, the general
exception particularly that Mr. Tidwell mentioned.

14 Number 5, "Should cities and counties be given
15 autonomy, that is absolute freedom from legislative control,
16 in any areas of local concern?"

17 Mr. Barrow?

18 MR. BARROW: We get into definition there, don't we.

19 If something can be logically and honestly defined
20 as strictly local concern, I think yes, but we get into
21 picking straws.

22 CHAIRMAN BRINSON: Mr. Adams?

23 REPRESENTATIVE ADAMS: Yes, but, you know, that
24 again is something we're going to have to look at.

25 CHAIRMAN BRINSON: I think what we're aiming to do

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1 here is just really get a starting point, wouldn't you say,
2 Mel?

3 MR. RUPNOW: I would say yes too if you can deal
4 with both the absolute and the local concern question.

5 MR. HILL: But I think the question is this, should
6 the state continue to have the right by general law to come
7 in and preempt an area that it considers has statewide impact?

8 MR. CARLYLE: So the question could be focused on
9 the planning and zoning powers.

10 MR. HILL: I think planning and zoning is the only
11 area right now for which this is true. Local governments at
12 the present time have autonomy in the area of planning and
zoning because of the present constitutional provisions.

14 Should this be continued, number one, and should any
15 other areas be added to it for which that is so?

16 CHAIRMAN BRINSON: Is there any difference in the
17 way you want to vote, again bearing in mind we're just trying
18 to get a starting point, or is there any qualification that
19 you want to put as a comment?

20 I think we have just done a couple, but I want to
21 leave the answer yes with the caveat that local concerns
22 would require definition, and also with the understanding
23 that we're talking about whether or not states would be
24 permitted to come in where they judge that there is a state-
25 wide impact.

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1 MR. RUPNOW: Would you include in that my comment
2 earlier about state mandated minimums or floors?

3 One of the things that I see where we come to the
4 legislature on occasion is to set certain salaries. I don't
5 see that as a function of the state legislature.

6 CHAIRMAN BRINSON: That's a good example also.

7 MR. RUPNOW: You know, everybody gets a certain
8 minimum salary, and if they want to make more than that or
9 something that's another issue, but I don't see that as a
10 state legislative kind of thing.

11 CHAIRMAN BRINSON: Let's do include that.

12 MR. RUPNOW: It seems to me that I've seen notice
13 of district attorneys, some of these kinds of things. I may
14 be wrong, but that's my recollection.

15 REPRESENTATIVE ADAMS: We have a state minimum, and
16 then like in Fulton County they subsidize it, the district
17 attorney and the superior court judges and the state court
18 judge.

19 MR. RUPNOW: It seems to me of dealing with
20 sheriffs --

21 REPRESENTATIVE ADAMS: The sheriff's salary in
22 Fulton County is subsidized.

23 There's a minimum salary for a state court judge
24 and --

25 MR. RUPNOW: Does it say what they can subsidize it?

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1 Maybe my memory is bad, but I have a recollection of
2 seeing a bill in the legislature in that area.

3 MR. TIDWELL: There are hundreds of them, the
4 deputy sheriffs, the secretaries' pay.

5 MR. RUPNOW: So there are some?

6 MR. TIDWELL: Yes.

7 CHAIRMAN BRINSON: Make a note of that, Mel, just
8 for purposes of properly addressing that.

9 6, "Should cities and counties be given more
10 latitude in determining their own form of government?"

11 Mr. Barrow?

12 MR. BARROW: (Inaudible.)

13 MR. RUPNOW: I'll say yes.

14 CHAIRMAN BRINSON: Mr. Adams?

15 REPRESENTATIVE ADAMS: I'll say yes.

16 CHAIRMAN BRINSON: Under that, "Should they be
17 authorized to set up charter commissions to frame their own
18 city charter or county local act?"

19 Mr. Knowles?

20 MR. RUPNOW: I guess my first blush would be yes
21 within some sort of state guided framework. I think there's
22 got to be some I'll say parameters established; I don't
23 think it should be unlimited. I don't know how to set those
24 kinds of limitations. There ought to be some constraints or
25 restraints.

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1 CHAIRMAN BRINSON: Mr. Adams?

2 REPRESENTATIVE ADAMS: Normally there is a commission
3 set up to propose city charters, but I think it still should
4 be left to the General Assembly to legislate that recommenda-
5 tion or the charter amendments, so I guess my answer would be
6 no.

7 The question is not completely explanatory, except
8 you know we have had commissions to recommend charter
9 revisions on city charters, and I think that power should be
10 left with the General Assembly to adopt that charter for the
11 cities.

12 MR. RUPNOW: Let me ask a question. I draw a
13 distinction or see a difference between setting up the
14 charter commission and then implementing or adopting the
15 results or efforts of that commission's work. Maybe I
16 misinterpret the question,

17 REPRESENTATIVE ADAMS: That's what I'm kind of --

18 MR. RUPNOW: Are you talking about the charter
19 commission could be formed independently and literally create
20 a charter and the thing be adopted, or are you saying that --

21 MR. HILL: It would be under criteria established
22 by the General Assembly both in terms of the creation and in
23 terms of the adoption.

24 Now, this question really came out of the history
25 of Georgia because in 1951 the municipal home rule act which



1 was declared unconstitutional in '54, the first municipal
2 home rule act had in it criteria for establishing local
3 charter commissions, and that particular aspect of the home
4 rule act of '51 wasn't brought forward into '65, so we haven't
5 had any such thing recently, but it's not as if this hasn't
6 been part of Georgia's history already where the local
7 government is authorized according to a separate procedure to
8 set up a commission, and that commission was authorized to
9 submit to the people for a vote that charter. They them-
10 selves of course couldn't do it, and I believe if they
11 followed those procedures they did not come back to the
12 General Assembly for the General Assembly to approve it,
13 the people in a referendum would approve it or not approve
14 it in terms of the form of government.

15 My question here was meant to be broader than that
16 really. Should they be authorized to set up charter
17 commissions and adopt them under criteria established by the
18 General Assembly, whatever they should decide. They could be
19 adopted either locally by referendum or adopted by the General
20 Assembly on recommendation of the commission, but that would
21 be gain up to the legislature to decide what to do.

22 That was all intended to be encompassed in my
23 question.

24 REPRESENTATIVE ADAMS: Well, my question, I mean my
25 answer would be no because it's really not clear, and I would

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1 say I think cities should, you know, present their charters
2 or charter amendments whether it be by commissions or by
3 the counsel or whomever for approval by the General Assembly.

4 MR. HILL: And not directly?

5 REPRESENTATIVE ADAMS: If you go to referendums
6 it's costly unless you can -- and we're getting too many things
7 on the ballot now, so many people don't know what they're
8 voting on such as constitutional amendments and city charter
9 revisions and things of that nature,

10 MR. RUPNOW: In your situation then you would see
11 that the citizens of the community would not be voting on it,
12 it would simply be acted on by the legislature?

13 REPRESENTATIVE ADAMS: I think it would be a costly
14 process. I'm satisfied with the present setup on that in
15 that if they have constitutional amendments that they want to
16 present or a new charter, such as the last session Hapeville
17 had a new charter, it was approved by the city council, and
18 if they want it then the legislators can pretty well follow
19 their guidelines, because they're the ones that answer to
20 their local people.

21 MR. RUPNOW: But the one in Hapeville was not voted
22 on by the people, it was a recommendation from the mayor and
23 the council.

24 REPRESENTATIVE ADAMS: That's right. And the city
25 charter, when was it adopted, the new city charter for

1 Atlanta, Bill, in '72 or '73?

2 MR. ALEXANDER: '73.

3 REPRESENTATIVE ADAMS: There was a commission
4 created by an act of the General Assembly to look at the
5 charter of the city of Atlanta and recommend a complete new
6 charter which went from a form of government controlled by
7 the council to a strong mayor type government.

8 Now, when you make such a drastic move as that the
9 General Assembly is going to be accountable to the people
10 when they vote on that, so when you're looking at the city
11 charter you're looking at something that can be either a weak
12 mayor or a strong mayor, and I don't know how to answer
13 except that I would just still like to have some control in
14 the General Assembly.

15 MR. RUPNOW: I guess my reaction though is that in
16 the sense that it was voted on by the legislature the
17 accountability is really only, at least for the citizens of
18 Atlanta would be only to the Fulton County delegation.

19 REPRESENTATIVE ADAMS: It would be a local act.

20 MR. RUPNOW: You're seeing it treated as a local
21 act with the accountability there.

22 REPRESENTATIVE ADAMS: You have 24 members in the
23 Fulton County delegation, sixteen of them put their -- well,
24 we have a portion of Atlanta and DeKalb County too that would
25 be included, but what it boils down to is that the people in

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1 the unincorporated area of Fulton County would not have a
2 vote on it unless they represent some area of the city of
3 Atlanta, and then those people in DeKalb County that
4 represent Atlanta would have votes, so it turns out that
5 sixteen or seventeen people could decide on whether they
6 wanted a new charter.

7 MR. BARROW: This is the very reason I think the
8 people of the city or the county should have more authority
9 to decide what they want in their charter or their commission.

10 I certainly think the General Assembly has a place
11 in establishing parameters of the powers of the city or the
12 county that they may include in their charter.

13 I have no objection to bringing any charter to the
14 General Assembly once it's decided on by the people of that
15 particular municipality or county, because I have faith that
16 the General Assembly as long as you stay within the parameters
17 of the law will approve whatever the people in my city say
18 they want in their charter, but I think the people in the city
19 through referendum or whatever mechanism should be set up
20 should approve the charters at least before they come to the
21 General Assembly. I have no problem with bringing it to the
22 General Assembly for final approval.

23 REPRESENTATIVE ADAMS: Usually they can send their
24 resolution over -- in our particular case we get a resolution
25 from the council and the mayor which does not go on the floor

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1 of the house, but it is presented to the delegation, or we
2 get an opinion from the city, and of course the opinions are
3 usually voted on by both the -- I mean by the council and
4 then approved by the mayor.

5 Yes, please.

6 MR. ALEXANDER: In the case of the Atlanta charter
7 in '73 I was in the legislature then, and I'd say for the most
8 part all of them did oppose that charter. The General
9 Assembly did create the charter commission that met and
10 agonized for almost a year, but quite a few aldermen actually
11 were lobbying against it, and I would believe that the majority
12 of the aldermen at that time opposed the charter. This was
13 something the General Assembly in effect imposed on the city
14 of Atlanta. I'm not saying it was wrong, but I thought for
15 your information --

16 REPRESENTATIVE ADAMS: I didn't mean that they sent
17 us a resolution on the charter, what I'm saying is usually
18 on legislation that affects the city of Atlanta the first
19 thing a legislator does is to find out whether the city
20 agrees or disagrees.

21 MR. ALEXANDER: I think the general trend in any
22 governmental body, the ones holding office would be very
23 reluctant to make drastic changes in their governmental
24 organization, so I would think if you left it up to the local
25 government completely they probably wouldn't make that

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1 drastic a change.

2 REPRESENTATIVE ADAMS: The only problem I find with
3 anything that complicated is that the people really don't know
4 what they're voting on.

5 CHAIRMAN BRINSON: That's right. What Mayor Barrow
6 said, we had an experience in Rome where the people, the city
7 commission really knows what they need and very often can
8 convince the city voters that that is what they need, and at
9 the same time the legislators might be more swayed by, or
10 might be at odds with some of the city politicians and be more
11 favorable to special interest groups that don't really speak
12 for the city. I think it cuts both ways.

I don't know what the answer to that problem is.

14 For instance, do you think it's a bad result that
15 the aldermen there desired to not enact it? I mean that's
16 an oversimplified question.

17 MR. ALEXANDER: I'm in two different positions now.
18 I was in the legislature then and voted for the charter, and
19 I work for the city of Atlanta, but if I could kind of speak
20 personally I think it was a good change, but the elected
21 officials of the city opposed it.

22 I think it's natural. I think the legislators would
23 oppose a major change in the legislative body; it's just
24 human nature that people are going to oppose a drastic change
25 in the way they operate.

1 REPRESENTATIVE ADAMS: The reason the aldermen
2 opposed it was that it changed their districts, it created
3 twelve districts within Atlanta whereas in the past all
4 eighteen of them had run from the city at large, it took a
5 lot of power away from them and gave it to the mayor, and I
6 hear complaints now from the aldermen that they have no
7 influence over the department heads, that the executive branch
8 does have the power, and I don't want to, you know, belabor
9 this thing, it's just a question of how many people could be
10 informed enough on a city charter to know what they were
11 voting on, and you would see the cities then get into more
12 political action on something like that than you would if the
13 members of the General Assembly made the decision, and
14 usually the members of the General Assembly are going to
15 have -- in that particular case they had numerous hearings
16 and adoptions, deletions and everything else before the final
17 package was perfected.

18 MR. RUPNOW: Bill, do you think the citizens of
19 Atlanta would have voted for it had they put it up to a
20 referendum?

21 MR. ALEXANDER: I think they would. I know a lot
22 of the citizens felt like that the aldermen kind of weren't
23 responsive to the needs of the community because they were
24 voted on citywide, and of course this came along at the time
25 of a strong community move where people wanted to have the

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1 electorate more accountable to the smaller units, so I kind
2 of believe it would have been approved.

3 CHAIRMAN BRINSON: Ed?

4 MR. SUMNER: I'm not sure we understand where we are
5 right now. There may be authority, more authority out there
6 now than a lot of people realize now as far as charter
7 amendments.

8 The first point is I think we may have -- maybe
9 the staff could look at this, but we have had a number of
10 cities come with community charters in the last ten or
11 fifteen years, and I'm aware -- I think some of those have
12 been fairly substantial changes in form of government, that
13 is the council has gotten in and said "Look, we want to go to
14 a city manager form of government," and they have in fact
15 changed from a strong mayor or a weak mayor to a city manager
16 form of government, so I don't think it totally beyond the
17 realm of possibility, in fact the city council might decide
18 to make some changes and decides it needs a full time
19 professional staff.

20 The other thing is that right now as far as cities
21 are concerned, the city right now can amend its own charter,
22 there's procedure for doing that, and the only real case in
23 the courts about that was the Jackson-Newton case which said
24 that the city can amend the charter except to the extent that
25 it makes a substantial change in its form of government,



1 that still had to be done by the legislature which I think
2 maybe is what Mr. Adams is talking about, so there is
3 substantial authority now, but on any other matters you can
4 in fact amend the charter now by passing an ordinance at
5 one meeting of the council and advertisement in the paper
6 for three weeks, then you can pass it the second time and
7 that is part of your charter.

8 There's also another one that ties into Question (b)
9 procedures I don't think very many people are aware of, and
10 that is there is a procedure for amending either the charter
11 or adopting an ordinance by a petition of the voters in the
12 city. I think by a 15 percent petition any dissatisfied
13 group of citizens in the state can come in and amend the
14 charter, they can cut the hourly rate, say the city attorney
15 of Rome should not receive more than \$35 an hour for his
16 work.

17 CHAIRMAN BRINSON: He doesn't.

18 (Laughter.)

19 MR. SUMNER: You need a raise then up to the \$30
20 an hour.

21 If they got mad at Mayor Barrow they can say "We're
22 going to cut the mayor's salary in Bowden from \$50 a month
23 to \$20 a month" by petition. We have already got some
24 authority out there in the '65 home rule act that a lot of
25 people are not aware of, and this is something that happens

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1 in the legislature all the time, they get a lot of local
2 charter amendments or local acts that could have been done by
3 ordinance if the city wanted to do it.

4 This is one area I think that in the existing home
5 rule we've got that maybe should be more broadly broadcast
6 and more education about, maybe assurances given to city
7 attorneys that you can do this with ordinance, we don't have
8 to always go to the legislature, and the legislature might
9 like it too and get it out of some of these local amendments,
10 but there is substantial authority already in this area.

11 MR. ALEXANDER: The big limitation is changing any
12 power.

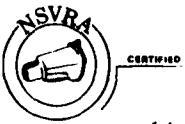
13 MR. SUMNER: Not really. I think it's the form of
14 government. Well, if it goes -- yeah, if you're say going
15 from a strong mayor to a weak mayor that is a change in form
16 of government and substantial power.

17 MR. ALEXANDER: For example, just as an oversight
18 in the new charter of the city of Atlanta they left out the
19 power of the mayor to perform marriages, and now I understand
20 to get that in it has to come back to the General Assembly
21 rather than a home rule amendment because that is a power
22 of the elected official.

23 MR. BARROW: Can he give divorces?

24 (Laughter.)

25 CHAIRMAN BRINSON: You didn't vote,



1 MR. HILL: This discussion has raised another
2 question that maybe should have been included here to me,
3 and that is from the standpoint of the city the charter is
4 their constitution, and an argument could be made that any
5 time there is a complete new charter that it should be
6 subject to a referendum in the locality to preserve --

7 Now, it happens more often than not that the General
8 Assembly will adopt it by local act subject to a referendum,
9 but there's no requirement about it at the present time,
10 so another question might be should that kind of a require-
11 ment be included in the constitution.

12 That just struck me as we were speaking.

13 MR. SLEWSKY: There's also been a movement --
14 another way we're working right now with the Glynn County-
15 Brunswick charter commission to write a new charter for
16 consolidated government, and the constitutional amendment
17 which authorizes that charter commission enables that charter
18 to be enacted by a simple referendum, by a simple majority
19 without going back to the legislature, and that's another
20 trend which is coming. We talked to Savannah about some
21 things, they might be interested in this.

22 CHAIRMAN BRINSON: In other words, constitutionally
23 provide that it may be done -- I mean legislatively provide
24 it may be done, may be effected by referendum?

25 MR. SLEWSKY: That's right, just by referendum.

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1 CHAIRMAN BRINSON: Mayor Barrow, you did not vote.
2 I believe we have two nos.

3 MR. RUPNOW: I thought I said yes.

4 CHAIRMAN BRINSON: Maybe you did. We'll put yes,
5 again with the qualifications noted.

6 Paragraph (b), "Should the General Assembly be
7 directed to provide by general law for optional forms of
8 municipal and county government which could be adopted by
9 petition and referendum in the particular locality?"

10 MR. HILL: This question, if I might speak to this,
11 also comes from other state constitutions. This is the way
12 a number of other states do handle this question of form of
13 government, they will have -- South Carolina two or three
14 years ago adopted a law similar to this for cities and
15 counties where there were five forms of government set forth
16 in the general law and the local government was permitted to
17 continue working under its present charter or it could adopt
18 one of these five optional forms by referendum in the
19 locality, so that's what this question means, it's where it
20 came from.

21 MR. RUPNOW: If initially 6 was answered in the
22 affirmative, do you really need this? I mean if they're
23 given substantial latitude in governmental form or structure
24 do you need a list in the constitution that says you can have
25 any one of five or any one of six?

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1 MR. HILL: It won't be in the constitution, it will
2 be in the statute that they would have a choice of five forms
3 or however many that the General Assembly would provide by
4 general law.

5 MR. RUPNOW: It would be an inconsistency. You're
6 giving them lots of latitude in one way and in the other form
7 you're saying you want them to choose from five or six or
8 whatever.

9 MR. HILL: That's true. I think that the first
10 question that we've answered (a) yes would be the most
11 latitude you could give them, and then they could tailor make
12 the charter to their particular interest locally, so that
13 would be the most, but (b) would still be more latitude
14 perhaps than they have now because there is no way for them
15 locally by referendum to adopt a new form of government or a
16 new charter, so --

17 CHAIRMAN BRINSON: Didn't the original home rule
18 statute direct the General Assembly to provide options to the
19 cities from which they could choose and that's why it was
20 ruled unconstitutional because they didn't provide options?
21 Isn't that true? I mean that looks like that's what the
22 question --

23 MR. HILL: Provide optional forms of municipal and
24 county government.

25 CHAIRMAN BRINSON: Yes.

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1 MR. HENRY: I think this general law that is
2 envisioned by (b) would probably -- and the concern that was
3 expressed earlier, this would set the parameters or the
4 procedures by which a city or a county would amend their
5 charter or local act, it maybe wouldn't deal -- you know, it
6 would set out the options that they could choose and it would
7 more or less restrict them in going to some radical form of
8 government I guess but, you know, this would be a way to keep
9 it under control by the state.

10 MR. HILL: I'm not even sure they're mutually
11 exclusive. I could see a law that authorizes local government
12 to establish a charter commission to study the form of
13 government and either adopt one of the five forms that are
14 set forth in the general law or provide a new charter itself.
15 I'm not sure that it's mutually exclusive, these two
16 questions.

17 The other committee heard testimony from someone
18 that this has not worked that well in other states and they
19 were not persuaded themselves that this would be a good change
20 for Georgia to have such a law.

21 CHAIRMAN BRINSON: Mr. Knowles, do you have any
22 feeling one way or the other on it?

23 MR. RUPNOW: My first blush is no.

24 CHAIRMAN BRINSON: Mr. Adams?

25 REPRESENTATIVE ADAMS: To be consistent with my

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1 other, no.

2 MR. BARROW: Mr. Chairman, I'm going to have to
3 apologize -- I've got a conflict, I've got to be across town
4 and I'll let Ed Summer sit in for me.

5 CHAIRMAN BRINSON: All right.

6 (Mr. Barrow withdrew.)

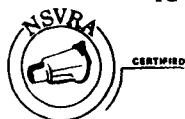
7 CHAIRMAN BRINSON: "Should a distinction be main-
8 tained in the constitution between county and municipal
9 home rule power?"

10 There is a pretty strong expression as to the
11 feeling of the cities with respect to whether or not they
12 would want powers in the constitution as opposed to statute.

13 We haven't heard a whole lot from the counties as
14 to how they feel about the constitutional home rule. Do you
15 have any input on that, Jay?

16 MR. RICKETTS: We have received no request from any
17 county requesting a change in the constitution with regard to
18 that. I think the argument that's made is interesting, but
19 I don't think it's totally convincing, and that is there is
20 some indication that the Supreme Court or the recent courts
21 have said that statutory grants of home rule powers are
22 liberally or will be more liberally construed. That's a
23 statement of contemporary judiciary intent. Whether or not
24 that would continue to be the attitude of the courts in the
25 future is indeterminate at this point, I think primarily

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1 because of the inability to see what future courts will do,
2 plus no one asking for a change, more than likely the position
3 of our association will be when it's finally taken is that no
4 change in the constitution in that regard needs to be made.

5 CHAIRMAN BRINSON: Mr. Adams, how about you?

6 REPRESENTATIVE ADAMS: I see a problem that if you
7 wanted to make a change in any of the home rule power you
8 would have a constitutional question as to whether it would
9 affect municipal and county if you were to set them on the
10 same -- You're talking about giving them the same basis
11 of home rule, right?

12 CHAIRMAN BRINSON: That's right.

13 REPRESENTATIVE ADAMS: Until I knew more about it,
14 I mean until we've looked at it closer, got into it in more
15 depth I would say no.

16 MR. RUPNOW: I would react, if you were to rephrase
17 the question and leave out the word constitution -- that's
18 what you're saying I think, Representative Adams, whether
19 there should be a distinction between the home rule powers
20 of cities and counties --

21 REPRESENTATIVE ADAMS: I was just looking at the
22 constitutional question whether you can change one without
23 changing them both.

24 MR. RUPNOW: Or whether we really ought to draw a
25 distinction between the cities and counties, and that leads

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1 me to another what I think of as an issue, is whether the --
2 I see the cities performing certain kinds of functions, I see
3 the counties performing other kinds of functions. I guess
4 the question you get into is if those home rule powers deal
5 with different functions I guess I might have to draw the
6 answer yes.

7 I see there are times when the counties should not
8 be in the urban services kinds of programs, those are
9 functions that probably ought to be left to cities, and if
10 the home rule powers dealt with those services then I would
11 probably have to say yes to that, although I'm not really
12 sure where the distinction would be drawn in this case.

13
14 CHAIRMAN BRINSON: I think it is more directed on
15 what source do you draw a particular power from.

16 MR. RUPNOW: You're saying whether they draw their
17 home rule powers from the constitution or from the legislation.

18 CHAIRMAN BRINSON: Yes. Isn't that right, Mel?

19 MR. HILL: Yes, that's right. That's the intent of
20 this question.

21 MR. RUPNOW: Well, then I guess I would go back with
22 the no or a question mark.

23 MR. RICKETTS: It seems that the municipal associa-
24 tion thinks that the present statutory grant as far as
25 cities is concerned is adequate, and the commissioner's
association thinks that the present constitutional grant for



1 counties is fine, and unless there is a specific group
2 crying out for change I don't see why this is an area that
3 needs any further exploration.

4 CHAIRMAN BRINSON: Ed, do you have anything?

5 MR. SUMNER: One reason I think the municipal
6 powers are strongly in favor of keeping our home rule in the
7 legislative form, a statutory form -- certainly I'm not
8 suggesting again there's a whole lot of outcry they need a
9 lot of changes, maybe the legislature might need to change it
10 somewhat, but one particular reason I think that hasn't been
11 brought up today is the flexibility we've got now to amend
12 our home rule provisions, it's been amended a number of times,
13 the home rule act of '65 has, and possibly come up -- that's
14 a much simpler thing to do with 91 votes of the legislature
15 than try to go to a constitutional or mini-constitutional
16 home rule grant with the enumeration of powers, and I think
17 we like that flexibility, and my impression again, we don't
18 have an official policy on that specific issue should it be
19 a constitutional grant or should it be more of a legislative
20 type grant, but my impression would be we would not like to go
21 to the constitution I think mainly because of the flexibility
22 and also because of the statement by the courts in the 1970
23 case that construed the legislative grant more liberally
24 than a constitutional grant.

25 CHAIRMAN BRINSON: I think the votes were no with

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1 your qualifying comments.

2 Mel, why don't you go on to the next general
3 subject matter, Legislative Issues, and give an overview
4 before we get into specific questions.

5 MR. HILL: All right.

6 These questions relate to the way in which the local
7 governments relate to the state legislature, and to try to
8 put some of the points that Representative Adams was making
9 before in an earlier meeting, Representative Adams did point
10 out the population statutes and the need to try to do some-
11 thing about those, so that is part of these questions, part
12 of this area.

13 Question Number 1 relates to something we're talking
14 about as well that Mr. Rupnow mentioned earlier that he thought
15 the state should have some minimum standards in an area and
16 then the local government should be able to have higher
17 standards if they so choose, and that there are areas in which
18 both the state and local government should be able to act
19 concurrently, and under the present system when the state
20 addresses an issue by general law it preempts the field unless
21 that general law specifically carves out an exception that
22 says local governments can come in, but there's some question
23 whether that's constitutional or not because the present
24 provisions of the constitution state that no local law shall
25 be passed in any case for which provision has been made by

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1 an existing general law, so that there's some question as to
2 whether that's even allowable. We have done it, and thus far
3 it hasn't been challenged, but the Question Number 1 really
4 is trying to have this committee decide if we should make it
5 clear in the constitution that that situation would be
6 allowable and it would be constitutional.

7 Let me give an example that was given in another
8 committee that illustrates the point, and that is with
9 respect to litter control right now we have a general law
10 which was passed two or three years ago on litter control,
11 and it's a statewide law that covers the subject, and that
12 preempts the local government from having any kind of local
ordinance on that subject.

14 Now, that doesn't seem to be -- I doubt if the
15 General Assembly would be upset if the local government
16 adopted such an ordinance to try to deal with that problem
17 locally, but at the moment they're not permitted to, so that's
18 what this first question was. Perhaps we could go to that
19 now.

20 CHAIRMAN BRINSON: All right. Number 1, "Should
21 cities and counties be authorized to act concurrently with
22 the state in areas which are matters of both state and local
23 concern, provided that such local action is not inconsistent
24 with state law or does not undermine state policy?"

25 Mr. Rupnow?

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1 MR. RUPNOW: I would say yes.

2 CHAIRMAN BRINSON: Representative Adams?

3 REPRESENTATIVE ADAMS: Let me ask Melvin, on this
4 litter law, now if the city of Atlanta adopted an ordinance
5 which would be more stringent than the state law, you're
6 saying that would not be constitutional?

7 MR. HILL: That's right, under the present system,
8 under the present constitution that would not be valid.

9 REPRESENTATIVE ADAMS: I thought if it were more
10 stringent it would be, but they would have to meet the state
11 minimum, but that they could by city ordinance enact a more
12 stringent litter law.

Now, I'm not --

14 MR. HILL: That's not my understanding of it.

15 MR. ANTHONY: Mel, you're asking your Number 2,
16 but isn't Number 1 really talking about population, what we
17 call population statutes? You were saying that nobody can go
18 in and enact a litter statute of their own, but yet that's
19 what's happening under population statutes, and I know that
20 will come up for discussion under Number 2, but that's exactly
21 what happens in general laws of local application, they
22 circumvent general state policy.

23 REPRESENTATIVE ADAMS: I would be totally opposed to
24 population acts in the new constitution in that what we do
25 today don't affect anybody but a certain municipality or

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1 county, but next year it could be that it would affect people
2 that would grow into that.

3 Now, if that's what this question deals with I
4 would say --

5 MR. HILL: Question 1 does not deal with population,
6 it wasn't the intention; it's much more broad than that.

7 REPRESENTATIVE ADAMS: My answer would be that if
8 they wanted to go to a more stringent ordinance I would say
9 yes, because I think we just talked about the counties and
10 the various salaries throughout the state. The state has a
11 minimum salary for just about every job in each county, and
12 yet if the county sees fit to subsidize because of the work-
13 load or something like that they can do it, so in that case
14 my answer would be yes, they could meet the minimum but could
15 be more stringent if they so desired.

16 CHAIRMAN BRINSON: We will mark that one yes.

17 2, "Should population be able to be used as a basis
18 for classification of cities and counties?"

19 Mr. Rupnow?

20 MR. RUPNOW: Well, I guess generally my answer is no,
21 but I am not sure what the basis for classification is.

22 REPRESENTATIVE ADAMS: That's what I want to get a
23 clarification. Are you talking about for grant purposes, are
24 you talking about for --

25 MR. RUPNOW: Certain powers, taxation powers,



1 annexation powers, a variety of these things.

2 REPRESENTATIVE ADAMS: Every city and county in the
3 state of Georgia has got to be classified I guess by popula-
4 tion now in order to receive the grants, federal funds, et
5 cetera.

6 MR. HILL: It's really just a general question that
7 leads into the other three. Why don't we just jump to (a),
8 (b) and (c).

9 REPRESENTATIVE ADAMS: I would have to question-mark
10 that.

11 CHAIRMAN BRINSON: You're talking about bracketing
12 now.

13 REPRESENTATIVE ADAMS: Well, bracketing, now
14 bracketing population as I said I would be totally opposed to
15 it.

16 MR. RUPNOW: I know some states where they bracket
17 cities by population from the standpoint of the state aid for
18 highways.

19 REPRESENTATIVE ADAMS: That would come under
20 classification, according to population.

21 MR. RUPNOW: Yeah, but smaller cities get less per
22 mile than larger cities.

23 REPRESENTATIVE ADAMS: That's right.

24 MR. RUPNOW: I don't know if that's necessarily bad
25 by virtue of the cities -- there's probably a greater demand

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1 in larger cities. The larger the city, the more grants they
2 get.

3 REPRESENTATIVE ADAMS: That's true in this state,
4 smaller counties get larger grants than the larger counties
5 because the larger counties are more self-sustaining in the
6 way of revenue and everything else.

7 You find some counties in Georgia that do not even
8 have an industrial plant or anything, or a city; whereas in
9 Atlanta it's a trading center and they feel like that Atlanta
10 draws enough revenue from the other parts of the state that
11 they don't need as much revenue grants as some of the smaller
12 counties and cities.

13 CHAIRMAN BRINSON: You had a comment?

14 MR. HENRY: I think one of the issues that was
15 discussed in Senator Coverdell's meeting was that where
16 population is a legitimate basis for classification it should
17 be used and the General Assembly should have the power to
18 control where it will be used, but where you enact a general
19 law and then you come in and carve out these exceptions by
20 population in areas where it is not legitimate then General
21 Assembly should be able to control that also, whereas right
22 now they really have no authority to say that this general
23 law cannot be affected by a subsequent population statute
24 because a population statute is a general statute, it has
25 the same authority as the general law which it's excepting

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1 itself from. That's the thrust of this I think is that they
2 want to allow the General Assembly in areas where population
3 cannot be used as a legitimate classification, they want to
4 allow the General Assembly to prohibit that classification.

5 REPRESENTATIVE ADAMS: We have one good example of
6 that right now, and I'm hearing a lot from the people, is
7 this new pollution control that affects counties with a
8 population of 200,000 or more, and it so far only affects
9 three counties, DeKalb, Fulton and Cobb. Is that the kind
10 of classification you're talking about?

11 MR. HILL: I had in mind more the one -- I think
12 Question (a) was generated -- this question Number 2 where
13 you have cities of between -- you know, you're bracketing --

14 MR. ANTHONY: Are you saying put them into the
15 statute and then you wouldn't have to come back with popula-
16 tion bills saying a city between such and such and such and
17 such --

18 MR. RICKETTS: Put them in the constitution, and
19 then legislate according to brackets.

20 MR. ANTHONY: Is that what you're saying, put the
21 classification in the constitution and then you wouldn't have
22 to come back and say a city between 30 and 35,000?

23 MR. HILL: That's what Question (b) relates to,
24 that's what Question (b) had in mind where the state would
25 classify cities and counties by population, say all cities

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1 of 1,000 to 5,000 which is first class, and five to twenty
2 are second class, then they could come back and legislate by
3 general law according to class. That's what the second
4 question had in mind.

5 Again that's from other states where this has been
6 used, and I don't know the virtues or problems with it, but
7 that is something that relates to this area.

8 The first question is whether, to what extent
9 population should be able to be used --

10 REPRESENTATIVE ADAMS: Or should something else
11 for the basis of classification except population.

12 MR. HILL: Yes.

13 CHAIRMAN BRINSON: Let's skip over to (a) and
14 say "Should general laws of local application be prohibited?"

15 REPRESENTATIVE ADAMS: I have already given my
16 answer, yes.

17 MR. RUPNOW: I think I would agree. If I under-
18 stand the question my answer is yes too.

19 CHAIRMAN BRINSON: (b), "Should the General Assembly
20 be directed to classify cities and counties on the basis of
21 population, and then be prohibited from legislating with
22 respect to them except by general law according to class?",
23 which is what we were just addressing.

24 Mr. Sumner?

25 MR. SUMNER: The only problem I think we've got



1 with that type of thing is again does population validly
2 reflect the difference from one city to another, from one
3 county to another.

4 I'll give you one example of what I was leading at
5 is Albany and Dougherty County, that is a city classified,
6 and a county, sort of a population class, population-wise
7 you say an urban county is a county over 50,000 population,
8 total population. Dougherty County qualifies, but down there
9 they have a, they have worked out a different arrangement
10 of the service delivered perhaps than they may have in say
11 Richmond County which would be about the same population.

12 Down there in Dougherty County they have I guess
13 you'd say more, I think the traditional quote county type
14 services, and the city of Albany provides, almost exclusively
15 provides the so-called municipal type services, the fire,
16 the police, some of these type things. All right.

17 So how do you recognize that county compared to
18 Richmond County where you've got an unincorporated area over
19 there that for all practical purposes is a city, it does
20 everything a city does, police, fire, the whole ball of wax.

21 I think you just can't say population, a population
22 of 50,000 doesn't necessarily reflect the character of that
23 county or this county or that city or this city, you've got
24 all kinds of cities in DeKalb County that provide nothing
25 now except police, everything else is provided by the county



1 through a contract, the fire, the water, the sewer, this type
2 of thing, and if you say all cities over 10,000 will be third
3 class cities and they have all the powers, they shall provide
4 all the services, the following services, et cetera, you're
5 going to have some cities in DeKalb County that aren't
6 providing these services now, but you might have a city in
7 Carroll County that is providing the services, so I'm not
8 sure population is the basis on which to classify. Maybe it
9 ought to be on services; it might be one of a number of
10 factors if you're going to do it, but it's a highly difficult
11 area.

12 Do you need classification to begin with and, if you
do, how do you do it?

14 CHAIRMAN BRINSON: Do you have a yes or no answer?

15 REPRESENTATIVE ADAMS: No.

16 CHAIRMAN BRINSON: Mr. Rupnow?

17 MR. RUPNOW: I guess I would -- I really have a
18 question mark, I'm really not sure on that one.

19 I think in some places I've seen it work and work
20 fairly well by a limited classification, but I can also see
21 some problems with it, so I don't really --

22 REPRESENTATIVE ADAMS: My thinking is that if we're
23 going to enact local legislation to affect -- well, general
24 legislation that would affect two cities of the same size
25 I think that should be narrowed down each city using local

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1 legislation or general legislation in effect to deal with that
2 city only.

3 I mean just like Ed said, you cannot take 10,000
4 people in one city and compare them with 10,000 in another
5 city as to their needs, and so therefore I think we should
6 get to some form of local legislation that was advertised by
7 name in the city you're talking about.

8 MR. RUPNOW: I guess I was looking at this from the
9 standpoint that if the legislature decides that certain powers
10 or certain grants or these sorts of things are applicable to
11 cities of under 10,000 or from 10 to 50,000 that these are
12 kind of permissive sorts of things, they're not necessarily
13 mandatory so that the difference in the cities -- one could
14 use the power if it felt it was appropriate and another would
15 not, but they wouldn't --

16 I guess that's where my confusion comes as to whether
17 this becomes a mandatory or a permissive sort of thing, and
18 that's where I have --

19 REPRESENTATIVE ADAMS: This question is so general,
20 I mean it's broad and --

21 MR. HILL: It's generated from the feeling that the
22 present situation under which a general law relating to
23 cities or counties applies to every city or county of the
24 state and allows no distinction is not necessarily the most
25 effective way of legislating, it's really just to see what

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1 kind of -- how could we provide for a system where when you
2 pass a law that affects a city of between, I mean that affects
3 cities of Atlanta's size and it's also going to affect the
4 very smallest, it seems there should be some method of
5 distinguishing legislatively by general law between these
6 different size cities, and that's the whole purpose of these
7 questions.

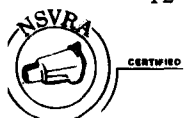
8 CHAIRMAN BRINSON: You say that question in general,
9 the next one says "more generally."

10 (Laughter.)

11 REPRESENTATIVE ADAMS: I saw that.

12 Now, federal grants or aids of any nature are
13 looked at and the state has no control over. I mean you
14 apply for them through the state government, but when we're
15 talking about state statutes or the constitution of the state
16 of Georgia, usually if a city has a problem they come back
17 with local legislation that would correct it.

18 What I'm trying to say is that we should not enact
19 any local legislation that might affect another city of the
20 same population, so therefore we have to come to some
21 conclusion through this thing -- I haven't looked at all the
22 questions -- as to what type criteria they have to meet to
23 introduce local legislation, and I certainly don't want to
24 continue with the population bracket, and I think Legislative
25 Counsel would bear me out that if these things were tested



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1 it would probably fall through.

2 MR. RUPNOW: Let me go back if I understand our
3 discussion for part of the morning at least that you generally
4 are opposed to that kind of population bill for a city of
5 50,000 or something like that, specifically for a city, and
6 there was also some discussion earlier about the idea of
7 trying to get the cities to assume the responsibilities or
8 powers they now have rather than coming to the legislature
9 and asking for specific acts when they really could in a sense
10 do it themselves.

11 REPRESENTATIVE ADAMS: Now, the home rule and this
12 I think is two different things. I mean we're giving each
13 city a chance to enact by city ordinance certain things
14 dealing with home rule, but now we're talking about a
15 category which I think is all together different and that's
16 with respect to grouping cities of similar population or lack
17 of population in together in that they have to do certain
18 things, and as long as there's a state minimum code or state
19 law which says they have to meet a minimum criteria, then if
20 they want to go a little above that they can do it by local
21 ordinance or when we come in here with a population act we
22 are just dangerously affecting other cities or counties that
23 might grow into that act, so my concern is that if we have
24 local legislation we should do it by a procedure which would
25 name that city or that county, and it would have to be

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1 properly advertised, then everybody that was interested could
2 be notified that such legislation was being considered.

3 MR. RUPNOW: I guess I understand that.

4 My reaction is I thought that earlier in our
5 discussion you were in a sense trying to get away from that
6 kind of legislation.

7 REPRESENTATIVE ADAMS: I am except for amending city
8 charters or creating new charters or for some newfound program
9 that might be excluded from the home rule act.

10 Now, I'm not saying that we should give the cities
11 and the counties full open power to do whatever they want to
12 do, but I think we're going to have to name the home rule
power that we will give them.

14 I don't think the members of the General Assembly
15 would want to give up all that power. If that be the case
16 they would have no real significance in their districts.

17 CHAIRMAN BRINSON: Do you think that more general
18 question of just a prohibition of the General Assembly from
19 legislating with respect to cities and counties except as
20 general law -- should that be yes or no?

21 You indicate apparently that you do not --

22 REPRESENTATIVE ADAMS: I don't, I don't want to deal
23 with general laws -- God, we would have to have a 150-day
24 session if we did, so I still favor the local act, local
25 legislation act, but I want it to be defined.

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1 CHAIRMAN BRINSON: Mr. Rupnow?

2 REPRESENTATIVE ADAMS: To not affect some other area.

3 MR. RUPNOW: It seems to me that if you vote, if
4 you were to say yes on this you would be in a sense opposing
5 the kind of specific single city bill. If that's the case,
6 then I would say yes.

7 Now, I guess I'm going to draw the distinction --
8 if you're dealing with the charter amendments and that sort
9 of things, but the idea goes back to our earlier discussion on
10 salaries and some of these types of things. I'm going to say
11 yes.

12 CHAIRMAN BRINSON: Yes, it should be prohibited?

13 MR. RUPNOW: Yes.

14 CHAIRMAN BRINSON: We've got a split on that one.

15 MR. RUPNOW: You can break the vote.

16 CHAIRMAN BRINSON: I'm not supposed to do that.
17 I'm inclined to say no.

18 Again, you're going to have to look at the overall
19 picture before you can do that and see what powers the city
20 is going to have, but just isolating this and bearing in mind--
21 there will be some limitations on what the cities can do I'll
22 have to say no.

23 MR. SUMNER: Let me ask a question on that.

24 What would happen -- are you saying under this
25 question if your answer was yes you couldn't have a local act?

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1 The charter is a local act. I mean there would be
2 no -- You're saying cities themselves would be formed by
3 general law?

4 MR. HILL: Yes.

5 REPRESENTATIVE ADAMS: They are by general law now
6 with local application.

7 MR. SUMNER: They're granted a charter in their
8 name, it's not a population bill, they can say granting the
9 charter for the city of Trion or whatever.

10 I think you can get away from the charter entirely
11 if you say yes to that question.

12 MR. RUPNOW: Then I misunderstood that question in
13 the sense, or interpreted it differently.

14 MR. SUMNER: I would just ask the staff what it
15 means. Is that what it means?

16 MR. HILL: This comes from other states, this would
17 radically alter the way in which Georgia handles local
18 legislation, I mean it would abolish legislation as to cities
19 and counties and you would only have -- they would be given
20 all home rule power unless by general law --

21 CHAIRMAN BRINSON: Yes. Look at the other part of
22 the picture, that's what I'm thinking of. It isn't an isolated
23 question unless you know what powers are going to be --

24 REPRESENTATIVE ADAMS: We'd never get through in a
25 year's session.



1 MR. RUPNOW: I might go back and change my vote on
2 that based on that additional information.

3 CHAIRMAN BRINSON: All right. Let's mark that one
4 no.

5 MR. HENRY: I think maybe to clarify the whole thing,
6 once you first reverse the presumption of Dillon's Rule and
7 give the local governments the power to do something unless
8 they're restricted then you necessarily take away the
9 necessity for local acts and population acts, and you give
10 them greater home rule power and you hope they will exercise
11 it in that area.

12 Then what you say is, okay, now the General Assembly
13 by general law will place restrictions on those powers, but
14 now do you want the General Assembly to be able to act by
15 population act to take those restrictions off in some cities
16 and leave them on in other cities.

17 That's I think the whole thrust of where this
18 decision agenda is going.

19 CHAIRMAN BRINSON: I think so too. This specific
20 question can't be answered in isolation, you have to consider
21 the whole powers.

22 MR. HENRY: If that's your decision, then to be
23 consistent with that, you know, I think you would have to say
24 that, you know, where you give them more power in these areas
25 where you want them to have power should the General Assembly

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1 be able to meddle in local affairs by population bracket
2 statutes or population exclusions from the general laws?

3 REPRESENTATIVE ADAMS: I'll tell you the feeling of
4 most members of the General Assembly is that if there's a
5 local act that Bibb County wants and I live in Fulton County,
6 and those people in Bibb County have to answer to their
7 people down there, I could care less what they do, you know,
8 as long as it's not anything going against the minimum state
9 codes, and I don't think any member of the General Assembly
10 wants that responsibility of meddling in other people's
11 cities or counties.

12 CHAIRMAN BRINSON: Right now I realize the hour, and
I think it is just imperative we get through this thing, I
14 believe we should do it in another thirty or 45 minutes.

15 Yes, Mel?

16 MR. HILL: I was going to say you're about to reach
17 the end of your questions anyway. The organizational issues
18 are Senator Coverdell's. You only have one more question
19 here.

20 CHAIRMAN BRINSON: We will press on then.

21 Number 3, "Should local constitutional amendments
22 be prohibited in the future?"

23 Now we're talking about local constitutional
24 amendments now.

25 Mr. Rupnow, do you have a comment on that?



1 MR. RUPNOW: No, I don't, Are you talking here
2 about a statewide vote on local constitutional issues? Is
3 that what you're talking about?

4 REPRESENTATIVE ADAMS: It would be local constitu-
5 tional amendments. A local constitutional amendment is voted
6 on by the people it would affect, which would be Fulton
7 County or Atlanta. IN our case we could have a local
8 constitutional amendment affecting only Atlanta.

9 MR. RUPNOW: Okay, The Governor's Blue Ribbon
10 study commission's recommendations were voted statewide,
11 weren't they? How did that occur?

12 REPRESENTATIVE ADAMS: Yes, and ninety percent of
13 those recommendations could have been done by local
14 constitutional amendment. Some of it was determined to be
15 local, but the Secretary of State or whoever, they chose to
16 put most of them general, and so they were defeated because
17 the people -- and this is the point I'm making, the people of
18 the state of Georgia just don't know what the constitutional
19 amendments do, so I would --

20 Well, you go ahead and answer it, how you would feel
21 about it.

22 MR. RUPNOW: I guess my -- I would say they
23 probably would not or should not be prohibited.

24 REPRESENTATIVE ADAMS: I would say no.

25 MR. HILL: I might point out as background



1 information that the Select Committee which is the overview
2 committee to this whole effort has asked the Article IX
3 committee, and as a full committee you're going to have to
4 resolve this issue, to make a recommendation to them about
5 what to do about local constitutional amendments.

6 We have over a thousand local amendments to the
7 constitution that are of the same stature as the constitution
8 that we now have; they're not local acts that are voted on
9 locally, they are amendments to the constitution that are of
10 the same stature and importance as the rest of the constitu-
11 tion, so this little red book that we show as the
12 constitution of Georgia is just the tip of the iceberg and
13 we have to know -- we're trying to put together a copy so we
14 can see exactly what the constitution looks like, and the
15 Select Committee is anxious to know exactly what to do, and
16 it relates not to just this article but to Article VII on
17 taxation, Article VIII on education, and there's a massive
18 effort just to know what we have much less what to do about
19 it in the future, so I'd say this question is as much to get
20 you thinking about how you feel about local amendments, do
21 you think this kind of thing -- should an effort be made to
22 eliminate the need, number one, for constitutional amendments
23 of local application, and secondly the allowance of them,
24 and should we prohibit such things in the future.

25 They have usually arisen out of a need that the

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1 local people felt that the present constitution didn't
2 provide, so if we can address those issues -- and Michael
3 has done a survey of the last twenty years worth of local
4 amendments and he's found that seventy percent of them
5 relate to seven different areas, seven different subject
6 areas that if the constitution were amended to authorize
7 local governments to do these matters or authorize the
8 General Assembly by local legislation to do these matters
9 subject to a referendum then we wouldn't have needed them,
10 so --

11 MR. ANTHONY: It seems to me, Mel, if your staff
12 could write a position paper on the alternatives like you
13 just touched on right there at the end to have the committee,
14 you know, to possibly revolve their discussion around those
15 alternatives, because there's obviously been a need for it,
16 there's over a thousand -- I know exactly what you're talking
17 about, because local constitutional amendments make up a good
18 deal of local legislation in general, and so why was it done
19 -- not what for the need, but why for the method and what are
20 the alternatives.

21 REPRESENTATIVE ADAMS: What I'm thinking about is
22 like we have a state law that says property will be assessed
23 at forty percent of value, and then each county and each city
24 can assess certain millage.

25 Atlanta is a big industrial city, I mean business

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1 city, so we have a high millage rate in Atlanta, and it takes
2 a high millage rate to operate Atlanta.

3 We felt like there were so many people who could not
4 afford the kind of tax they're paying on their homes, so we
5 had a local constitutional amendment which gave a \$5,000
6 homestead exemption to everyone and \$10,000 to those people
7 that were 65 years or older, and certainly a person 65 years
8 or older after they've worked all their life and trying to
9 live on retirement, they can't pay these high taxes, where
10 but you have restrictions there, your income being one of the
11 restrictions, you can't have an income of the household of
12 more than \$8,000 a year to apply for this, so those type
local constitutional amendments need to be left intact.

14 Now, there is a statewide law that gives a \$2,000
15 homestead exemption, and under -- I think when Jimmy Carter
16 was Governor we passed a bill that would say that anyone 62
17 years old or older would not have to pay school tax if their
18 income was below a certain level. Well, that's a state law.

19 Then the city of Atlanta and Fulton County both
20 came along with a 65-year-old law that says, that raised the
21 income substantially but they will not have to pay school
22 taxes.

23 Now, they do have to pay the bonded indebtedness,
24 the general obligation bonds, things of that nature. So
25 that's the reason I said no, that we should be -- that we

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1 should keep local constitutional amendments in effect, but
2 you know, you could limit -- I don't know what kind of
3 problem it would create, but you could limit as to what type
4 constitutional amendments would be considered locally.

5 MR. HILL: That problem you raised about the
6 exemptions, homestead exemptions, that has been responsible
7 for maybe thirty percent of the ones we've had.

8 REPRESENTATIVE ADAMS: We've had them in just about
9 every county and city in Georgia to some extent.

10 MR. HILL: If the constitution were rewritten in
11 the taxation article to allow exemptions, homestead exemptions
12 to be increased upon recommendation or upon local legislation
13 of the general assembly subject to referendum in the locality
14 it would have the same effect that we have now, but take it
15 out of the constitution.

16 There is grave concern that to allow a local
17 government to literally write itself out of the constitution
18 of Georgia is not a procedure that should continue, and
19 certainly an underlying thrust of this whole effort of the
20 constitutional revision relates to trying to get a document
21 that that would not be necessary.

22 REPRESENTATIVE ADAMS: I stated that if we had
23 specific things in there that could be treated locally, you
24 know, it would be all right, but to just say wipe out the
25 local constitutional amendments I think we would be wrong,



1 but if we could -- as I said, I don't know how many problems
2 it would create to try to specify as to what you could
3 consider a local constitutional amendment.

4 What are your feelings on that?

5 MR. SUMNER: I have a personal feeling, a very strong
6 personal feeling, I think this is one of the biggest problems
7 Georgia has in local constitutional amendments. The problem
8 again goes back to the Georgia constitution of 1877, the
9 reason you've got to have so many local amendments is because
10 you've got such a long document with powers and limitations
11 specifically listed, and any time you enumerate and
12 restrict --

13 I think what Mel was hitting on is if you give, if
14 you rewrite it this document could be about probably six or
15 ten pages long really, and a very broad power left to the
16 legislature -- you know, give the legislature the power, in
17 Fulton County if you want it by local act to continue the
18 5,000 exemption let the legislature do it by local act as
19 opposed to putting it in the constitution. I think that's a
20 very dangerous precedent to put it in the constitution, and
21 it really messes up the document because I don't know if
22 anyone in the state has a copy of the constitution of Georgia.

23 I think the Legislative Counsel is trying to put one
24 together, but the Georgia constitution is probably three or
25 four times this thick.

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1 REPRESENTATIVE ADAMS: Another question. How many
2 people would read it if they had it.

3 MR. SUMNER: The other problem, this is something
4 that Jay may differ and his association, both tied into local
5 legislation and population acts and local amendments is this
6 exemption of various local governments from broad, well
7 established state policy. We had a population bill out of
8 Tifton County a couple of years ago which would have
9 converted the local option sales tax from a city tax to
10 strictly a county tax with all of it going to the county.
11 That was one example. The Governor vetoed that. It was
12 handled in the context of local legislation, and the General
13 Assembly members questioned it. They had one local represen-
14 tative who wanted to give it to the county, it passed, the
15 Governor vetoed it because he viewed it as an exception to
16 the established statewide policy for local option sales tax
17 to be shared by cities and counties.

18 We had a problem the last couple of years of the
19 hazardous waste disposal. Several constitutional amendments
20 were put in to give the county commission the authority to
21 prohibit the location of a hazardous waste disposal site in
22 their county, and it was on the ballot. Can we give, or
23 should you give that kind of autonomy on that kind of issue
24 to a local county commission when you've got an EPA and
25 federal regulations to deal with hazardous waste. You can

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1 get into 159 counties saying "We're not going to have any
2 hazardous waste." If you do that, you don't have any
3 industry in the state of Georgia.

4 Those are the overriding state concerns and the
5 questions.

6 I think what Mel has referred to, local government
7 exempting itself from the constitution of the state of Georgia.
8 I think the better alternative would be to get a very broad
9 document and leave it up to legislation maybe with some local
10 referendum.

11 REPRESENTATIVE ADAMS: If that provision is made,
12 then I would go along with it.

13 MR. SUMNER: That kind of relates to the second
14 question, though, should the present ones be repealed.

15 If you go to repealing them, you'd have to write
16 it broadly and have -- Mel mentioned package legislation, a
17 package which in effect by legislation you put back in the
18 \$5,000 exemption for elderly people in Fulton County, you
19 would have to have a great deal of legislation to take the
20 place of those amendments to keep the effect --

21 REPRESENTATIVE ADAMS: You're saying if we took this
22 out we would have all the present local constitutional
23 amendments would be repealed?

24 MR. SUMNER: The question, should they be repealed.
25 I don't know if all of them should be or not. You just said

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1 you wouldn't want the one repealed on the Fulton County of
2 five thousand --

3 REPRESENTATIVE ADAMS: No, I wouldn't.

4 MR. SUMNER: If you don't repeal it, say you don't
5 want any more in the future, maybe one method would be
6 adopted by statute --

7 CHAIRMAN BRINSON: Again the question is part of the
8 integrated whole.

9 MR. SUMNER: If you make it a broad document, then
10 you don't need local amendments. If you make it an enumerated
11 document then you may need them in the future, if you say
12 the cities and counties can do these ten powers, and as Bob
13 can tell you, the city attorneys and county attorneys, if
14 they're not sure that they power they want is encompassed by
15 that one document, one phrase, say public housing projects,
16 something they're not really sure of what is the definition
17 of a public housing project and it's directly related to that
18 they're going to come in, and this is where you get them now,
19 they're going to come up with a local constitutional amendment
20 to specify it in more detail exactly what they want to do in
21 that local government. It's just a matter of safety, they're
22 going to make sure that what they want to do is covered in the
23 constitution.

24 If you get away from that, I think you do a lot to
25 improve the legal basis from the state of local governments

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1 and all other areas too in the constitution.

2 He certainly I think would object to losing the
3 effect of a lot of his local amendments.

4 MR. RICKETTS: We have no special attraction to
5 local constitutional amendments as procedural devices other
6 than for the result that they accomplish.

7 CHAIRMAN BRINSON: Because of the deficiency of the
8 present constitution.

9 MR. RICKETTS: Here's the problem, though. You
10 know, we have no magic for the present process, but the
11 difficulty is in duplicating or creating alternative process
12 that is not more difficult politically than the present one.
13 If that can be done, then fine, abolish the restriction, do
14 whatever we want with it.

15 MR. SUMNER: It really goes back to what I raised
16 in another committee as the basic policy question of the whole
17 process, one question is how much the people of Georgia trust
18 the legislature. If you trust the legislature to do what's
19 right you're going to give them very broad authority to carry
20 out these things by legislation; if you don't trust the
21 legislature, and that's what the 1877 and picked up in '45
22 and subsequent constitutions has said, if you're going to put
23 everything in very specific enumeration in the constitution
24 that's a very basic posture question, how much does anybody
25 trust the legislature. Are they going to give it very broad

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1 authority and let you do it by legislation and trust you'll
2 do it right, or are they going to say "Huh-uh, we don't want
3 you to do it," it's got to be very enumerated.

4 CHAIRMAN BRINSON: Did you have a comment?

5 MS. BOYD: I was going to reiterate that as the
6 constitution stands now you would be opposed to eliminating
7 constitutional amendments because you wouldn't have a safety
8 valve or any way to check -- you know, obviously all these
9 amendments we have now came out of that the constitution
10 didn't cover certain areas that they specified, so if you
11 stay with, as Ed was saying, enumerating things then I would
12 say you would have to keep some sort of procedure in to get
around it, but if you switch it -- you know, the subcommittee
14 seems to have a consensus of doing that which was the first
15 question asked today -- if you switch it then you could
16 eliminate it.

17 MR. HILL: I think Steve was right, we're not in a
18 position to answer this question until we get a better picture
19 of what we have, and the office of Legislative Counsel and
20 ourselves are trying to get at least a package together of
21 what we have, and once that happens we can proceed to try to
22 analyze it and see exactly where we are, but it's a
23 monumental undertaking and it's just not -- I can't give you
24 a date and time when we'll finish with it.

25 REPRESENTATIVE ADAMS: If you could get the proposed

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1 wording for the new session --

2 CHAIRMAN BRINSON: I was going to ask, with this
3 decision agenda having been completed and these answers, can
4 you get the drift of the subcommittee enough to begin on some
5 drafting?

6 MR. HILL: Yes.

7 CHAIRMAN BRINSON: Why don't we plan to do that at
8 our next meeting? Maybe some of the drafting will be done.

9 MR. TIDWELL: Mr. Chairman, on the question of local
10 constitutional amendments, contrary to what I've heard around
11 here that's been said that you have local amendments because
12 the constitution is silent on this, that is not why you have
13 local constitutional amendments, it's because the
14 constitution prohibited that particular course of action
15 and you have to -- all the counties and municipalities have
16 to live by these rules when Atlanta has one that says "We
17 ain't going to play by those rules, we're going to play by
18 our own rules," and they can pass a local constitutional
19 amendment. That's why you have local constitutional amend-
20 ments, not because it's silent.

21 CHAIRMAN BRINSON: My observation -- I don't know
22 whether you were talking about me saying it was silent -- I
23 said my feeling is because the present constitution is
24 deficient and it's too detailed and therefore the necessity
25 of those amendments.



1 MR. TIDWELL: You don't have true, quote,
2 constitutional revision, whatever that is, unless you
3 eliminate somehow the necessity of all of these individualized
4 tailored constitutional processes.

5 CHAIRMAN BRINSON: That necessarily entails
6 generalities.

7 MR. TIDWELL: There is a way to deal with it. Other
8 article committees that have worked on this issue have
9 addressed all of the local constitutional amendments they can
10 find that dealt with the articles, and then they dealt with
11 them, they made a decision that we can eliminate 95 percent
12 of them by using this language, but there is a need
13 specifically to keep four or five amendments, and they kept
14 them, so it's not an either/or. You can address the
15 situation, but I guess what Mel was asking for here and what
16 the Select Committee is going to be looking for is a specific
17 answer to these two questions here that specifically are asked
18 of this article committee to give them your collective
19 wisdom. It's a big problem.

20 REPRESENTATIVE ADAMS: I would like to see in
21 writing, you know, what we've proposed to do.

22 MR. HENRY: I don't think one statement could solve
23 the problem. I think you have to go through here, and in each
24 place in this constitution that has generated local
25 constitutional amendments, you know, you have to look at it



1 and say why has it generated them, let's fix that, each
2 specific point in this document that necessitates a local
3 amendment.

4 It's not an easy task. Number one, it's not easy to
5 assemble the local constitutional amendments that have been
6 enacted since 1877, and I know in a lot of instances the
7 constitution has been amended generally to take care of
8 previous local constitutional amendments, and those amendments
9 I think you could legitimately repeal and ask the local
10 government to enact by ordinance where they have that
11 authority or ask the General Assembly to enact by local law
12 where they have that authority, but it's not something that
13 you can say "Okay, you know, let's fix it, let's put some
14 language in to fix it, " you have to deal with the language
15 at each point that you come to that has generated the local
16 problem.

17 I think, you know, the reversal of the presumption
18 of Dillon's Rule would go a great way towards eliminating the
19 necessity for local constitutional amendments.

20 It's hard to compile all the areas that need to be
21 looked at specifically to eliminate local constitutional
22 amendments.

23 REPRESENTATIVE ADAMS: I think one of our greatest
24 problems is the way that we handle local constituional
25 amendments by population and by other methods, and that has



1 caused all the problems that we're suffering today that have
2 affected other areas, so if we can get that problem solved
3 then I think we can go on through the rest of it pretty
4 easily.

5 Wouldn't you say that's the greatest problem,
6 Charlie? Don't we have something like a thousand constitu-
7 tional amendments that only affect one area a few years ago
8 and now it affects several areas?

9 MR. TIDWELL: Most of them have not used the
10 population, I think Atlanta-Fulton County have used
11 population --

12 REPRESENTATIVE ADAMS: Well, Richmond County.

13 MR. TIDWELL: -- on the local bills, but there's
14 really no logical need to use population as the basis of local
15 constitutional amendments, and Atlanta has done it, but the
16 reason to do it is not there because you can specifically go
17 in and name the community you're talking about.

18 REPRESENTATIVE ADAMS: What happens is you don't
19 have to advertise a constitutional amendment, do you?

20 MR. TIDWELL: No, sir.

21 REPRESENTATIVE ADAMS: That could very well name the
22 area that they were talking about.

23 MR. TIDWELL: You don't find many so-called local
24 constitutional amendments --

25 REPRESENTATIVE ADAMS: Population statutes are the

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1 main thing.

2 MR. TIDWELL: That's right.

3 CHAIRMAN BRINSON: Any other -- Excuse me.

4 MR. HENRY: I was going to ask Charlie, what is the
5 authority -- does the commission that determines whether it's
6 a general or local have to determine, make that determination
7 whether it's -- can they use statewide impact criteria, or
8 do they just have to -- like for instance all the local
9 homestead exemptions, that has a statewide impact I'm sure
10 where you have an erosion of the county tax base in each
11 county, that would have a statewide impact on funding
12 education, for instance, I would think, so could they use
that?

14 MR. TIDWELL: The three individuals that make that
15 determination, the Legislative Counsel, the Secretary of
16 State and the Attorney General, and I only recall one
17 instance where their decision has been challenged in the
18 court, and their decision was upheld, so they call them the
19 way they want to.

20 Having dealt with it in the past, and Melvin used
21 to have a part in it, when I was in the Legislative Counsel's
22 office we used to have the Attorney General trying to develop
23 a certain pattern of consistency and they generally do, and
24 some of them that are very close could go either way, but
25 generally it's those three individuals that make the decision

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1 and that's it. The courts generally are not going to go
2 behind their decision unless there's just an obvious abuse
3 of that discretion.

4 CHAIRMAN BRINSON: Any other general comments on
5 the subject matter of the meeting today?

6 MR. HILL: I want to point out the next meeting of
7 the committee was scheduled already for August 13th, and what
8 we'll try to do is get drafts together, we'll meet with
9 Legislative Counsel's office and get a copy to you hopefully
10 about a week before the meeting, I'll try to send it out
11 early around the 4th, and we'll have time -- and I would
12 suggest we plan to meet all day on the 13th if it's
13 necessary because we'll have drafts at that point and we'll
14 want to try to hash out an answer and it may be the last
15 meeting if you can agree at that time, or you may want to
16 schedule another one.

17 CHAIRMAN BRINSON: All right. Why don't you make
18 that notation in the notice that it will be an all-day
19 meeting, we'll break for lunch.

20 MR. HILL: Do you want to make it 9:30 rather than
21 ten?

22 CHAIRMAN BRINSON: Ten is better. You never know
23 what you're going to run into on the expressway.

24 MR. HILL: Okay.

25 CHAIRMAN BRINSON: Thank you very much.



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1 (Whereupon, at 12:25 p.m. the subcommittee meeting
2 was ajourned.)
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STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

SUBCOMMITTEE ON LOCAL GOVERNMENT
ORGANIZATION, REORGANIZATION AND
GENERAL CONCERNS.



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Room 401-A
State Capitol
Atlanta, Georgia

Wednesday, July 23, 1980
9:30 a.m.

1 PRESENT :

2 COMMITTEE MEMBERS :

3 CHAIRMAN PAUL COVERDELL
4 JAMES BURGESS
5 JOE B. MUNDY
6 REPRESENTATIVE WARREN EVANS
7 MRS. ELINOR METZGER

8 ALSO PRESENT :

9 MELVIN B. HILL, JR.
10 VICKIE GREENBERG
11 MICHAEL HENRY
12 LOU LITCHFIELD
13 HARVEY FINDLEY
14 DOUG CARLYLE
15 JAY RICKETTS
16 ED SUMNER
17 ANNE SPIELBERG
18 NANCY VAN AMBERG
19 CHARLES TIDWELL

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P R O C E E D I N G S

1
2 CHAIRMAN COVERDELL: We may as well get started.

3 MR. HILL: First I would like to introduce Mr. Joe
4 Mundy, a new member of the subcommittee.

5 Otherwise, I would tell you that the committee to
6 revise the powers section, Bob Brinson's committee, sub-
7 committee 1, has asked us to draft some language for them
8 for their next meeting which will be the middle of August
9 on the home rule power and whatnot, so we waited until this
10 meeting to get the thoughts of this committee as well to
11 begin the drafting for that subcommittee.

12 I'm not sure how you wish to proceed with your part
13 of it.

14 I would suppose we would draft for this committee
15 and that committee some language for the next meeting that
16 we'll eventually look at to implement the decisions that we
17 have already addressed in previous meetings.

18 CHAIRMAN COVERDELL: We can talk about that for a
19 moment or two. It would seem to me that from review of this
20 committee we would be most interested in the language that
21 followed the decision-making process we would be going
22 through.

23 I think if that's satisfactory as a reference point
24 or beginning point for Subcommittee 1 that would be the way
25 to go unless Subcommittee 1 has gone through a process by



1 which they are arriving at conclusions that are different from
2 ours. How far along are they?

3 MR. HILL: They have gone through this same decision
4 agenda, they don't have identical reaction, but the general
5 tone and general attitude of the committee is the same, and
6 I feel we do have -- we're approaching a consensus between
7 the two committees and so we'll be able to draft something
8 that will reflect your decisions and theirs.

9 CHAIRMAN COVERDELL: Would it be useful to both
10 committees if you delineated -- you might have your draft
11 language, but delineate the discussion points where the
12 consensus seems to have fallen in a different direction?
13 It might be nice for both committees to have that separation
14 of attitude.

15 We're probably going to focus around the critical
16 debating points anyway.

17 Okay. Any other administrative notes?

18 Refresh me. We are going to complete our
19 organizational issues section here, and then we had
20 contemplated that at the meeting following this that we would
21 come with this first draft language? Is that not correct?

22 MR. HILL: Yes.

23 CHAIRMAN COVERDELL: Have you had an opportunity,
24 Mel, to go over -- and I haven't listed them, but as you have
25 gone through these meetings you have enumerated requests such

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1 as the one that Vickie has complied with here. Are there
2 others yet unfinished?

3 MR. HILL: There was another one on land use, a
4 request for that which we gave the last time. They were the
5 only things we could find in our notes that were requested by
6 the committee.

7 CHAIRMAN COVERDELL: If any committee member feels
8 that they have requested something from staff, they need to so
9 advise them and give them the opportunity to try to prepare
10 that between now and next meeting. Otherwise we will assume
11 we have fulfilled the basic requests that have been made of
12 them in the area of research.

That being said, let's proceed.

14 Page 3 of our agenda, Organizational Issues. Mel,
15 why don't you place into the record Question 1.

16 MR. HILL: Question 1 is "Should the consolidation
17 of governments be encouraged in the constitution?"

18 Then under that, "Should the consolidation of two or
19 more counties be made easier?" "Should the consolidation of
20 a county and the cities within a county be made easier?", and
21 "Should the authorization for intergovernmental contracting
22 be expanded or modified?", and then "Should the issue of
23 annexation by cities be addressed in the constitution?"

24 Those are the four questions within this first
25 question about consolidation of governments.



1 CHAIRMAN COVERDELL: Okay, Jim, I'm going to
2 continue to use you as our reference to discussion. Why
3 don't you basically take that issue, point 1, (a), (b), (c),
4 and (d) and give the committee some central conceptual
5 discussion on it, and we'll go from there. I know you've got
6 some thoughts on it.

7 MR. BURGESS: Well, on Number 1, I don't think the
8 word encourage ought to be in the first question. I'm not
9 sure that a legal document such as a constitution should
10 encourage an activity on the part of local government.
11 Perhaps it should permit it, or it should be permissive.

12 I would say -- as this is now drafted I would say
13 no, that it shouldn't encourage consolidation, but if you
14 would consider should the constitution contain adequate
15 authority to permit an effective mechanism say by statute
16 that would facilitate the consolidation of local governments
17 in the event they wanted to consolidate, I would say that
18 would be yes, but as it's drawn I would, I just have a
19 problem with --

20 MR. HILL: Should we change the words to the
21 consolidation of governments be facilitated by the
22 constitution? Would that be --?

23 MR. BURGESS: By a sufficient permissive grant of
24 authority in the constitution, yes, I would say yes.

25 CHAIRMAN COVERDELL: As we have gone through here

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1 we have not only answered these decision questions, but we
2 have rewritten them in several cases which I think has been
3 useful.

4 Let's rewrite that if we can, let's get some
5 language down.

6 MR. BURGESS: Beg your pardon?

7 CHAIRMAN COVERDELL: Let's try to state your question
8 as you have --

9 MR. BURGESS: Should consolidation of governments
10 be authorized in the Georgia constitution? I would say yes.

11 CHAIRMAN COVERDELL: Okay. So you're just changing
12 the word encouraged to authorized.

13 MR. BURGESS: Yes.

14 CHAIRMAN COVERDELL: All right. Any discussion
15 about that not too subtle subtlety?

16 MS. METZGER: That certainly doesn't promote it or
17 doesn't do anything about encouraging it in any way.

18 CHAIRMAN COVERDELL: It's a neutral position.

19 MS. METZGER: I think the word used in describing it
20 should facilitate it.

21 CHAIRMAN COVERDELL: You feel that way?

22 MS. METZGER: I think authorize is more neutral.

23 CHAIRMAN COVERDELL: Do you agree with that
24 neutrality, or would you prefer to --

25 MS. METZGER: I think I prefer authorized.

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1 CHAIRMAN COVERDELL: Any other discussion?

2 MR. BURGESS: I think perhaps the rationale for that
3 is that the consolidation of a local governmental entity is
4 sort of a political matter for the citizens to resolve
5 locally. They should have ample authority going back to the
6 constitution to accomplish that if they so desire, but the
7 constitution itself shouldn't be drawn in such a way as to --
8 well, I'm not even sure you could draw it to do that.

9 Consolidation of governments or any change of local
10 authority should be a right and not a mandated type thing.

11 CHAIRMAN COVERDELL: I think as we go through the
12 other four questions --

13 MR. BURGESS: It clears it up.

14 CHAIRMAN COVERDELL: -- it begins to clear up any
15 question of neutrality, starting with (a).

16 Jim, "Should the consolidation of two or more
17 counties be made easier?" Why don't you take that and make
18 your opening statement.

19 MR. BURGESS: Let me say that I have read the law
20 on consolidation, but I've really forgotten it, but I believe
21 to consolidate two counties now it takes concurrent approval
22 of the two grand juries. Isn't that true?

23 MR. FINDLEY: Yes.

24 MR. BURGESS: That's a statutory authorization that
25 if you want to consolidate Fulton and Forsyth Counties the

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1 grand juries in the respective counties would have to concur
2 by a majority vote to effect that consolidation.

3 Is that right? What is the --

4 MR. FINDLEY: That's changing county lines.

5 MR. BURGESS: It's a majority vote in the two
6 counties now, it's granted now by -- The change in county
7 lines is the grand jury, it's a majority vote in the
8 affected counties now.

9 CHAIRMAN COVERDELL: How does the vote come about?
10 How can the citizens have that vote to concur?

11 MR. BURGESS: I've forgotten the law in that area.
12 I've read it, but it's been a long time.

13 MR. HENRY: File a petition with twenty percent of
14 the qualified voters with the probate judge, and the probate
15 judge certifies it and publishes it, and then it goes on that
16 if it fails you can't do it within a period of two years
17 after that, and there's a lot of statutory language in here,
18 but the gist of it is the majority of the qualified voters
19 voting in each of the counties affected.

20 CHAIRMAN COVERDELL: But the only way the election
21 can be brought before the people is by a petition?

22 MR. HENRY: Yes.

23 MR. FINDLEY: There's been some debate on that,
24 Mr. Chairman. It seems that language seems to offer the
25 petition as an alternative. The majority vote is required,

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1 but it seems to say that the General Assembly may do it, if
2 I remember right, or you can have -- the exact language, I
3 haven't read it in a while either -- if you want me to just
4 read it briefly.

5 The General Assembly shall have power with the
6 concurrence of the majority of the qualified voters voting
7 thereon in each of the counties affected to provide for the
8 consolidation of two or more counties into one or the merger
9 of one or more counties into another, or the division of a
10 county and to merge a portion thereof into the other county,
11 and it's really worded wierd, but then it says provided,
12 however, upon the filing with the judge of the probate court
13 of any county of a petition signed by not less than twenty
14 percent, the language that Mikewas talking about, so the
15 construction that we have always put on it is the General
16 Assembly could do that by an act, and then it could be
17 initiated by this petition as well. We're not sure of that.

18 MR. BURGESS: But the General Assembly's power to
19 act still would have to be approved by the voters?

20 MR. FINDLEY: Oh, yes, it would take a vote of
21 approval by the voters in the county affected in any case.
22 The General Assembly couldn't unilaterally do it without a
23 referendum.

24 CHAIRMAN COVERDELL: I don't know, Jim, that the
25 answer to that is yes. That language might require some



1 modification for clarity.

2 MR. BURGESS: Let me make this suggestion. What
3 about wording it "Should the language regarding consolidation
4 of two or more counties be clarified," and I think you could
5 do it in this sense.

6 For instance, a lot of this procedural detail could
7 be put in the statute. You could make the twenty percent
8 requirement, it could be debated as being too high, so you
9 might consider reducing it to fifteen or ten percent, ten
10 percent of the qualified voters is a pretty large number in
11 Fulton County, for example, it's not as much in some of the
12 less populous counties, but you might want to consider that
13 would be a way of making the initiative easier to accomplish
14 to bring it to a vote. You would still have it approved by
15 the majority of the qualified voters voting in the election.

16 CHAIRMAN COVERDELL: I would think that one obvious
17 omission in the present language is the two governments could
18 put the question before the people, that the governments of
19 Fulton and Forsyth if they by joint resolution called for an
20 election by the citizens of both counties on the question
21 would be a reasonable option on this type question.

22 MR. BURGESS: Let me make this suggestion for your
23 consideration, that you draft this Paragraph 6 to provide that
24 the General Assembly shall enact legislation to provide for
25 the merger of two or more counties or a portion of the county,

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1 and that as a part of that legislative grant it would
2 include provisions for petition for initiative by the
3 governing authority of the respective counties involved
4 and any other method by which it deems desirable, just have
5 that as a one-sentence statement in the constitution.

6 You may want to put a proviso, provided that the
7 General Assembly could not authorize a petition that would
8 require more than ten percent of the qualified voters or
9 more than fifteen percent, maybe have that kind of limitation
10 on the grant. In other words, stress it that the General
11 Assembly --

12 CHAIRMAN COVERDELL: Before we get to that, let's
13 try -- I think the way the question is worded, if we answer
14 it yes it's a little misleading. Let's try to restate this
15 question.

16 Should the current language in the constitution
17 regarding consolidation of two or more counties be modified?
18 Yes/no. I think we would be saying there is some room for
19 modification in that.

20 MR. BURGESS: Say modified and approved since it can
21 be approved.

22 REPRESENTATIVE EVANS: Your theory is to leave it
23 out of the constitution about the --

24 MR. BURGESS: I'm saying to put the power in the
25 constitution.

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1 REPRESENTATIVE EVANS: I'm talking about, though,
2 in effect it ought to be ten percent or twenty percent or
3 be initiated by the governing body, or --

4 MR. BURGESS: Let the general statute spell out
5 those details. In other words, put in the constitution the
6 grant of power.

7 REPRESENTATIVE EVANS: I would say that on something
8 like that, though, that it ought to be -- we ought to spell it
9 out.

10 MR. BURGESS: Let me just hang with you just a
11 minute. I'm not saying to take out the safeguards such as
12 the percentage requirement. I can see you continuing that
13 kind of limitation, but the specific procedures like, you
14 know, it's got to be advertised for a period of six consecutive
15 weeks in a journal which shares advertisements, that's really
16 language that could be carried out in the statute, you don't
17 need to clutter up the constitution with that kind of
18 operative detail or procedure.

19 I think we're really saying the same thing, put the
20 safeguards in so far as protection of local citizens against
21 an abuse of the power, but take out the procedural details.
22 I think that's where you can modify and improve this language.
23 That's all I'm saying, that's what I'm trying to say.

24 CHAIRMAN COVERDELL: Mel?

25 MR. HILL: The question comes down to what are the



1 essentials of this, and I think the essentials of this are who
2 can do it, who can propose it, who can initiate it.

3 CHAIRMAN COVERDELL: It must be a vote --

4 MR. HILL: That is has to be a vote.

5 MR. BURGESS: Those are the limitations on the
6 grant.

7 MR. HILL: I would say, you know, not to jump ahead
8 exactly, but I think this could also be made to encompass
9 the city and county situation, we have consolidation of the
10 city and the county, to also have the authorization for
11 consolidation of those units covered in the same way.

12 CHAIRMAN COVERDELL: Let's wait until we get there.

13 MR. HILL: Okay.

14 CHAIRMAN COVERDELL: I think you're probably
15 correct.

16 MR. HILL: One handfull at a time.

17 CHAIRMAN COVERDELL: Okay. The difference in -- in
18 other words, from my point of view if it said that it had to
19 ultimately be put to a vote, it would require a majority,
20 that it could be brought to a vote by a resolution or
21 initiative of both governments, by petition or by the General
22 Assembly, and that if you left it there you would probably
23 be all right.

24 I don't know that I would be concerned about the
25 number or the percent by petition that would be required.

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1 I think I'm inclined to think that that could be left to
2 statute, but you might want to put a minimum on it, no less
3 than ten percent which is essentially what you've got now,
4 it's not all that different.

5 I haven't read the -- I think we can settle that
6 question when we get to actually looking at the language.

7 REPRESENTATIVE EVANS: Maybe I misunderstood Jim.
8 As long as we've got some safeguards in there -- the part
9 about the advertising, I don't even think it needs to be
10 advertised, the papers are going to play it up, you know,
11 why put it in there.

12 But as far as -- the safeguards ought to be spelled
13 out in there.

14 MR. BURGESS: You see, it even goes into how the
15 judge of the probate court conducts the election.

16 MS. GREENBERG: On page 72 -- I think the question
17 also addresses the 51 percent requirement, that 51 percent
18 of the registered voters of the portion of the counties
19 affected shall have voted in such election. That I think also
20 is an object of the question that should be made easier.
21 That's quite a difficult requirement.

22 CHAIRMAN COVERDELL: That's almost a guarantee
23 against it. Maybe that ought to be put into a separate
24 question. I think if we left this question where we are now
25 and added a new sub(a), should consolidation of two or more



1 counties require a majority of the registered voters
2 participate in an election regarding the question --

3 REPRESENTATIVE EVANS: A majority of the majority.

4 MR. BURGESS: A majority of those voting.

5 CHAIRMAN COVERDELL: From my point of view it's no,
6 that I've always opposed that type of vote where you're
7 really giving powers to the people who do not participate
8 equivalent or greater than those that are.

9 Harvey, you've got a comment on that?

10 MR. FINDLEY: I would agree, Mr. Chairman, with your
11 observation. I have always felt that past history indicates
12 that that is so hard to come by that it's essentially a
nullity, you may as well not have anything.

14 CHAIRMAN COVERDELL: Joe?

15 MR. MUNDY: I was just talking to Mr. Hill about
16 this very same thing. I would agree with your idea of not
17 a majority of your registered voters, but a majority of those
18 voting, and if they do not call it at a special election
19 I think that gives an unfair advantage to a very few people
20 there that do vote.

21 You know, as we well know a relatively small
22 percentage of our registered voters vote when they're stirred
23 up at a general election or there's really a lot of interest,
24 and you don't call -- you probably would be interested in
25 this, but when you call a special election it's usually

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1 called for the idea that, in my county that the fewer we can
2 get to vote the better off we'll be, and I don't think that's
3 right.

4 CHAIRMAN COVERDELL: That's an interesting
5 question. I think that has a lot of merit.

6 If we might, I'm not going to restate that question,
7 I hope we've got it, sub(a) regarding the participation in the
8 election by a majority of registered voters, and we're saying
9 that should be no, that should not be required, with the
10 caveat or the qualifier, however, that the question must be
11 put to the electorate in a general election.

12 MR. MUNDY: I'll buy that.

13 Let me say that every bond election we have in our
14 county, we never have one in a general election, and two
15 months later or six weeks later they call a bond election,
16 and they could have had it where everybody could come and
17 vote, but the reason they don't is they think it might not
18 pass if everybody gets a shot at it, and I don't think that's
19 right.

20 CHAIRMAN COVERDELL: Any other comment on where we
21 are at this point on that question, of the rewrite of that
22 question?

23 All right. Let's move on, then. "Should the
24 consolidation of a county and the cities within a county be
25 made easier?"

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1 Mel, now we are to your sandpile.

2 MR. HILL: This question is even more relevant
3 than the first question in the experience of Georgia in the
4 last ten years. Of course, we have had a number of efforts
5 to consolidate cities and counties in Georgia over the last
6 ten years, only one of which has been successful, but under
7 the present situation constitutionally in order to bring about
8 a vote by the people whether or not they wish to consolidate
9 the city and county, first of all you have to get a local
10 constitutional amendment that authorizes the General Assembly
11 to establish a charter commission to study the question and
12 present it to the people, and it requires a double referendum
13 in a sense, and it does cause any city or county that's
14 interested in consolidation to have to go to a local
15 amendment first and then set up a commission, and then
16 finally three or four years later to have a vote on the
17 question.

18 What I'm wondering is whether we should just
19 authorize the General Assembly to in fact provide for a
20 procedure for the consolidation of cities and counties but
21 with the same safeguards we have already talked about with
22 the county consolidation.

23 CHAIRMAN COVERDELL: What if the question read
24 "Should the consolidation of a county and cities within a
25 county operate under the same authorization as enumerated

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1 in Question (a)?"

2 MS. METZGER: You're cutting out one step.

3 CHAIRMAN COVERDELL: The same constitutional safe-
4 guards and/or rights and authorities are in place for
5 county-to-county or county-to-city.

6 MR. BURGESS: Mr. Chairman --

7 MS. GREENBERG: Go ahead.

8 CHAIRMAN COVERDELL: There's time for both of you.
9 Vickie, go ahead.

10 MS. GREENBERG: I'm looking at Section IV, if you
11 have your brown copies, on page 75, and paragraph 1 speaks
12 of consolidation of both county and municipal governments.
13 How does that interact with the power on page 71 under
14 Section I where it talks about methods of county consolidation?
15 It seems like it's speaking in two places to county
16 consolidation if you have your brown copy.

17 CHAIRMAN COVERDELL: I don't.

18 MS. GREENBERG: It's pages 71 and 75.

19 MR. HILL: This Paragraph 1 of Section IV is
20 basically a dead letter in the law because of its phraseology.
21 No one has really understood exactly how this could be
22 implemented, and no optional systems of municipal and county
23 government have ever been provided, and it appears to me
24 that it's never been very effective.

25 MR. FINDLEY: The General Assembly to my knowledge

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1 has never shown any interest whatever in implementing that,
2 so as you pointed out to begin with the people that have been
3 interested in city-county consolidations usually are a
4 community group in a certain area of the state, Savannah-
5 Richmond County, Brunswick-Glynn, several places have tried
6 it, and finally Columbus-Muskogee did it, but the General
7 Assembly having failed to ever do anything about that para-
8 graph, having no interest whatever apparently in doing anything
9 about it, the groups that are interested in it have never
10 found that as an alternative, so they first then go as Mel
11 pointed out for a local constitutional amendment because
12 that requires optional systems. In other words, you all would
13 have to adopt some kind of general law that set up optional
14 systems of city-county consolidated government in order to
15 breathe life into that paragraph.

16 MS. GREENBERG: Is that the type of language, very
17 simple language that you're speaking of, Jim, to allow for
18 consolidation of counties?

19 MR. BURGESS: No, not in that -- I think this issue
20 is -- I don't think they can be combined.

21 The language dealing with the consolidation of city
22 and county governments I don't think could be combined in the
23 same paragraph and language dealing with the consolidation
24 of two counties, because I think there are complexities
25 present in the consolidation of a city and county that

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1 wouldn't be present in the consolidation of two counties, of
2 a county and a county, and therefore I think you're really
3 going to have to have a whole separate paragraph dealing
4 with that.

5 I think it would have to be fairly detailed to cover
6 the types of situations that would be encountered locally.

7 For example, if you take the local amendments that
8 have been used to authorize these consolidations around the
9 state, they all follow a very similar pattern, and the
10 Columbus-Muscogee amendment is a good model for that local
11 constitutional amendment, but it contains certain grants of
12 powers in it that would necessarily -- one, for example, a
13 city and county government probably should have the power to
14 vary their rate of taxation from area to area within its
15 jurisdiction because of different service levels. Because
16 of the uniformity provision of taxation in the constitution
17 you couldn't do that unless you dealt with a, unless you had
18 a specific grant of power in the constitution that authorized
19 the new charter or the document creating the government to
20 provide for the varying of the tax levels.

21 Another specific area is in the consolidation or
22 merger of certain public offices such as that of, or
23 abolishment of certain public offices such as that of tax
24 collector, the treasurer, the sheriff. Those being
25 constitutional officers you have to have a specific grant of

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1 power to deal with a change of those offices.

2 CHAIRMAN COVERDELL: To come back, let's say you
3 treat them in separate sections, but the trigger -- basically
4 when you talk about counties you're talking about the trigger
5 or the enabling system that would allow it to come about.

6 Do you feel that there ought to be required
7 differences in terms of the enabling authority of these
8 jurisdictions to enter into consolidation? In other words,
9 should the governments not be allowed to call for an
10 election by resolution as we said for the counties, or should
11 they not have a petition, or should it be a greater percentage?
12 In other words, in terms of the mechanism of putting it
before the people do you see a difference ought to be
14 required?

15 MR. BURGESS: Well, if you're talking about how
16 it's triggered or it's started off, I could see how that
17 could be combined, I guess you could combine it in the same
18 paragraph, but really I'm still not comfortable with it.
19 I think you really ought to deal with --

20 CHAIRMAN COVERDELL: If it's in a different
21 paragraph, if they read the same?

22 MR. BURGESS: Yes.

23 CHAIRMAN COVERDELL: It would be the same system,

24 MR. BURGESS: What I'm saying, the triggering, the
25 manner of initiating city-county consolidation, those options

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1 could be granted in a permissive sense within a broad
2 constitutional provision, but there are so many more things
3 that have to be dealt with is what I'm saying.

4 CHAIRMAN COVERDELL: In the municipal-county.

5 MR. BURGESS: In the municipal-County question.

6 CHAIRMAN COVERDELL: I think then, you know, in
7 light of the present situation the answer to subquestion (b)
8 might indeed be yes, and the extension of the answer is that
9 the enabling system could be made to track that of two or
10 more counties.

11 We might note, however, that there are intricacies
12 of a merger of a city and a county that require greater
detail in the constitution per Jim's comments to us here.

14 You know, I'm a little bit puzzled by that. I
15 would think that those problems that you enumerated could
16 occur in a merger of two counties.

17 MR. BURGESS: I think they probably could, because
18 you've got two sets of elected officials.

19 CHAIRMAN COVERDELL: Service levels and --

20 MR. FINDLEY: In the local constitutional amend-
21 ments, Mr. Chairman, all those have always -- you're having
22 to do a local constitutional amendment anyhow, so it's always
23 been resolved in favor of detail to make sure that you do
24 have the flexibility in the local constitutional amendments,
25 and I would -- in doing a local constitutional amendment on

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1 a city-county consolidation I would recommend that.

2 Insofar as an improved general provision of the
3 constitution is concerned relative to city-county consolida-
4 tion, maybe you could avoid a lot of the detail if the
5 language is clear in granting the authority for the city-
6 county consolidation, but you can override other provisions
7 of the constitution that Jim points out that would relate to
8 that then take a chance on getting a favorable reaction from
9 the courts.

10 Well, let me mention Tennessee. Tennessee has got
11 a very broad general provision on city-county consolidation.
12 That was the forerunner of the Nashville-Davidson County
consolidation. All the issues, every major issue that you
14 have in city-county consolidation was raised before the
15 Supreme Court of Tennessee in construing that Tennessee
16 provision after the consolidation of Nashville-Davidson
17 County which has served as the pattern for all modern city-
18 county consolidations that I know about, including
19 Columbus-Muscogee.

20 The court in Tennessee resolved every issue in favor
21 of legalizing consolidation, the uniformity of taxation which
22 Tennessee has got a similar provision in its constitution,
23 most all the constitutional questions that you would raise in
24 Georgia were raised in Tennessee, and they got a very
25 favorable ruling, a very broad and generous ruling from the

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1 Supreme Court of Tennessee on construing that constitutional
2 provision.

3 If I were doing a local constitutional amendment
4 I wouldn't take a chance on getting such a ruling from the
5 court, but on a general provision authorizing city-county
6 consolidation though I would tilt in favor of taking a chance
7 on broader language and getting a good construction of it
8 because the detail could come back to haunt you sooner or
9 later, and even on these detailed provisions of the city-
10 county consolidation there are certain provisions that you
11 could rethink if you had the opportunity to rethink it, if
12 it wasn't in the constitution. I think they have had some
13 results that really weren't intended in a couple of
14 instances.

15 MS. METZGER: I'm not sure I'm following this
16 exactly, but why is it necessary to have a constitutional
17 amendment to get the process started?

18 Is it possible to rewrite this section so that that
19 isn't necessary to get it going?

20 CHAIRMAN COVERDELL: Under our rewrite that would
21 be eliminated.

22 MS. METZGER: That would not be necessary.

23 MR. FINDLEY: That's the point, we could get a
24 good -- If the constitution has a good clear general
25 provision, put good in quotations, as to how to go about it

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1 on city-county consolidation with whatever safeguards are
2 necessary from a public policy standpoint before that could
3 come about, then the local constitutional amendments should
4 not then be required as they are now.

5 CHAIRMAN COVERDELL: Does the Tennessee provision
6 combine county to county and county to city?

7 MR. FINDLEY: No. It deals with city-county
8 consolidation. It was a separate provision they got in 1962
9 I believe it was as a forerunner to the Nashville-Davidson
10 County consolidation.

11 CHAIRMAN COVERDELL: Can you enlighten us as to
12 the differences in enumerating county to county and county to
13 city in their draft, why they separated the two?

14 MR. FINDLEY: I don't really know what Tennessee has
15 on the county consolidation, Mr. Chairman; I never looked at
16 it.

17 I don't know whether that's much of a problem in
18 Tennessee, I don't know how many counties they have up there,
19 but the city-county consolidation has always come along in a
20 different context than a county and county consolidation.
21 They have never been considered together that I know of
22 because it's more of a modern kind of a question, although
23 some city-county consolidations date back quite a number of
24 years, but it is more of a modern problem where counties
25 have always been an integral part of the state government

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1 in Georgia as well as other states.

2 CHAIRMAN COVERDELL: Okay. Well, it would seem on
3 this subquestion we have said -- we have left the question as
4 is, we have said yes, we have said the triggering system
5 quite possibly could be the same, but that greater detail
6 maybe necessary in dealing with the question of county and
7 city consolidation.

8 Is there any other discussion regarding subquestion
9 (b)? Yeah, Mel.

10 MR. HILL: In the county consolidation we had
11 agreed that a vote would be necessary by each unit. In the
12 city-county consolidation should there be anything stated
13 about the way in which the vote on a city-county consolidation
14 will take place, because the only way -- well, the way that
15 Columbus-Muscogee County called for its consolidation was to
16 have the city vote counted, and then the whole countywide
17 vote counted, and that was the double majority necessary
18 as opposed to the city voting and then the members of the
19 unincorporated county voting, and invariably in the consolida-
20 tion efforts it gives veto power to the people outside the
21 city over this consolidation if they're not counted.

22 Now, I'm just wondering whether you think that should
23 be addressed. We are addressing it as far as counties, that
24 their unit should be -- each of the counties should vote on
25 it. Should it be addressed that way with city-county

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1 consolidation?

2 CHAIRMAN COVERDELL: Before you enumerated the
3 subtleties of the difference in that vote my intuitional
4 view I think academically is that both jurisdictions should
5 express themselves, and that you should carry it on out to
6 carve out some portion of one of the jurisdictions and you're
7 in a sense creating a new jurisdiction.

8 My view is that every registered voter of the county
9 government would vote on the question before the county,
10 every registered voter of the city government would vote on
11 the question before the city.

12 REPRESENTATIVE EVANS: I would say, though, that
13 you would never have one to pass if you had it by that vote.
14 Columbus wouldn't have passed it probably by that particular
15 method.

16 MR. HILL: That is the way it passed.

17 REPRESENTATIVE EVANS: I thought they took theirs
18 over and did it differently though overall. I mean they had
19 it the city people just voted, and then the county?

20 MR. HILL: All the county counted as a whole.

21 REPRESENTATIVE EVANS: They counted all the county
22 which would be the city -- you're talking about counting the
23 city in with that?

24 MR. HILL: Because it's part of the county.

25 REPRESENTATIVE EVANS: I'm saying, though, if you



1 limit it just to those in the city voting, would have to
2 approve it by a majority, and those in the county outside of
3 the corporate limits voting, I don't believe you would ever
4 get one through.

5 Richmond County defeated one, the citizens of the
6 county defeated it and the city citizens had voted for it
7 several years ago.

8 MR. FINDLEY: The same thing on Savannah-Chatham,
9 Mr. Chairman. The local constitutional amendment on
10 Savannah-Chatham mandated the concurrent majorities that Mel
11 mentioned, that is mandated a vote of the city of Savannah
12 as one vote and Chatham County outside the city of Savannah
13 as another vote, the constitutional amendment, and it killed
14 it because the support of the city-county consolidation
15 unless things change has always dwindled as you go from --
16 the distance from the core city is in direct proportion to
17 the support for city-county consolidation, and the
18 requirement for concurrent majorities in the unincorporated
19 area, while it might be politically necessary to do that in
20 some, if it's mandated in the constitution, the upshot of it
21 is that traditionally it's turned out to be an exercise in
22 futility like it has been twice in Savannah, they have tried
23 it twice.

24 REPRESENTATIVE EVANS: And in Augusta.

25 MR. FINDLEY: And in Augusta I think two or three

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1 times, and in Athens as well.

2 In Athens-Clarke the constitutional amendment did
3 not mandate that, but the General Assembly from a policy
4 standpoint the delegation insisted on the concurrent
5 majorities; in Savannah-Chatham the delegation last session
6 after talking about it several years is amending their local
7 amendment to the constitution to remove the requirement for
8 this kind of majority vote because you just can't achieve it
9 historically if that's the vote on it.

10 CHAIRMAN COVERDELL: I can see where a majority must
11 participate in the election, but secondarily I think there is
12 a gross injustice that it fosters, it creates classes of
voters. I know I could never support that kind of thing.

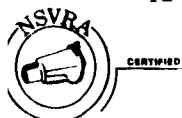
14 Well, I think the answer to the question is we are
15 approaching it as we did county to county, we're requiring
16 the jurisdictions in question to vote.

17 REPRESENTATIVE EVANS: I think we need to look at
18 that question, that situation, because the idea is --

19 CHAIRMAN COVERDELL: Jim, hold it. We can only hear
20 one of you talking at a time.

21 Okay, go ahead.

22 REPRESENTATIVE EVANS: If the intent of this
23 committee or the full committee is to make it easier to bring
24 about city-county consolidation I think the vote is going to
25 be the critical feature of the whole thing, and I base that



1 on Richmond -- I live close to Augusta And Richmond County,
2 and I base it on that, and if we're going to adhere to
3 having a concurrent vote in both jurisdictions, the county
4 and the corporate limits, as somebody said a little while
5 ago it's just an exercise in futility because it's not going
6 to pass where you have that kind of vote, and I don't know
7 what kind of vote to have, and I see there's some merit in
8 it, but if we're going to make it easier then we need to make
9 it where it would at least be possible, and in my opinion
10 that's not going to be possible.

11 CHAIRMAN COVERDELL: The way we're talking at the
12 moment is let's just say XYZ city wants to merge with YX
13 county, if the question were put to the people under the
14 direction of the constitution which would have been that
15 both governments could have called the question on a general
16 election, some form of petition could have been completed by
17 both jurisdictions, or the General Assembly might put the
18 question. All right. Then XYZ county countywide, every
19 voter in it would require a majority, and every voter in YX
20 city would have voted and that would have required a
21 majority.

22 Now, I think that under those circumstances a
23 consolidation could occur or not, depending on the manner in
24 which the issue was being presented, so we have rejected the
25 idea that a certain segment, i.e., an unincorporated quote

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1 county resident would alone have their own vote on the
2 question.

3 REPRESENTATIVE EVANS: Okay. I agree with that.

4 CHAIRMAN COVERDELL: That's where we are at this
5 point.

6 REPRESENTATIVE EVANS: I misunderstood. I was
7 thinking your position was that the county voters should vote,
8 those outside the corporate limits, and those in the
9 corporate limits, and you had to get a majority of each.

10 As Harvey said, the farther you get away from the
11 center core of the cities the less support you're going to
12 have for city-county consolidation. The folks out at the far
end of the county are not going to be in favor of it.

14 MR. HENRY: I was just wondering at what point in
15 this procedure the charter, the consolidated charter was going
16 to be framed. In other words, are you going to have it by
17 initiative, are you going to have it by joint resolution of
18 the two governments, are you going to have the General
19 Assembly plus a majority -- you've got to have something to
20 vote on, and at what point in this procedure is the actual
21 charter going to be framed, and can that be done by local
22 law?

23 I know they do it now by -- they can create charter
24 commissions by local constitutional amendment for reasons
25 I'm not sure of, but then you've got to frame the charter in

1 order to put it before the voters.

2 I was just wondering at what point in this
3 procedure the charter would be framed.

4 MR. HILL: The vote would be on whether to
5 establish a charter commission to frame a consolidated
6 government for the city and county, and then to submit it
7 back to the voters for approval by a majority of the resitered
8 voters voting in each of the jurisdictions affected.

9 CHAIRMAN COVERDELL: Okay. In a sense that makes
10 it more difficult concurrently. As presently, the charter
11 could be called and then put to the people.

12 MR. BURGESS: Not really, because now you have two
13 votes anyway. You've got a local vote on the local
14 constitutional amendment, and then you have another vote on
15 the charter, so you have two votes now anyway.

16 CHAIRMAN COVERDELL: Yes, that's right.

17 MS. METZGER: There were three, were there not, the
18 other way around? What are --

19 CHAIRMAN COVERDELL: We passed a constitutional
20 amendment for the Atlanta charter, and then put the question,
21 you're right, so we would not be altering it if we followed
22 that procedure.

23 MR. BURGESS: You could alter it, going back to
24 Harvey's idea of having a very broad consititutional
25 provision on city-county consolidation that in itself would

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1 recognize or attempt to bridge these other limitations in
2 the constitution. If you did that and you had that amendment
3 implemented by the general statute that could set forth the
4 alternatives to the initiative on the motion of the
5 respective governing bodies to get the commission created --
6 South Carolina has that approach where they have a grant
7 within the constitution itself, but by statute they specify
8 the ways in which you move the thing out, in other words
9 whether you create a charter commission who initiates how
10 the membership of the commission is determined, this kind of
11 thing.

12 REPRESENTATIVE EVANS: Why do we need to vote on the
13 charter commission?

14 CHAIRMAN COVERDELL: That's a good question.

15 REPRESENTATIVE EVANS: If we're going to vote on the
16 final product, that's the main thing. It would seem to me
17 that it could be -- if the governing authorities or the
18 legislature or so many percent of the registered voters of
19 the two entities petition, then there would be a charter
20 commission appointed, and then their product would be voted
21 on, and -- it's kind of ridiculous to have to do the thing --

22 CHAIRMAN COVERDELL: What was that, Jim?

23 MR. BURGESS: That's the beauty, the advantage of
24 a general constitutional provision is that you would eliminate
25 one of those elections, you would eliminate the necessity of

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1 getting a local constitutional amendment approved.

2 CHAIRMAN COVERDELL: Maybe as we did on the majority
3 of the registered voters participating, maybe we ought to
4 create a subquestion (b) here just for clarification on
5 language and our intent to say in rough form "Should the
6 petition, or should the enabling procedure call for a vote
7 to establish a commission whose result would be put ultimately
8 to the people for a vote or not?"

9 I hear our committee saying it should not, that
10 instead the enabling procedure should allow for the formula-
11 tion of basic parameters for formulation of a charter group
12 whose results ultimately are placed to the people.

13 Does that fairly characterize the direction we're
14 headed? Elinor?

15 MS. METZGER: I don't see we're losing anything by
16 doing that.

17 CHAIRMAN COVERDELL: I think we're saving a lot of
18 time and confusion.

19 MS. METZGER: And money.

20 CHAIRMAN COVERDELL: Does that answer the question
21 you put to us?

22 MR. HENRY: I would just like to ask Harvey, in the
23 absence of any authorization couldn't the General Assembly
24 by local law create a charter commission just as a commission
25 with no -- I mean with an authority to study the question

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1 and not -- I mean granted they're going to be cutting across
2 constitutional bounds in what they're proposing, but why do
3 they do it by local constitutional amendment now?

4 MR. FINDLEY: You mean why is there a local
5 constitutional amendment bottoming the city-county
6 consolidation?

7 MR. HENRY: No, bottoming the creation of a charter
8 commission to frame the charter.

9 MR. FINDLEY: They don't necessarily, Mike. They
10 have taken -- basically recent ones have taken two different
11 approaches.

12 Augusta-Richmond County, their local constitutional
13 amendment granted the powers directly to the General Assembly
14 to provide for the consolidated government. Now, they
15 actually created a charter commission over there, but the
16 authority was granted directly to the General Assembly, so
17 that whatever that charter commission came up with had to
18 come back to the General Assembly and be adopted by the
19 General Assembly before it was submitted to the voters.

20 The others, Athens-Clarke and Columbus-Muscogee,
21 the one that's in effect, the constitutional amendment took
22 the form of authorizing the General Assembly to provide by
23 law, local law for the creation of a charter commission,
24 and that charter commission's work then went directly from
25 the charter commission to the voters.



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1 There's two different ways to do it. Savannah-
2 Chatham's was a direct grant to the General Assembly I
3 believe. I'm sure Augusta-Richmond's was, it was the General
4 Assembly that actually had to pass the act in Augusta-
5 Richmond County.

6 REPRESENTATIVE EVANS: That's right.

7 CHAIRMAN COVERDELL: I think we've got enough
8 guidance here for the drafters to get the consensus of where
9 the subcommittee is going.

10 MR. FINDLEY: There's one point I wanted to mention,
11 Mr. Chairman. On city-county consolidation it seems to me it
12 should be considered whether other forms of governmental
13 reorganization, that the language should be formed broadly
14 enough so that other forms of governmental reorganization
15 short of full-blown consolidation might be authorized,
16 because I think the city-county consolidation might not be
17 an answer in some areas of the state, it just couldn't be
18 achieved for one reason or another, but other forms of
19 governmental reorganization might could be achieved.

20 It would seem to me you should have that flexibility
21 to come to a form of governmental reorganization short of
22 full-blown city-county consolidation.

23 Baton Rouge and East Baton Rouge Parishes of
24 Louisiana is another form, an example of another form where
25 there they had one governing body which created to act as

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1 the governing body for both the city and the county while
2 retaining the corporate existence of both those governmental
3 entities, but they had one governing body sitting as the
4 governing body for both those governmental entities, and
5 that may be an alternative that could be -- that might have
6 some possibility in some areas of the state. It has worked
7 extremely well in Baton Rouge-East Baton Rouge Parish since
8 1949.

9 MS. GREENBERG: What is the benefit, they retain
10 their name and their existence but in essence it's just a
11 way of getting around the idea of losing your identity?

12 MR. FINDLEY: That's right.

13 MR. BURGESS: The governing body really wears two
14 hats. They function as the city council in acting for Baton
15 Rouge, they function as the county commission when acting for
16 the entire territory, but there's only one government.

17 MR. FINDLEY: The actual fact is that it's
18 recognized as one of the most successful governmental
19 reorganizations in the country, and has been since 1949,
20 and I don't think that that flexibility -- it seems to me to
21 have that flexibility to authorize that where it's a
22 possibility.

23 I think Atlanta-Fulton, there's a much greater
24 possibility for achieving that here than there is full-blown
25 city-county consolidation, assuming you want to have any

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1 kind of governmental reorganization.

2 CHAIRMAN COVERDELL: We can't assume anything.

3 MR. FINDLEY: I think that's exactly right. I
4 think city-county consolidation is not a live possibility in
5 Atlanta-Fulton.

6 MR. HILL: I suggest this, Mr. Chairman, I suggest
7 we have a provision on county consolidation which we have
8 agreed to, a provision on city-county consolidation, try to
9 address those, and if we can find some language to open up
10 the even more wild-eyed schemes that we could have that in a
11 separate provision.

12 I would hate to mix these up, because people
13 basically understand the idea of county consolidation and
14 city-county consolidation, and perhaps when we're finished
15 we may find they are so similar we could in fact merge them,
16 but let's at this point at least look at them separately
17 and we can work with Harvey on trying to come up with something
18 on --

19 MR. BURGESS: Do we want to work into that the
20 concept of functional consolidation as well?

21 MR. HILL: That gets into the contracting question
22 to some extent down here.

23 MR. BURGESS: I don't think so. I'm talking about
24 where you consolidate all the tax collection functions, for
25 example, in one government versus the other. It would not

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1 be a contract, it would actually be a merger of the functions
2 or a shift of responsibility from one government to the other,
3 and I think that ought to be dealt with as a part of the
4 flexibility that Harvey is getting at.

5 Functionally there's a fair amount of functional
6 consolidation that's occurring in Georgia, I mean like
7 Waycross-Ware, they have one tax collector, Atlanta-Fulton
8 has one tax collection office. They do it by constitutional
9 amendment here.

10 CHAIRMAN COVERDELL: Let's try to -- other than
11 enumerating another subquestion (b) that says "Shall the
12 constitution provide for wild-eyed schemes," let's see if
we can't phrase a question that covers, at least introduces
14 for consideration this question.

15 Jim or Harvey, give us your suggestions. Should
16 the constitution authorize --

17 MR. BURGESS: Say various forms of city-county
18 consolidation, including total merger.

19 CHAIRMAN COVERDELL: Or functional merger?

20 MR. BURGESS: Or functional merger.

21 CHAIRMAN COVERDELL: Okay. I think that is probably
22 the second sub to (b), and then under Yes/No as I understand
23 the general consensus here the answer would be yes.

24 Okay. Let's move on into (c) then. Mel, why don't
25 you introduce (c).



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1 MR. HILL: "Should the authorization for inter-
2 governmental contracting be expanded or modified?" Yes or no.

3 Now, I know that in some cities and counties this
4 authorization for intergovernmental contracting now found in
5 Section IV, Paragraph II, as part of the Amendment 19
6 provision, this authorization has in fact resulted in a good
7 bit of functional merger between city and county for
8 selected services.

9 Now, I'm not aware that that's what was used down
10 in Ware and Waycross, Ware County-Waycross. Did they have
11 an actual amendment to bring it about?

12 MR. BURGESS: Yes, just as Fulton County did.

13 MR. HILL: I know in a lot of cases we just have it
14 by contract, and I know that this has worked well in many
15 cities and counties, and I'm not even -- the question doesn't
16 suggest there is anything wrong with it, it's just presenting
17 to the committee the question of whether there is any change
18 required in it.

19 CHAIRMAN COVERDELL: Jim, have you any view on that?

20 As I understand it, your view is that under the
21 present constitutional authorization it's among the better
22 points in the current constitution.

23 MR. BURGESS: I have always had the feeling that
24 we have a very broad grant of intergovernmental contracting
25 power within the existing constitution which specifically

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1 says the state or a city or county or municipality, any
2 political subdivision and public authority can contract with
3 each other for any function which they are by law individually
4 authorized to perform. I think that's a summary of the
5 existing constitutional language.

6 I have always felt that that is pretty broad.
7 Perhaps it doesn't cover private contracts, but you're
8 really talking about intergovernmental contracts, I think
9 it wouldn't be a germane subject anyway, so the basic grant
10 it seems to me is adequate.

11 I have some question in reading the grant by
12 all of the additional provisions have been added to it.
13 If you'll look on page 79 you'll see some of those things,
14 you'll see the basic grant, subparagraph 1 on page 78,
15 and then you see a lot of other detailed qualifications or
16 modifications of that grant in those subsequent paragraphs.

17 Well, you've got a notwithstanding paragraph there
18 which -- I'm not sure what that really is intended to
19 accomplish.

20 MR. HENRY: That came in in 1960 as part of an
21 appropriations control amendment, this is just to make sure
22 that the revenue bonds didn't have the money dried up.

23 MR. BURGESS: Then you've got a specific grant
24 with regard to the indigent and sick. It could be that was
25 put in there because that function perhaps is not considered

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1 a public purpose, therefore it had to be in the constitution.

2 It's possible, Mr. Chairman, you could retain the
3 broad grant here but cut out some of the detailed language
4 in this section, it seems to me. Do we need to go into this
5 kind of detail on that?

6 CHAIRMAN COVERDELL: It appears that basically
7 you're saying that conceptually we're headed in the right
8 direction presently with some technical question as to how
9 much language should or should not be in there, and we'll
10 leave that question to staff to come back to us in the form
11 of recommendation of the language as presented to the
12 subcommittee.

13 We might move on unless somebody knows some grave
14 question to be considered in this area,

15 MR. HENRY: The other contractual authorization in
16 here is at the end of Amendment 19 which allows them to
17 contract to perform the services within another jurisdiction.
18 I think that would get into your functional merger of services
19 there.

20 I don't think that under this other one you could
21 contract within another jurisdiction. That may be what you
22 want to look at and expand.

23 CHAIRMAN COVERDELL: Rephrase your question.

24 You're saying that under this section there would
25 not be the authority to contract -- Restate it.



1 MR. HENRY: What I'm saying is, I know under
2 Amendment 19 you're given the authority to contract in other
3 jurisdictions, like a county can contract to perform
4 services within a city with that city.

5 Over here I'm not sure that that's the thrust of
6 that contracts provision there.

7 What I'm saying is that when he was mentioning
8 functional merger of services which would imply performing
9 services within another jurisdiction, you want to expand that
10 concept, I think this Amendment 19 contractual authorization
11 would be the place to do it.

12 CHAIRMAN COVERDELL: Is there any discussion
regarding that suggestion?

14 I think that I'm going to come back to the same
15 statement I made, as you all begin to draft the language
16 we've got the consensus of view as to what we're trying to
17 achieve, and if it's felt by the staff it would be reinforced
18 in the manner you just suggested, bring it to us in the form
19 of a recommendation that would be consistent with the
20 direction of the subcommittee.

21 Okay. Let's move on then to (d). "Should the
22 issue of annexation by cities be addressed in the
23 constitution?"

24 MR. HILL: This is the subject of a constitutional
25 provision in a number of other state constitutions, and

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1 that's one of the reasons that we put the question here;
2 it's not presently addressed in our constitution.

3 CHAIRMAN COVERDELL: What is the current procedure,
4 strictly a constitutional amendment?

5 MR. HILL: No, it's authorized by general law, by
6 statute, but there are four different methods of annexation
7 authorized by general law, but it is not specifically stated.

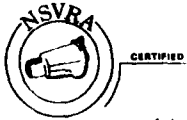
8 That was one of the subjects that Perry Sentell
9 addressed in his article as to whether the General Assembly's
10 authorization for annexation to cities was a matter of self-
11 government by municipalities, and the court held that it was
12 a matter that could be delegated to local governments, and it
13 has been by the General Assembly, and it's strictly a matter
14 of statute at the present time.

15 CHAIRMAN COVERDELL: Well, any comment?

16 REPRESENTATIVE EVANS: That's a very phony issue,
17 to say the least.

18 CHAIRMAN COVERDELL: That sounds like a correct
19 statement. It would seem to me, you know, that the
20 authorization should exist in the constitution, and perhaps
21 some basic criteria enumerated with relation to what as a
22 bottom line must transpire in order for it to occur.

23 Other than that, I would think we would want to
24 follow our same view as to not get into elaborate detailed
25 authorization.



1 State it again, let's have it once again in the
2 manner in which it occurs right now.

3 MR. HILL: The manner in which it occurs right now
4 is by virtue of statutory authorization to cities to annex
5 in one of four ways.

6 CHAIRMAN COVERDELL: Which are?

7 MR. HILL: There's the hundred percent method, a
8 hundred percent of the people in the area adjacent to or
9 contiguous to the city can petition to be included; there
10 is --

11 CHAIRMAN COVERDELL: This is statute?

12 MR. HILL: By statute, that's right.

13 Secondly there is a sixty percent method, sixty
14 percent of the residents of a particular area, and there are
15 limitations, there has to be sixty percent development in the
16 area, and it's a complicated procedure, but that's the sixty
17 percent method for the second,

18 A third is by local act of the General Assembly, it
19 can simply amend the charter to add territory to a city, and
20 whether or not there is a referendum is up to the legislature,
21 the local legislation itself; and

22 Fourth, there can be an initiative by the citizens
23 and a referendum locally to add certain property to the city.

24 So it is all statutory, there is no reference in
25 the constitution to it, and I'm not -- you know, I certainly

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1 don't know whether you want to have anything in there.

2 It's been construed, the court has construed
3 annexation to be within the powers of self-government where
4 the General Assembly is authorized to delegate that to local
5 governments, so there's no need to have a change in the
6 constitution to continue to function as we are.

7 CHAIRMAN COVERDELL: Harvey, what are your thoughts
8 on that?

9 MR. FINDLEY: Off the top of my head, Mr. Chairman,
10 I can't see why the constitution needs to deal with it
11 because that's one area that the General Assembly has very
12 broad flexibility by the case law, including the case that
13 Mel mentions that construed the basic home rule provision
14 for municipalities as authorizing the General Assembly to
15 pass these general laws and set up a procedure for annexation
16 that Mel just enumerated, so the General Assembly has got
17 substantial flexibility in this area now, and it would seem
18 to me the only thing you could do would be to chip away at
19 that flexibility unless you wanted to restate it somehow
20 in the constitution. You could require a referendum to annex
21 territory or things like that which is not presently
22 required.

23 CHAIRMAN COVERDELL: I feel a slight inconsistency
24 probably brought about by a rash of pragmatics but, you know,
25 when you take these two counties, since both parties have a

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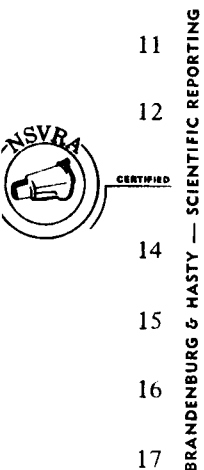
1 right to alter their form of government, both parties have a
2 right to express themselves on it, and we took the city and
3 the county and we came to the same question, and now we're
4 taking a municipality and a given constituency and we're
5 saying that that base line is not necessarily applicable in
6 these cases, so now let's justify -- let's have some
7 discussion as to why we ought not to require the same rights
8 to prevail when the form of government on this group that we
9 annex is being altered.

10 MR. SUMNER: Can I address that?

11 I think except for the local legislation route you
12 already have the people in the area, they have the veto. I
13 mean in the one hundred percent method the landowner has to
14 say "I want to come into the city" when he comes in, and the
15 sixty percent method. The only one now that we say there
16 isn't the referendum type thing is where you or the
17 legislature --

18 Most of them that I'm familiar with, you know, there
19 may be one or two, I think there's one in Douglasville in
20 1890, or very few of them I think that now don't permit some
21 kind of referendum in some such form or fashion, so what
22 you're talking about is to require something in a local
23 bill for annexation, some sort of referendum.

24 MR. FINDLEY: The politics of it usually dictate a
25 referendum, the General Assembly will put a referendum on



1 most annexation bills if they're annexing any substantial
2 block of territory because if it's controversial they're
3 going to put a referendum on it. That's been the history.

4 On the other hand, there has been minor adjustments
5 in the city of Atlanta's lines, Mr. Chairman, as an example,
6 a piece of property that cuts across, half in and half out,
7 and you all have come back and made a minor adjustment on
8 that because the constituents are complaining and so forth.

9 In those kinds of adjustments it seems to me it
10 would be extremely unfortunate to mandate a referendum.

11 There are circumstances you might want to rewrite the
12 corporate limits, it might not make any substantial change
13 in them, but there's twenty years of amendments that have got
14 the corporate limits where they are very hard to find and
15 understand, or it might be part of a rewrite of the corporate
16 limits as a revision of the charter, for example, as you
17 recodify the charter.

18 If you put language in there that when you deal with
19 corporate limits that it would automatically trigger a
20 referendum it seems to me it would have all sorts of
21 implications on limiting the flexibility of the General
22 Assembly in a lot of other areas.

23 CHAIRMAN COVERDELL: I think that answers in great
24 part the question, but I can think of several recent examples
25 where large numbers of people are involved and it's clearly



1 intent of, you know, one of the vested interests to enact it
2 without a referendum knowing that the majority of that group
3 of people simply do not choose. It raises a fairly serious
4 question.

5 MR. FINDLEY: It's true on the abolition of a
6 municipality as well because in Mr. Mundy's county and mine,
7 we had a municipality abolished out there for what appeared
8 to me to be adequate reasons, but over the opposition of the
9 people that lived in that community, they were properly
10 opposed to it, but they were abolished nevertheless.

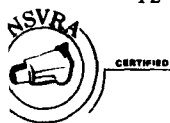
11 And there's been proposals at one time or another
12 by members of the General Assembly to prohibit the, amend
13 the constitution to prohibit the General Assembly from
14 abolishing a municipality unless there were a referendum on
15 it; none of those have ever gotten off the ground, but they
16 have been offered.

17 CHAIRMAN COVERDELL: Any other comment?

18 REPRESENTATIVE EVANS: What are some of the other
19 states doing in connection with this particular issue? How
20 do they approach it? Do they do it in the constitution, or
21 do they usually approach it in the general statute?

22 MR. HILL: I say there are a number of constitutions
23 that do address this directly, I don't know the numbers or
24 how many, but there are a number that do it, and I think
25 North Carolina has it in its constitution, but I think the

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1 question for this committee is again whether it warrants
2 being addressed at all, number one, and if so, what elements
3 of it warrant being addressed, what are the essentials of it.

4 As Harvey says, if we get into the referendum
5 requirement like we are proposing for consolidation we may be
6 tying the hands of the legislature in a way that we don't want
7 to do, plus also we have the same question here and it's
8 very relevant to the people in Savannah at this time about
9 how do you count the vote in a referendum on annexation.
10 Do you just count the people to be annexed, do you count the
11 whole city and the people to be annexed as one vote or
12 require a majority of each to approve it, so it's very
complicated.

14 MS. GREENBERG: Would it be advisable then to
15 distinguish by population or by number of people affected
16 or possibly by geographic area, the amount of area affected
17 to determine whether or not you need a referendum in both
18 areas affected, classified by population above a certain
19 number of persons affected would have to be annexed by
20 referendum?

21 CHAIRMAN COVERDELL: There's another question here
22 too, and that is that -- Well, I'm trying to be consistent
23 in this business and it's almost impossible, but there are
24 times, and I think it's the constitution where you get into
25 it, where simply there has to be somebody in the state that

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1 can deal with the greater good.

2 For us to always reduce the decision to the
3 combatants has never been very practical, so at some point
4 you have to get up above the battle. Annexation may be a
5 question that is in that arena.

6 Representative?

7 REPRESENTATIVE EVANS: Paul, the distinction of
8 course is in the matter of consolidation, you really bring
9 about the elimination of a government, whether it be county,
10 two counties or a county and city, whereas the question of
11 annexation is not to that extent.

12 It would seem to me that maybe we ought to have a
13 general statement in there that the legislature -- that
14 annexation would be authorized but would be carried out
15 through general statute enacted by the legislature, because
16 annexation can change, I mean the procedures -- what is good
17 today we may not want tomorrow.

18 I can't see there's much difference in the
19 consolidation of the governments. Probably what we adopt
20 today might be advantageous or beneficial fifty years from
21 now, but annexation can change, and we may want to change it
22 at times, and once we get it locked into the constitution
23 we have that much more difficulty with subsequent
24 constitutional amendments.

25 CHAIRMAN COVERDELL: I tend to agree that silence

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1 on the question -- I don't find myself going with -- I would
2 think the statement the representative made is reasonable
3 that it's authorized and the procedures under which it shall
4 occur shall be set forth by the General Assembly, essentially
5 what we've got now.

6 MR. HILL: To go back to Vickie's suggestion, do
7 you think there should be something about, you know, if more
8 than twenty percent of the population is going to be added to
9 the new unit or more than ten percent of the area of the
10 city similar to what happened in Savannah, whether there
11 should be any kind of limitation where a referendum is in
12 fact required, or do you think political realities will
13 dictate a referendum anyway so the constitution needn't
14 address that?

15 MR. SUMNER: The point is you can do anything right
16 now. The General Assembly can come back and repeal every
17 annexation general law on the books, or they can come in and
18 change them. You know, you've got total authority right now.

19 I think they could pass a general law which says any
20 annexation would require some form -- you've got one that does
21 it, three statutory methods that does require it now.

22 I suppose you could put local legislation through
23 the General -- You know, you've got total authority to do
24 it now.

25 You know, let's put it in the same in cities, it

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1 would be hard put to call for the cities in the Plantation
2 Pipeline case that Mr. Sentell referred to, that probably I
3 guess was just about the leading case on home rule in the
4 state, we got some very good judicial language which said
5 that the constitutional provision which authorized the
6 General Assembly to delegate powers, that in itself said
7 the General Assembly could delegate annexation subject to
8 general law with standards, and that's what the whole issue
9 was in that case. We've already got it, they just took the
10 general language in the municipal home rule statute to do
11 what I think Representative Evans was saying, that they can
12 provide for annexation subject to general law. The courts
have already said that's what you have done.

14 The case has got to be made -- right now I can't
15 see what the case is why you need it as long as you've got
16 the General Assembly right now can do whatever they want to
17 do, you can require referendums, change the present law or
18 do away with it, which I reckon some folks smiling in the
19 room would like that to happen --

20 MR. RICKETTS: I would like to second that motion.

21 MR. SUMNER: I don't really know why it needs to be
22 specifically in the constitution.

23 CHAIRMAN COVERDELL: Jim?

24 MR. BURGESS: I think in addition to what Ed is
25 saying the city is a political creature of the state created

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1 by the General Assembly, it can do whatever it wants to,
2 the case law has pretty well substantiated it. It can
3 expand it, it can contract it, it can abolish it, and that's
4 pretty well established.

5 However, there may be -- you know, in terms of the
6 drafting of the constitution it may be good form to put in a
7 provision that the General Assembly would be authorized,
8 which it is now, but just to say it's authorized to provide
9 by law for the addition of territory to incorporated, to
10 municipalities, something like that.

11 I don't know, that may -- it's a chance. The court
12 could change its mind.

13 Let's say that at some future point the General
14 Assembly passed a unilateral act substantially and that was
15 attacked as being unconstitutional with denial of due process,
16 this type of thing. If you then had language in the
17 constitution that would certainly buttress that authority,
18 whereas that might -- for example, that kind of annexation
19 might not hold up on the Plantation Pipeline because there
20 were different political considerations being considered by
21 the court.

22 MR. HILL: Not to mention the fact that Plantation
23 Pipeline came up under the wording of the constitution that
24 we have in front of us, and when we're finished it's going to
25 be a whole new ball game perhaps. If we reverse Dillon's

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1 Rule and we in fact do what we've been talking about doing,
2 then we can't necessarily say they're going to construe self-
3 government as broadly as they have been, so I think to leave
4 it silent may be dangerous.

5 CHAIRMAN COVERDELL: That would be my view.

6 MR. SUMNER: That's the only caveat to what
7 Professor Sentell's article, you mess around with the
8 present wording of the home rule, a substantial change, you
9 don't know what you're getting, so that may be -- depending
10 on what you do with the other part we may have to have,
11 you know -- So any time you change the phrase on self-
12 government or delegation or anything of home rule you might
13 get a different interpretation. There are some caveats that
14 might be possible, the case needs to be made clearly on that.

15 MR. CARLYLE: Are we going to get into enumerating
16 additional powers once we start annexation, is there something
17 else? It seems like there is that problem.

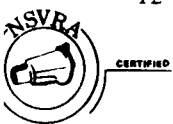
18 MR. HILL: There's always something, isn't there.

19 CHAIRMAN COVERDELL: The question is if you
20 enumerated annexation and didn't enumerate abolishment --
21 we could always say put a footnote and refer the court back
22 to the subcommittee for further clarification.

23 (Laughter.)

24 CHAIRMAN COVERDELL: Well, you know, we need some
25 help from the lawyers of the group on that question.

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1 I'm wondering if you change the language if the
2 silence could be construed as to not authorize --

3 MR. FINDLEY: Mr. Chairman, on the other point on
4 home rule back in Professor Sentell's discussion a few weeks
5 ago there was a decision made in here to reverse Dillon's
6 Rule in the constitution, and if you reverse Dillon in the
7 constitution then some other language has got to go in the
8 constitution, some different kind of language than the basic
9 grant of authority on municipal home rule that's in the
10 constitution, because in confining ourselves to that
11 Paragraph being municipal home rule it was Professor Sentell's
12 idea to modify that and apply it to both counties and
13 municipalities, keeping the language intact so you could
14 benefit from the court decisions that we have on it.

15 If you do that, if you want to achieve a reversal
16 of Dillon in the constitution, there would be no reason not
17 to achieve a reversal of Dillon statutorily which you have
18 done in the case of municipal home rule as far as it goes,
19 the basic thrust of the municipal home rule statute of 1965
20 is to reverse Dillon, so it could be statutorily done, then
21 you could make all home rule a matter of statutory law with
22 that basic grant of authority modified to include both
23 counties and municipalities, but with that you would have to
24 modify your position on reversal of Dillon in the constitution
25 itself because that language would not do it that's presently

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1 in the constitution.

2 CHAIRMAN COVERDELL: Other comment?

3 Well, it's a perplexing question.

4 MR. BURGESS: Why don't we leave it out.

5 CHAIRMAN COVERDELL: I think we will suggest silence
6 on annexation under subparagraph (d).

7 In parentheses I think we ought to note that some
8 further exploration of that issue by staff might be necessary,
9 end of parentheses.

10 Okay. Number 2 for the record now, Mel.

11 MR. HILL: "Should any county offices be given
12 constitutional status?"

CHAIRMAN COVERDELL: Comment?

14 MR. HILL: Presently they're not specifically
15 delineated in the constitution about what are the county
16 constitutional officers, and there are about seven of them,
17 and the question is whether the constitution should be more
18 specific about who they are.

19 It does mention sheriffs, and that is the only
20 group that is specifically mentioned, but all of the county
21 constitutional officers are presently provided for with a
22 broad statement that, you know, they shall be elected as
23 provided by law.

24 CHAIRMAN COVERDELL: Well, without getting into the
25 politics, as a point of reference our municipal and county

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1 systems are trying to modify their structures trying to deal
2 with the social needs of today, I think as a practical matter
3 to enumerate structure in the constitution is not needed.

4 As an opening reference point I would say the answer
5 to the question is no. Now we'll throw it open for discussion.

6 Does anybody argue yes and, if so, which officers
7 of the county in your mind ought to be enumerated in the
8 constitution?

9 Elinor?

10 MS. METZGER: I certainly would agree with that,
11 but I ask the question why in the world qualifications for
12 sheriff are spelled out.

13 CHAIRMAN COVERDELL: I don't know where that dates
14 from historically.

15 MR. FINDLEY: Very recent.

16 REPRESENTATIVE EVANS: Yes, within the last four or
17 five years.

18 CHAIRMAN COVERDELL: Okay. Let's have some
19 clarification on it.

20 MR. CARLYLE: On what, the qualifications of
21 sheriff?

22 MR. FINDLEY: The reason for putting that in there?
23 I think it was, Mr. Chairman, that they wanted to
24 apply the peace officers -- there was some qualifications they
25 wanted to apply to the office of sheriff, I think it was to

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1 require them to have the training of the peace officers'
2 standards and training act, and that couldn't be done under
3 the present provisions of the constitution it was felt because
4 it's an elective office and the guy is old enough to run for
5 the office, the qualifications for the county office, he's got
6 to live in the county two years and be a qualified voter, so
7 to add those qualifications to require sheriffs to be trained,
8 which you all have passed an act to do that, that's been
9 implemented that required putting provisions in the constitu-
10 tion authorizing you to provide qualifications for the office
11 of sheriff, so now they have to be trained under the --

12 CHAIRMAN COVERDELL: Under the constitution?

13 MR. FINDLEY: Under the peace officers' standards
14 and training act. You all statutorily implemented this.

15 MR. CARLYLE: There's a specific one on sheriffs
16 now.

17 CHAIRMAN COVERDELL: What page?

18 MR. CARLYLE: This is on page 71, sheriff's
19 qualifications.

20 REPRESENTATIVE EVANS: Doesn't he have to have a
21 high school degree, diploma?

22 MR. FINDLEY: I think you all put in some other
23 qualifications as well under this authority here.

24 MS. METZGER: It seems this is the wrong place to
25 be spelling out qualifications, for one to be singled out.

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1 CHAIRMAN COVERDELL: That's my view. I don't know
2 what --

3 REPRESENTATIVE EVANS: Where should they be spelled
4 out?

5 MS. METZGER: We're not spelling out the qualifica-
6 tions for judges or legislators or governors or mayors or
7 anything.

8 REPRESENTATIVE EVANS: That would be in other
9 sections, now, that wouldn't be in this.

10 Your members of the legislature are going to be
11 spelled out --

12 MS. METZGER: I don't understand why we have
13 singled out sheriffs. I think sheriffs should be qualified,
14 and probably in just the way that this provides for, I don't
15 know anything about that, but to single out sheriffs among
16 all the other people and put it in the constitution just
17 seems to me to be very strange. Maybe there is a better
18 reason than I know about.

19 MR. HENRY: I think sheriffs were probably in here
20 since the 1877 c onstitution, and then once you had them in
21 here you said they had to be a county resident for so many
22 years, you couldn't make those qualifications any more
23 stringent than they were in the constitution by statute, so
24 you had to amend the constitution, and this right here is the
25 1877 constitution. This is in the spirit of 1877 right here,

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1 and it was just in later years that you had these other good
2 things come in, but basically where you say the Governor
3 has to be a resident for four years and has to be 35 years
4 old or whatever it is, you can't then come back and say he's
5 also got to have a doctorate in political science or something
6 like that.

7 CHAIRMAN COVERDELL: Well, you could.

8 REPRESENTATIVE EVANS: You have to do it by
9 constitutional amendment, though. You couldn't do it by
10 statute.

11 MS. GREENBERG: If we put a general statement in
12 under Paragraph 8 which talks about eligibility saying that
13 the General Assembly may in addition to these basic
14 eligibilities require other things of particular officers by
15 general law, something like that, so that you could have
16 general laws relating to county officers, not just sheriffs
17 but require statewide other things for county officers and
18 not require a constitutional amendment each time.

19 MR. CARLYLE: You need to authorize the General
20 Assembly to say who county officers are also, because the
21 court has been a little confused sometimes, just within the
22 past two years decided county commissioners were county
23 officers.

24 MR. MUNDY: What would be wrong with identifying
25 county officers in the constitution, and not necessarily

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1 have the qualifications? What would be wrong with having --
2 I think it would be good, let me put it that way, if they were
3 identified in the constitution.

4 MR. HENRY: When you wanted to consolidate that
5 would present an obstacle to consolidation, having a
6 constitutional officer that you couldn't abolish.

7 MR. TIDWELL: It might also recreate all those
8 offices that have been abolished. That would be one of the
9 reasons.

10 REPRESENTATIVE EVANS: With a consolidation you're
11 still going to need a clerk of court whether you --

12 MR. HENRY: I know that, but what I'm saying is you
13 create a clerk of court, and then you try and consolidate
14 and you're creating a clerk of court of a consolidated
15 government which isn't in the constitution, then you no
16 longer have a clerk of court of the county, so you're
17 abolishing the clerk of court of the county and you're making
18 a clerk of court of the consolidated government, and that
19 would just be another obstacle or an extra constitutional
20 power that you would have to be authorized to have in order
21 to create a consolidated government.

22 MR. BURGESS: I think what Mike says, it really
23 does lead to a lot of inflexibility when you start naming a
24 wholesale group of officials and designating them as
25 constitutional officers.

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1 Why don't you make all the mayors constitutional
2 officers? Why not have all the fire chiefs and police chiefs
3 constitutional officers?

4 Why is it necessary the tax collector, the treasurer
5 and the sheriff be constitutional officers? After all, these
6 are administrative offices, they are not policy level type
7 positions, they're not enacting legislation, they're
8 carrying out legislation, so why should you elevate them to
9 that level of law in the first place? They are really
10 administrative officials.

11 The clerk of the court is a clerical function,
12 it's a record keeping position. I even question why a clerk
of a court should be elected; I even question why any of these
14 officials should be elected with perhaps the exception of the
15 sheriff.

16 REPRESENTATIVE EVANS: Let's remember too we've got
17 an association of sheriffs and an association of county
18 commissioners, an association of probate judges and so forth
19 that will also have their say in this matter at the proper
20 time.

21 MR. MUNDY: I didn't realize it did all what you
22 said it did. I'm not that good a lawyer. But this is the
23 reason that I thought it would help if it was enumerated
24 because there have been and will be from time to time
25 movements to eat up your other -- one office take over

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1 these other elected offices, and I think that's wrong, and
2 I think they ought to be protected some way.

3 MR. BURGESS: My question is why don't you have all
4 the police chiefs and all the fire chiefs and all the public
5 works directors in the constitution? Why don't we elect
6 them?

7 Why do we have to elect tax collectors? They are
8 carrying out an administrative function, they're not
9 legislators, so why do you have to pick out and treat a body
10 of people different? I have never understood that about
11 Georgia's system of law. Why do we elect anybody?

12 MR. HENRY: I think this is from 1877. Again,
13 back in 1877 you wanted to have a voice in who came out there
14 and collected what little bit of taxes were collected.

15 MR. BURGESS: I agree, I understand that, but that's
16 not the case today.

17 Why do you have to pay for the expense of elections
18 to have a tax collector? Why can't your elected officials
19 appoint the tax collector to collect the taxes? That's what
20 is done in most governments. Why do we have to make an
21 exception in county government? Why do we have to have an
22 elected treasurer in the county? I just don't understand
23 that.

24 CHAIRMAN COVERDELL: Wait a minute, Elinor. Jay
25 had his hand up and I wanted to acknowledge that.



1 MR. RICKETTS: I'm not here to defend the tax
2 commissioners, probate judges, the clerks of superior court,
3 but we have had 200 years of history in this state and I
4 think it would be naive for this subcommittee or any other
5 subcommittee in the constitutional revision process to think
6 you're going to propose a change that's going to wipe that
7 history out.

8 I mean I agree with you on a personal level, Jim,
9 there are some abstract policy questions that we can all ask,
10 but, my God, you can't in one fell swoop wipe out the
11 historical tradition of this state, and a lot of people would
12 say, you know, it shouldn't be wiped out.

MR. BURGESS: Well, we can try.

CHAIRMAN COVERDELL: Elinor.

MS. METZGER: I was going to make the additional
comment, I agree with you entirely, you put people under the
pressure of having to be elected instead of allowing them to
do a professional job. It just --

REPRESENTATIVE EVANS: I want to say who's going
to be my clerk of court and my sheriff. I want to have some
voice in that.

MS. METZGER: Even if they're not policy making
people?

REPRESENTATIVE EVANS: Well, who is going to make
that decision, the county commissioners? Somebody has got

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1 to make the decision, and as a voter and a citizen I want to
2 make that decision, have some say-so in that. I don't want
3 the county commissioners to control all of the officers in
4 the county. I think there has to be some independence there.

5 MR. MUNDY: I happen to be the clerk of the court
6 and proud of it, incidentally, but I wouldn't want the job
7 if it wasn't an elected job, I'll tell you that.

8 MS. METZGER: It doesn't hamper you to have to
9 go through the elections process and distract you from --?

10 MR. MUNDY: I've gone through seven of them, and
11 nobody ran but me.

12 CHAIRMAN COVERDELL: Let's come back to -- in other
13 words, we have just been dealing with consolidation. If
14 you enumerate -- let's take the sheriff, I think it's kind of
15 a classic example, we'll use Fulton as an example -- if
16 Fulton County and Atlanta were merged what options would they
17 have in terms of law enforcement?

18 It's my understanding if the 1877 language prevails
19 I've got a police chief of the consolidated government and a
20 sheriff required by the constitution. The government would
21 have no option in dealing with the sheriff because it was
22 mandated by the constitution. Is that a correct evaluation
23 or not?

24 MR. FINDLEY: Under the present provisions of the
25 constitution most of the city-county consolidation amendments

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1 specifically protect the office of sheriff, and I think
2 that's right. Unless you've got specific authority to deal
3 with that office, then I think that he would have to be the
4 chief law enforcement officer in the county, which he is.

5 Now, they have evolved as in Fulton county where
6 the sheriff's principal duties in Fulton County is an officer
7 of the court, he's really not involved in law enforcement.
8 I think he could be if he wanted to, he still has the
9 authority as a law enforcement officer.

10 MR. CARLYLE: Of course you might address this
11 problem by providing for the consolidation of offices by
12 general law in the language providing for the consolidation
of government.

14 CHAIRMAN COVERDELL: I think we ought to note that.
15 Well, from a practical standpoint I agree with
16 what Jay said, I think if the subcommittee eliminates these
17 offices and their enumeration --

18 MR. MUNDY: Could I ask one more question before we
19 leave this?

20 CHAIRMAN COVERDELL: We're not leaving it. We will
21 have grave difficulties with it.

22 Let me ask as a suggestion, is there any way that
23 we could constitutionally provide for these offices and also
24 grant or authorize a procedure by which they could be
25 altered? They're enumerated, but --

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1 MR. BURGESS: They're not enumerated now, and
2 you're proposing to enumerate them.

3 CHAIRMAN COVERDELL: Just take the sheriff, we've
4 got him enumerated.

5 MR. HILL: He is the only one.

6 MR. BURGESS: He is the only one.

7 MR. HENRY: You've got the tax receiver, tax
8 collector, treasurer.

9 CHAIRMAN COVERDELL: Are they not enumerated? I
10 thought they were.

11 MR. HILL: The county treasurer and the tax receiver,
12 tax collector are mentioned in Paragraph 6 which authorizes
13 the General Assembly to consolidate the offices of treasurer
14 and tax receiver and tax collector into the new office of
15 tax commissioner.

16 REPRESENTATIVE EVANS: What about the clerk? That
17 would be another article?

18 MR. HILL: The clerk of court is not mentioned in
19 the constitution specifically. He is mentioned by reference
20 in the sense that it now states that the county officers
21 shall be elected, and by judicial decision it has been
22 determined that clerks of superior court and about six
23 others --

24 REPRESENTATIVE EVANS: How about probate court?

25 MR. HILL: Yes, about six others -- I forget who

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1 all they are.

2 MR. CARLYLE: All of those are by judicial decision
3 because the county officers in Paragraph 8 doesn't list who
4 county officers are. It may list county commissioners up
5 here under Paragraph 6, but it doesn't say that they are
6 county officers; the court has said that. The same way with
7 county treasurer.

8 The question is what constitutes -- who is a county
9 officer subject to be elected every four years having
10 conformed with these residency requirements, and the court has
11 been the one to determine who is a county officer.

12 MR. FINDLEY: Right.

13 MR. HENRY: They have said a county registrar, a
14 county tax assessor, a constable and a grand juror have been
15 held not to be county officers; a clerk of a superior court,
16 a county commissioner and a county school superintendent have
17 been held to be county officers. That's just very limited --

18 CHAIRMAN COVERDELL: What have they said about the
19 tax receiver, collector and the treasurer?

20 MR. HENRY: I think they would be county officers
21 by being mentioned in there, and I think if you tried to
22 combine the office of tax receiver and tax collector into
23 something other than the tax commissioner you would have to
24 get a local constitutional amendment.

25 REPRESENTATIVE EVANS: That's right. That's what



1 we did in our county.

2 MS. GREENBERG: Could we possibly change this
3 radically by making it very flexible and providing that the
4 General Assembly shall provide for county officials and
5 provide that they either be elected or appointed, and also
6 the General Assembly shall provide for their duties and their
7 terms of office and their eligibility and their qualifica-
8 tions, just a very flexible kind of statement in the
9 constitution and take away mention of all these other
10 officers, and that would also cover consolidated governments,
11 counties and cities.

12 MR. CARLYLE: I'm sure you could do that, but the
13 problem is it's --

14 MR. FINDLEY: It's a wild-eyed idea.

15 CHAIRMAN COVERDELL: That would have to come under
16 wild-eyed schemes I'm afraid.

17 REPRESENTATIVE EVANS: That has that snowball's
18 chance of getting through.

19 MR. HILL: We could do this, though, I think that
20 this might be more realistic, to say that any officer that
21 is now an elected official shall not have the office changed
22 to an appointed one without an election. Maybe we could
23 still put in some protection, and then merger with the
24 consolidation provision in the sense that there will be a
25 referendum on consolidation, and as part of that referendum



1 which is the way it's worked with other consolidation
2 efforts, there may be some affect on the elective constitu-
3 tional officers in that county in the consolidation effort,
4 but the fact that the citizens are voting on it is what saves
5 it from being rejected outright.

6 CHAIRMAN COVERDELL: Let me run something by you
7 attorneys here. Could Paragraph 8 and Paragraph 6 be
8 consolidated into one paragraph, and also Paragraph 9 where
9 these officers that are enumerated here are restated, but
10 there is a proviso that allows for modification of the
11 county officers under this section by statute put to a
12 referendum or something like that?

13 MR. CARLYLE: You could say something like unless
14 otherwise provided by law, approved by referendum, the
15 following shall constitute the county officers of the state.

16 CHAIRMAN COVERDELL: Which allows a facility --
17 well, what it does, it doesn't alienate all of these groups
18 in unison hopefully, but it does allow for a local juris-
19 diction to deal with modification they may perceive to be
20 necessary in terms of the way they want to run their
21 government, a protector for both the vested interest and
22 the electorate in that they have to express it openly.

23 Yes, Mel.

24 MR. HILL: That would be an excellent idea. I think
25 it would be very helpful to all concerned to have a clear

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1 statement of who the county constitutional officers are.

2 I mean the question of whether they should be or
3 shouldn't be is not one that can be resolved here, but the
4 fact that there are certain recognized elected county
5 constitutional officers at the present time and we don't know
6 who they are by the constitution, it's something we can
7 rectify by your suggestion, and it would be very helpful.

8 CHAIRMAN COVERDELL: Harvey, does that direction
9 have any merit, or are we just wandering off in the forest?

10 MR. FINDLEY: I think so, Mr. Chairman. I think it
11 sounds like a good approach to it.

12 The flexibility that the General Assembly would have
13 there could present a problem on it, you know, but if that
14 could be achieved it seems to me that would be a sound
15 approach to it.

16 I do think it would be better for them to be named
17 in the constitution. Then there's other problems in this
18 that when the court found that the county commissioners were
19 county officers within the meaning of this constitutional
20 provision on a four-year term, et cetera, it had unintended
21 results I think, and you couldn't even stagger the terms of
22 the county officer any more, for example. If you had a
23 seven-man board or a five-man board initially set up under
24 that decision I don't think you could stagger them.

25 CHAIRMAN COVERDELL: They would all have to be

1 four-year terms?

2 MR. FINDLEY: They would all have to be four-year
3 terms. We've got lots of staggered terms that we've been
4 doing for years, but now under that decision I think it would
5 be illegal to now set up staggered terms of office for
6 county commissioners.

7 Those that are already staggered, it's an
8 accomplished fact, so I don't think it presents a problem,
9 but perspective that comes up fairly often, and that kind
10 of flexibility needs to be --

11 CHAIRMAN COVERDELL: This proviso for the General
12 Assembly would deal with that.

13 MR. FINDLEY: Right.

14 CHAIRMAN COVERDELL: It would also deal with the
15 question like the one I enumerated in Fulton County relative
16 to governmental reorganization. It would basically alter
17 that structure if it were adopted by the people.

18 Does the subcommittee find that to be an adequate
19 answer to Question 2? It places a good bit of responsibility
20 on the staff to consolidate that language or proviso. Is
21 there other comment about it at this point?

22 MR. HENRY: Mr. Chairman, maybe I shouldn't comment,
23 I wanted to speak to something that I see no question in here
24 where I can speak to it.

25 CHAIRMAN COVERDELL: How about letting us try to get

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1 through 3, and then come to that one. We're having a hard
2 enough time.

3 MR. HENRY: You mean write my own question?

4 CHAIRMAN COVERDELL: Right, or enumerate it.

5 REPRESENTATIVE EVANS: Getting back to 2, though,
6 are we going to name the constitutional officers?

7 MR. HILL: Yes.

8 CHAIRMAN COVERDELL: They would be named.

9 REPRESENTATIVE EVANS: Which ones are we going to
10 name?

11 MR. HILL: The ones that have been judicially
12 determined to be constitutional officers. There are seven,
and I don't know -- I can't list them off the top of my head.

13
14 MR. FINDLEY: I can tick them off. Sheriff, clerk
15 of the superior court, tax collector, tax receiver or tax
16 commissioner, judge of the probate court, treasurer -- did I
17 mention him? -- coroner and surveyor. You always forget
18 those, but they're in there too.

19 That would be seven, wouldn't it?

20 The surveyor is actually a county officer as well.

21 MS. GREENBERG: What you're doing then is you're
22 creating constitutional officers, and there's no flexibility --

23 MR. HENRY: No, we're not creating them.

24 MS. GREENBERG: -- because the judiciary can change,
25 their opinions can change with the times, and now the language



1 is mandated in the constitution.

2 MR. CARLYLE: We said unless otherwise provided by
3 law.

4 MR. BURGESS: I think you ought to add the county
5 engineer.

6 MR. TIDWELL: Those are not the only ones. You've
7 got the county school superintendent, the members of the board
8 of education, the county commissioners.

9 REPRESENTATIVE EVANS: I was thinking about some of
10 those. A county surveyor, I really don't know what a county
11 surveyor does.

12 MR. BURGESS: He surveys.

13 REPRESENTATIVE EVANS: For who?

14 MR. BURGESS: For the county. The people that can't
15 afford to hire a surveyor, he comes out and surveys for them.

16 CHAIRMAN COVERDELL: Do you suppose we could sneak
17 by an elimination of the surveyor?

18 REPRESENTATIVE EVANS: That's what I'm saying, to me
19 it's ridiculous to make a county surveyor -- I've been
20 practicing law for twenty some years now and I never have
21 known a county surveyor to do anything other than put behind
22 his name C.S.

23 MR. BURGESS: Sometimes they go out and survey.

24 REPRESENTATIVE EVANS: Why not let the county
25 commissioners, if they need some surveying hire somebody to go



1 out and do it? They don't need a --

2 MR. BURGESS: Why not let them appoint a coroner,
3 or why not let them appoint a tax collector?

4 REPRESENTATIVE EVANS: The coroner probably would be
5 fine. Now, the tax commissioner, I want to vote on him because
6 I may not like him.

7 MR. HILL: Is the coroners' lobby pretty strong?

8 (Laughter.)

9 A VOICE: Stronger than you think.

10 REPRESENTATIVE EVANS: A doctor ought to be a
11 corner in a sense, he needs medical training of course.
12 Down in my county you couldn't get a doctor to run for
13 coroner, but if he was appointed he might serve.

14 Those are some of the things. I'm saying we need to
15 list some of them in there, but we don't need coroner as an
16 elected official, nor do we need in my opinion a surveyor as
17 an elected county official.

18 CHAIRMAN COVERDELL: Let's start the other way.

19 If you were going to enumerate any of them -- and
20 Jim, you're of the view that none should be enumerated --

21 MR. BURGESS: No.

22 CHAIRMAN COVERDELL: If you were going to enumerate
23 them, which ones would you recommend be enumerated?

24 MR. FINDLEY: I think the sheriff, the judge of the
25 probate court, the clerk of the superior court, the tax

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1 commissioner.

2 MR. BURGESS: Finance commissioner.

3 MR. FINDLEY: The county school superintendent.

4 We get into a problem when we start this enumera-
5 tion, really.

6 MR. TIDWELL: Mel raises a question, you ought to
7 have a compelling reason to put something in the constitution;
8 the Select Committee is going to want you to have a compelling
9 reason, and I haven't heard that compulsion rise.

10 CHAIRMAN COVERDELL: It hasn't been aired.

11 Mel came close to it when he asked how strong was
12 the lobbying group for coroners.

13 MR. TIDWELL: You'll find that they'll all join
14 hands.

15 CHAIRMAN COVERDELL: If you didn't enumerate, now
16 would you still have the section relating to a county
17 officer, an election and term? If none were enumerated you
18 would still have that section in the constitution; is that
19 correct, Jim?

20 MR. BURGESS: I think you could just say that county
21 officers are deemed to be any officer elected to office in
22 the county government. You could do that.

23 MR. HENRY: You wouldn't necessarily by taking them
24 out of the constitution preclude them from being elected. By
25 taking out the enumeration and leaving in here county

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1 officers shall be elected you're going to leave it up to the
2 court to decide who is a county officer and who has to be
3 elected, and your public policy is going to be made over
4 there at the judicial building.

5 MR. BURGESS: Not if you say in the constitution
6 that any officer elected is a county officer.

7 REPRESENTATIVE EVANS: But who's going to say who's
8 to be elected? Somebody has got to say -- just say any
9 elected office, but somebody has got to say who is going to
10 be elected.

11 MR. BURGESS: That's it. If they decide you elect
12 the engineer, then he becomes a county officer.

13 REPRESENTATIVE EVANS: Who is they? That's what
14 I'm saying, who is they who is going to say who's going to be
15 elected?

16 Are they going to be the county commissioners, or
17 are they going to be the courts, or who?

18 MR. BURGESS: That's a good point.

19 CHAIRMAN COVERDELL: I think you've got to enumerate
20 that the county commissioner has to be enumerated, that he
21 shall be elected and he is a county officer, don't you? Can
22 you get away with --

23 MR. HENRY: By court decision he's a county officer.

24 CHAIRMAN COVERDELL: We're changing what the court
25 may decide theoretically here.

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1 MR. FINDLEY: The fact of the matter is --

2 MR. TIDWELL: What do you accomplish when you
3 enumerate?

4 MR. FINDLEY: The fact of the matter is they are
5 enumerated, it's just that they aren't spelled out in the
6 constitution. The court has read the constitution and reading
7 the constitution they have enumerated them, so they're in
8 the constitution as if they were listed.

9 CHAIRMAN COVERDELL: What if it said this -- not
10 trying to get it in its actual form, but what if it said
11 county commissioners are county officers and that brings them
12 under this proviso of four years, et cetera, and any office
13 they, the county commissioners designate by requiring
14 election of that office.

15 REPRESENTATIVE EVANS: That would leave it up to the
16 county commissioners to set up the clerk of the court or the
17 sheriff and so forth, and that wouldn't work.

18 CHAIRMAN COVERDELL: But then you come back to the
19 question, you're making us "they." We're sitting here
20 trying to determine which ones, and it's just been pointed
21 out you've got various systems already in existence, we have
22 to provide except however in this case it's that way, and in
23 another case it's something else.

24 The minute we start listing --

25 MS. GREENBERG: Do we want uniformity of county

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1 officers county by county? That's our premise, do we want
2 uniform officials as far as election and term of office and
3 eligibility requirements, compensation, whatever?

4 CHAIRMAN COVERDELL: I'm of the view that we don't.

5 MS. METZGER: That's what it says now I believe in
6 Paragraph 6.

7 CHAIRMAN COVERDELL: We're trying to study it. Of
8 course it's been altered.

9 MR. HENRY: If you don't enumerate either the fact
10 that county officers have to be elected or who the county
11 officers are, leave that up to the General Assembly, then
12 you're setting public policy, that's where public policy
should be set I would think.

14 CHAIRMAN COVERDELL: Here?

15 MR. HENRY: At the General Assembly. Do you have
16 a fear the General Assembly is going to say "In my county
17 we're going to pass a little old local law that allows me to
18 appoint all the county commissioners?"

19 CHAIRMAN COVERDELL: No. I think there would be
20 concern about the General Assembly having that power.

21 Representative Evans is concerned about county
22 commissioners, somebody else would be concerned about the
23 General Assembly.

24 REPRESENTATIVE EVANS: I just use that as an example.
25 I don't think the county commissioners ought to appoint every

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1 officer in the county.

2 I think they have a certain prescribed duty, I
3 don't think they ought to appoint the clerk of the probate
4 court, I don't think they ought to appoint the clerk of the
5 superior court or the sheriff.

6 MR. CARLYLE: Let's take superintendent of schools.
7 How many forms do we currently have? Some are elected, some
8 are appointed, some by the grand jury --

9 MR. TIDWELL: I don't know of any school superin-
10 tendent that's appointed by the grand jury.

11 REPRESENTATIVE EVANS: You're talking about the
12 membership of the board or you're talking about the school
superintendent?

14 CHAIRMAN COVERDELL: The superintendent.

15 REPRESENTATIVE EVANS: The superintendent is either
16 elected by the people or appointed by the board.

17 CHAIRMAN COVERDELL: Let's stay on that fellow.
18 How would you have him in this constitution?

19 REPRESENTATIVE EVANS: How is he in there now?

20 MR. HENRY: That's not your bailiwick, that's over
21 in Article VIII. They have already provided for ways to have
22 county boards elected or appointed, ways to have superin-
23 tendents elected or appointed. They have already developed
24 that.

25 The county officers that you have now, if you took

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1 them out you could provide by general law that all the
2 sheriffs in all the counties shall be elected and there shall
3 be no more than ten county commissioners per county who shall
4 be elected, and there shall be a county coroner who shall be
5 elected for a term of X amount of years as provided by law,
6 by general law.

7 MS. VAN AMBERG: I don't know if this is being
8 brought into that, but if you want uniformity county by county
9 can't you say in the constitution there shall be uniformity
10 in who the county officers are and they shall be enumerated
11 as provided by law, the qualifications --?

12 CHAIRMAN COVERDELL: You would run into the same
13 problem, they would be concerned the general law wouldn't
14 include them.

15 MR. HILL: Charlie, getting back to the practi-
16 calities again, do you feel we would have to have some
17 protection for those that are now elected to state that,
18 you know, their offices cannot be abolished without some
19 referendum?

20 Do you feel there's any way to get around that
21 problem other than to state that a referendum would be
22 necessary?

23 MR. TIDWELL: Well, that bothers me just on the
24 practicality of it. The county officers are simply not going
25 to stand for that provision in the constitution, any

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1 provision like that. Their lobby with the General Assembly
2 would be sufficient to get it out.

3 I know these are not considerations that you're
4 just bound to, but that's just not going to happen. They
5 will all join hands, and when you get the sheriffs, all the
6 sheriffs, the clerks of the courts, the probate judges,
7 that's the end of it.

8 MR. HILL: I'm saying they are protected.

9 MR. TIDWELL: They're protected now, and they want
10 to continue to be protected.

11 MR. HILL: The language that the chairman proposed
12 earlier was that unless otherwise provided by law,
13 conditioned upon a referendum, the following shall be
14 constitutional officers; they would all be protected unless
15 and until there's a referendum about it in their area.

16 A VOICE: That's not enough protection, I don't
17 think.

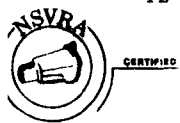
18 MR. TIDWELL: My judgment would be that would not
19 be acceptable.

20 MR. HILL: It's less protection because the
21 referendum is not enough, they want to have a constitutional
22 amendment to get themselves changed.

23 CHAIRMAN COVERDELL: Harvey?

24 MR. FINDLEY: Back to the county officers and the
25 enumeration of them, I think the problem arises because the

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1 court has construed county officers, gone over in Article
2 VIII, picked up the county school superintendent and all
3 other things, and the county school superintendent should be,
4 as Mike pointed out, handled in Article VIII, whatever is
5 decided to do over there, and he really ought not to have
6 anything to do with Article IX, but the court decisions have
7 construed county officers to mean these people. While I
8 can't think of the term right now -- but the answer, if you're
9 going to enumerate them and take this approach that you're
10 talking about, if that's the final decision is to set up a
11 new category and to call them something equivalent to county
12 officers that enumerates what we're really talking about
13 when we're talking about county officers, and we talk about
14 the sheriff, the clerk of the superior court and the judge
15 of the probate court and a couple of other people really
16 we're talking about. We're not talking about county school
17 superintendents. Even county commissioners are dealt with
18 separately in the constitution, and that language dealing
19 with county commissioners ought to stand on its own feet
20 it seems to me without the courts incorporating into that
21 paragraph dealing with county officers the county commissioners
22 and school superintendents and so forth.

23 Whether or not you can still control the existence
24 of those offices by general law conditioned on a referendum
25 is just a policy decision that Charlie points out the problems

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1 with if you go that way.

2 It seems to me that if you're going to authorize
3 city-county consolidation or county-county consolidation
4 that you have to deal with the abolition of those offices
5 somehow, because you can't have a county-county consolidation
6 with a whole group of officers for two counties when you've
7 only got one.

8 CHAIRMAN COVERDELL: Well, we have really hit a
9 tangle here.

10 I still think we come back at least at this point
11 in time -- I don't think we should necessarily -- we might
12 recognize that something we propose would be altered, but to
13 never, never express it I think might be a mistake -- let it
14 be altered.

15 I think the idea of some form of enumeration, not
16 including the surveyor -- we all seem to have agreed on that,
17 perhaps not the coroner, but the chief officers here
18 enumerated.

19 I don't quite follow not including the county
20 officials -- I mean the county commissioners as county
21 officers because you've got the proviso what we're talking
22 about that would allow the statute adopted by referendum,
23 so if you wanted two-year staggered terms or something to
24 that effect to alter the manner in which you structure the
25 qualifications and/or length of term you could do so.

1 MR. FINDLEY: I agree, Mr. Chairman. It would
2 depend on how you structure the language.

3 CHAIRMAN COVERDELL: It may require a separate --
4 My idea would be they would be included as a county officer
5 as these others.

6 MR. RICKETTS: I think Harvey is saying that with
7 the court's interpretation that presently, unless additional
8 changes were made --

9 CHAIRMAN COVERDELL: It would be four years.

10 MR. RICKETTS: Right.

11 CHAIRMAN COVERDELL: Okay. Well, you either have to
12 allow for staggered terms somewhere, or else rely on the
statute to be submitted to referendum to allow it.

14 MR. FINDLEY: The county commissioners, depending
15 on what's finally done, are going to have -- are mentioned
16 presently in another provision of the constitution, the
17 General Assembly may create county commissioners in those
18 counties that need them, and then there's another provision,
19 and provide for their powers and duties, so you've got other
20 provisions on county commissioners anyhow. See what I mean?

21 CHAIRMAN COVERDELL: Yeah, so we would exclude them,
22 rely on the other provisions.

23 MR. FINDLEY: On the other provisions.

24 CHAIRMAN COVERDELL: We would put a proviso in there
25 that allows for alteration of the titles only by referendum,



1 a law, a general statute that was submitted to referendum,
2 and in all probability that will be stricken because there's
3 the politics of the question, but it is an expression of
4 something I think makes sense as these governments try to
5 deal with the changing times, and I think for us to just
6 totally avoid it at this point in time would be a mistake.

7 Now, I don't know which of these -- let's see if
8 we can't decide which should be enumerated, and then we will
9 close to our next meeting, which will leave us with one
10 question remaining and the unwritten question that Mike was
11 going to present to us, and then we will move into language.

12 Let's get some help. Charlie, give us the key ones
13 to be enumerated, the sheriff, the tax collector, the
14 commissioner, whatever.

15 REPRESENTATIVE EVANS: Some counties have a tax
16 collector and a tax receiver, some few, but most of them I
17 think have now consolidated that into one officer, tax
18 commissioner. I have never known the difference between the
19 two, tax collector and tax receiver, but --

20 MR. HILL: One takes in the money, and the other
21 one collects it.

22 CHAIRMAN COVERDELL: A tax somebody and the
23 sheriff. Now who else?

24 We're leaving the superintendent out in deference
25 to another article.

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1 REPRESENTATIVE EVANS: He's going to be covered
2 under Article VIII, isn't he?

3 CHAIRMAN COVERDELL: We left the county commissioners
4 out.

5 MR. BURGESS: Why have we left the county
6 commissioners out?

7 MR. HILL: They are enumerated in another article.
8 The county commissioners are enumerated in another section.

9 CHAIRMAN COVERDELL: Harvey and I were just going
10 through that.

11 MR. HILL: I was following the conversation, but,
12 Harvey, the county commissioners are dealt with in Article IX.

13 MR. FINDLEY: That's right.

14 MR. HILL: They should be also addressed in this
15 enumeration; right?

16 MR. FINDLEY: It depends on how you structure I
17 think, Mel, because they're addressed in Article IX. You
18 can't just mention county commissioners I don't think in any
19 kind of enumeration and let that be it in the constitution,
20 you've got a provision that says the General Assembly can
21 create boards of county commissioners in those counties that
22 need them and provide for their powers and duties, et cetera,
23 so it would depend on how you structure it as to whether or
24 not that language -- If you have a separate paragraph
25 dealing with county commissioners, then I think you could

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1 take care of their status there it seems to me rather than
2 enumerating them among county officers.

3 When most people think of county officers, they're
4 thinking of the sheriff, the clerk of the superior court,
5 the judge of the probate court and the tax official or tax
6 receiver.

7 MR. BURGESS: Why don't you go ahead and leave it to
8 that group?

9 MR. FINDLEY: The county surveyor doesn't need to be
10 mentioned for obvious reasons already mentioned, the coroner
11 under the present provision of the constitution that office
12 could be abolished and a medical examiner created, the
13 treasurer could be abolished under the present provisions of
14 the constitution, so they aren't now protected, so I don't
15 see any need why the constitution would need to enumerate
16 them because they aren't currently protected under the
17 constitution.

18 MR. BURGESS: Also your banks perform the treasury
19 function today, you don't really need it.

20 CHAIRMAN COVERDELL: Who are the four we have
21 enumerated?

22 MR. FINDLEY: The sheriff, clerk of court, the
23 judge of probate and the tax collector-tax receiver.

24 CHAIRMAN COVERDELL: We're stopping there, and we
25 will leave to the staff in conversation with Harvey whether

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1 or not the county commissioner requires subparagraphs and
2 how that interlock would occur.

3 REPRESENTATIVE EVANS: You thought this was going
4 to be an easy one, didn't you?

5 CHAIRMAN COVERDELL: Okay.

6 When is the other group meeting?

7 MR. HILL: Well, they're probably going to change
8 their meeting. It's tentatively set for the 13th of August,
9 but I think it will be changed because there's too many
10 committees meeting that day, so the week of the 11th or the
11 18th they will be meeting.

12 If we could make it the week of the 4th, either the
13 6th or the 7th -- How about that?

14 CHAIRMAN COVERDELL: That's fine.

15 MR. HILL: The 6th is a Wednesday. Do you want to
16 make it 9:30 on the 6th?

17 CHAIRMAN COVERDELL: Let's make it the 7th.

18 MR. HILL: Thursday, 9:30. Okay. August 7.

19 CHAIRMAN COVERDELL: Will that give you time to do
20 your language work?

21 MR. HILL: We'll do what we can. We will try to
22 have something for you to react to.

23 CHAIRMAN COVERDELL: All right.

24 (Whereupon, at 12:00 noon the subcommittee meeting
25 was adjourned.)

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Subcommittee Meeting Held on July 23, 1980

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STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

SUBCOMMITTEE 2 ON COUNTY AND
MUNICIPAL FINANCE

BRANDENBURG & HASTY — SCIENTIFIC REPORTING



Room 402
State Capitol
Atlanta, Georgia

Wednesday, July 30, 1980
1:30 p.m.

1 PRESENT :

2 COMMITTEE MEMBERS :

3 CHAIRMAN ED S. SELL
4 REPRESENTATIVE JACK CONNELL
5 MR. BOB KNOX
6 MR. RAY JACKSON

7 ALSO PRESENT :

8 MELVIN B. HILL, JR.
9 MICHAEL HENRY
10 VICKIE GREENBERG
11 JACK MORTON
12 STEVE VAUGHN
13 JAY RICKETTS
14 ED SUMNER
15 KEN JONES
16 JIM KITTRELL
17 TOM STEVENS

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P R O C E E D I N G S

1
2 CHAIRMAN SELL: Gentlemen, the hour has arrived.
3 We may have some others to come in, but I don't know who is
4 coming and who isn't. I did get a telephone call from Hal
5 Davis who I believe is from Valdosta, who said that he would
6 not be here today, so suppose we go ahead and get started.

7 Mike Henry and Mel have taken our proposal which we
8 tentatively drafted at the last meeting and which was sent
9 out to you with some minor revisions later on, they have
10 taken it and treated it further in an effort to reduce some
11 of the verbiage, and I think, Mike, if you will pass that out.

12 Suppose for the record that we go around the table
here and let everyone say who he is so that the reporter can
14 get that information. Jack, suppose we start with you.

15 REPRESENTATIVE CONNELL: Jack Connell from
16 Augusta, member of the committee.

17 CHAIRMAN SELL: Ed Sell, Macon, member of the
18 committee.

19 MR. JACKSON: Ray Jackson, Macon, member of the
20 committee.

21 MR. HILL: Mel Hill with the staff.

22 MR. KNOX: Bob Knox from Thomson, member of the
23 subcommittee.

24 MR. HENRY: Mike Henry with the staff.

25 MR. RICKETTS: Jay Ricketts with the County

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1 Commissioners Association.

2 MR. SUMNER: Ed Sumner, Georgia Municipal
3 Association.

4 MR. JONES: Ken Jones, Georgia Municipal Association.

5 MR. KITTRELL: Jim Kittrell, Seaboard Coastline
6 Railroad.

7 MR. STEVENS: Tom Stevens, City of Atlanta.

8 MR. KNOX: Mr. Chairman, I got a letter, I gave you
9 the original there, from Hobby Stripling who is the president
10 of the Georgia Municipal Association, just raising a couple
11 of points for us, and I'll just pass everybody out copies if
12 they would like -- just pass that down and everybody can have
the benefit of it.

14 GMA has a committee that's sort of been looking at,
15 following all of the other committees, they have been working
16 and those are just suggestions they are raising.

17 CHAIRMAN SELL: Suppose you take a minute to look
18 at the letter which Bob Knox has distributed, and we will
19 bear that in mind as we walk through these proposals.

20 Do you have extra copies of this letter for Mr.
21 Morton?

22 (Pause.)

23 MR. KNOX: I would like to try to peg them if you
24 would like as we go through, and just try to bring them out.

25 CHAIRMAN SELL: Why don't you do that.

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1 We have already handled some of these.

2 (Pause.)

3 CHAIRMAN SELL: All right. You should have before
4 you now then --

5 Mr. Reporter, I think you may wish to note for the
6 record that the last two arrivals are Mr. Jack Morton and
7 Mr. Vaughn. What is your name?

8 MR. VAUGHN: Steve Vaughn.

9 CHAIRMAN SELL: They both are with the Tax Reform
10 Commission.

11 MR. MORTON: Tax Reform Commission, yes, sir.

12 CHAIRMAN SELL: All right. You should have before
13 you now three documents. One will be on legal cap which is
14 essentially the revision which resulted from our meeting of
15 July the 30th.

16 You will have a mimeographed photocopy of a document
17 on letter size paper which represents the work of the staff
18 in abbreviating what we had otherwise done in the legal cap
19 draft; and

20 You have before you the letter from Mayor Hobby
21 Stripling who is president of the Georgia Municipal Associa-
22 tion about some matters of interest to that association.

23 Suppose we walk through what we have here, and if
24 there are any changes to be -- which the committee wishes to
25 make or which anyone wishes to have considered we can make

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1 them, and perhaps we can during the course of the afternoon
2 adopt a sufficient number of these to result in a recommenda-
3 tion to the full Article IX Committee.

4 We are supposed to complete our work in time to
5 report to the Article IX Committee on or before September the
6 1st is my understanding, and so we need to conclude it today
7 if we can; if we can't, we'll have to come back in short
8 order.

9 Mel and Mike, would you now like to walk through
10 these documents for us?

11 MR. HILL: Okay, Mr. Chairman. I think what we will
12 do is take the draft that we had prepared based on the last
13 committee meeting, the long version, and compare it in each
14 case with the provision that we have. In most cases there is
15 no substantive change between the version that you have in
16 in the long sheet and the version the staff came up with,
17 it's merely an effort to editorially revise the draft here to
18 shorten and clarify some provisions.

19 We can just start with Paragraph I, Purposes of
20 Taxation, and there are two alternatives as this committee
21 had outlined the last time.

22 Alternative 1 is similar in both these two versions.
23 Alternative 2 we didn't draft because we felt this Alternative
24 2 as on this long sheet is adequate if that's the alternative
25 you should choose.

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1 That would be the first topic of discussion, Mr.
2 Chairman.

3 MR. KNOX: Basically the wording in the short sheet
4 I see here is basically the same as in Alternative 1 of the
5 committee report; right?

6 MR. HILL: Yes, that's right.

7 CHAIRMAN SELL: Yes. There's a change in format
8 largely.

9 MR. KNOX: The wording is about the same.

10 MR. HENRY: One thing in the staff proposal, I
11 added back in "Nor shall any taxes collected by allocated
12 for any particular purpose" which is the limitation that's
provided now.

13
14 I was a little vague on what the resolution of that
15 issue was at the last meeting and decided to go ahead and
16 include it for you to omit if that policy decision was to be
17 made.

18 CHAIRMAN SELL: All right. Do we have any discus-
19 sion on that?

20 First I believe that Mayor Knox would say that he
21 would prefer to delete the phrase "or municipal corporation"
22 and the phrase "and municipal governments" from all of
23 paragraph 1 in both cases.

24 MR. KNOX: Not necessarily. As I recall our last
25 meeting we were a little concerned when we delineated the



1 purposes for taxation in Alternative 2 and put in municipal
2 governments in that context because we thought it would
3 limit what we got now as far as municipal governments is
4 concerned, but as far as municipal governments in the
5 Alternative 1 and in the Paragraph 1 that we have here, I
6 don't think that is all that objectionable.

7 CHAIRMAN SELL: I was just looking at Mayor
8 Stripling's letter. He says that there's very little to be
9 gained by placing municipal power of taxation in the
10 constitution, and so I took it that --

11 MR. KNOX: I think that again gets back to the same
12 alternative we talked about basically. That would not be an
13 irrevocable position saying that we didn't want municipal
14 governments in there anyway. I think it basically gets back
15 to what we said at the last meeting.

16 CHAIRMAN SELL: Municipal governments are not in
17 Alternative 2.

18 MR. KNOX: Right.

19 CHAIRMAN SELL: Well, for those of you who --

20 MR. KNOX: The counties might to think about it,
21 what they have to say.

22 CHAIRMAN SELL: Jay, do you have any thoughts?

23 Our thinking before was that Alternative 1 would
24 be satisfactory if the powers subcommittee made adequate
25 provision for powers.

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1 MR. KNOX: That's right.

2 CHAIRMAN SELL: Basically we preferred Alternative
3 1 because of its brevity and its breadth really, but we're
4 a little afraid of the history of the Supreme Court decisions
5 if broad powers, adequate powers are not granted in the
6 powers section.

7 Yes, Ed.

8 MR. SUMNER: I had one question on Paragraph 1. It
9 says here purposes authorized by general law. What does that
10 do to local charters? A charter is not a general law, you
11 know, and we get our powers now -- they flow primarily from
12 charters. You know, basically your charter wouldn't mean
much I guess.

14 CHAIRMAN SELL: This is on the --

15 MR. SUMNER: On Paragraph 1 over here. The other
16 one, the long draft is a little bit wordy. It says as
17 authorized by the General Assembly. That doesn't say whether
18 it's general or local.

19 MR. KNOX: Yes, that's right.

20 MR. SUMNER: That would be the only question I would
21 have. You know, I'm not sure -- it probably wasn't intended
22 to do that I don't think, but that would preclude the charter
23 where it gives all the powers to the cities now basically,
24 the basic powers by the home rule statute, the home rule
25 provisions.



1 MR. HENRY: I think that's right. It was an
2 oversight.

3 This provision is drafted in conjunction also with
4 the Article VII committee which I think is going to also
5 expand the purposes for which the state can tax to any lawful
6 purpose as provided by law, and given the restrictive
7 interpretation of the present Section V and the present
8 Article VII I think that this wouldn't be necessarily
9 contingent upon a change in Article VII, but it would be
10 enhanced by that type of change in Article VII, but this
11 would open the door I think for the General Assembly to
12 react to changing times in setting public policy without
13 having to go back to the constitution and amend the
14 constitution to state a purpose for which -- well, in the
15 present case a county can tax, but with this it would be
16 both county and municipal government.

17 CHAIRMAN SELL: Well, I think the point is that a
18 municipal charter is not a general law.

19 MR. KNOX: Yes. I think that wording would probably
20 have to get back to the same type wording that we've got.

21 MR. SUMNER: Just take out the word general and say
22 as provided by law.

23 CHAIRMAN SELL: As provided by law.

24 MR. SUMNER: That's the only change that would have
25 significant impact.

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1 REPRESENTATIVE CONNELL: Take out the word general
2 in the second line.

3 MR. HILL: Perhaps it would be more accurate to say
4 the governing authority of any county or municipal corpora-
5 tion may exercise the power of taxation.

6 We have used that language in the home rule
7 provisions, and I think that would be the governing authority
8 of any county or municipal corporation.

9 CHAIRMAN SELL: You would insert "the governing
10 authority"?

11 MR. HILL: Yes.

12 CHAIRMAN SELL: What about the prohibition against
allocations for particular purposes?

13 That was left out of our earlier draft, and I can
14 tell you why it was left out. As a result of some litigation
15 that arose over in Bob Knox' area primarily in the Richmond
16 County Business League litigation, the Supreme Court of
17 Georgia held in a series of five of those cases as I recall
18 the Supreme Court of Georgia indicated that moneys collected
19 from license fees from the unincorporated area were required
20 to be spent in the unincorporated area, and during the course
21 of the litigation there was made the point that since the
22 constitution -- Jack, you may remember all of this litigation
23 too -- since the constitution prohibited the allocation of
24 local revenues that you couldn't allocate it to, you couldn't
25



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1 allocate the license tax receipts to the unincorporated area,
2 and the Supreme Court as I recall held no, that what that
3 meant was you couldn't allocate it for a particular purpose
4 but you could allocate it to a particular area, and I think
5 probably the prohibition against allocation for a purpose was
6 left out just to avoid that hassle in the future.

7 I have no particular strong feelings about it one
8 way or the other. Do you have some?

9 MR. KNOX: What was the thinking of the staff in
10 putting that in?

11 MR. HENRY: Well, primarily to include present
12 limitations. My impression of that case was that the court
13 said they didn't rely on this provision saying that you
14 couldn't allocate it for any particular purpose, but they
15 carved out their own saying that where you collect it only in
16 the unincorporated area you could only spend it in the
17 unincorporated areas, said that it wasn't for a particular
18 purpose.

19 CHAIRMAN SELL: That's correct.

20 MR. HENRY: So it really wasn't a construction of
21 this provision, but it was a -- they excused this provision.

22 CHAIRMAN SELL: They said it didn't apply.

23 MR. HENRY: Right.

24 My draft, you know, I would want it to reflect the
25 positive decision made by the committee, but that was my --



1 I was just retaining the present limitation in light of the
2 fact that I didn't think the court -- while they said this
3 provision didn't apply, I thought that perhaps it was a
4 concept that had merit, that applied in other instances that
5 I couldn't off the top of my head think of, but the fact that
6 it was in there I didn't mean to change anything of substance.

7 MR. HILL: I would say in light of Amendment 19,
8 you know, we're not sure yet exactly what's going to happen
9 to that authorization; it's not going to be dropped certainly,
10 and the power to district and provide for the taxation within
11 the district for a particular service is going to be
12 retained. In light of that provision I think we would have
13 to say unless otherwise provided by this constitution or by
14 law no levy need state a particular purpose, and if we had a
15 district that would be happening. Don't you agree, Mike?

16 CHAIRMAN SELL: It's a question of the allocation of
17 revenues rather than the stating of a purpose of the levy.

18 The present law, the present constitution says that
19 no levy need state the purpose except as required by law and,
20 frankly, I wanted that left out because I can't find any law
21 that requires it, and I'm afraid that there's some population
22 statute that's going to pop up and -- that was designed for
23 Fulton County fifty years ago and now affects Bibb County or
24 Richmond or somebody else, and Richmond county has not for
25 years stated the purpose for which they --



1 REPRESENTATIVE CONNELL: I doubt if they know.

2 (Laughter.)

3 MR. SUMNER: Let me raise a question, something you
4 raised on the statute I'm not sure that -- what about hotel
5 and motel tax? Doesn't that statute require it be used for
6 the purposes of promoting tourism and that type thing, a
7 certain percent? How does that compare with this type of
8 thing?

9 REPRESENTATIVE CONNELL: How do you define what's
10 promoting tourism? The Civic Center, that promotes tourism.

11 MR. SUMNER: Is that allocating it for a particular
12 purpose?

13 MR. HENRY: I think the taxes levied to retire a
14 general obligation debt would be a tax allocated to a
15 particular purpose, but that's again provided by the
16 constitution.

17 MR. KNOX: I think it might be well to do what Mel
18 suggested, simply as the existing wording, the existing
19 constitution very simply "and unless otherwise provided by
20 this constitution or by law."

21 CHAIRMAN SELL: Well, of course, you could run again
22 into the proposition of these population bills that apply to
23 cities as well as counties. That was my fear of it.

24 MR. SUMNER: I raised a lot of questions about it
25 when you all took it out the last time, and really from the

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1 position -- I don't know, what does it mean if you take it out
2 or leave it in -- what was the reason for it being in there
3 in 1877 and, you know, there must be some -- well, it may not
4 necessarily, but you would think there was some reason it was
5 in the '77 and '45. Was there a thought to it or, you know,
6 what evil was it guarding against, was it trying to correct?
7 I don't know. I just wasn't sure of all the implications
8 myself and what abuse it might open up.

9 MR. HILL: It strikes me as a general principle of
10 taxation that the government does not have to specify the
11 reasons ahead of time that it's going to need this money,
12 and to me it was just a general statement of principle about
the foundation.

14 Can our tax experts lend any light on this subject?

15 MR. SUMNER: Do you think it was to protect the
16 local governments saying that someone couldn't come in and
17 sue and say you've got to say what part goes to police and
18 what part goes to --?

19 Is it really a protective thing for cities and
20 counties? I just don't know.

21 MR. HENRY: I would think it would be similar to
22 the state prohibition against the earmarking of funds where
23 you get to a point where you have taxes with automatic
24 appropriations and your governing body would have no
25 discretion where to allocate those taxes, and all your taxes

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1 are collected for something, and you may have a need arise
2 where you have no revenues to meet that need.

3 That was my impression of it, was just a basic
4 prohibition against the earmarking of tax revenue. I think
5 both of them put together provide a pretty thorough
6 prohibition.

7 CHAIRMAN SELL: What about the hotel and motel tax?

8 MR. VAUGHN: As I understand the law, as I read it
9 there is legislative intent language in there, and there was
10 some discussion and debate at that time as to whether or not
11 it could be mandated, and ultimately it was decided it could
12 not be mandated, so there's a big long paragraph in there
13 stating it's the intent of the General Assembly that they
14 provide this money for the promotion of tourism and commerce
15 or whatever else the language is with no specific mandatory
16 requirement because it's not being followed now. The
17 proceeds --

18 CHAIRMAN SELL: The local tax ordinances with which
19 I'm familiar do allocate it.

20 MR. VAUGHN: Yes, the local ones do, but the general
21 law does not.

22 CHAIRMAN SELL: Right.

23 MR. VAUGHN: And some local ordinances do not
24 allocate any of it, and some allocate all of it. It's all
25 in between.

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1 CHAIRMAN SELL: The question is, would this
2 prohibit the local governments --

3 MR. SUMNER: It just says by law, that would be --
4 an ordinance is a special law. Is that what's contemplated,
5 or would it have to be by the General Assembly?

6 CHAIRMAN SELL: This just says "nor shall any taxes
7 collected be allocated for any particular purpose," period.

8 MR. HENRY: Well, to qualify by "unless otherwise
9 provided by law" at the beginning of that sentence --

10 MR. SUMNER: I guess an ordinance is a local law.
11 That allocates it, I guess, a special ordinance.

12 CHAIRMAN SELL: Frankly I had not read that
13 qualifying paragraph, qualifying clause to apply to both.

14 MR. KNOX: I hadn't either, to tell you the truth.
15 I don't think it does the way it's written.

16 CHAIRMAN SELL: I had read unless otherwise provided
17 by law no levy need state the particular purpose, but in any
18 event there shall be no allocation. That's the way I had
19 read it.

20 MR. HENRY: That's a misstatement then, because it's
21 intended to apply to both.

22 CHAIRMAN SELL: Do we have a motion on this?

23 MR. KNOX: It appears to me if we just reword the
24 second clause that we've got there which begins "nor shall
25 any taxes be collected", the qualifier would fit with both

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1 of them, we're doing what everybody wants to do it seems to
2 me, although I guess that still throws it back, Ed, to your
3 same problem.

4 CHAIRMAN SELL: We still have the same problem about
5 the local special laws, population bills.

6 We break it down to eight decimal points in Bibb
7 County and advertise it that way, so it doesn't bother us,
8 but I do know that there are some counties, and Richmond is
9 one of them, that doesn't do that.

10 MR. JACKSON: Jack, isn't it Columbus that had
11 something on the ballot to allocate all of their taxes this
12 past time that did not pass? You may be more familiar with
13 it.

14 MR. MORTON: They had a Proposition 13 kind of
15 thing, but I don't remember any allocation.

16 MR. JACKSON: If you left this phrase out would you
17 get involved in that?

18 MR. MORTON: I don't think so.

19 MR. JACKSON: I vaguely recall --

20 MR. HENRY: I think at the very least we could put
21 the provision as it stands right now back into this draft.

22 MR. RICKETTS: Mr. Chairman, couldn't you take care
23 of your problem by moving the qualifying or the phrase at the
24 end of that sentence, say "no levy need state the particular
25 purpose for which the same was made, nor shall any taxes



1 collected be allocated for any purpose except by law
2 enacted after the effective date of this amendment" so that
3 you would wipe out your population bills that you're
4 concerned about that have been enacted prior to the effective
5 date of the amendment?

6 MR. KNOX: You could wipe out some other things too
7 if you did that that you don't want to wipe out.

8 MR. RICKETTS: Like what?

9 MR. KNOX: Like you're talking about the hotel-motel
10 tax or anything else that is presently in effect that does
11 allocate.

12 MR. SUMNER: Saying as a statement of general
13 principle, I don't recall how it's worded, it's just a
14 general intent, just saying that ordinances that allocate it
15 would have to be redone by the locals after the effective
16 date. That wouldn't be a problem.

17 MR. HENRY: To clarify just a drafting point here,
18 do you think that if the policy decision is to retain these
19 two limitations, do you think that if we take "unless
20 otherwise provided by law" from the first part of the sentence
21 and put it at the end so that the sentence would read "No
22 levy need state the particular purpose for which the same
23 was made, nor shall any taxes collected be allocated for any
24 particular purpose unless otherwise provided by law," do you
25 think that "unless otherwise provided by law" then would

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1 qualify both of those limitations?

2 MR. KNOX: Yes, I think it would.

3 CHAIRMAN SELL: I think that would. I think from a
4 drafting standpoint you want to qualify at the end rather than
5 at the beginning.

6 REPRESENTATIVE CONNELL: Let me ask Mayor Knox a
7 question.

8 Bob, as you read this July 30th memorandum here,
9 the second paragraph --

10 MR. KNOX: Right.

11 REPRESENTATIVE CONNELL: In this Alternative 1 or 2
12 gives county governments the right, the power of taxation, it
does not limit it as requested in this letter here.

14 MR. KNOX: Well, I was going to bring that point up
15 later, not in this paragraph, but maybe in a proposal for
16 another paragraph.

17 REPRESENTATIVE CONNELL: I would be delighted to --

18 CHAIRMAN SELL: All right. Where are we now on
19 Paragraph 1, Alternative 1?

20 MR. KNOX: It seems to me we're at the point where we
21 want to say that the qualifying phrase "unless otherwise
22 provided by law," or whether we want to go back to the exact
23 same language that you've got in the present constitution.
24 Basically isn't that it?

25 MR. HENRY: Well, I took out "or by this

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1 constitution." I was thinking that that goes without saying
2 that if the constitution allows you to do it you can do it.

3 MR. KNOX: It appears to me putting the qualifier
4 at the end is all right.

5 CHAIRMAN SELL: First, do we have a sense as to
6 whether or not we ought to prohibit allocations unless
7 authorized by law? I think that is the first --

8 Do we have any feeling about that?

9 MR. KNOX: I think so.

10 CHAIRMAN SELL: Do we have a motion to that effect?

11 MR. KNOX: I so move.

12 CHAIRMAN SELL: Second?

13 MR. JACKSON: Second.

14 CHAIRMAN SELL: Any further discussion?

15 All in favor say aye.

16 (No reply.)

17 (Laughter.)

18 CHAIRMAN SELL: Opposed no.

19 The ayes have it, the limitation is to be included,
20 and without further action we will just request the staff to
21 revise the language of this Alternative 1 so as to provide,
22 so as to make the qualifying clause at the end rather than
23 at the beginning of the sentence.

24 MR. HILL: I would still urge that we include the
25 mention of the constitution because of Amendment 19 provisions.



1 I think that is a specific exception to this which we're going
2 to be recognizing that if they create a special service
3 district they can provide a tax in that district for that
4 service. I think that is a clear exception to this, and
5 that's why I would like to see "unless otherwise provided
6 by this constitution" just to make sure there's no
7 uncertainty.

8 MR. KNOX: In other words, "by this constitution or
9 by law"?

10 MR. HILL: Yes.

11 CHAIRMAN SELL: Is there any objection to that?

12 MR. KNOX: No, sir.

13 CHAIRMAN SELL: All right. Well, we will take that
14 direction.

15 All right. What do we have next, Mel? Alternative
16 Number 2?

17 MR. HILL: The staff did not prepare a substitute
18 proposal for Alternative Number 2 on Section I.

19 This, as you can see, relates only to county
20 governments.

21 MR. KNOX: I don't really recall exactly how our
22 discussion at the last committee meeting went, but was it to
23 the extent that we were going to suggest both alternatives to
24 the committee as a whole, or we were going to try to decide
25 upon one or two and stick with it?



1 CHAIRMAN SELL: My recollection of our discussion
2 at this point is that given the history of the decisions of
3 the Supreme Court of Georgia which say, tend to say that
4 counties at least may exercise only those functions for which
5 they are authorized to levy a tax, that this might be
6 necessary if the powers committee did not provide broad
7 enough powers to cover these things that are listed in the
8 Alternative 2, that if the powers committee provided adequate
9 powers then we would recommend Alternative 1 only, but if
10 they do not have the powers, if the powers which they would
11 recommend do not encompass these which are basically the
12 existing powers of counties then we would recommend that
Alternative 2 be adopted so as to ensure that county
governments would have the power to do these things.

15 MR. HILL: The other two subcommittees that are
16 working on this question, both Bob Brinson's committee and
17 Paul Coverdell's committee, have agreed up to this point --
18 they haven't seen the draft yet, so they may change their
19 mind when they see it down on paper -- as a matter of policy
20 and philosophy they want to reverse the presumption of
21 Dillon's Rule in the constitution, both those subcommittees,
22 so that there's going to be a broad statement of authority to
23 city and county governing authorities to exercise all powers
24 of self government not otherwise prohibited, regulated or
25 restricted by law or this constitution, so that that is the

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1 direction they're moving.

2 I think for purposes of your discussion you can
3 assume that is what they're going to do, understanding you can
4 always come back to this if that should appear inadequate
5 when you head to the full committee.

6 Or, if you prefer, you can leave both alternatives
7 here until you have the draft in front of you so you can
8 react to it then.

9 MR. KNOX: They're going to be talking in general
10 terms without specifying on the reversal of the Dillon's Rule
11 philosophy?

12 CHAIRMAN SELL: The constitution beginning with the
13 home rule amendment undertook to instill that philosophy.
14 I'm not sure the extent to which that philosophy has permeated
15 our judicial branch, and I think that's the thing that
16 frightens everybody.

17 MR. KNOX: What would you think, Ed, assuming these
18 other two subcommittees are going the way they're going, would
19 you want to go back to this language here?

20 CHAIRMAN SELL: They way they're going I wouldn't
21 think we would need it.

22 MR. KNOX: That's fine.

23 CHAIRMAN SELL: Can we dispose of alternative 2 then
24 by saying that in principle it's the sense of this subcommittee
25 that Alternative 1 is preferred, but that local governments

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1 and particularly counties, since they are the ones whose
2 powers are contained in the constitution, need to have
3 adequate provision for their powers in the powers section
4 whether it's done generally or by specifics -- I don't think
5 it makes any difference.

6 MS. GREENBERG: I have a question. To promote this
7 continuity of thought between the three committees, and if the
8 other two committees are going to go along with this reversal
9 of Dillon's Rule, wouldn't you have to change your Paragraph 1,
10 the Alternative 1, which would allow the General Assembly to
11 authorize a local government to tax and spend for any public
12 purpose as determined by law, to delete that part of the
13 sentence which says "as determined by law"? That seems to go
14 back to Dillon's Rule rather than reversing it.

15 Just make a flat statement that any county or
16 municipal corporation of the state may exercise the power of
17 taxation for any public purpose, period.

18 MR. HILL: No, because that's one of the specific
19 exceptions to the home rule grant. You see, that's why you're
20 going to have to see it all to realize what's happening.

21 MS. GREENBERG: It limits it to such an extent it
22 is going to limit the other home rule grant very extensively.

23 CHAIRMAN SELL: Doyou follow that?

24 It seems to me the comment is well taken.

25 MR. SUMNER: The public purposes have been pretty --



1 they have been construed I think that you can levy -- I don't
2 know, that may not -- if you're going to limit it, have the
3 limitation put on home rule provision you've got power of
4 government except as limited by law, you're double killing --
5 do you need them both?

6 It seems to me as a philosophy you ought to have the
7 authority to tax as necessary to carry out any powers you've
8 got.

9 MR. RICKETTS: Aren't you saying basically the
10 concept of reversing Dillon's Rule is that they're going to
11 have all the powers of self government except those
12 specifically prohibited, and the whole concept and the theme
13 of Alternative 1 and Alternative 2 for that matter is one of
14 authorization which is exactly the --

15 MS. GREENBERG: That's how I read Alternative 1.

16 MR. HILL: That is the theme, that's right, but
17 you see over in the exceptions it says the adoption of any
18 form of taxation beyond that authorized by the General
19 Assembly, so that you go back to the General Assembly --

20 MR. RICKETTS: You're going to take taxation out of
21 the --

22 MR. HILL: That would be another one, yes, and so
23 here's another limitation in terms of the purposes for which
24 the taxation may be exercised, and I think Vickie is right,
25 I think there has to be a meshing of these things so that we

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1 have a similar philosophy in both, but I think it can be done
2 better when we have the other before us, and I would prefer
3 to keep that in mind. We agree on philosophy, it's just a
4 question of whether to word it as a grant of authority or a
5 limitation really.

6 You could say that the governing authority of any
7 county or municipal corporation in the state may not exercise
8 the power of taxation except pursuant to a public purpose
9 as prescribed by law, and then you would be more in keeping
10 with the philosophy that we're adopting in the other article.

11 I'm not sure if you want to do that at this stage
12 since they're still in a drafting stage themselves, but it's
not going to change the basic underlying philosophy of this
14 committee as far as I can see; it's just a drafting problem
15 later.

16 MR. KNOX: I would suggest that too that we keep
17 that in mind, but that we wait for any kind of semantic
18 type changes until we get it all in.

19 CHAIRMAN SELL: As amended we said that the
20 governing authority of any county or municipal corporation may
21 exercise the power of taxation for any public purposes as
22 authorized by this constitution or by law. That was the
23 decision a few minutes ago.

24 Was I right about that?

25 MR. HILL: The second sentence we decided would be

1 that way.

2 MR. KNOX: The second sentence I don't think we
3 mentioned the constitution; I think we said by law, period.

4 MR. HILL: The reason we said by the constitution
5 prior was because we had fourteen purposes listed, but it's
6 not needed now.

7 Would you like us for purposes of our next meeting
8 or for purposes of the report to the committee to just redraft
9 this in the framework of a reversal of Dillon's Rule?

10 MS. GREENBERG: When you draw some language up
11 could you say for any public purposes not denied by general
12 law? Would that promote that home rule authority or home rule
grant?

14 MR. HILL: No, no. No, we're not giving them that
15 much. You want the General Assembly to determine what
16 purposes they can exercise powers of taxation for, and what
17 you're assuming is that --

18 MR. KNOX: Carte blanche.

19 MR. HILL: -- carte blanche, and that's not -- I
20 don't want to try to draft this right here.

21 I just wonder if you would like us to reverse it,
22 leave it as is for discussion --

23 MR. RICKETTS: You're really talking about a semi-
24 reversal of Dillon's Rule.

25 MR. HILL: Well, yes, of course.



1 CHAIRMAN SELL: Do we have any motion before us at
2 this point?

3 MR. KNOX: Mr. Chairman, I move that we adopt
4 Paragraph 1 as it has been prepared in the short sheet draft.

5 CHAIRMAN SELL: And as revised by our previous
6 discussion?

7 MR. KNOX: Yes.

8 CHAIRMAN SELL: Second?

9 MR. JACKSON: Seconded.

10 CHAIRMAN SELL: All in favor say aye.

11 (Ayes.)

12 CHAIRMAN SELL: Opposed no.

13 All right. We will let it take that direction, then.

14 Now we come to Paragraph Alternative 2. What is the
15 feeling about that?

16 I'm going to tell you there is one change in
17 Paragraph 2 that I am not sure everybody is aware of, I don't
18 know how you feel about it, but the fourteen provides for
19 support and provision for maintenance of public schools,
20 public education and activities necessary and incidental to
21 and including school lunches, music, bands and athletic
22 programs. At the present time music, bands and athletic
23 programs are not educational purposes and you can't spend
24 money for that.

25 In my proposed revision I threw that in for

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1 discussion because it's been my observation around over the
2 state that's caused a great deal of trouble. Now you may not
3 like it, you may like it like it is, but I do want to call
4 your attention to the fact that is a change from the existing
5 constitution.

6 MR. HENRY: There's a provision in Article VII,
7 Section II, Paragraph 1, Subparagraph 13 which is the purpose
8 for which the state can tax, and therefore the purpose for
9 which the state can necessarily delegate to a political
10 subdivision the authority to tax for this purpose, which says
11 to pay the salaries of personnel and to pay for the utiliza-
12 tion of school facilities including school buses for
13 extracurricular and interscholastic activities, including
14 literary events and music and athletic programs within
15 individual schools and between schools in the same or in
16 different school systems when such activities are sponsored
17 by local boards of education as an integral part of the total
18 school program, and there will be an amendment on the ballot
19 this November to broaden that provision even further, but
20 then again if we're taking purposes out of the constitution
21 it would allow the General Assembly to provide for that
22 anyway I would think.

23 CHAIRMAN SELL: That's in the present '76
24 constitution?

25 MR. HENRY: Yes, sir.

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1 CHAIRMAN SELL: I was familiar with some cases that
2 said those rulings I believe they are from the state board of
3 education on that subject, but I was not aware there had been
4 any constitutional provision.

5 MR. HENRY: They have gained this incrementally.
6 After each Attorney General ruling they get an amendment to
7 it, they just add on to it.

8 CHAIRMAN SELL: Perhaps this really is no change,
9 then. I had thought it was a change.

10 MR. HENRY: It's kind of a patchwork.

11 CHAIRMAN SELL: Can we dispose of Alternative 2 by
12 saying that essentially we prefer Alternative 1?

13 MR. HILL: With the understanding --

14 CHAIRMAN SELL: With the understanding that the
15 powers or equivalent powers are granted at least county
16 governments under other provisions.

17 All right. Now you have Paragraph 2 here.

18 MR. HILL: Yes. Paragraph 2 in the staff draft is
19 a revision based on what we thought was the intent of the
20 Paragraph 2 draft that Ed had done, but it makes a signifi-
21 cant change from the present law which as a matter of policy
22 this committee will have to decide.

23 The present law authorizes in the establishment of
24 a taxing district that a county may create a tax district for
25 which a service is provided only within that district yet

1 levy a countywide tax. Under this provision there would be
2 a limitation such that whether a city or a county should
3 create a special district and have a special service within
4 that district to tax for that service, but only be levied
5 upon the taxable property in that district, so it's a
6 significant change from the present.

7 It was in the last draft. I don't know that at that
8 time we discussed it in detail; I don't remember that we did.

9 MR. KNOX: The wording you have in your staff
10 draft is basically the same as the committee draft; is that
11 right?

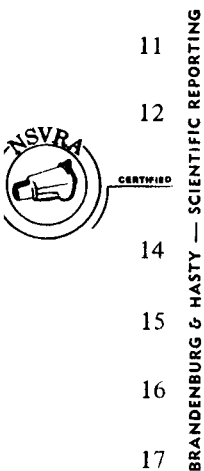
12 MR. HILL: Basically the same, right, except that
13 the committee draft says the government shall be authorized
14 to levy a tax only upon the taxable property in Ed's draft;
15 whereas in this case we said that the tax shall be levied
16 only upon the taxable property --

17 CHAIRMAN SELL: I think they mean the same thing,
18 but I'm not certain that was the intent of the other --

19 MR. RICKETTS: Ed, was your intent with that to
20 change the present constitution with regard to the authority
21 of the county or city to establish a service district?

22 CHAIRMAN SELL: I believe the present law requires
23 the vote, requires that it be submitted to a vote.

24 MR. RICKETTS: That's over in Section V, Paragraph 3,
25 but in Section IV, Paragraph 2 --



1 CHAIRMAN SELL: In our draft we don't have a
2 Paragraph 3.

3 MR. SUMNER: You made this 3 too. What Jay is
4 saying is basically the existing Section V, Paragraph 3 was
5 deleted for all practical purposes unless you've got
6 Paragraph 2 over in Section IV, you've got the authority to
7 create special districts.

8 MR. RICKETTS: Right now in Section IV, Paragraph 2
9 I doubt if any county or city would do it, but it has the
10 authority to set up a special service district and tax
11 jurisdictionwide, and the language in this Paragraph 2, the
12 draft of that, would change that and limit the authority of
the city or county to taxing just within the district.

14 CHAIRMAN SELL: Yes. I think it was the sense of
15 this committee last time that if there was a -- if a special
16 service district was established that the tax would be levied
17 only in that special service district for the purpose of
18 providing the service which is rendered only to that district.

19 MR. RICKETTS: I think the thinking of some might
20 be that giving the city or county that flexibility would --
21 might under some circumstances be advantageous where equity
22 of service distribution may be unusual. I think generally
23 speaking that's what's going to happen, they're going to tax
24 just within the service district, but it's conceivable that
25 there might be a situation when some kind of unusual service

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1 situation might dictate something else. The present
2 constitution gives the city or county greater flexibility.
3 This language here would restrict it somewhat.

4 CHAIRMAN SELL: We do recommend, did recommend to
5 the powers committee I think that certain language which was
6 contained in Paragraph 4, Paragraph 3 of this section V --
7 you see this on page 7 of your legal cap proposal, it just
8 says that a local government may district its territorial
9 jurisdiction, and in the case of a county this shall mean,
10 be construed to mean an area outside the incorporated limits
11 of -- the area outside of the incorporated limits of any
12 municipality to provide public services and so forth.

13 Frankly, I would like to take out that provision in
14 parentheses because of a local situation we've got in Macon
15 where it looks like the county is about to need to district
16 to provide a garbage collection district consisting of the
17 entire county, and under an agreement with the city maybe
18 we can do it under Amendment 19 anyhow, but I got to worrying
19 about that last week, it looked like the city and county might
20 agree that in effect the county is going to take over the
21 garbage collection countywide.

22 MR. RICKETTS: That too is a substantial --

23 MR. SUMNER: I don't see the thing you're talking
24 about taking out. You're saying it could be limited only to
25 the unincorporated areas?

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1 CHAIRMAN SELL: Yeah. The thing we referred to
2 the -- we omitted from the paragraph and referred to the
3 powers committee was, did contain the limitation that in the
4 case of a county that you could only create a special tax
5 district in the unincorporated areas.

6 MR. RICKETTS: You're talking about putting that in
7 the constitution?

8 MR. HILL: That was part of the original proposal
9 that Ed distributed, and it was omitted from the draft the
10 last time.

11 CHAIRMAN SELL: It was omitted from the draft at this
12 point and referred to the powers committee.

13 MR. HILL: Really the whole issue of districting
14 and establishing tax districts was referred over to the powers
15 committee and will be dealt with there. We never really got
16 into any policy discussions about how it should be done or
17 who should have the power, we just kicked it over to them.

18 The only thing that this committee decided to
19 concern itself with last time was the taxing within that
20 district and what other limitations on that should there be,
21 and that's where this question came up.

22 MR. SUMNER: It seems to me, I'm not sure, the
23 present constitution permits creation of a special district
24 within which the above services or any portion of shall be
25 provided and to fix reasonable charges and fees for such

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1 services.

2 I'm just wondering whether you could -- I'm not sure
3 whether you could tax countywide. It seems to me the tax and
4 the service has to be tied together. That's the question.

5 MR. HILL: Frankly, my own feeling is the draftsmen
6 intended to do what you're doing with your new redraft, that's
7 my own feeling. We haven't talked to the draftsmen to see
8 whether in fact this was intended or not, but I think a clear
9 reading of the revision now says that the powers of taxation
10 may be exercised by any county or any combination of for the
11 above powers or for the above services, or within any such
12 district, and I think that the "or within any such district"
gives the county the power to tax countywide.

14 I agree with you, Jay, that under the present
15 wording that would be allowed, but my own thought is that it
16 may have been a drafting omission or a drafting mistake at
17 the time.

18 I have no idea who did it, and I'm not pointing any
19 fingers, but I just think that the spirit of this provision
20 would seem to go to taxing the people that are getting the
21 service and not taxing countywide for a special district.

22 MR. HENRY: My understanding of this, perhaps the
23 reason I drafted it this way, is right now a county has three
24 options. They can provide a service countywide, they can
25 create a service district and provide a service in that

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1 district and tax countywide, or they can create a service
2 district and tax only in that service district.

3 MR. RICKETTS: You could have a situation where a
4 particular area of a county, and I won't specifically think of
5 an area, but you could have an area that is not receiving a
6 fair share of county services, and if the county decided, you
7 know, to provide a specific service just within that district
8 and not tax anyone other than continuing the level of taxes
9 countywide. Now, in that kind of situation it seems to me
10 that you might want -- you know, for that kind of situation
11 you might want to continue the present language of the
12 constitution.

13 MR. HENRY: To give them the discretion to tax in
14 that district or to tax countywide for the service in that
15 district?

16 MR. RICKETTS: Right.

17 MR. HENRY: I think that's what you have right now,
18 and I think that's what you have under this draft.

19 My understanding of the last --

20 MR. RICKETTS: How would you have it under that
21 draft?

22 MR. HILL: Not under the staff draft, under the
23 previous draft.

24 MR. HENRY: Under this right here, because it says
25 shall be authorized to levy a tax only upon the taxable

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1 property in such district. Okay.

2 You authorize them to. Whether they decide to
3 exercise their discretion and the authority --

4 MR. RICKETTS: What about the word only?

5 MR. HENRY: They still have the discretion to
6 exercise that authority to tax only within that district
7 under this draft right here.

8 Under the staff draft they don't. If you provide
9 service in an area, you tax in that area. That was my under-
10 standing of the policy decision made at the last committee
11 meeting, and I tried to clarify that in the staff draft.

12 MR. KNOX: That's in line with my thinking, Jay.
13 I understand what you're saying, but I think that's exactly
14 the problem we've got now. If you leave it open like that
15 then you've got counties and cities and they're going to
16 continue to butt into one another.

17 MR. SUMNER: I think what Mr. Stripling's letter
18 was driving at was eliminating the second option that Mr.
19 Henry pointed out, to tax countywide for countywide services
20 and countywide for noncountywide services and then within a
21 district. We would like to see the elimination of that second
22 possibility, noncountywide service, and it should not be
23 supported by countywide taxes. It's a matter of tax equity.

24 MR. KNOX: This would probably be an appropriate
25 time to expound on what Hebbly said in his letter that we all

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1 have copies of here.

2 There is no specific language that is recommended,
3 but you understand what he's saying here I think by the third
4 paragraph of his letter; he talks about exception and this is
5 exception for counties to tax generally.

6 "This exception is that we would strongly urge
7 appropriate language in the constitution which would make it
8 clear that municipal taxpayers and residents should not be
9 subject to county taxation for a service which is already
10 being provided to municipal residents or property by a
11 municipality," and then he goes on in the next paragraph to
12 explain.

13 Of course, that is written strictly from the stand-
14 point of municipalities you understand, but again I think it
15 gets back to the same question we butt heads about all the
16 time and that's double taxation; however you want to call it,
17 and I think some delineation needs to be made.

18 MR. JACKSON: Being a service, though, for the good
19 of all your citizens whether it was city or county, and you
20 were only allowed to tax in just one little area --

21 MR. SUMNER: What services?

22 MR. JACKSON: Say for instance, let's think of
23 nothing but law enforcement.

24 MR. SUMNER: You wouldn't be prohibited from doing
25 that. The sheriff, for example, should be taxed countywide

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1 for services, but patrols --

2 MR. JACKSON: I have heard it argued both ways,
3 they don't perform any duties inside the city.

4 MR. SUMNER: To the extent he performs countywide
5 services, for example, your court administration, taking care
6 of the jail, to the extent that the taxation might support
7 his patrol which is only in the unincorporated area, that
8 part of the budget ought to be levied on the unincorporated
9 area residents if the city is already providing the police
10 service, and by contract between the city and county they can
11 work out that you will have a mutual coverage agreement.

12 MR. RICKETTS: The problem is you've got a tre-
13 mendous variety of relationships that exist between counties
14 and their member cities. I mean some -- I'm thinking in just
15 one aspect the relationship that exists with regard to the
16 willingness and ability of the county to take over services
17 that are supposedly being duplicated, you know, by the
18 municipality. In some cases the county stands willing and
19 able to provide the service countywide, the only trouble is
20 the municipality is not interested in getting out of that
21 particular service area or service responsibility; what
22 they're interested in is, you know, cutting municipal
23 residents a little slack on their taxes. That's understandable
24 from the municipal standpoint, but I think, you know, trying to
25 write into the constitution of the state of Georgia a flat

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1 prohibition that a county cannot tax countywide for a service
2 that just so happens to be provided by a municipality within
3 that county doesn't recognize this kind of variation where
4 you have a county willing and able to provide the service.

5 The real villian in that kind of situation at least
6 in my mind and in my association's mind is the municipality's
7 unwillingness to get out of the service. You know, what is
8 really being asked for is, you know, get out of this service
9 area and let us -- you know, let us cut our citizens a little
10 slack on their taxes, but I think we have hashed this over
11 so many times --

12 MR. KNOX: We could sit here and argue about it all
13 day, you're saying we're the villian and we're saying you are
14 the villian, and we could be here all day doing that.

15 All we're saying is that -- and that's why it's a
16 tough issue, and there's no way that we're able to come up
17 with any kind of language that we can give you right now
18 except to say that we think it appropriate to try to address
19 this question in this taxation section that we're dealing with.
20 That's it.

21 MR. RICKETTS: This thing is so controversial that
22 I would make one suggestion, and that is it be pulled out and
23 made -- if you're going to -- if anybody is serious about
24 pushing this concept that they recognize the likelihood that
25 proposing this would be enough in and of itself to cause a

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1 major controversy within the General Assembly and that you
2 could well jeopardize the entire effort of constitutional
3 revision of this article and of other articles just simply by
4 including this one type of proposal. I think in all honesty
5 this is that kind of proposal.

6 MR. JACKSON: What if you wanted to perform water
7 lines in a certain part of your city that didn't have water,
8 would you just tax that portion?

9 CHAIRMAN SELL: For example, the city of Macon has
10 a library and the county contributes to the operation of that
11 library. Now, this would prohibit what, Hobby's proposal
12 would do what?

13 MR. SUMNER: It would mean the county would have to
14 support its contributions from the unincorporated area
15 residents, and the city residents are already paying for the
16 city contribution.

17 You see what I'm talking about, if you tax county-
18 wide the city pays for half the cost and the county pays for
19 half the cost, the city residents have paid full cost of the
20 city contribution, and then the county taxes countywide for
21 their half the city residents pay twice, they pay part of the
22 county share and part of the city share.

23 CHAIRMAN SELL: You would in effect run your millage
24 up so high in the county that it couldn't be done as a
25 practical matter.

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1 MR. SUMNER: You could take away the unincorporated
2 subsidies. This is the point of tax equity. We can't see
3 any way in the world as Ed was arguing to support the idea
4 that we're going to tax the entire state to provide high level
5 police services to an entire county, for example, and say
6 we're going to tax all of Fulton County and we're going to
7 triple the size of the Atlanta police force, or vice versa,
8 we're going to tax all of Atlanta to provide an unincorporated
9 area police force which, you know, they have a legitimate
10 regular kind of police force, not necessarily the sheriff,
11 this is a separate department taxed countywide in Fulton
12 County, they never make an arrest except on a mutual aid
13 backup make an arrest inside the city -- there is no tax
14 equity to support that statement.

15 CHAIRMAN SELL: That's not true statewide, Ed.

16 MR. SUMNER: Where it doesn't exist there's no
17 problem. There are some counties that are not in the
18 business --

19 CHAIRMAN SELL: That is not what is proposed. The
20 proposal is some sort of language, I understand it's not
21 specific language, but the proposal is that if the
22 municipality renders a service within the municipality then
23 no countywide taxes could be levied for that sort of service.

24 MR. SUMNER: For example the police.

25 CHAIRMAN SELL: Yeah.

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1 MR. SUMNER: A county police type operation.

2 CHAIRMAN SELL: Our county police, granted they do
3 most of their patrolling outside in the county, but they do
4 patrol inside the city, they do make arrests inside the city.

5 MR. SUMNER: Do you have a contract with the city?

6 CHAIRMAN SELL: No.

7 MR. SUMNER: Amendment 19 says a county can't pro-
8 vide police inside the city because there's a mechanism for
9 contract, except by contract.

10 MR. RICKETTS: Do you examine the equity of the
11 services that the residents of a municipality get simply on a
12 service by service basis, or do you look at all the services
13 that a county is providing and make a determination that on
14 the whole of those services that they're either getting their
15 fair share of county services or not?

16 I mean what is being asked is to go down for each
17 service and try to create, you know, equity service by service,
18 and I don't think that can be done.

19 MR. HENRY: That's not being asked here, Jay.
20 You've still got the discretion, the county has the discretion
21 as to whether they want to set up a district for a service or
22 whether they choose not to do that.

23 MR. RICKETTS: It's being said, but --

24 MR. HENRY: They do set up a --

25 MR. HILL: Mike, I think we're arguing about a

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1 proposal that isn't in writing.

2 MR. RICKETTS: We're not talking about your draft,
3 we're talking about Hobby Stripling's conceptual proposal to
4 prohibit countywide taxation for a service that is provided
5 in the unincorporated area, and what we're saying is that the
6 situation of equity or nonequity and -- you know, I'm allowing
7 the possibility that in some instances there are substantial
8 inequities between the city and unincorporated county
9 residents in terms of services, but, you know, it's not
10 universal, it's not statewide, and this kind of concept
11 assumes that it is a universal problem.

12 MR. SUMNER: It would correct it where it is, and
prevent it where it might otherwise occur.

14 I will point out, and if you would like me to dig
15 it out I will, but it's not just us talking about it, you
16 know, this was viewed as a radical GMA proposal, but the
17 National Association of Counties in 1975 identified double
18 taxation as one of the major issues they've got over the next
19 ten years, and they discussed and recommended a limitation
20 of the double taxation -- they used that phrase. I know
21 that's an unpopular phrase in some categories, and I'll dig
22 out the symposium where that was recommended if you want me
23 to bring it to you, but it's not such a radical proposal.

24 MR. KNOX: To try to put us back in context, what I
25 view the letter as suggesting, and maybe I'm wrong in that,



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1 but what I view this letter as suggesting is that this sub-
2 committee attempt to address this issue; if the subcommittee
3 does not want to address the issue, then it be dismissed and
4 nothing more be done about it, but the suggestion is that we
5 do address the issue and that we attempt to get anybody that's
6 interested, the staff, you all, GMA, or anybody, to get
7 together and see if we can't come up with some language.

8 To me we are completely hiding our heads in sand if
9 we attempt a constitutional revision and do nothing to address
10 the question; we're just hiding our --

11 CHAIRMAN SELL: I think the fear of the counties,
12 Bob, is not that they want to create or perpetuate any double
13 taxation situation which is bad, the fear is that if you try
14 to put everything on a mathematical basis there is no way --
15 not everybody within a city limits gets the same degree of
16 services.

17 MR. KNOX: I understand that fear, and I think there
18 ought to be some way to address the problem. It's not something
19 we can do today.

20 MR. SUMNER: We're not even suggesting you have to
21 have \$100 in service equaling \$100 in tax exactly, you're
22 saying it's impossible. The high crime areas in Atlanta get
23 more police patrol, I know what you're saying.

24 CHAIRMAN SELL: And where the topo is -- some
25 sections of the city don't even get sewer service, public

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1 sewer service because the topography doesn't permit it.

2 MR. JACKSON: This is the reason I asked that question
3 a little bit ago when you said you're not taxing water and
4 sewer. I get a tax levy from the City of Macon that says one
5 section of that town is three mills less because they don't
6 furnish them water and sewage. Explain that one.

7 MR. SUMNER: I don't know. Generally your water and
8 sewage is supported by user fees, revenue bonds.

9 MR. JACKSON: Once it's there.

10 MR. SUMNER: If they got EPA money they can't do it.
11 The EPA says you must be self-supporting in water and sewer.

12 MR. JACKSON: Now, if you had the situation in the
13 city or county, either one, and you were going to extend the
14 lines, would you only tax those particular people for that
15 high cost under that?

16 MR. SUMNER: The revenue bonds are paid off from the
17 fees generated by the users, which would only be the people
18 that are attached into the sewer and water.

19 MR. KNOX: I think you're begging the question.
20 Just like I said earlier, there is no specific language that
21 anybody has presented to us, and the language we're suggesting
22 or the concept we're suggesting is let's try to attack the
23 problem. Hell, it's a problem, everybody has been talking
24 about the problem for years.

25 MR. RICKETTS: I think there are plenty of examples



1 around the state where a city --

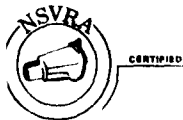
2 MR. KNOX: When you attack it city by city and
3 county by county --

4 MR. RICKETTS: That's the way it ought to be.
5 With the local negotiating feature, the local option sales
6 tax act, the distribution of local option moneys between
7 county and cities within the county can be varied according
8 to the physical relationship, you know, between the county and
9 the city so that if there is an inequity then the distribution
10 can be varied to accommodate that.

11 I can imagine a situation, I think in all honesty
12 and fairness you could imagine a situation where a county is
13 providing a service and taxing countywide for that is being
14 provided by one of the cities within that county, imagine
15 that kind of situation where the relationship, the overall
16 service relationship is generally satisfactory to everyone.
17 Now, surely in 159 counties there have got to be several of
18 those kinds of situations, I'm convinced there are.

19 Okay. If you were to ratify or change the
20 constitution as has been proposed in Hobby's letter, what you
21 would do is take a situation where equity, you know, seems to
22 generally exist as far as the citizens are concerned and say
23 that counties are going to have to stop doing what they're
24 doing, would you not create -- would you not tip the balance
25 against equity in that situation where you have it already

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1 and the constitution is changed, would you not be going in the
2 other direction?

3 MR. KNOX: The only problem is -- I don't know, just
4 as I'm telling you, Hobby's letter doesn't suggest any
5 specific language.

6 MR. RICKETTS: The concept is clear enough so we know
7 what he's talking about.

8 MR. KNOX: I think the concept needs to be dealt
9 with, needs to be addressed. You can't just dismiss it
10 offhand and say "Let's don't try to work it out." If you're
11 going to do that, then the problems are going to compound
12 themselves, you're going to have counties and cities fighting
even worse than they are now.

14 MR. SUMNER: Particularly if you're talking about
15 equalization of service delivery authority in the home rule
16 powers. You know, I think Harvey Findley has made a very good
17 presentation on the whole problem, the major issue between
18 cities and counties for Senator Coverdell's committee several
19 meetings ago, and pointed out there was never any problem a
20 hundred years ago because counties provided countywide services
21 and taxed countywide; the problem has only occurred, and it's
22 only real critical in the more urban, suburbanized counties,
23 and twenty or thirty counties in the state we don't have a
24 problem because the counties are not providing less than
25 countywide services with countywide tax money. It's only



1 occurred where counties have gotten the authority through
2 local amendments first, then through the home rule amendment
3 of 1966 and some other amendments where they're -- and of
4 course Amendment 19 was known in 1972 as the equalization
5 amendment -- that was what the subcommittee that come out with
6 it said, we want to equalize the authority between cities and
7 counties, so in effect counties changed from having very
8 limited countywide powers that they used countywide taxes for
9 into more general purpose government where they provided any
10 service including those in the unincorporated area but kept
11 this countywide tax power.

12 I think what Hobby is saying is there's no problem
13 as long as there's the concept -- there's no problem with
14 countywide taxation for a countywide service, county roads
15 which the county provides both inside and outside the city in
16 most counties, these are ones that are county roads, and the
17 courts, any number of services that are provided countywide
18 that's fine, but if the county wants to go into police
19 services and tax for police services, not the sheriff, I mean
20 the frequent patrols, you know, they double and triple the
21 staff for it and have a regular police department -- the
22 fire departments in unincorporated areas, why should the
23 municipal property taxpayer subsidize the unincorporated tax-
24 payer.

25 MR. RICKETTS: Is it a relevant factor in your mind,

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1 Ed, that a county may be in the situation you're talking
2 about stands ready and willing and able to take over that
3 service and provide it countywide, should you make a change --
4 you know, should you modify Hobby's proposal to say that
5 except where the -- that this won't apply where the city has
6 refused the county's offer to provide the service wall to wall?

7 MR. SUMNER: That goes into the consolidation issue
8 which they are trying to make easier to permit city and county
9 consolidation. That's just part of the issue to be looked at,
10 the concept.

11 If Hobby's concept goes in over here should we look
12 at the other issue and say the county has the right to make
13 the offer and if they're refused, you know, and there's no way
14 to --

15 MR. KNOX: Mr. Sell, I started to raise all this at
16 the beginning of our session and I felt I wouldn't because it
17 would get to this, and that's what it's gotten to, so that's
18 why I waited to this point to bring it up.

19 I was attempting to try to get us to try to work on
20 this issue, and it doesn't appear we're going to be able --
21 well, I don't know, maybe we can, but I suppose that to get
22 off this we need to see whether we want to address the issue,
23 we're digressing somewhat from the Paragraph 2 consideration
24 that was started, and I apologize for having done that, but
25 it just seemed appropriate to bring that up while we were

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1 discussing it.

2 CHAIRMAN SELL: I think it was a proper point in the
3 discussion to bring it up.

4 Hobby's letter says that he thinks the constitution
5 should make it clear that municipal taxpayers and residents
6 should not be subject to county taxation for a service which
7 is already being provided to municipal residents by the
8 municipality, which is a little bit different from some of the
9 things we have been talking about, it seems to me.

10 MR. KNOX: If you'll let me interrupt just a second,
11 I don't think we necessarily need to be held by the specific
12 words that are in that paragraph. The general tenor of
13 thought to address the question of duplication of services
14 or duplication of taxes for a service I think is what we're
15 after, and if we want to address that question I think that's
16 what we're sort of looking at for this committee to address;
17 if we don't, pass it by and go on, but we thought it the
18 appropriate place to address it here.

19 CHAIRMAN SELL: What I'm saying is that Hobby's
20 letter it seems to me is narrower in scope than some of the
21 things we have been talking about.

22 I was not being critical of his letter, I was
23 saying it seems to me that maybe we have gone beyond the scope
24 of what he is proposing.

25 Do we have a motion?

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1 MR. KNOX: On paragraph 2, is that what we're on,
2 or on this concept here?

3 CHAIRMAN SELL: On the concept as it relates to
4 Paragraph 2.

5 Suppose we dispose of Paragraph 2 if we can
6 separately in the sense they're in conflict --

7 MR. KNOX: I don't think so necessarily.

8 CHAIRMAN SELL: I don't see the conflict, but I --
9 What about Paragraph 2, the staff's draft for Paragraph 2,
10 Section V.

11 MR. HENRY: The only change here really is from this
12 draft on the legal size says shall be authorized to levy a
13 tax only on the taxable property in such district, and the
14 staff draft says shall be levied on the taxable property, so
15 it was felt taking away the discretion to exercise that
16 authority or not and mandating that where they do create a
17 district they do tax only within that district.

18 CHAIRMAN SELL: Would this language preclude the
19 requirement of service fees as opposed to -- would you be
20 limited to ad valorem taxation, or could you fund the water
21 service by service fees, or fire service by service fees for
22 that matter?

23 MR. KNOX: It appears to me it only addresses the
24 issue of tax.

25 MR. HENRY: Of tax, yes.



1 MR. KNOX: So fees would not be --

2 MR. RICKETTS: Mike, let me ask you a question.

3 How would the language in the draft affect the
4 ability of a county to take funds derived from its county
5 M&O millage and use it to provide service within a service
6 district?

7 MR. KNOX: I don't think you could do it, because
8 that would be any tax, it appears to me.

9 MR. HENRY: In other words, you couldn't take your
10 general tax revenues and expend them in a special district.

11 MR. RICKETTS: You see, I think you've basically
12 got three possible ways you're going to fund.

13 You're going to fund it out of general tax revenues,
14 or you're going to have an additional tax within some -- you
15 know, right now you have an additional tax within any district
16 of the county, presumably, you know, just within the service
17 district or the district smaller than the service district,
18 larger than the service district, or countywide.

19 Or the other way to fund it would be simply with
20 nontax revenue.

21 MR. SUMNER: This does not affect that except when
22 you've got an M&O levy you're budgeting that for your
23 appropriations process, you don't call it a special district,
24 but if you have an M&O levy you want to spend money on a
25 particular area of the county to improve street lighting or

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1 water, you just appropriate it, so that wouldn't affect it.
2 You don't call it a special district, you do it now, and the
3 county commissioners appropriate \$100,000 of M&O money to
4 do street lighting, you know, on Johnson Street --

5 MR. RICKETTS: So you're providing service within
6 a specific district --

7 MR. SUMNER: Street lighting on a street, that's an
8 area, a district of the county, you just don't call it
9 districts.

10 MR. RICKETTS: That's not really a district within
11 the notion that --

12 MR. SUMNER: That's why it wouldn't affect it.

13 MR. RICKETTS: I'm not sure that's true.

14 MR. KNOX: Sure it's true. If you don't create a
15 special tax district then this doesn't even apply.

16 MR. RICKETTS: This talks about service district.

17 MR. SUMNER: If you don't create a service district,
18 then you don't worry about it, you could take M&O money and
19 appropriate it. Lord, we wouldn't want that, we wouldn't
20 want you to tie up municipal funds where we couldn't take
21 municipal general levy and spend it any way we wanted to in
22 the city for a particular project.

23 CHAIRMAN SELL: Like the City of Macon does, buy
24 some recreation site outside the city limits.

25 MR. SUMNER: That's right, you see, there's a

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1 special district not even in the city.

2 MR. HENRY: I think for purposes of considering this
3 I think the point was well taken we should add that any tax
4 assessment or fee for that service shall be levied on the
5 taxable property, or shall be levied only in that district.

6 MR. SUMNER: It would only operate if you create
7 special service district.

8 MR. HENRY: I was trying to take the language here
9 and reduce it to clarify what I thought was the policy decision
10 that was made at last committee meeting.

11 CHAIRMAN SELL: The existing constitution says that
12 such services shall be authorized only by an act of the General
13 Assembly establishing or authorizing the establishment of a
14 special district and authorizing the county to levy a tax only
15 upon the taxable property in such district for the purpose of
16 maintaining, constructing and maintaining facilities. That
17 is the present language of the constitution.

18 In our earlier draft the principal change that was
19 made was to let it be done at the option of the local
20 government.

21 MR. RICKETTS: But that's Paragraph 3, Section V.

22 CHAIRMAN SELL: This is what Paragraph 3 -- We
23 don't have a paragraph 3 of Section V. This is it; this is
24 the equivalent; this is the same thing.

25 MR. SUMNER: In other words this draft doesn't really

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1 change the concept of Paragraph 3 except it makes it optional,
2 takes out the referendum is about all it does.

3 CHAIRMAN SELL: It takes out the referendum and
4 eliminates the requirement that you go do anything with the
5 General Assembly. It's really a home rule --

6 MR. RICKETTS: How can we talk about establishing
7 tax districts under Paragraph 3, Section V, and not talk about
8 establishing them under Paragraph 2, Section IV, which is
9 really the operative provision of the constitution right now
10 with regard to tax districts.

11 MR. HILL: I think they both have to be considered.

12 MR. RICKETTS: I think they do too.

MR. HILL: And that's what was intended with this.

14 CHAIRMAN SELL: We're only talking about taxation
15 here. The power to create the district is Section IV.

16 MR. RICKETTS: But over here in Paragraph 2,
17 Section IV, Ed, the language says in addition the power of
18 taxation and assessment may be exercised by any county,
19 municipality or combination thereof, or within any such
20 district for the above powers in order to provide such
21 services.

22 I mean right now under Section IV, Paragraph 2
23 except I believe for two services that are not included within
24 the Amendment 19 list the county can establish a service
25 district of any geographical dimension within the county and



1 can tax any way it wants.

2 I'm not saying it can or should, but under the
3 present language of that section it has the authority to
4 come up with any possible taxing scheme to support that
5 service. Now --

6 MR. SUMNER: Except you can't do it inside the city.
7 You cannot provide a service in the city except by contract.
8 It would have to be in an unincorporated area.

9 MR. RICKETTS: You know, what we're talking about
10 doing is restricting or diminishing the authority which we
11 presently have.

12 CHAIRMAN SELL: I didn't think so unless you also
13 change Section IV which we don't deal with in this subcommittee.

14 MR. RICKETTS: I think what happened, the Paragraph
15 3, Section V obviously was around a long time before Amendment
16 19 was, and Amendment 19 was ratified and for the most part
17 largely replaced Section V, Paragraph 3. Isn't that true, Mike?

18 MR. HENRY: Yeah. This is the easier way to go
19 about creating a special district is under Amendment 19
20 unless you want to create a special district for gas and
21 electric generating and distribution system.

22 Let me go back to square one. My understanding of
23 the last committee meeting was we had in our proposal that
24 we're sending to Mr. Brinson's committee the authority of a
25 county or municipality to create a service district. Okay.

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1 We decided that was a power that should properly be considered
2 by the powers committee, but that this committee wanted to
3 retain jurisdiction over the form of taxation that would be
4 exercised within that district.

5 Then I got the sense of the committee that they wanted
6 to say that when you create a special district, when you
7 provide a service only within that district that you should
8 only levy a tax within that district, or assessment or fee,
9 and that's the way I drafted this.

10 MR. RICKETTS: But that's really the language that
11 levying a tax only upon the taxable property in such district
12 is a limitation out of the provision of the constitution which
13 existed prior to Amendment 19. That limitation is not in
14 Section IV, Paragraph 2, so in effect, you know --

15 MR. HILL: It goes against the spirit --

16 MR. RICKETTS: I can't help it, it goes against the
17 spirit of Amendment 19.

18 MR. SUMNER: Now you're only talking about the
19 unincorporated area, you're not talking of the city --

20 MR. KNOX: What do you want?

21 MR. RICKETTS: I would have to say, you know, at
22 this point we basically would want what we've got.

23 Bob, in all honesty we did a survey of the use of
24 Amendment 19, we probably would not find a single instance,
25 you know, where special tax is being employed outside of a

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1 service district.

2 MR. SUMNER: Then why do you need it?

3 MR. RICKETTS: I mean it's there and it can be used
4 if needed.

5 MR. SUMNER: I think you can do it anyway through the
6 general levy thing. What I'm saying, if you want to levy a
7 tax, a GO tax, and spend it in a particular area whether you
8 call it a district -- you know, I just don't see you're adding
9 anything by it -- you've got it anyway in your regular
10 general --

11 The limitation on it kicks in when you take the
12 affirmative action of creating, delineating this four-block
13 area as a special service district. If you take that
14 delineation, you can only tax in that four-block area under
15 the staff draft.

16 As long as you don't create the special district
17 you could levy a tax countywide across Bibb County to
18 provide something in that area.

19 MR. RICKETTS: Well, that's what we're talking about,
20 what happens --

21 MR. KNOX: I thought the way that this was prepared
22 was how we discussed it last time, and that was what I thought
23 we were after was pegging the taxing authority to the special
24 service district where the service district would pay it,
25 pure and simple.

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1 CHAIRMAN SELL: I think that was the decision of
2 the committee last time. I'll have to agree with that.

3 MR. HILL: I would suggest once again if I might,
4 whenever the governing authority of any county or municipal
5 corporation, just to be consistent.

6 MR. HENRY: Did you want to expand that to include
7 assessment of fees so they would not be limited only to tax
8 the property in there but to charge a fee for say creating a
9 special sewer district?

10 MR. SUMNER: That might allow you to create a special
11 district for -- you know, maybe perhaps some kind of amusement
12 and recreation area and charge tax on people to come into --
13 Could you do that if you had a --

14 CHAIRMAN SELL: Counties are frequently -- the use
15 the same sort of method for street improvements and many
16 municipalities do on the third, third and third basis, and so
17 you create a special district, a special paving district, and
18 I'm a little concerned about -- it may not be but one block
19 long, but I'm a little bit concerned about exclusive reference
20 to levying a tax because you may want to provide the service
21 or provide the facility by some method other than a tax.
22 It may be by an assessment, property assessment, it conceivably
23 could be by user fees. Even a fire service, you might want
24 to say \$100 per house per year. We do ours by ad valorem
25 taxes in the fire district which is coextensive with the

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1 unincorporated area.

2 MR. SUMNER: You use that per-house --

3 CHAIRMAN SELL: There are other methods.

4 MR. HENRY: My understanding is, and I'm not wedded
5 to this language, but an assessment or fee would be a tax
6 when you're talking about the uniformity of taxation provision,
7 the court would find that to be a tax. This is an exception
8 to the uniformity.

9 MR. HILL: No, I think this would authorize -- if we
10 added assessment and fee I think it would allow user fees.
11 You see, you could establish a solid waste disposal district
12 and only the users would be charged, and not everybody that
13 owned property in that, so I would say if we just said any
14 tax, assessment or fee for such service shall be levied or
15 assessed only in such special district, then that would cover
16 it and open it up to that.

17 MR. KNOX: Okay.

18 CHAIRMAN SELL: Shall we ask the staff, then, to
19 prepare language to that effect?

20 MR. KNOX: All right, sir.

21 MR. RICKETTS: Would this language, Mel, in your
22 opinion limit the --

23 MR. HILL: Tax, assessment or fee.

24 MR. RICKETTS: -- limit the authority of the county
25 or city to use revenue derived from M&O to support such a

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1 service?

2 MR. HILL: No. It doesn't appear to me it would
3 create a problem.

4 MR. HENRY: If they create a special district --

5 MR. RICKETTS: Are you saying that --

6 MR. HENRY: You have to take the affirmative action
7 to create the special district before it triggers this.

8 MR. RICKETTS: What's what I'm saying. If you
9 create a special service district, my question is, you know --

10 MR. HILL: You're not going to do it unless you're
11 going to establish a tax, a fee or an assessment for that
12 service.

13 Like Ed said, you may have a certain are of the
14 county that needs more concentrated level of service than
15 another area, so of course your resources would be concentrated
16 in that area, but you're not going to officially establish a
17 district --

18 MR. RICKETTS: I'm not talking about a concentration
19 of service, I'm talking about initiation of a service that is
20 not provided countywide or jurisdictionwide, just in that
21 district.

22 MR. SUMNER: You could still do it, you can do it
23 now. In effect what you're doing now, even where a city or
24 county police service -- if you go in and create a county
25 police department you're taking it out of the M&O budget and

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1 funding it in what amounts to a special district without
2 actually declaring it, so you can still do that, you just
3 don't declare it a special district, you take your money out
4 of the M&O and --

5 MR. RICKETTS: Okay, very true, but right now you
6 have got language in the constitution which arguably supports
7 that practice, and what we're talking about is changing the
8 language, and my question is, changing the language in this
9 way, does it prevent M&O revenues from being used to support
10 services within designated special districts?

11 MR. HENRY: The people are still paying a tax under,
12 you know --

13 MR. RICKETTS: I know they are.

14 MR. HENRY: They're still entitled to the same
15 services from the taxes, they just have the opportunity to
16 receive the special service and to pay a special assessment,
17 fee or tax for that service.

18 MR. JACKSON: I understand what Jay is saying
19 because I have heard argument a number of times, especially
20 in Macon-Bibb County that if the services are only performed
21 in that district then those people should only pay for it
22 is what the argument is, and that's GMA's argument.

23 MR. RICKETTS: What I'm saying is, you know, can
24 the revenue to support that service come from the general
25 M&O millage. Presently it can.

1 MR. HILL: Not if you create a special district.

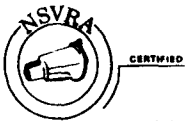
2 MR. RICKETTS: So in effect what you're going to have
3 to do, if that's true you're going to have to have a lower
4 millage for the rest of the county outside of the service
5 district; you're going to have to have a split millage.

6 MR. SUMNER: If you establish a district. If you
7 don't establish a district, nothing happens.

8 MR. JACKSON: But if you already have a district
9 established with everything in the unincorporated area,
10 then what Jay is saying, what would happen to all your
11 existing programs out there?

12 CHAIRMAN SELL: I don't think the question of
13 special districts created really presents any difficulty.
14 I think where the double taxation argument comes in that
15 does create difficulty, suppose out of M&O money you have
16 \$250,000 set aside for road maintenance which is done
17 essentially outside the city limits for counties, are we
18 doing anything or would we be doing anything which says that
19 all of that tax has got to be levied on the people in the
20 unincorporated areas, and a great many of the double taxation
21 arguments have been that you ought not to let the counties
22 levy any tax inside the incorporated limits -- I'm not trying
23 to state the GMA position, but I'm saying what some of the
24 arguments are -- for road maintenance because the city does
25 that in the city, and the county does it in the county, and

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1 that you ought not to let your county patrol costs be county-
2 wide costs for the simple reason that I think it's true in
3 most counties, it is in ours, that the bulk of the services
4 are provided outside the incorporated limits, and these are
5 areas of equalization that are just impossible. The Supreme
6 Court as you know has held that you don't have to get a
7 mathematically precise --

8 MR. RICKETTS: What you would do with this, Ed, as
9 I see it is if it can be shown that you have a de facto service
10 district and you march into court and the court compels the
11 county to have a differential of tax millage, so you back in
12 the door of the double taxation thing, this is the flip side
of the coin.

14 CHAIRMAN SELL: That is the thing that worries,
15 that's worrisome. You know, if you're going to create a fire
16 district, provide fire service in a specified area that
17 doesn't create any problem as I see it, you could make those
18 people who are getting that particular service, specialized
19 service, pay the cost of it. It's the general services that
20 are troublesome.

21 MR. SUMNER: Again, I don't see in reading the
22 language what you suggest. Whenever the governing authority
23 of any county or municipality of the state creates --

24 MR. RICKETTS: It creates it by making service
25 allocation decisions.



1 MR. HILL: What if we said creates by ordinance
2 a special service district.

3 MR. SUMNER: I have never heard of a de facto
4 ordinance.

5 MR. HILL: That would require them to actually
6 adopt a law locally to do it before this could happen.
7 You know, that would address Jay's problem.

8 MR. RICKETTS: I'm not trying to forestall this
9 any longer, but I think this is obviously one of the most
10 serious aspects of the whole subcommittee's charge, and I
11 don't think that in the space of 45 minutes or the duration
12 of this meeting we can come up with even conceptual language
to deal with this.

14 Can we postpone this one meeting, Mr. Chairman?

15 CHAIRMAN SELL: Yes, sir. I was hoping to wind up
16 this thing this meeting. If we can't, we can't.

17 Do you think that the GMA would be willing to
18 propose some specific language?

19 MR. KNOX: About what, Ed? About this Paragraph 2
20 we're talking about?

21 CHAIRMAN SELL: Well, about this Paragraph 2 and the
22 specific reference to Hobby's letter.

23 MR. KNOX: Well, as it refers to -- as Paragraph 2
24 is discussed it appears to me that's an entirely different
25 matter from what I was talking about. If we want to consider

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1 both of them together and try to get together and discuss it,
2 sure, I think we'd be happy to. If you want to put both of
3 them together --

4 CHAIRMAN SELL: Do you think the ACCG would be
5 agreeable?

6 MR. RICKETTS: We'll certainly sit down and talk.
7 Obviously we can't promise to agree, we haven't agreed on this
8 subject yet, but there's always the first time.

9 CHAIRMAN SELL: Well, do we --

10 MR. KNOX: I think we could go on and adopt
11 Paragraph 2 myself. I don't see any reason why we shouldn't.

12 MR. SUMNER: Maybe I'm not reading the language,
13 but it's not even triggered until somebody does something,
14 creates a particular --

15 MR. KNOX: To me it's perfectly straightforward. I
16 don't see any hidden --

17 MR. SUMNER: Unless your city council says "We're
18 going to by ordinance create a special district," that's true.

19 MR. JACKSON: I have to tend to agree with Jay.
20 I'm not a legal scholar at all, but I think once that thing
21 hit the courts they could construe it to mean that any
22 services performed out in that district would have to be
23 collected for. Is that basically your argument too?

24 MR. RICKETTS: That's what I'm saying.

25 MR. KNOX: That's what he said until we mentioned



1 put "by ordinance" in there, then he didn't know what to say.

2 MR. RICKETTS: That's an interesting approach, Bob.
3 I'm not altogether sure that that boilerplates the problem.
4 It may. I would like to have --

5 MR. HILL: That's not a boilerplate, that's a pretty
6 important "By law," what we're saying is --

7 MR. RICKETTS: I'm not using it in the traditional
8 sense of that phrase, I'm talking about reinforcing it. I
9 don't think it necessarily solves that problem.

10 MR. KNOX: I'll get it on the floor, Mr. Chairman.
11 I make a motion we adopt Paragraph 2 as has been drafted.

12 MR. HILL: Did you want to include "by ordinance"
or not?

14 MR. KNOX: Yes.

15 CHAIRMAN SELL: You have heard the motion. Is
16 there a second?

17 There is no second. The motion fails.

18 May we ask, then, that -- it looks like we can't
19 dispose of either Paragraph 2 or this portion of Hobby's
20 letter today -- may we ask that both GMA and ACCG present
21 specific language at a --

22 MR. KNOX: I would like to ask that we get if we
23 could a little more specific than that, if there is a time
24 that this staff, the ACCG staff, the GMA staff could all sit
25 together and attempt to come up with some language rather

1 than just submit it. We would be meeting all day, and we
2 could just try to cut this time --

3 MR. SUMNER: I would like to get some opinions from
4 other city and county attorneys as to what Paragraph 2
5 that Mike Henry has drafted means.

6 CHAIRMAN SELL: May we ask, then, that this
7 subcommittee staff, the ACCG staff and the GMA staff confer
8 at their earliest opportunity undertaking to resolve it and
9 bring back if possible some --

10 MR. HILL: Mission impossible; is that it?

11 CHAIRMAN SELL: Yes, mission impossible.

12 Would you gentlemen be agreeable to that?

13 MR. HENRY: Mr. Chairman, could I suggest -- I
14 think maybe what Ed is saying, maybe we should just circulate
15 this language to selected county and city attorneys, because
16 it appears to me that I have heard these same arguments
17 every time the issue has come up and, you know, you're just
18 locking horns, and I would rather get an opinion of people
19 who are not specifically involved in it and see what they
20 think of it or any provision they could come up with.

21 If we could have the authority to do that,
22 circulate the provision --

23 MR. SUMNER: I would like to say if you do that
24 maybe let staff circulate the pro and con position and see,
25 you know, "Do you think it does A or B? Does it prohibit

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1 the county from using M&O money in a specified area?", and
2 if you think that's the case then -- let's join the issue so
3 to speak and say "Okay, here's how one side interprets it,
4 the other interpretation is this, which do you agree is the
5 correct one?"

6 MR. HILL: Is the staff supposed to address the
7 double taxation question as well, or is this strictly the
8 Paragraph 2 provision?

9 CHAIRMAN SELL: We really haven't gotten our --

10 MR. RICKETTS: We've got technical questions inter-
11 mixed with policy questions. We've got technical questions
12 as to what the legal effect would be of the ratification of
the draft language, and that's one thing.

14 Then we've got, you know, the general policy question
15 of whether or not the draft makes any reference to Hobby
16 Stripling's concept, but I think we have to resolve the
17 technical questions first.

18 CHAIRMAN SELL: Mel, if there is no objection, let's
19 try to resolve Section 2. Maybe if Section 2 is resolved
20 that will help with the Stripling letter.

21 MR. RICKETTS: You mean Paragraph 2, Ed?

22 CHAIRMAN SELL: Paragraph 2, yes.

23 I don't think there is any basic disagreement about
24 the Stripling letter, I think there are a lot of fears that are
25 unresolved about trying to mathematically -- you know, if I

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1 live five miles from the water station and Mike lives two
2 miles, does it cost more to furnish me water because they
3 have to pump it twice as far -- this is the sort of thing,
4 and we had a consolidated, a proposal for consolidation of
5 the city of Macon have almost that sort of thing proposed,
6 it just gets to be that picky. I'm not sure at all that is
7 what Hobby is talking about, I doubt if it is, but the staffs
8 can help us resolve Section 2, and maybe that will help
9 resolve the other.

10 I don't think on the question of creation of special
11 districts for specific services we've really got a whole lot
12 of problem. At least that's my feeling about it.

13 Maybe this is a good time to take a ten-minute
14 break.

15 (A brief recess.)

16 CHAIRMAN SELL: Can we go ahead and move ahead so
17 we can hopefully wind up?

18 Jay said he might be a few minutes late getting
19 back, so let's don't wait on him. I don't think what we're
20 going to get into is going to create any problem that
21 requires his input particularly.

22 All right. The next thing, we come to Section --
23 Let's see. We have finished with Section V as far as we can
24 go today.

25 All right. We come to Section VII.

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1 MR. KNOX: I'll try to key these in.

2 CHAIRMAN SELL: Okay. I was thinking there was
3 something that was related to this.

4 okay. The staff proposal -- do you want to comment
5 on this now, Mel?

6 MR. HILL: The staff draft again is merely an
7 editorial revision of what was Paragraph 2 of the other. We
8 did not include a definition in here, that doesn't follow the
9 standard procedures we have been using in other articles, so
10 we just repeat county, municipal corporation or political
11 subdivision at those places in which it appears in this
12 section, and there is no substantive change in Paragraph 1
13 from what was suggested and approved before in Paragraph 2.
14 Is that correct, Mike?

15 MR. HENRY: Well, in the first draft we deleted the
16 provision on special registration for bond elections and
17 said that hereafter any special registration shall be null
18 and void, but any bonds issued under special registration laws
19 would continue to be valid. We delete that.

20 You requested research on that, and I found that
21 that came in in 1917 as an amendment to the constitution
22 apparently to address a specific problem they had at the time,
23 and to be extremely safe I modified this committee draft as
24 amended through the last meeting to put that no debt may be
25 incurred without the assent of the majority of the qualified

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1 voters, and then to describe those qualified voters I put
2 "registered to vote in the jurisdiction of the political
3 subdivision holding the election," which would preclude I
4 believe the special, subsequent special registration, so I
5 think we have effectively done what that provision did which
6 prohibited special registration.

7 That's the only change that was made in that
8 provision.

9 CHAIRMAN SELL: Now, as I understand it the present
10 constitution is construed, notwithstanding some ambiguity of
11 the language as really saying that a local government can go
12 to 13 percent, and this would in effect reduce that to ten
percent.

14 MR. HILL: Yes, Mr. Chairman. If you look over to
15 the next page, page 2, Michael has an alternative Paragraph 1
16 which you may want to consider at this time where there's a
17 paragraph inserted that restates what is the present provision
18 of the constitution.

19 I think as a policy matter the committee had felt
20 that ten percent was sufficient, a sufficient debt limitation
21 in light of the increasing property values that have occurred,
22 but in any event you might want to consider it again now that
23 it's in front of you here on page 2.

24 MR. KNOX: Is ten percent for all practical purposes
25 sufficient? I'm trying to think -- right now my city is



1 getting ready to borrow a lot of money from Farmers Home
2 Administration that would not be under -- that's purely debt,
3 I don't think there are any certificates or bonds issued,
4 and if I'm not mistaken we're planning to borrow four and a
5 half million dollars and we've got a digest of less than \$45
6 million.

7 CHAIRMAN SELL: Would this be a general obligation
8 bond?

9 MR. KNOX: No, it's tied to the water and sewer
10 system that we -- Well, I don't know. That's a good
11 question.

12 CHAIRMAN SELL: If it's a revenue bond there's no
13 limitation on it.

14 MR. KNOX: It's not a revenue bond, I don't think.
15 It's purely a debt as I understand it. We're just going to
16 have a note to Farmers Home Administration, that's it pure
17 and simple.

18 MR. HENRY: Are you going to have a referendum on
19 it?

20 MR. KNOX: No.

21 MR. HENRY: Do you have a statute which specifically
22 authorizes you to do that?

23 MR. KNOX: I think so. I don't -- maybe that's an
24 unusual situation, but I just wondered if -- This is the
25 first time I ever thought about it when I read this, but I

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1 think I'm asking if that ten percent from a practical stand-
2 point is sufficient.

3 MR. HENRY: Are you accepting and using funds
4 granted by the federal government to aid construction of
5 public works?

6 MR. KNOX: That's the question I've got later, but
7 then you've got a ten-year limitation on that, which Farmers
8 Home bonds are forty years.

9 I really don't know. I'm just raising the question.

10 MR. HENRY: My understanding is from what you're
11 saying, what you're doing is not provided for in here as it
12 is presently written, and this makes no substantive change
13 from as it is presently written, so if you can do it under
14 this you could do it under this draft.

15 MR. SUMNER: There may be a lot of things done under
16 federal law that may not be authorized in the constitution.

17 CHAIRMAN SELL: You know, under the -- there's a
18 considerable body of thought that if federal law authorizes
19 a municipality to do something it doesn't make any difference
20 what the state law or constitution says, that that
21 constitutes an authority.

22 I ran into that in the question of -- the television
23 people wanted the county to give them a franchise, and I said
24 there's no provision for the county to grant a franchise;
25 they came back with some authority for the proposition that



1 the federal statutes authorized and required, and that this
2 was an automatic grant of authority to local governments
3 because under -- what am I trying to say -- it's not priority,
4 but --

5 A VOICE: Preemption?

6 CHAIRMAN SELL: -- under the pecking order there's
7 the state statute, then the state constitution, then the
8 federal statute, and then the federal constitution.

9 MR. SUMNER: That required you to grant it. They
10 don't require cities and counties to take water --

11 CHAIRMAN SELL: I would think if they authorized it,
12 it would be the same.

13 MR. SUMNER: I don't know that that necessarily
14 applies--just because you have the authority. I don't know.

15 MR. HENRY: I'm not sure exactly where these loans
16 are from or any of this power from the federal government is
17 falling, but in our Paragraph 2 we broaden substantially the
18 ability to borrow funds from the federal government,
19 Paragraph 2, Subparagraph 2.

20 MR. SUMNER: That helps a lot.

21 CHAIRMAN SELL: I like that.

22 MR. HENRY: This is presuming that the federal
23 government will impose conditions sufficient to keep the
24 counties and municipalities afloat and solvent and not allow
25 them to just borrow without any limitation.



1 MR. KNOX: You're eliminating that ten-year
2 restriction?

3 MR. HENRY: The alternative subparagraph 2 is
4 what we're eliminating basically.

5 MR. KNOX: That was another question. That was a
6 question that was raised in Hobby's letter. Many of the
7 federal programs provide thirty or forty-year paybacks. If
8 we eliminate that I think that's probably --

9 CHAIRMAN SELL: I like this staff proposal for the
10 reason that we can't see now what the federal government is
11 going to do next year, we don't know what the laws are going
12 to be in the future, and if we tie it to a specific history
we could be in trouble.

14 As a matter of fact, we did have to amend the
15 constitution, didn't we, Jack, to provide for the relocation
16 payments or something like that because --

17 MR. SUMNER: This would still leave you subject to
18 that ten percent limit. The only thing it altered in
19 Paragraph 2 is exempt it from the referendum requirement, but
20 it doesn't exempt you from the ten percent requirement, so
21 Mayor Knox may still have his problem as to what he borrows
22 if it exceeds the ten percent limit.

23 MR. KNOX: That was the question I was going to
24 raise also.

25 The wording in this draft that we have here, the

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1 provisions of Paragraph 2 hereof shall not apply to the
2 circumstances enumerated below, and no election in such cases
3 shall be required. Of course, you have just shortened that to
4 say no election shall be required, and I think that ten
5 percent restriction may well have been eliminated with your
6 exceptions here, you see.

7 MR. HENRY: So in other words you would rather
8 retain that language which says the provisions of Paragraph 2
9 -- in our case the ten percent limitation -- shall not apply
10 to these enumerated loans?

11 MR. KNOX: Just make that Paragraph 2 a general
12 exception to Paragraph 1.

13 MR. HILL: Notwithstanding any of the above.

14 What about the alternative to Paragraph 1, do you
15 think we should retain what we now have authorizing an
16 additional three percent?

17 MR. KNOX: Does anybody ever --?

18 MR. HILL: I think there have been. I wish Harvey
19 was here. I think there have been some that have gone above
20 it, and I don't know what havoc we might wreak by eliminating
21 it.

22 CHAIRMAN SELL: Jack, do you have any background on
23 that?

24 MR. MORTON: I don't know. Of course, the general
25 limitation from seven to ten percent was only changed in '76



1 or '78 -- I've forgotten --

2 MR. HENRY: I was thinking it was a lot earlier than
3 that.

4 MR. MORTON: It's only been in the last few years,
5 so I'm sure not too many have gone over it, but there possibly
6 have been some since that time.

7 REPRESENTATIVE CONNELL: Let me ask a question about
8 this Paragraph 2, Section 2, that you're proposing.

9 MR. HENRY: Yes, sir.

10 REPRESENTATIVE CONNELL: Your city would have little
11 or no say in what the county was going to borrow in the way of
12 loans from the federal government as long as the county
13 complied with the federal law. Is that the way I read this?

14 MR. HENRY: Yes.

15 REPRESENTATIVE CONNELL: Well, suppose you provided
16 by law, state law, the state law would parallel the federal
17 law, that's required, but the state law would be written on a
18 local basis by your county legislators which would include the
19 city legislation. There would be some measure of control at
20 the state level if the city or the municipality didn't agree
21 with the repayment of those loans, because in my county we're
22 getting money from the feds that's used totally outside the
23 city. As a matter of fact, they're getting grants that are
24 based on countywide population which includes the city's
25 population, but all the money is spent outside. We don't have

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1 any say-so over it at all.

2 MR. HENRY: Is that a loan that they're receiving?

3 REPRESENTATIVE CONNELL: I think most of them are
4 grants. We can't get the county to give us any of those funds
5 at all.

6 MR. HENRY: I don't think this would preclude the
7 General Assembly from coming in and placing conditions and
8 limitations on funds received by counties.

9 REPRESENTATIVE CONNELL: There are no limitations
10 now on grants. What about federal loans? What limitations
11 would there be for the county on that?

12 MR. HENRY: For the General Assembly to come in and --

13 REPRESENTATIVE CONNELL: Are there any limitations
14 now for a county to make a loan from the feds?

15 MR. HENRY: The limitations imposed by this provision
16 are the only ones I know of, which I think has -- what did you
17 say, the ten-year provision.

18 MR. KNOX: The ten-year payback.

19 MR. HENRY: The ten-year payback, and then on the
20 disaster loans you have a lot of -- you have some conditions
21 on there where you can cancel a loan, but you have to have
22 the result of a major disaster and the existence of a
23 demonstrated need for financial assistance in order to perform
24 this governmental function.

25 I understand what you're saying, but what I --



1 I didn't do anything different than what's in here now, and
2 that would be something for you all to work out. I didn't
3 think that through, and I just kept this language and put it
4 here in very, very abbreviated form hopefully to provide for
5 greater flexibility.

6 MR. SUMNER: I've got a question about that. If
7 you just say conditions imposed by federal law, pursuant to
8 conditions imposed by federal law, the federal law specifies
9 everything that it would be possible to regulate. You're not
10 concerned about the state -- Jack is concerned about the
11 legislature saying "Well, consistent with the federal
12 conditions we want to place these additional conditions on the
13 use of these federal loan or grant funds," maybe in the area
14 of a county. Are you precluding anything by the General
15 Assembly also having oversight?

16 MR. HILL: If you said "or by the General Assembly,"
17 would that take care of it?

18 MR. SUMNER: Maybe you don't need it.

19 CHAIRMAN SELL: What about striking the word
20 "federal" from the last line?

21 MR. HENRY: You may have the state government come
22 in and say "We don't want you to borrow this money" where the
23 federal law says you can, and the federal law in fact may
24 make it real easy for you to borrow that money where the state
25 government sets as a public policy that you should, and if we

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1 want to preserve that power then I think you should strike
2 federal.

3 CHAIRMAN SELL: Obviously you aren't going to get a
4 federal grant or a loan unless you comply with the federal
5 law.

6 REPRESENTATIVE CONNELL: But you could have a state
7 statute that contradicts the federal law. If you don't agree
8 with it, then you just don't have the statute.

9 MR. SUMNER: You might be able to regulate some
10 areas that aren't specifically addressed in the federal law.

11 What I'm thinking about, nobody likes to spend money
12 any more than the federal bureaucrats, if they can give money
13 to somebody in any shape, form or fashion they can to the city
14 or county they're going to find a way to do it, it's just a
15 matter -- This is just a big policy question, do you want it
16 totally determined by federal bureaucrats saying whether a
17 city or county can get money or not.

18 MR. RICKETTS: It's going to be determined anyway.
19 The only thing you're going to do is give the --

20 MR. SUMNER: Believe me, I get calls all the time
21 from HUD general counsel and they want to make certain that
22 things they can only do if it's authorized -- they say "Now,
23 is the city really authorized to accept this money under --",
24 you know, they have their own provisions right now, sometimes
25 they can't use money apparently unless it's also under state

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1 law. They do, believe it or not, give lip service to the
2 Tenth Amendment I suppose or whatever and take some cognizance
3 or recognition of state restrictions on their creations, and
4 I've got calls from the HUD general counsel on several
5 occasions on various projects and schemes, you know, that were
6 set up and various projects and trying to help do some
7 research on it, could they do it legally under state law,
8 and they had to have that opinion basically before they could
9 approve the loan or grant.

10 It's just a question of whether you want to --
11 Right now there's nothing about or conditions of federal law
12 in the constitution.

13 I wish Tom Stevens was still here, he's with the
14 finance department.

15 CHAIRMAN SELL: I think they're in there to a certain
16 extent because one of these things I think paraphrased the
17 federal law, and that's on the disaster loan I believe.

18 MR. HENRY: I don't see any limitation on the
19 General Assembly anyway, and the General Assembly has the
20 inherent authority unless they're limited by the constitution
21 from legislating on any subject matter they want to, and if
22 the federal law preempts them, that's their limitation.

23 If the federal law says "We have spoken on the entire
24 area," then the General Assembly couldn't do it anyway even if
25 you specifically authorized it. But absent a constitutional

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1 limitation the General Assembly has the inherent power to
2 enact any type of legislation it wants. You could take
3 federal out --

4 MR. SUMNER: It may not be a problem. The present
5 provisions in Title 87, you know, they've got like they say
6 the authority, but I just raised the issue. I think that's
7 what Jack was talking about, should there be a concern.
8 Maybe not. Maybe they can do it anyway.

9 CHAIRMAN SELL: All right.

10 MR. KNOX: Do you want to get back to Paragraph 1?

11 CHAIRMAN SELL: Let's get back to Paragraph 1.
12 We were talking about ten percent versus thirteen percent
which seems to be the present state constitution.

14 MR. KNOX: And that extra three percent has now and
15 in the draft a five-year payback provision I think. Isn't
16 that right?

17 CHAIRMAN SELL: That's correct.

18 MR. HENRY: It has some other procedural specifica-
19 tions in there about how you go about doing it, but I think
20 I've got it as provided by law.

21 MR. KNOX: I'm really not that aware of it, but just
22 as sure as you leave it out somebody is going to need it.

23 MR. JACKSON: Some of the smaller ones especially.
24 That ten percent is a lot of debt, though, a lot of it.

25 CHAIRMAN SELL: You now, I have the gut feeling



1 ten percent is enough, but --

2 REPRESENTATIVE CONNELL: Do you have any statistics
3 on how much some of these have already borrowed as far as --
4 Jack, do you have any of that?

5 MR. MORTON: I haven't seen anybody that's been able
6 to do anything on a statewide basis as far as --

7 REPRESENTATIVE CONNELL: What is the state's present
8 -- what is it, about seven or eight percent?

9 MR. MORTON: Yes.

10 REPRESENTATIVE CONNELL: Authorized fifteen?

11 MR. MORTON: Yes.

12 REPRESENTATIVE CONNELL: Why would you make the
13 cities and counties different from what the state is
14 authorized?

15 MR. MORTON: I don't know.

16 MR. KNOX: The state is authorized fifteen?

17 MR. HENRY: The state was prohibited up until 1952
18 from incurring any kind of debt, where the cities and
19 municipalities had ten percent for a long time.

20 CHAIRMAN SELL: Historically it was seven percent
21 for counties and cities or other political subdivisions. I
22 suppose they mean boards of education too.

23 MR. JACKSON: If you want to find out at the school,
24 the state school board may be able to help you. Each county
25 has to certify, and the city if it's an independnet school,



1 certify its debt limit.

2 MR. HENRY: For the school board?

3 MR. JACKSON: Yes. I just filled out a certification
4 yesterday.

5 MR. HENRY: What about the general debt, the county
6 debt?

7 CHAIRMAN SELL: I think you've probably got a whole
8 mess of local constitutional amendments which increase the
9 old seven percent figure.

10 MR. HENRY: I know of a few.

11 REPRESENTATIVE CONNELL: Is it cumulative between
12 -- the ten percent, is that the way this reads, is it
cumulative between three local bodies?

14 MR. HENRY: Pardon?

15 REPRESENTATIVE CONNELL: Each body can go ten?
16 In other words, the board of education of Bibb County can go
17 ten, the city of Macon can go ten on its own indebtedness,
18 and the county of Bibb countywide can go ten, so you could
19 almost have thirty percent basically; right?

20 MR. HENRY: Yes.

21 REPRESENTATIVE CONNELL: If it was fifteen, that
22 would be forty-five.

23 CHAIRMAN SELL: That's true.

24 REPRESENTATIVE CONNELL: Seven might be enough.

25 CHAIRMAN SELL: The only advantage I see to having



1 -- unless somebody happens to need it, the principal advantage
2 is that if your limitation is ten percent and you're actually
3 bumping close to that ten percent with a new bond issue it
4 adversely impacts your interest costs; whereas if you're
5 authorized thirteen percent and you're bumping ten percent
6 it doesn't have the same adverse effect or impact.

7 MR. HENRY: This extra three percent, though, is
8 subject to a five-year payback, so I mean that's a pretty
9 onerous provision I would think and not too many people would
10 use it.

11 CHAIRMAN SELL: I would suggest we leave it at ten
12 and see --

13 MR. HILL: See if anybody hollers?

14 CHAIRMAN SELL: See if anybody hollers, and in the
15 meantime, Bob, you might check out your --

16 MR. KNOX: I so move, then, we leave it as it is in
17 Paragraph 1 of the staff draft.

18 MR. JACKSON: Second.

19 What would be Columbus' since they have a joint,
20 combined all that debt, would it be -- Consolidated
21 governments would just be one government, so it would really
22 just be one ten percent instead of tacking them together.

23 MR. HENRY: I wouldn't think so.

24 MR. JACKSON: What I'm talking about, if they
25 added all the debt --

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1 MR. HENRY: I think you would only have one ten
2 percent. They may have gone down there and created a special
3 district by local amendment to give them authority, you know,
4 within their own city limits giving them the authority to do
5 it.

6 You have a lot of amendments that create a special
7 district, and say notwithstanding what the county or city
8 school board can do, you can go up to ten in this district
9 alone.

10 REPRESENTATIVE CONNELL: Let me ask you a question
11 while we're talking about these totals.

12 Where you have two boards of education in the same
13 county, like you have right here in Fulton County, part of it
14 is in DeKalb also, the school system, can each one of those
15 systems allow ten percent?

16 MR. KNOX: Any political subdivision.

17 MR. HENRY: I would agree on a strict reading of this
18 that's the only way you could do it.

19 CHAIRMAN SELL: We have a motion before the
20 committee to leave it, to adopt Paragraph 1 of the staff
21 proposal as it now stands.

22 Is there any further discussion?

23 All in favor say aye.

24 (Ayes.)

25 CHAIRMAN SELL: Opposed no.

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1 It is adopted.

2 All right. We come to Paragraph 2, and --

3 MR. KNOX: I think we said at the beginning we
4 wanted to make that a general -- put some general exception
5 language to Paragraph 1.

6 MR. HENRY: Notwithstanding Paragraph 1, "Any county,
7 municipal corporation or political subdivision of this state
8 may, without an election held therefor..."

9 CHAIRMAN SELL: You may want to change the language
10 to the governing authority if you're going to be consistent
11 with what --

12 MR. HILL: The same with Paragraph 1. I'm just
going to do that.

14 CHAIRMAN SELL: All right. I take it there is no
15 problem with Subparagraph 1.

16 MR. KNOX: That's just as is in the present
17 constitution.

18 CHAIRMAN SELL: That's just as is.

19 Paragraph 2 now we were discussing, or Subparagraph
20 2.

21 MR. KNOX: I like the way you've got it worded much
22 better than the Subparagraph 2, the alternative to
23 Subparagraph 2.

24 REPRESENTATIVE CONNELL: You like the alternative
25 better?

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1 MR. KNOX: No, I like the other one better, the
2 general language, because really a lot of people borrow money
3 from the federal government to do things other than just
4 preliminary stuff that's mentioned in the alternative, and
5 that's what you're saying you've got certain restrictions
6 tied to.

7 I think that's the point I brought up. We borrow
8 from Farmer's Home, it's a forty-year payback, but we're
9 borrowing to do much more, we're borrowing to put sewer and
10 water in the ground rather than preliminary drawings and plans
11 and all that stuff.

12 CHAIRMAN SELL: Do we have a motion on Subparagraph
13 2?

14 MR. KNOX: Yes, I make that motion.

15 CHAIRMAN SELL: Is there a second?

16 MR. JACKSON: Second.

17 CHAIRMAN SELL: Any discussion?

18 All in favor say aye.

19 (Ayes.)

20 CHAIRMAN SELL: Opposed no.

21 Two is adopted.

22 Subparagraph 3. Is there any problem about
23 Subparagraph 3?

24 MR. HENRY: I changed this back the way it was in
25 here for the mere -- the way it's drafted with this we have to

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1 pay in whole or part the cost of property reevaluation and
2 ad valorem tax equalization programs, and just for lack of
3 knowing what the difference between the terms that we put in
4 here and the terms that are in here and any impact, I thought
5 that perhaps we should continue to use the term as it's used
6 in the present constitution.

7 You may have come to a decision at the last meeting
8 that you felt that this language was a better statement. If
9 it was, my draft would certainly reflect that.

10 I just wanted to point that out.

11 CHAIRMAN SELL: I don't know, I suspect that I'm so
12 tied up in litigation and everything else involving the re-
evaluation I may have stuck reevaluation in without thinking
14 about it. I don't know of any reason why it should be
15 reevaluation as opposed to --

16 MR. KNOX: I don't know. I can't think of any.

17 CHAIRMAN SELL: We've got a lawsuit involving our
18 digest.

19 MR. HILL: Should it be property valuation and ad
20 valorem tax equalization programs?

21 We discussed this last time, and it was the general
22 consensus that that stated it more clearly.

23 CHAIRMAN SELL: All right. That is a change from
24 the existing constitution which had a long rigmarole about --
25 Where is it.

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1 MR. HENRY: It had in it by way of --

2 CHAIRMAN SELL: It said the contract had to be
3 approved by the State Revenue Commissioner, among other things.

4 MR. HENRY: By way of borrowing from private
5 individuals, firms, corporations or partnerships as well as
6 the state, you could borrow without limit, it had shall be
7 paid in one or more at least annual instalments within a seven-
8 year period, and not more than five percent interest, and that
9 the property tax shall be levied to pay off the debt, that
10 any contract must be approved by the Revenue Commissioner
11 pursuant to regulation promulgated therefor; so that was
12 deleted, and "to be provided by law," or -- I think we were
just silent on that.

14 CHAIRMAN SELL: We were just silent on that.

15 That was apparently -- you know, at one time there
16 was some question again I think in DeKalb County litigation
17 where they had what they called a cadastral survey, I
18 remember that word, and they got some problem about whether or
19 not they could pay for it, wasn't it Jack --

20 MR. MORTON: Yes, sir.

21 CHAIRMAN SELL: -- and I think this constitutional
22 amendment was really specifically designed for that DeKalb
23 County situation, but with the requirements of counties to
24 really do this sort of thing periodically it seems to me the
25 general authority is good.

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1 Does anybody have any problem with it?

2 Do we have a motion that Subsection 3 be adopted?

3 MR. HILL: Now, as in the staff redraft or using the
4 language we had from the last --

5 CHAIRMAN SELL: The staff redraft, what we have
6 before us.

7 Did we have a motion?

8 MR. KNOX: Yes, sir. I so move.

9 CHAIRMAN SELL: Is there a second?

10 MR. JACKSON: Second.

11 CHAIRMAN SELL: All in favor say aye.

12 (Ayes.)

13 CHAIRMAN SELL: It is adopted.

14 Number 4.

15 MR. HENRY: This is the same as is in the last
16 committee draft except that there was a limitation -- there is
17 a limitation in the present provision which was omitted from
18 the committee redraft from last time which I included in the
19 staff draft which provided that the loan -- well, it said
20 make temporary loans between January 1, I put incur debt
21 by obtaining temporary loans, because "make temporary loans"
22 kind of didn't make sense to me, it looked like you were
23 letting them get into the business of loaning money, so I
24 hopefully clarified and put "incur debt by obtaining temporary
25 loans."

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1 Also there was a limitation that the loan shall not
2 exceed or be in excess of the total anticipated revenue for
3 such year, which was omitted from this draft, which is in the
4 present provision, and which I reinserted in this provision.

5 CHAIRMAN SELL: Not to exceed 75 percent?

6 MR. HENRY: It says that all outstanding loans shall
7 not exceed 75 percent of the total gross income from taxes
8 collected in the last preceding year, with the additional
9 limitation that it also not be in excess of the total antici-
10 pated revenues for such year -- for the year when the loan is
11 made, or when the loan is taken out.

12 CHAIRMAN SELL: I don't see that back in here. Is
13 that back in here?

14 MR. HENRY: That's in this draft right here.

15 MR. KNOX: Yes, it is back in there, "nor be in
16 excess of the total anticipated revenue for such year."

17 CHAIRMAN SELL: Okay. Right. Yes.

18 The one change, then, from the previous -- from
19 the present constitution is that -- and I think this was made
20 at Bob's suggestion -- that instead of the payment being due in
21 any event by December 31st that it be due not more than one year
22 from the date it was incurred.

23 MR. KNOX: Right.

24 MR. HILL: From which incurred I think we made it.

25 MR. SUMNER: Let me ask one question.

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1 I always construed that to mean from taxes, which
2 would mean any taxes, not just property taxes, but I heard a
3 well respected finance director for a city say that that meant
4 ad valorem taxes, 75 percent of total gross income from ad
5 valorem taxes.

6 As long as it says taxes, a tax is a tax, and that
7 would include local option sales tax and any other tax I
8 would suspect; right?

9 It ought to. You've got some places that maybe have
10 very low, you know, property tax levy and you want to borrow
11 based on the total tax income.

12 MR. RICKETTS: And some that are nonexistent.

13 CHAIRMAN SELL: Ed, if you're going to construe it
14 very strictly, the court of appeals and the Supreme Court have
15 talked about licenses, taxes and fees, and I don't know whether
16 ad valorem taxes are different from licenses, taxes and fees.

17 MR. SUMNER: The sales tax is an excise tax. I
18 think you ought to make it clear that it includes this type of
19 taxes.

20 MR. RICKETS: How about from all taxes, just the
21 simple insertion of the word "all."

22 CHAIRMAN SELL: Well, you could just say total
23 gross income collected in the last preceding year.

24 MR. SUMNER: That includes federal revenue sharing
25 funds and everything. That's very broad.

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1 Maybe you want to.

2 CHAIRMAN SELL: Well, I didn't have that in mind,
3 really.

4 MR. SUMNER: When we start playing with it --

5 MR. KNOX: You really open it up.

6 MR. RICKETTS: From all taxes?

7 MR. HENRY: I don't see how you could read the
8 present provision to limit it to ad valorem taxes.

9 MR. SUMNER: I thought a tax -- you've got income,
10 excise and property tax -- those are all types and forms of
11 taxes. A license fee is something else, a user fee is some-
12 thing else, but I thought tax would cover income, sales and
13 excise. Those are the three main things you might be concerned
14 about, if you ever get an income tax for local government.

15 CHAIRMAN SELL: If it ain't broke, maybe we ought not
16 to fix it.

17 MR. SUMNER: I didn't think it was broke, but if it
18 is broke we don't talk about nobody.

19 REPRESENTATIVE CONNELL: Let me ask a question,
20 "no loan outstanding which was made in any prior year," the
21 third line from the bottom where it says you can't make a loan
22 if there's an outstanding loan previous. Does that relate to a
23 temporary loan or any other loan?

24 MR. KNOX: It should relate to temporary loans.

25 REPRESENTATIVE CONNELL: It doesn't say what loan.



1 It doesn't clarify what type of loan.

2 MR. KNOX: It ought to say all such temporary loans.

3 MR. SUMNER: He was concerned if you had a GO debt
4 outstanding you couldn't --

5 MR. HILL: All such temporary loans.

6 MR. KNOX: I'm sorry. Excuse me.

7 CHAIRMAN SELL: Maybe what we ought to say, Bob, is
8 that no loan outstanding which was made in any prior year
9 under the provisions of this subparagraph, because Paragraph
10 Number 1 is in effect a temporary loan.

11 Now we really need to relate it to that particular
12 paragraph.

13 All right. Any other comments on this paragraph?

14 REPRESENTATIVE CONNELL: Do you want to add the word
15 all before taxes?

16 CHAIRMAN SELL: Is there any objection to adding the
17 word "all"?

18 REPRESENTATIVE CONNELL: Does that relate to all city
19 and county tax, state tax? Not federal tax?

20 CHAIRMAN SELL: That would be taxes collected by the
21 entity incurring the debt.

22 MR. RICKETTS: I wouldn't get too specific on that,
23 Ed, because you don't want to exclude local option which is
24 collected -- imposed locally but collected by the state. I
25 think if you just say all taxes that will take care of it,

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1 CHAIRMAN SELL: I think this thing is going to be a
2 great boon or --

3 As amended, is there any objection to Subparagraph 4,
4 those two amendments being the insertion of the word "all" in
5 front of the word "taxes," in the fourth line and adding the
6 proviso limiting the effectiveness of the limitation for those
7 loans incurred under that subparagraph?

8 All right. Hearing none, we will go on to paragraph
9 3. All right.

10 Do you have any comment on this?

11 MR. HILL: This was a consolidation of Paragraphs
12 4 and 5 of your previous draft that Michael put into Paragraph 3
13 and it doesn't change -- well, it does omit one provision that
14 is now in the constitution "to be provided by law," and that's
15 the last sentence of the prior draft which stated the moneys
16 from the sinking fund may be invested and reinvested in the
17 bonds of the local government and the bonds of the state of
18 Georgia and bonds of other local governments together with
19 instruments issued by the US, and all that laundry list of the
20 types of bonds in which these moneys may be invested was to be
21 left to be determined by law under Michael's draft.

22 CHAIRMAN SELL: Any discussion on Paragraph 3?

23 MR. KNOX: Basically that is a consolidation of the
24 first draft 4 and 5, less that last laundry list?

25 MR. HILL: That's right.



1 MR. HENRY: Personally this levy to pay bonds --
2 you people who are out in the trenches with it every day ,
3 shall at or before the time of doing so provide for the
4 assessment and collection of an annual tax in a sufficient
5 amount to pay the principal and interest of said debt within
6 thirty years.

7 Does that mean that once you decide to issue a bond
8 you have to set up the mechanism thirty years down the road?

9 CHAIRMAN SELL: Yes. When you issue a general
10 obligation bond, the bond people always want you -- now
11 whether it's -- I assume that this has something to do with
12 the marketability of the bonds, but they want you to adopt an
13 ordinance right then and there levying a sufficient tax to pay
14 the whole debt service, and we do.

15 MR. HENRY: Do you levy it on the property?

16 CHAIRMAN SELL: Sure, it's levied on all of the
17 taxable property.

18 MR. HENRY: Do you levy it in a millage form or --

19 CHAIRMAN SELL: I don't think you can levy it in a
20 millage form. I think it's a general levy.

21 MR. HENRY: I mean would the fact that, for instance,
22 property values took a nosedive, would that affect the ability
23 to raise this money?

24 CHAIRMAN SELL: I don't think you describe it in terms
25 of millage, you just describe it in terms of maybe dollars.



1 I've forgotten exactly how it reads, but it couldn't be a
2 millage because if the digest keeps going up it would be much
3 too much, and if it goes down it would be too little.

4 MR. HENRY: I see.

5 CHAIRMAN SELL: This paragraph seems to me to be a
6 redundancy, but it's been in here for years and years, and I
7 figure there must be some reason for it. I didn't raise
8 a question about it.

9 MR. KNOX: I would move approval of Paragraph 3.

10 CHAIRMAN SELL: Second the motion?

11 MR. JACKSON: Seconded.

12 CHAIRMAN SELL: All in favor say aye.

(Ayes.)

14 CHAIRMAN SELL: Opposed no.

15 (No reply.)

16 MR. KNOX: Mr. Chairman, this might be an appropriate
17 time to bring up one question that came from the GMA committee,
18 it's at the beginning of the second page of Hobby Stripling's
19 letter if you want to follow it, and basically there is a
20 suggestion made and we may want to consider the refunding of
21 GO bonds under specified language where there is no more money
22 to be paid.

23 In other words, if a situation comes up where the
24 taxpayers might be able to be saved money by refunding which
25 some people have done just recently, that that would be

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1 available under the constitution. That's a suggestion.

2 MR. SUMNER: Not necessarily -- without necessity
3 for referendum?

4 MR. KNOX: Right.

5 MR. HENRY: We omitted all that --

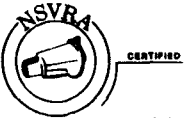
6 CHAIRMAN SELL: That refunding thing we omitted is
7 something different from what he's talking about. I talked to
8 Pope McIntire about the refunding provisions within the
9 present constitution. Many of you know that Pope McIntire is
10 sort of honcho to the bond business for King & Spalding which
11 probably does more than anybody else. Pope said he had never
12 in his practice, never knew of the existing refunding
provisions being required or needed.

14 I think basically those must have been depression
15 type measures, but they certainly have not been required in
16 the last thirty or forty years.

17 Now, what Hobby's letter is talking about is a
18 situation where the interest rate comes down and you have a
19 balance due on an existing issue, you ought to be able to
20 refinance the balance at a new and lower rate of interest
21 without having to go through a recall of the existing bonds
22 and a holding of a new election for that purpose.

23 MR. HILL: If you were inclined to do that, it would
24 be relatively easy to add a fifth exception over here in
25 Paragraph 2 that would authorize them to provide for the

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1 refunding subject to these conditions.

2 I think it would be easy to accomplish. The
3 question is whether you would like to do that and open it up
4 for the local government without a referendum to provide for
5 this.

6 CHAIRMAN SELL: Yes, that would be the place to put
7 it I think.

8 MR. HENRY: My understanding was you could do this
9 by contract.

10 CHAIRMAN SELL: What you can do by contract and
11 what is done by contract, every bond issue that's put out as
12 I understand it is now subject to being called, but what would
you replace that with if you called in those bonds?

14 Those are really contemplated -- for example, it
15 comes up lots of times in revenue bonds which doesn't
16 specifically apply to this, but it's a good illustration,
17 you've got a water and sewage business, they have got out-
18 standing \$5 million in revenue bonds, they need 5 million
19 more, what do you do?

20 You can't issue very well 5 additional million
21 dollars worth of bonds in many instances, so you have to call
22 in your original issue and then float a new \$10 million
23 issue to pay off the old bonds and get your additional money.
24 You could do that also with general obligation bonds, but
25 this proposal would be limited to those situations where the

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1 life of the original bonds is not increased and when they money
2 is really a refinancing of the balance due.

3 MR. KNOX: Jay raised a point of whether you could
4 increase the amount, and that's not the intent either. The
5 intent is for everything to stay the same except the interest
6 to be reduced so the net overall cost to the taxpayers would
7 be less.

8 Frankly, I have not studied this a whole lot
9 myself. You may want to -- if you want to consider it, you
10 may want to see if it will fit as you say under 1.

11 MR. HILL: It's hard to imagine someone objecting
12 to it. It sounds as if it's a very foresighted proposal
13 that would eliminate the expense of a referendum in a case
14 where no one is likely to object, so I would suggest that we
15 incorporate it at least for purposes of the discussion at the
16 next meeting or to the full committee with the understanding
17 that, of course, if something comes up we can always eliminate
18 it.

19 MR. RICKETTS: Ed says the intent is not to increase
20 the --

21 MR. HENRY: It wouldn't be just an intent, it would
22 be stated subject to these limitations.

23 CHAIRMAN SELL: I think we need to limit that as a
24 statement.

25 MR. HILL: It would be specifically stated.

1 CHAIRMAN SELL: I think it's implied when you're
2 talking about a refunding of a specific issue; it's got to be
3 a refunding for the balance due, but it might be well to
4 specifically state it.

5 If there is no objection we will let it take that
6 direction, then.

7 MR. KNOX: All right, sir. Thank you.

8 CHAIRMAN SELL: All right. We come now to Paragraph
9 4.

10 MR. HENRY: This is a failsafe. It's --

11 REPRESENTATIVE CONNELL: You don't need it, but
12 you'd better have it.

MR. HENRY: Better have it.

14 CHAIRMAN SELL: Is there any objection to it?

15 MR. KNOX: No, sir.

16 CHAIRMAN SELL: All right. No objection. We will
17 consider that one adopted.

18 We come now to revenue bonds.

19 MR. HENRY: This is substantially reduced -- well,
20 not really, but in yours where you state that shall be
21 revenue anticipation certificates, number one, that law has
22 been changed to revenue bond law, and I thought that perhaps
23 we could bring it in line with what the law states today,
24 provide funds for the purchase or construction in whole or
25 part of any revenue-producing facility which is authorized by

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1 revenue certificate laws as now or may hereafter be amended.
2 I think perhaps just to state that it shall be as provided by
3 general law would be sufficient.

4 We had it as general law rather than just as
5 provided by law because it was -- I guess it would be a policy
6 decision to make so that you couldn't go in and authorize a
7 certain locality to issue revenue bonds for a particular
8 purpose without some type of legislative scrutiny as to what
9 you're doing.

10 It came up in connection with some counties' use of
11 revenue bonds to build county court houses and other public
12 works that are not revenue-producing facilities, so I talked
13 this over with Harvey Findley and he felt that we should have
14 it as provided by general law.

15 The second part which says subject to provisions
16 set out hereinafter requiring election, I took that provision
17 and put it in the separate paragraph which has to do with the
18 construction or maintenance of gas and electric generating or
19 distribution systems -- I put that whole subject matter in its
20 own separate paragraph, whereas in the present constitution
21 it's kind of sprinkled throughout.

22 We also included public authority under this general
23 law on revenue bonds. This would necessarily include the
24 public authorities law that we have on the books right now
25 which authorizes them to issue revenue bonds.

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1 I have got this as optional, "The debt represented
2 by revenue bonds shall be repayable only out of the revenue
3 derived from the project, shall not be deemed to be debt of
4 the issuing political subdivision." I think that's stated in
5 the law, I think the definition of a revenue bond is this, so
6 I've got "No such issuing political subdivision shall exercise
7 the power of taxation for the purpose of paying any part of
8 the principal or interest of any such revenue bonds," and
9 also I think it is implicit in any type of revenue bond that
10 the issuer can't levy a tax to pay for it when it states in
11 the law that they shall only be repayable out of the revenue
12 derived from the project, so I left that as optional, but I
see no harm in leaving it in here. I mean it's just further
solidification of that concept of what a revenue bond is.

15 There's basically no change, no substantive change.
16 that was intended, and I don't think there's a substantive
17 change effectively by this redraft with respect to revenue
18 bonds as they can be currently issued.

19 Then again I state in Paragraph 2 -- I have taken
20 out the revenue bonds that are issued for gas and electric
21 generating and distribution systems.

22 MR. MORTON: There is a substantive change in
23 Paragraph 2, though.

24 MR. SUMNER: Yes, there is.

25 MR. HENRY: Yes.

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1 CHAIRMAN SELL: I'm sorry, Jack, I didn't --

2 MR. HENRY: I was going to get to that.

3 MR. MORTON: I was just inquiring as to whether or
4 not he realized there was a substantive change in Paragraph 2.

5 MR. HENRY: It was deliberate.

6 CHAIRMAN SELL: All right. We are on now Paragraph
7 1. Do we need to consider Paragraph 2 before we talk about
8 whether we want to dispose of Paragraph 1?

9 MR. KNOX: No, sir.

10 CHAIRMAN SELL: I suppose the first question is
11 shall the matter in brackets be included or excluded from
12 Paragraph 1.

13 MR. KNOX: I think we ought to include it.

14 CHAIRMAN SELL: Is there any other thought about
15 the matter, that it should or should not be included?

16 If there is no objection, then, we will consider it
17 included.

18 The question now is on the adoption of Paragraph 1
19 with the bracketed matter included. Is there any disposition
20 with respect to that?

21 MR. KNOX: I move its adoption.

22 CHAIRMAN SELL: Second?

23 REPRESENTATIVE CONNELL: Second.

24 CHAIRMAN SELL: Discussion? All in favor say aye.

25 (Ayes.)

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1 CHAIRMAN SELL: Opposed no.

2 It is adopted.

3 Paragraph 2.

4 MR. HENRY: Paragraph 2, as Jack pointed out, has a
5 major change in it. Basically in the present provision you can
6 issue revenue bonds without referendum except when you're
7 issuing revenue bonds to buy, construct, extend, operate or
8 maintain gas or electric generating or distribution systems,
9 and I believe that election is the same as if you're incurring
10 debt, a referendum for GO debt.

11 All right. Now, the second part of it is where I
12 made a change, and we could just as easily go back to the way
13 it originally is, but I'll give you my reason for the change.

14 In Article III it says that the General Assembly
15 shall not have the authority to regulate municipal -- such
16 power and authority shall never be exercised in any way to
17 regulate or fix charges of such public utilities as are or may
18 be owned or operated by any county or municipality of the state
19 except as provided in this constitution.

20 This provides the one exception to where the state
21 can regulate a municipal or county-owned utility, and the
22 present provision says that any time that they extend the gas
23 or electric services beyond the county in which the city or
24 county or political subdivision is located then they become
25 subject to state regulation and subject to taxation as are

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1 privately owned and operated utilities.

2 I made the change to say that whenever they extend
3 beyond the limits of the jurisdiction in which the county or
4 municipality or political subdivision is located, so that in
5 effect under the present provision a municipality could extend
6 its electric generating system outside of the city and out
7 into the unincorporated area of the county and not be subject
8 to taxation and regulation, but if they tried to extend it
9 outside of the county then that's when they would be subject
10 to this.

11 My thoughts were -- and I was talking to Ed about
12 this this morning -- is that given the posture of the Supreme
13 Court and the antitrust laws after that LaFayette case this
14 would provide an adequate protection to a municipal or county
15 system because that was one of the reasons why they held that
16 the LaFayette municipal system, electric system was subject to
17 antitrust law was because they extended it beyond their
18 municipal limits.

19 I'm not wedded to the idea, I just thought that it
20 could perhaps help to prevent that from happening for any
21 municipal electric system in Georgia, county electrical system
22 in Georgia.

23 MR. SUMNER: Let me raise a question. I didn't know
24 you were talking about this in the context, Mike -- I don't
25 think what you've got would protect us whatever as far as the

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1 antitrust thing particularly; it would create some substantial
2 problems because it would reverse some very basic philosophies
3 and that is the state ought not to tax directly its political
4 subdivisions, it would subject them to taxation like any
5 other --

6 You've got the situation of the county potentially
7 taxing the municipal property and a municipality taxing the
8 county property if the county thing went across a municipality,
9 taxing ad valorem taxation I guess, I think that would just be
10 a dangerous precedent.

11 The second thing is it would subject these things to
12 PSC regulations. Believe me, they can't say grace with what
13 they've got now without trying to regulate the existing things
14 they've got to regulate and I believe you would have the PSC
15 taking strong exception to this because they don't want it.
16 They don't want any additional headaches in trying to regulate
17 municipals who are already under --

18 MR. HENRY: This is just my first shot at trying to
19 prevent that type of thing that happened in LaFayette from
20 coming about, given the fact that we're attempting to reverse
21 Dillon's Rule, and I'm not -- I mean this is just something
22 I'm throwing out.

23 I'd just as soon you'd go back to the language that's
24 in here right now so as not to upset the applecart.

25 MR. SUMNER: Also LaFayette was a tie-in contract

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1 with this antitrust case, it was a situation where the city
2 said "If you want our water you have to take our electricity,"
3 so this wouldn't -- you know, certainly doesn't address this,
4 plus this would not establish a state policy which would
5 permit antitrust, anticompetitive activity.

6 CHAIRMAN SELL: What about a Section I violation?

7 MR. SUMNER: What do you mean?

8 CHAIRMAN SELL: A monopoly or attempt thereat in
9 Section I of the original Sherman Act, the General Section I.

10 I don't think this creates it, but I suppose if the
11 local authority does undertake to preempt, the local government
12 does attempt to preempt it they may have a possible Section I
13 problem, but I don't know how we can avoid it.

14 MR. SUMNER: The other thing is we do have the
15 regulation in Georgia -- this is as far as electric goes -- of
16 the territorial assignment act, and a fight in Louisiana which
17 developed were the cities were trying to extend their lines
18 competing with Louisiana Power and Light, and so the city used
19 their leverage as the water provider saying "If you want our
20 water you've got to take our electricity too."

21 In Georgia we've got a territorial assignment act
22 and the PSC does carve up the territories as far as assignment,
23 and that was litigated and the Supreme Court upheld that act,
24 and so a city cannot extend its service area unless it already
25 had a certificate -- I think they've got a certificate of,

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1 what is it, primary provider or secondary provider, it's a very
2 complex type thing, so we are somewhat limited from ever getting
3 into the situation at least on this area of LaFayette, and I
4 think the LaFayette thing may go -- there's many other issues.

5 MR. HENRY: I was just looking at it. I think there
6 are many other problems created.

7 MR. SUMNER: I think the PSC is having a rough time
8 with what they've got.

9 MR. SUMNER: Last year there was a bill to put water
10 and sewer rates in cities and counties under the PSC juris-
11 diction, so --

12 MR. HENRY: In any event, this was omitted, the
13 thing that was written in here was omitted and I thought that
14 it was -- it's an exception to the Article III prohibition of
15 the state getting involved in municipal utilities, and I
16 thought that you should look at that exception and make a
17 policy decision as to whether it should be retained or deleted
18 or dealt with, and although this probably doesn't get around
19 LaFayette I wanted to bring it up and make an initial stab at
20 it and see what you all had to say.

21 CHAIRMAN SELL: All right. What is the pleasure of
22 the committee?

23 MR. HENRY: The way it reads right now it would
24 read where such revenue bonds are issued for the purpose, for
25 this purpose and the gas or electric generating or distribution

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1 system extends beyond the limits of the county in which the
2 municipal or political subdivision is located, then its services
3 rendered or the property located outside the county shall be
4 subject to taxation and regulation in the same manner as are
5 privately owned and operated utilities. That would leave it
6 as it presently exists right now.

7 MR. KNOX: Do I gather that language assuages some
8 of the fears?

9 MR. HENRY: I might throw out in the last session
10 someone tried to amend this to state that you could regulate
11 them if you went past the county, but you couldn't tax them
12 until all the bonds were paid off. There was a specific
13 amendment to this provision here in this last session --

14 CHAIRMAN SELL: What is the pleasure of the committee
15 with respect to this paragraph?

16 MR. KNOX: I don't know that much about it, but it
17 sounds like everybody sort of wants it back the way it was
18 before, so with that in mind and to keep us moving I move that
19 we adopt the paragraph as amended to put this last sentence in
20 the existing constitutional language.

21 CHAIRMAN SELL: That is property outside the
22 jurisdiction will be taxable? That is in shorthand --

23 MR. KNOX: Outside the county, yes.

24 CHAIRMAN SELL: Outside the county, outside the
25 jurisdiction. You could have a municipal system that goes out

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1 into the county.

2 REPRESENTATIVE CONNELL: You're not talking about
3 water, you're discussing electricity?

4 CHAIRMAN SELL: Just gas and electricity.
5 Is there any objection to letting it take that
6 direction?

7 The Chair hears none, so we will ask the staff to
8 revise it accordingly.

9 Paragraph 3.

10 MR. HENRY: This has been broadened somewhat. In the
11 change that was made from the present provision to the draft
12 as adopted at the last subcommittee meeting said that the
13 General Assembly can create or authorize the creation of by
14 county municipal accommodation the creation of a development
15 authority which in the present provision has subject to uniform
16 terms and conditions as it may deem necessary, and in this it
17 has as provided by general or local law.

18 In the staff draft it has been expanded somewhat to
19 say that the General Assembly may create development
20 authorities or authorize their creation in order to promote
21 the development of trade, commerce, industry and employment
22 opportunities, which is how it reads at present, or any other
23 public purpose as provided by general or local law.

24 This was intended to get around the multitude of
25 local constitutional amendments setting up different types of

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1 development authorities. In other words, it gives the General
2 Assembly more authority in the area.

3 CHAIRMAN SELL: I sometimes thought that when we had
4 something to do with money and the drafter didn't know where to
5 put it they put it in the revenue bond section. Isn't this an
6 Article III section?

7 MR. HENRY: Well, you've given the county, the local
8 government the authority to create, so I guess it's --

9 CHAIRMAN SELL: It starts out by saying the General
10 Assembly may create --

11 MR. HENRY: You know, in the 1945 constitution all
12 county and state financial matters were in Article VII, and
13 that's where this was. Then when they editorially revised it
14 they took certain things out and put it in Article IX on
15 county finance, and this is where it ended up.

16 They are beginning to have a lot of them coming out
17 which are downtown development authorities where the General
18 Assembly delegates its actual authority to tax to a group of
19 private citizens, and they're giving the citizens the authority
20 to set up their own special district, incur debt on their own
21 special district, and tax within that special district, so
22 that's -- I don't know how that can be addressed.

23 MR. RICKETTS: If we continue to widen it, it's
24 going to be addressed by the federal government.

25 MR. SUMNER: That's a danger. It may be addressed

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1 in a way we don't like with too much restriction. You know,
2 do we move to get a handle on it here or wait for them.

3 CHAIRMAN SELL: I'm serious, is this a matter for
4 revenue bond, Article III?

5 MR. KNOX: Is this development authority language in
6 the constitution?

7 MR. HENRY: It's been broadened to include any
8 public purpose, and it's been -- and you could under this do it
9 by general or local law, whereas now you can only do it by
10 general law.

11 MR. RICKETTS: Where did this come from? Is this
12 language here part --

13 MR. HENRY: Or for any public purpose is what
14 broadens it. That came from me. It's a specific intention of
15 doing away with local constitutional amendments.

16 MR. RICKETTS: Aren't you treating one even with the
17 other?

18 MR. HENRY: It's going to be done; it's either going
19 to be done by law or it will be done by local constitutional
20 amendment. I think the better of the two is to do it by law
21 if you're going to do it anyway.

22 MR. RICKETTS: You've got a movement in the General
23 Assembly to devise some mechanism, maybe legal, maybe nonlegal,
24 to get a handle on local constitutional amendments. I think the
25 policy process will probably take hold on those and you'll

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1 need -- What I'm suggesting is the proliferation of local
2 constitutional amendments creating development authorities for
3 multitudes of purposes may be handled by another solution and
4 making it easier to create development authority may be
5 unneeded.

6 MR. HENRY: That's a policy decision of the committee.

7 CHAIRMAN SELL: I'm just wondering what the language
8 where it says what the General Assembly may do, even though it
9 was stuck in this, if we --

10 MR. KNOX: The only thing that relates to taxation
11 is the exemption from --

12 CHAIRMAN SELL: That's right, and that's not some-
13 thing that a local government can do.

14 MR. KNOX: I move we pass this --

15 CHAIRMAN SELL: I would like to suggest that we --

16 MR. HILL: Unlike the other thing we're talking
17 about that could be cast to Bob Brinson's committee, if you
18 want to pass this to the Article III committee you're passing
19 to a dead group, they don't exist any more.

20 CHAIRMAN SELL: Is that right?

21 MR. HENRY: You could pass it to the Select
22 Committee and ask them to incorporate it in Article III.

23 MR. HILL: But they would want a policy judgment
24 about it from somebody, and I would ask you not to kick this
25 one over. I mean whatever you want to do, that's a question

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1 of organization, whether to take this out and put it in
2 Article III, but from a policy standpoint I really do hope you
3 will keep it.

4 CHAIRMAN SELL: I follow you.

5 REPRESENTATIVE CONNELL: They can take it out and
6 put it wherever they want to.

7 CHAIRMAN SELL: All right. Then what is the
8 view of the committee with respect to the policy involved here?

9 MR. RICKETTS: What about the elimination of local
10 law?

11 CHAIRMAN SELL: Frankly I like that because you can
12 have such varied local situations that would not be appropriate
13 for a general law. I don't think you want to create one for
14 every nursing home that comes in.

15 MR. RICKETTS: Are you talking about local develop-
16 ment authorities by local courtesy to legislators making a
17 significant amount of property tax exempt? That's an ambitious
18 idea.

19 MR. HENRY: The General Assembly could provide
20 procedures by which they set up a development authority for
21 any particular purpose that they may prescribe and allow the
22 local government to implement that or to implement development
23 authority under that procedure is the way I envision it.

24 MR. RICKETTS: The local constitutional amendment,
25 although we have thousands too many, at least you have the

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1 virtue of it having --

2 MR. HENRY: Is that right, there are thousands too
3 many?

4 MR. RICKETTS: At least hundreds too many. At least
5 you have the virtue of having the people who are going to have
6 to pick up the slack on the tax situation, having them vote on
7 the matter, and under the concept here you've got one group
8 making the decision and another group paying for it.

9 CHAIRMAN SELL: Where the existing language is --
10 it's in what section?

11 MR. HENRY: Section VIII, Paragraph 2, Revenue
12 Obligations, page 83.

13 MR. KNOX: I think the wording in the first draft
14 is about the same as that, isn't it?

15 MR. HENRY: It is, except that the staff draft has
16 been expanded to include for public purpose is the only change.

17 MR. RICKETTS: What about local law?

18 MR. HENRY: That's in --

19 CHAIRMAN SELL: That was in our prior draft. Is it
20 in the existing constitution?

21 MR. HENRY: It's under uniform terms and conditions.

22 MR. RICKETTS: As applies to general law.

23 CHAIRMAN SELL: All right. What is the pleasure of
24 the committee with respect to this?

25 MR. KNOX: I'm reading, I ain't moving right now.

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1 MR. SUMNER: I might add this is a very delicate
2 thing because I've heard some of the bond lawyers talk about
3 some of this wording, so any change you make I hope you all --

4 MR. HENRY: In what, In Paragraph 2?

5 MR. SUMNER: Any of the wording, if you change any
6 of the wording at all, anything you do with bond lawyers it
7 just drives them up the wall.

8 MR. KNOX: Mr. Chairman, I suggest we adopt the
9 existing language in Paragraph 2 of Section VIII in the
10 constitution, adding the one additional sentence that is the
11 last sentence of the staff draft which is the phrase --

12 MR. HENRY: That would be Paragraph 4 of the staff
13 draft?

14 MR. KNOX: That's right. Do you want to make that
15 Paragraph 4?

16 MR. HENRY: Is this what you're referring to right
17 here?

18 MR. KNOX: Yes, the last sentence. Do you want to
19 make that Paragraph 5? Or would it be 4?

20 MR. HENRY: I just put them both together in the
21 same paragraph.

22 MR. KNOX: I would suggest we just add that
23 sentence in as one additional sentence.

24 CHAIRMAN SELL: All right. Is there any objection
25 to that?

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1 MR. SUMNER: Paragraph 2 will not be a big problem.

2 CHAIRMAN SELL: It may be that you can resolve your
3 problem, or you can come to some agreement with respect to
4 Paragraph 2 because I rather sense that that is a soluble --

5 MR. KNOX: Mr. Connell who has been sitting here
6 today has been a part of that final deal, so --

7 CHAIRMAN SELL: What should be our schedule now?

8 MR. HILL: I would recommend two weeks from today,
9 Mr. Chairman, if it's open for you. That's the 13th of
10 August, a Wednesday.

11 CHAIRMAN SELL: That suits me.

12 MR. HILL: 1:30?

13 CHAIRMAN SELL: How do you feel -- One reason we
14 had it at 1:30 was that that's when we held it before because
15 another subcommittee was meeting in the morning, and Mr. Davis
16 from Valdosta has got a long way to come, except I think he
17 comes the night before anyhow. What do you feel about morning
18 as against afternoon, Bob?

19 MR. KNOX: Afternoon suits me better.

20 MR. HENRY: We have a meeting in the morning with
21 Bob Brinson's committee.

22 MR. HILL: No, we haven't. It's been changed.

23 CHAIRMAN SELL: You prefer the afternoon. All
24 right. Let's let it be, then.

25 If you will get out a notice --

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MR. HILL: It will be in this same room.

We will try to send a copy of the draft as revised at this meeting so you have it to look over one more time in case anything else should come to mind.

MR. KNOX: Are you going to draft some language on that refunding thing too for us?

MR. HILL: Yes. We'll add that into the draft.

CHAIRMAN SELL: I think we have made a lot of progress today.

Thank you for coming.

(Whereupon, at 5:10 p.m. the subcommittee meeting was adjourned.)

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Subcommittee Meeting Held on July 30, 1980

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STATE OF GEORGIA
COMMITTEE TO REVISE ARTICLE IX
OF THE
CONSTITUTION OF GEORGIA

SUBCOMMITTEE ON LOCAL GOVERNMENT
ORGANIZATION, REORGANIZATION AND
GENERAL CONCERNS.

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Room 401-A
State Capitol
Atlanta, Georgia

Thursday, August 7, 1980
9:30 a.m.

1 PRESENT:

2 COMMITTEE MEMBERS:

3 CHAIRMAN PAUL COVERDELL
4 JAMES BURGESS
5 REPRESENTATIVE WARREN EVANS
6 ELINOR METZGER
7 REPRESENTATIVE GRACE HAMILTON

8 ALSO PRESENT:

9 MELVIN B. HILL, Jr.
10 MICHAEL HENRY
11 VICKIE GREENBERG
12 MARY VAN AMBERG
13 STEVE RIECK
14 ED SUMNER
15 KEN JONES
16 LOU LITCHFIELD
17 ANNE SPIELBERG

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P R O C E E D I N G S

1
2 CHAIRMAN COVERDELL: Okay.

3 We are on page 4 of our decision agenda.

4 First of all, are there administrative notes
5 before we get into that? Mel, do you --

6 MR. HILL: No, sir.

7 CHAIRMAN COVERDELL: Okay. Has everybody received
8 this first draft? Do you want to wait until you pass it out?
9 Okay.

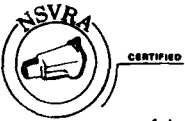
10 Let's move on. We are on page 4 of our decision
11 agenda, question Number 3. Do you want to read that one into
12 the record, Mel?

13 MR. HILL: Yes. "Should the relationship between
14 the county governing authority and the other elected county
15 officers be addressed in the constitution?"

16 Yes or no. And, if yes, in what way.

17 This question comes up in the context of a number of
18 local amendments that have been adopted, particularly in the
19 area of personnel where the county governing authority under
20 the present constitution has no authority over the salary or
21 the benefits or the personnel procedures of the personnel under
22 the jurisdiction of other county offices, and so there has been
23 an effort through some local amendments to establish a civil
24 service system countywide so that all of the employees of the
25 county are within the same basis of a civil service system.

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1 Without a local amendment authorizing it there is
2 some question whether it can be done because the jurisdiction
3 of the county officers over their own employees is that.
4 In other words, the county governing authority has no ability
5 under the present system to establish a uniform civil service
6 system.

7 That is one of the aspects of this question, but it
8 is broader than that, of course; should the county governing
9 authority be given any broader authority to govern in a county.

10 I'll just throw it open for discussion.

11 CHAIRMAN COVERDELL: Are you saying that the present
12 language would prohibit or at least throws a cloud over a
13 uniform employment practice in terms of retirement benefits,
14 merit system, that sort of thing?

15 MR. HILL: Yes.

16 MS. METZGER: Excuse me. And at present it takes a
17 local constitutional amendment to set up the conditions under
18 which a civil service could operate in the county?

19 MR. HILL: You see a number of local amendments that
20 authorize that authorize that, so our assumption is that that
21 probably is necessary. Once again, it's never been a subject
22 of litigation to my knowledge.

23 MS. METZGER: This is certainly true in DeKalb
24 County. There are employees that are under the direct control
25 really of one person instead of being on the merit system

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1 so that they can be responsible more for their actions --

2 MR. HILL: You see, one of the exceptions on the
3 county home rule authorization is action affecting any elected
4 county office, the salaries thereof or the personnel thereof,
5 except the personnel subject to the jurisdiction of the county
6 governing authority, so there is specific exception in the
7 home rule provision for counties that states that they cannot
8 take any action affecting the employees of other officers,
9 and so that's the reason I think that we have had the local
10 amendments authorizing a civil service system over all of them.

11 Is that a fair statement?

12 MR. BURGESS: Yes. That's right out of the
13 constitution.

14 MS. METZGER: What section are we?

15 MR. BURGESS: Page 73, the bottom of page 73 you'll
16 see that.

17 CHAIRMAN COVERDELL: It would seem to me that that
18 is not a desirable result, that there should be authority,
19 enabling authority in the constitution to allow some general
20 employee practices.

21 I could see some interesting -- we're treading on
22 turf here again, but in today's world, particularly in the area
23 of retirement systems, that's just a monstrosity to deal with.

24 The county employees of the tax collector, for
25 example, were in some way prohibited or clouded from

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1 participation in certain other county public pension systems.

2 You know, that problem -- I don't recall it ever
3 occurring in Fulton County, what they have done is to ignore
4 the cloud and proceed.

5 Jim, what is your view on that? I can't see why we
6 wouldn't want to at least make it possible for the local
7 county to establish uniform employment policies for county
8 employees of the county officers.

9 MR. BURGESS: I feel that this really gets at the
10 basic heart of the antiquated structure of county government
11 in Georgia traditionally, and I have heard many county
12 commissioners say "We are charged with raising all the money
13 to run the county, but we only have jurisdiction over about
14 sixty percent of the operation," and there is a frustration
15 there that all of the employees under the county officers as
16 well as the operation of those departments are not under the
17 jurisdiction of the county commission, and they do have an
18 indirect control, they control them through the power of purse,
19 they can cut their budgets and they can bring them in line or
20 try to bring them in line that way, but in the actual practice
21 they can't tell the sheriff really how to run his department
22 or who to employ or who to dismiss or to set up standards and
23 criteria.

24 That is not desirable in any kind of organization to
25 have that kind of fragmentation within the overall structure

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1 of the operation. Consequently they can't have a uniform
2 personnel system that would apply to a county, to those
3 departments that are governed or that are directed by an
4 elected administrative officer.

5 However, I think that in terms of again practicality
6 if you continue the county officers it's going to be pretty
7 difficult to take away their jurisdiction over their
8 employment, dismissal, discipline of employees.

9 I would agree that it would be desirable to take
10 this provision out of the constitution and to allow the county
11 governing authority to have complete policy say-so over all
12 of the operations of the government, and I believe the General
13 Assembly has that authority at the state level even though
14 you have some elected department heads in state government.
15 Are not their personnel part of the total merit system for
16 the state? Isn't that true?

17 CHAIRMAN COVERDELL: Yes, I was going to say that.

18 Of course, we had a long, long tedious discussion on Question 2
19 and basically resolved that we -- I think we came to a
20 consensus that we could not get away from an enumeration of
21 these four or five which were the sheriff, tax commissioner,
22 clerk of the court --

23 MS. VAN AMBERG: We dropped the treasurer.

24 CHAIRMAN COVERDELL: We dropped the treasurer.

25 Although it might be desirable for those not to be

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1 elected from an administrative standpoint, both the
2 politics of it -- there's some disagreement about that matter
3 -- so if they were to remain an elected post to allow -- I
4 think the principal concern here might have been that people
5 would still want some say-so about the leadership of those
6 facilities, particularly the sheriff and tax commissioner.
7 I don't think that prohibits us -- we would not be incon-
8 sistent in saying however the employees of the government
9 shall be dealt with in a uniform manner as you stated.

10 As a good example, we do that at the state level. We elect
11 the Commissioner of Agriculture, and we would probably have a
12 difficult time saying that we wouldn't do that any longer,
13 nevertheless the employees of the Department of Agriculture
14 operate under the merit system, and I think that premise ought
15 to -- we ought to at least make that clear.

16 MR. BURGESS: I think it would be very desirable.

17 REPRESENTATIVE EVANS: The main thing would be the
18 practicality of it in connection with all the --your local
19 officials would thereby --

20 It also covers more than just employees, but that's
21 a matter of salary. I guess -- I know from my standpoint one
22 of the biggest headaches I have is usually about every term
23 there's a request to raise the officials' salary or not.
24 Of course I have always kind of adhered to the position that
25 if they're going to be raised, not during the middle of a



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1 term, but that's a real problem, I don't know how to address
2 it.

3 None of the other officials, for instance the
4 probate judge nor the sheriff nor the clerk of court want
5 to leave it up to the county commission to set their salary.
6 They feel that they are a constitutional body with equal
7 status in their particular domain, and consequently they don't
8 want to leave it up to the county commission, and I can see
9 their reasoning.

10 So we're going to have to -- if we address this
11 issue it would have to be I think on the employee, type of
12 employment basis and not just the salaries and so forth, and
I would like to get rid of it myself, but I don't know how to
14 do it.

15 If we can come up with something that will satisfy
16 all of the different elected officials I'd be happy to vote
17 for it.

18 MR. BURGESS: Mr. Chairman, let me make this
19 suggestion.

20 I think that it would be difficult to deal with a
21 provision that would allow the county governing authority to
22 set the salaries of elected officials because they are
23 elected by the people and they occupy, as you say, the same
24 status as the county commission itself except they're
25 administrative functions and not legislative functions.

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1 However, in most civil service or merit systems
2 department heads and elected officials are exempted from it
3 anyway, and I believe this says the --

4 What you're really talking about in this phrase is
5 knocking out really three words or four, "or the personnel
6 thereof." In other words, if you could bring the personnel
7 back under the jurisdiction of the county that still would
8 not -- if you look at this paragraph you would only be knocking
9 out three or four words "Or the personnel thereof."

10 What I'm saying, if you could do it, that's probably
11 as far as you could go, you see what I'm saying. You couldn't
12 get into the salary of the sheriff, because if the people
13 elect the sheriff it's like a contract with those people.

14 REPRESENTATIVE EVANS: Should the county commission
15 tell the sheriff how many deputies and then use that -- in
16 these small counties I know of --

17 MR. BURGESS: They do it anyway, they do it
18 indirectly by budgeting.

19 CHAIRMAN COVERDELL: If they don't give him any
20 money he can't hire them.

21 MR. BURGESS: What we're saying here is --

22 REPRESENTATIVE EVANS: Then they come to the
23 legislature and say "We want a local act that will say that
24 you can hire ten deputies." I've had it happen, I know.

25 MR. BURGESS: But the General Assembly takes action



1 affecting the personnel of elected officials at the state
2 level, does it not?

3 In other words, you take action affecting the
4 employees in Department of Agriculture in terms of the merit
5 system, that's an act of the legislature.

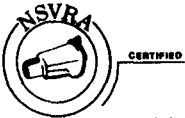
6 REPRESENTATIVE EVANS: Indirect more than --

7 CHAIRMAN COVERDELL: I think, though, that -- I
8 think we mentioned this before, that if we simply subscribe
9 here to the political response to modification or change that
10 we feel will improve the status of delivery of service by
11 government of the state we want to accomplish it, not that it
12 will all be set into motion maybe this time, but somewhere it
has to be recorded, the process has to begin where statements
14 are made about change.

15 I think from a practical sense in today's situation
16 personnel ought to be basically dealt with as we seem to be
17 heading here, and the politics of it will have to be debated.
18 Mel?

19 MR. HILL: I would like to take issue with something
20 Jim just said. He said they're elected officials and therefore
21 they can't -- the salaries must be set by the legislature.
22 Well, with regard to city councils that are elected officials
23 we have delegated to them the authority to set their own
24 salaries with certain conditions, that the salary will not go
25 into effect until after the next election, and I'm not so sure

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1 that that very same authorization wouldn't be appropriate for
2 county governing authorities as long as the limitations are
3 in there, and for that matter would there be -- I mean is it
4 totally unrealistic to consider the allowing the local
5 governing authority to set the salaries of the elected people
6 subject to any increase being prohibited until after the next
7 general election?

8 I don't know, it's --

9 MR. BURGESS: I just think it's inconsistent. If
10 you're going to keep elected county officers, they're elected
11 by the people.

12 MR. HILL: So are city council members.

13 MR. BURGESS: All right, I would go along with this.
14 I think to do it logically, to have a parallel there you
15 would have to let the sheriff set his own salary within those
16 limitations that you're talking about, the city council sets
17 its own salary, the county commission can set their own
18 salary provided it's not in the current term of office.

19 What I'm saying is can you allow one elected body to
20 set the salaries for another elected body? That other elected
21 body is that group of four county officers that were retained,
22 they are an elected group of officials, and you're letting one
23 group of elected officials not only set their own salaries
24 which they're now authorized to do by law, but you're saying
25 they can also set the salaries of another group.

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1 In other words, the General Assembly is really
2 delegating it in a triangle, they're delegating it down to
3 the county commission to set their own salaries, and at the
4 same time delegate it a little further and let them set the
5 salaries of the sheriff and the tax collector. I just don't
6 believe that would work.

7 I think you could possibly have uniform provisions
8 governing the personnel, but I don't believe -- I think you
9 would have a difficult time, a real difficult time selling to
10 let one elected group set the salaries of another elected
11 group.

12 MR. HILL: What if you let the sheriffs and the
13 others set their own salary subject to approval of the county
14 governing authority that has to pay the bill?

15 MR. BURGESS: That's doing the same thing in reverse.
16 Why not let them set the salaries and let the electorate take
17 care of it?

18 CHAIRMAN COVERDELL: If we did that, you know, that
19 might clear this question of enumerating them in the
20 constitution in a hurry.

21 MR. BURGESS: That's right.

22 CHAIRMAN COVERDELL: "I don't want that guy setting
23 his own salary, bam, get him out."

24 MR. BURGESS: The city councils can set their own
25 salaries, the county commissions can set their own salaries.

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1 CHAIRMAN COVERDELL: Counties can't. Fulton County
2 cannot set its own salary.

3 MR. BURGESS: You're right. They've got to come
4 back --

5 REPRESENTATIVE EVANS: Some local acts have given
6 them that right to set their own salaries.

7 REPRESENTATIVE HAMILTON: You mean some counties.

8 MR. BURGESS: That's right. In Fulton County they've
9 got to get it approved.

10 REPRESENTATIVE EVANS: Some counties have got --
11 usually they'll put in there not less than X dollars nor more
12 than Y. I mean those bills come through.

13 MR. BURGESS: That's right.

14 MR. RIECK: Senator, isn't part of the problem
15 really the fuzziness that exists between the executive and
16 legislative branches at the local level? The General Assembly
17 sets its own salaries, and elected constitutional officers at
18 the local level you've got that problem because there's I
19 guess the friction between the county commission and other
20 elected officials. It may be that's what needs to be
21 clarified.

22 CHAIRMAN COVERDELL: Steve, last session we went
23 round and round about that, and we have one strong view here
24 that they should not be enumerated, which we clarified. That
25 did not seem to prevail for various reasons, many of which

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1 are technical, so if you're going to leave them in we're back
2 in this problem we've got here.

3 Let's use the state as an example. Jim, the
4 legislature is elected, sets the salary for itself; the
5 county commission is elected but the General Assembly sets
6 the salary for them.

7 MR. BURGESS: You're right. The county can't,
8 because we tried to get a bill through to raise the Fulton
9 County salary. I personally feel the county commission should
10 be allowed to set their own salaries just like city councils
11 under the same sorts of standards.

12 CHAIRMAN COVERDELL: With the same parameters?

13 MR. BURGESS: With the same parameters.

14 CHAIRMAN COVERDELL: The grant to municipalities,
15 was that constitutional or statutory?

16 MR. HILL: Statutorily.

17 CHAIRMAN COVERDELL: Can we deal with counties in
18 the same manner?

19 MR. HILL: Yes, I think so. As a matter of fact,
20 when we look at the home rule provisions, the draft of the
21 home rule provisions, since we're going to be treating cities
22 and counties alike we have agreed as a matter of policy that
23 we will -- you know, I have assumed that we will be treating
24 them alike, and it would open the door to the county
25 commission setting its own salary subject to the same



1 limitations that cities would have, so I don't see any reason
2 to make a distinction especially if we have already agreed
3 we're going to treat them the same for purposes of home rule
4 powers.

5 CHAIRMAN COVERDELL: How many counties are there
6 that have a single commissioner or chairman?

7 MR. HILL: Five, I think. Four or five.

8 CHAIRMAN COVERDELL: The rest have some multiple
9 number?

10 MR. HILL: Yes. I have always been curious about
11 how the open meetings law applies to a sole county commissioner.

12 REPRESENTATIVE EVANS: I thought there was a court
13 test on that not too long ago. It applied to him, but it's
14 kind of hard to enforce it.

15 MR. SUMNER: I think someone sued them in Paulding
16 County or something.

17 REPRESENTATIVE EVANS: You get the right man or
18 woman, it's the best system.

19 CHAIRMAN COVERDELL: The benevolent dictator.

20 Well, you know, it seems to me that --

21 REPRESENTATIVE EVANS: Can I ask one thing. What
22 problem have we got with this? We're not trying to junk the
23 whole constitution in its entirety, but what problem have we
24 got with this particular provision presently?

25 MR. HILL: From a management standpoint it's a

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1 tremendous problem to the county governing authority because
2 each of the different officers can establish their own
3 personnel procedures and salaries for their people. They all
4 work in the same building, they all talk about these kind of
5 things, and it just creates -- I think from a management
6 standpoint it's really a real problem, and I would like to
7 know more about the civil service systems that have been
8 established by local amendment and what precipitated it, but
9 I would imagine that it was because of a lot of these problems
10 which from a practical management standpoint --

11 REPRESENTATIVE EVANS: Don't the counties now
12 though have control over -- they may not have over the
13 hiring and the firing, but in the budget process they've
14 still got control, do they not?

15 MR. BURGESS: Not over working conditions
16 necessarily.

17 MR. HILL: Not over the specific salaries. They
18 don't have a line item over what the individual county
19 officer is going to pay their secretary or their --

20 REPRESENTATIVE EVANS: I realize that, but they will
21 set so much money, and then they've got that control there.
22 I mean they either can spend it for this item or that item,
23 they line item it, they'll know what it is.

24 I know in -- for instance, in my home county the
25 clerk of court, for instance, is authorized I think the



1 statute says to employ a deputy clerk, and I think it's
2 spelled out within a specified amount for salary; it can be
3 not less than nor more than. Consequently, it's set by
4 local statute.

5 MR. HILL: What about the procedures for dismissal
6 and all the --

7 REPRESENTATIVE EVANS: He hires and fires.

8 MR. HILL: As the individual officer decides and,
9 you see, that is another whole dimension of this local
10 management problem is that under 1983 of the federal statutes
11 a county governing authority could be held personally liable
12 for a violation of the due process rights for employees that
are under its jurisdiction.

13 Now, if it is paying the bill of the people that are
14 working for these others, there is some question as to whether
15 they may be in fact liable for any violation of due process
16 rights in the dismissal of an employee, so it's a very
17 complicated situation.

18
19 MR. SUMNER: That raises another point. I know
20 there's one county, I wish I could think of the name of it,
21 where the revenue sharing office got some complaints about
22 hiring practices for the sheriff, and they went in and said
23 "Okay, X County, your revenue sharing is going to be cut off,"
24 take steps to cut off the revenue sharing. The county manager
25 says "Look, we can't control who the sheriff is hiring, we

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1 give him the budget, but we don't choose who his deputies
2 are, we don't have any authority to choose who is deputies
3 are." They said "Tough luck," you know, and the county as a
4 whole has a potential for being punished for what the sheriff
5 did, and that's the problem you're going to have in management
6 because you're getting the whole county suffering because you
7 may have one individual, one sheriff who wants to engage in
8 illegal employment practices and discriminate against
9 minorities or whatever, and you're going to get the blame,
10 and that was the highlight of what you said.

11 CHAIRMAN COVERDELL: I don't think you can justify
12 totally separate -- people look at these people as county
13 employees, and I don't think you can justify multiple hiring
14 and firing practices among other problems, but I do think
15 that the direction we've headed, the individual who's elected
16 probably ought not to touch -- it would essentially be leaving
17 the salary situation the way it is now, would not address
18 that.

19 Secondly, as Steve just pointed out the
20 department -- you know, Commissioner Irvin hires and fires
21 as the elected department head in a sense under the merit
22 system guidelines established by the state, and I can't how
23 that could be offensive reasonably to a sheriff or the clerk
24 of a court who simply has been given a merit system or at
25 least employment practices guideline by the authority which

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1 raises the money to hire his employees, to build some
2 parameters around the practices by which county employees
3 funded by county tax dollars are treated.

4 MR. BURGESS: For example, I have been in counties
5 where the elected officers would give their employees some-
6 times two and three times as much annual vacation as the
7 other employees of the county. You get those uneven personnel
8 practices that occur or that have different working hours, or
9 the sick leave policies would be different, they would give
10 say fourteen days a year while the regular general county
11 employees got ten. It creates a lot of resentment in between
12 ranks of employees.

13 CHAIRMAN COVERDELL: It's not a good system.

14 MR. BURGESS: It really isn't.

15 CHAIRMAN COVERDELL: If we were to say, take Jim's
16 suggestion and just leave the section striking the words
17 "or the personnel thereof," wouldn't we in effect basically
18 leave the -- we have left the four individuals being elected,
19 we have left their salaries to be treated as they are now,
20 we would have -- would we have left them responsible for
21 their own hiring and firing or the establishment of their
22 department so to speak under the auspices of uniform
23 guidelines? I think that question --

24 You know, if I were elected sheriff and could not
25 hire my own deputies, that would not be correct, but I ought

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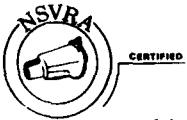


1 to have some practices that I had to follow that were
2 consistent with the governing authority's policy, but I
3 would want to pick who they were so long as they were -- I
4 hired them within reasonable standards.

5 Have we done that when we take that out, Jim, or do
6 we need --?

7 MR. BURGESS: I think as a practical matter most
8 governing bodies leave the hiring and firing to the department
9 heads. They will set -- for example, let's take the sheriff.
10 The personnel action taken by them might be to set up certain
11 criteria. In other words, they might require a deputy to
12 have certain kinds of law enforcement experience in order for
13 the sheriff to employ him as a deputy which now you don't
14 have, they can employ anybody, and many of them have no
15 experience; they're part of the total political network that
16 got the sheriff elected, that's how he got there through the
17 use of these people, so he turns around and hires them, so
18 it's purely a patronage system that you have in many counties
19 today.

20 I don't really see that the county governing body
21 would want to get into hiring and dismissal. I think the
22 actions they would take affecting personnel would be to set
23 up uniform personnel policies including procedures for
24 dismissal, employment, qualifications, vacations, sick leave,
25 military duty -- you know, these kinds of things would be the



1 actions they would take.

2 CHAIRMAN COVERDELL: Why don't we answer this
3 question --

4 REPRESENTATIVE EVANS: You haven't been out in the
5 country in a while.

6 MR. BURGESS: Yes I have, too.

7 REPRESENTATIVE EVANS: That sounds maybe right, but
8 it's not generally true. In these small counties there's a
9 great deal of friction between your county commission and your
10 other elected officers.

11 MR. BURGESS: I know that.

12 REPRESENTATIVE EVANS: The sheriff in the county over
13 from me, they had a sole commissioner until this term, but
14 he pretty well restricted the sheriff from hiring any deputies
15 and created a county police to handle the police function of
16 the county.

17 MR. BURGESS: But he did that through the budget.

18 REPRESENTATIVE EVANS: Right. But what I'm saying
19 is there's a great deal of friction in these small rural
20 counties between your county commissions and your other
21 elected officials as to salaries, as to hiring and firing
22 and so forth.

23 MR. BURGESS: Doesn't this create that friction?

24 REPRESENTATIVE EVANS: It might, but by the same
25 token how are you going to -- what are you going to do, how

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1 are you going to get around it?

2 MR. HILL: Do you think a county should be able to
3 establish a merit system over the employees that it pays
4 other than the elected officers, or shouldn't it?

5 I mean we have seen a number of cases where there
6 have been local amendments to allow that to happen, and should
7 the constitution at least permit that to be done? There
8 wouldn't be any mandate here that this would have to be done,
9 but at the present time it can't be done under the restric-
10 tions we have.

11 MR. HENRY: I think by simply omitting those words,
12 I think you have to go ahead and make an affirmative statement.

13 REPRESENTATIVE EVANS: I think you would too.

14 MR. HENRY: Because this would allow a county
15 commission to fire a deputy sheriff because they didn't go out
16 and serve some papers on somebody a certain commissioner
17 didn't like. You know, I think absent an affirmative state-
18 ment this would create probably more chaos than it is right
19 now in the smaller counties as you pointed out where there is
20 a lot of personal animosity between the elected county
21 officers.

22 CHAIRMAN COVERDELL: Well, what would be your
23 suggestion as to how we could enable uniform merit system
24 or retirement systems and at the same time not rob the
25 authority?



1 You know, if there really are -- if two bodies are
2 in contest, regardless of how we write this, they will seek
3 out ways to cause problems. For example, if they don't like
4 somebody that the sheriff hired, it's true that you could
5 change the standards that would prohibit the individual from
6 meeting them, but I would sure rather run that risk than
7 create the situation we've got now where it's like four or
8 five little fiefdoms in each county. I don't see how that
9 can ever be thought to be a practical --

10 MR. HENRY: It's a dilemma because you're flying in
11 the face of reversing Dillon here by them coming in again and
12 either mandating or authorizing a uniform merit system, and
13 absent some state uniform standard which probably wouldn't be
14 feasible, probably would not be able to apply to DeKalb and
15 Irwin County, absent some type of uniform system you would
16 have, the county commissioners would have the discretion to
17 come in and raise the standard for deputy sheriffs if they
18 didn't like a particular person.

19 MS. METZGER: Is it too farfetched to think in
20 terms of uniform standards throughout the state? I mean I
21 don't see how taking those words out is going to create a
22 climate or the conditions that can set up uniform standards
23 unless it's spelled out somewhere. Maybe it's spelled out
24 somewhere and I don't know where it is.

25 CHAIRMAN COVERDELL: It's not.

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1 MR. BURGESS: What we have been arguing for is a
2 desirable objective, but I guess getting right down to the
3 basic thing if you're going to keep your county elected
4 officials, which I am basically opposed to, but you've decided
5 to keep them, they're elected by the people to run a depart-
6 ment and are given that responsibility. I wonder if you can
7 really -- I really wonder how much practicality there is to
8 try to get over into the area of giving the county commission
9 control over those employees other than through the budget.

10 CHAIRMAN COVERDELL: Let's come at it another way.
11 Is there a possibility that we could enable a
12 county electorate to select to establish? Is it possible?

13 MR. BURGESS: Say that again.

14 MR. HILL: That's a very good possibility.

15 MR. BURGESS: Say that again.

16 CHAIRMAN COVERDELL: Is it possible to authorize a
17 county to establish this system by referendum is what I'm
18 saying?

19 MR. HILL: Sure.

20 CHAIRMAN COVERDELL: In other words, if the county
21 put the question on the ballot the people could decide whether
22 or not there would be five separate departments or whether or
23 not they chose to have a uniform county hiring or employee
24 system.

25 Now, you know, the final decision-maker here is the

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1 body that's served by these fellows and ladies, and why should
2 we forever prohibit them from making their voice known on
3 this? It's pretty hard to argue they shouldn't have a voice
4 in it.

5 If disputes like these you've mentioned develop, I
6 know when they do the populous doesn't like it at all with
7 the bickering going on, so there ought to be some way that
8 they could resolve, to terminate that situation.

9 MR. HILL: Would it be by ordinance subject to a
10 referendum or by local legislation? I think if you're given --

11 REPRESENTATIVE EVANS: You can do that now by local
12 legislation, you can create a merit system.

13 MR. HILL: I don't think so because of this limita-
14 tion in the constitution.

15 MR. HENRY: You could do it by local law right now,
16 you could set up in -- I think you could set up in the law a
17 merit system, but if you want to set up the merit system and
18 have it operated by the local governing authority I think you
19 have to do it by local constitutional amendment which is the
20 way they do it in many instances, but if you want to have a
21 local delegation have that overview of the merit system I
22 don't see any problem with doing it by local law right now.
23 That's another possibility which I --

24 MR. BURGESS: You mean you could have a local act
25 setting up a merit system?



1 MR. HENRY: I would think so, but if you tried to
2 delegate any authority under that local act to a county
3 commission to take some action which would affect the
4 personnel then you would be in conflict with this right here.

5 MR. BURGESS: What you're saying, you could put it
6 back to the supervision of the delegation.

7 MR. HENRY: Right. They would set up the merit
8 system within the bill, within the local act.

9 MS. METZGER: Then the constitution hasn't set up
10 any standard or any goal for local governments to follow if
11 we just sort of leave it the way it is.

12 CHAIRMAN COVERDELL: We sort of from the outset,
13 Elinor, established we didn't want the constitution to be
14 specific in form.

15 MR. RIECK: There are some statutory -- For
16 instance, going back to the sheriff's office, the Police
17 Officers Standards and Training Council does list to a
18 limited degree qualifications of deputies and the kinds of
19 training they have to receive to be certified which is a
20 matter of state law, but there are still big gaps in for
21 instance uniform policies on salaries, on hiring practices,
22 vacation, sick leave, that sort of thing. But I think
23 probably the point is that those still have to be locally
24 decided kinds of issues and policies, but the question comes
25 back who's going to set the policy, particularly with the



1 numbers of people who are popularly elected filling those
2 posts at local levels.

3 CHAIRMAN COVERDELL: Why don't you comment on as
4 you --

5 MR. RIECK: I was going to say I think the basic
6 problem that we're working around is the fact that there is
7 that fuzziness in the separation of powers at the county
8 governmental level, what we are addressing this morning.

9 You know, our whole system I guess is set up in a
10 balance of power where we've got clearly delineated at the
11 federal level and the state level a division of the executive,
12 the judicial and legislative branches of government. To a
13 lesser degree we've got that at the local level in some
14 cities, particularly in the more urban areas of the state
15 where there's a city council that performs the legislative
16 function, the mayor's office which is the chief executive
17 officer, and you've got various methods of handling judicial
18 questions, but at the county level that gets to be fuzzy.

19 We have a county commission that is elected by the
20 public that has both legislative and executive responsibilities
21 right now; we also have as other officers the sheriff, the
22 tax commissioner, the tax collector, the clerk of the court
23 who are popularly elected, but they have strictly executive
24 powers.

25 It seems to me you get back to the accountability

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1 question to the electorate who has the authority to levy and
2 raise the taxes is the county commission. They then have the
3 ultimate responsibility for financial stewardship in the
4 expenditure of those public revenues at the county level,
5 whereas for instance the sheriff has no accountability, he
6 can set his own salary, the salary of his staff, he can create
7 positions at his will by virtue of the fact that he feels
8 himself a publicly-elected official on a par with the county
9 commission.

10 I'm suggesting that the county commission has both
11 those executive and legislative powers and have the greater
12 responsibility when it comes to local revenues to the
13 electorate or to the taxpayers.

14 What I might suggest for your consideration is that
15 the powers of the county commission be more clearly defined
16 as predominantly legislative, maybe pull them out of their
17 executive responsibilities. That would of course require the
18 identification of some chief executive officer at county
19 level who is independent of the county commission and its
20 legislative responsibilities to execute those legal mandates
21 that the commission sets by its own local ordinances.

22 CHAIRMAN COVERDELL: I think the latter is the
23 problem, setting up a county executive. I just think we'll
24 never make that trying to establish the structure.

25 MR. BURGESS: You would be putting the form of

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1 county government in the constitution. That I think --

2 I think what you say is very true so far as the
3 complete fragmentation of the executive and legislative
4 responsibilities in county government. You are getting a
5 fair amount of county government reform going on around the
6 country where they are beginning to set executive and
7 legislative -- in DeKalb, you know, they've got a movement
8 there to change it, and they've got a separate executive, but
9 it's still fuzzy between his powers and that of the county
10 commission.

11 You do have more of a separation in Fulton County
12 since you have a county manager that theoretically carries out
13 the policy of the county government body, although they get
14 heavily involved in the executive side as well.

15 But I would agree with you up to the point that I
16 don't believe you could put the form of government in the
17 constitution. I do like, however, the idea of -- if you could
18 say that the county governing body, that all legislative
19 powers vested in the county governing body or authority,
20 but there again you've got many counties that are just not
21 going to go with having a separate either appointed executive
22 or an elected executive.

23 You know, many of them now have the county clerk
24 whom they look on as the -- in many cases the county clerk
25 is the county manager.

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1 Hall County had a separate county manager, and very
2 few of them have an elected chairman. I think the leadership
3 would be better if you had a separately elected chairman for
4 county government.

5 MR. RIECK: I guess that question comes down to --

6 MR. BURGESS: I'm not sure you could put it in the
7 constitution.

8 MR. RIECK: I understand the problem of home rule,
9 and I can understand local people -- that is, people who
10 reside in the county wanting to have some say in the form of
11 government that they operate under at the county level, but
12 is not the state sovereign, doesn't all power reside in the
state?

14 MR. BURGESS: At one time it did, but no longer,
15 not as a result of the constitution.

16 CHAIRMAN COVERDELL: Let's try to get at something.

17 What would be the objection of the county government
18 having the right to put a question before the electorate as to
19 whether there should be an authority vested in them to
20 establish personnel policies for all county nonelected county
21 employees, a merit system, et cetera, et cetera, et cetera.
22 They can't do it unless they're authorized to do it by the
23 people of their own county, but they do have the right to put
24 that question on a general election ballot, not on a special
25 election.

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1 REPRESENTATIVE EVANS: You mean to create like a
2 civil service or a merit system?

3 CHAIRMAN COVERDELL: Right.

4 In other words, leaving it exactly the way it is
5 except that we understand that it is not administratively
6 efficient, it's this way because of turf, political
7 differences, but that we have given the people a way if they
8 choose to prefer a more administratively efficient system,
9 a more practical system -- they don't have to do it, we're
10 not saying we're going to impose this, but if you choose to
11 keep the system as it is you have that right; you also have
12 the right to change it if you choose by a majority of the
registered voters.

14 Does that at least -- We will have done this.
15 First of all, several counties have accomplished that over
16 time, and secondarily we will have made a statement of
17 direction by putting that in the constitution. To ignore it
18 completely just makes me nervous.

19 MR. BURGESS: Why don't we maybe get the staff to
20 throw that question out to your different organizations and
21 see.

22 CHAIRMAN COVERDELL: I agree with you that there
23 will be a group that won't want that because they don't want
24 any possibility for their control to be diminished. I mean
25 that's just the nature of the beast.

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1 MR. BURGESS: There's going to be opposition to it,
2 that's true.

3 CHAIRMAN COVERDELL: They have to have enough people
4 in that county agree with them. If those people don't agree,
5 it ought not to be imposed upon them.

6 I mean, you know, somewhere the guy that runs the
7 grocery store has to pay the bill and ought to have something
8 to say about it, and not just some fellow sitting in an office.

9 MR. HILL: I'll bring up this 1983 again. This is a
10 sleeping giant in terms of the potential for liability of
11 local governments. It's been construed to in fact apply to a
12 municipal or a local government entity, they can be considered
13 a person within the meaning of that federal statute and held
14 liable, the public body itself held liable for a violation of
15 the due process rights of any public employee who was not in
16 fact given the notice and hearing and all the things that are
17 required in federal law.

18 You know, I say from the standpoint of the treasury
19 of the county it is essential that the governing authority be
20 able to begin to establish some control of these procedures.
21 I mean we're not even -- we don't have the luxury any longer
22 of allowing, I mean in the county itself of allowing all of
23 these separate fiefdoms to continue because it could bankrupt
24 the county.

25 Now, I don't mean to be a prophet of doom, but



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1 I see this as a --

2 MR. BURGESS: What's the effective date of the
3 statute?

4 MR. HILL: Oh, that was an 1877 statute or 1879.

5 MR. BURGESS: But 1983 is the date of the enforcement?

6 MR. HILL: You know, it's United States Code
7 Section 1983, it's presently on the books.

8 MR. BURGESS: It's now effective, then?

9 MR. HILL: Oh, yes, and it has in fact been held to
10 be violated by cities, a number of cities and counties in
11 their hiring and firing practices.

12 MR. BURGESS: I'm with you.

13 CHAIRMAN COVERDELL: If it were up to me, which it's
14 not, I would see the language establish uniform policy, but I
15 agree with Representative Evans and Michael that there are
16 some real practicalities involved, but I would hate to see us
17 just pass over it.

18 I wonder if we can't resolve this issue by
19 requesting -- we essentially know that that's an administratively
20 more efficient system, and we're asking the staff to establish
21 authority we might review in language granting the governing
22 authority to place the question on the ballot.

23 Then let me ask -- you said there are a multiplicity
24 of issues in this question. What are the others we might need
25 to confront beyond this?

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1 Have we essentially --

2 MR. HILL: I think it's money and people, it's
3 money and personnel. They are the primary -- I'm talking
4 about the actual governing authority.

5 CHAIRMAN COVERDELL: So in a sense we have answered
6 this question with this.

7 MR. HILL: We have answered the majority.

8 MR. HENRY: Senator, do you envision under this
9 referendum authorizing the establishment of a merit system that
10 the General Assembly could come in and also say you want to set
11 standards maybe on a population basis?

12 For instance, could the General Assembly say that
13 local counties can't have residency requirements as a
14 condition of employment?

15 CHAIRMAN COVERDELL: I think the authority should
16 be there; I don't think the mandate should be there.

17 MR. HENRY: In other words, this wouldn't be a home
18 rule area where they would be given complete autonomy?

19 MR. HILL: There's no area --

20 CHAIRMAN COVERDELL: I think the point you make is
21 a very good one. There needs to be in the area of these
22 practices as was just suggested the right of the state to
23 establish uniform policies so long as they apply in some
24 uniform system.

25 Yes, that would be my -- I think that would be

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1 yours too, wouldn't it?

2 MR. BURGESS: I think the state should be allowed to
3 establish statewide policies.

4 MR. HILL: It would be allowed under the present
5 wording of the constitution, which says that any general law
6 can preempt an area, and that would take it out of the hands of
7 the local government.

8 CHAIRMAN COVERDELL: Okay. That leaves us with
9 three more questions on page 5 of this agenda under Other
10 Issues.

11 Would you read the first one into the record?

12 MR. HILL: "Should the present provisions authorizing
13 the purchase of automobile liability insurance by counties be
14 retained in the constitution?" Yes or no.

15 And "More generally, should the question of
16 sovereign immunity for local governments be addressed at all
17 in the constitution?"

18 This question comes from Article IX, Section IV,
19 Paragraph -- No, I'm sorry, Section VI, Paragraph II,
20 which is on page 79 of the red book where at the present time
21 "The governing authority of each county is hereby authorized
22 in its discretion to purchase liability insurance to cover --
23 The governing authority of each county is authorized to
24 purchase liability -- automobile liability insurance, and the
25 sovereign immunity of the county is waived to the extent of

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1 the insurance policy that they get," and the governing
2 authority shall be authorized to levy a tax for such
3 purpose.

4 MR. BURGESS: Isn't there a similar provision for
5 municipalities but it's in a statute

6 MR. SUMNER: The statute says county and city in
7 Title 89, I think. Section 56 dealing with automobile
8 insurance, and Section 89 dealing with other liability
9 insurance.

10 MR. BURGESS: Was the reason for putting this in the
11 constitution was that this kind of expenditure wasn't for a
12 public purpose?

13 MR. SUMNER: I think it was mainly because counties
14 have more restrictive authority, it even goes back to the old
15 distinction.

16 MR. BURGESS: If you take this out it would have to
17 be a redefinition of their expenditure.

18 MR. SUMNER: It goes back to your same thing of home
19 rule. If you give them -- we get ours basically from the
20 home rule delegation, it's done by statute, so you put an
21 article in the constitution for counties, or do you want to do
22 it by statute.

23 MR. BURGESS: I would think you could take this out
24 then if you correct it in the home rule statute.

25 I'd say take it -- my suggestion would be you take

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1 it out.

2 CHAIRMAN COVERDELL: You know, it seems to me it's
3 somewhat a technical matter.

4 MR. BURGESS: Yes.

5 CHAIRMAN COVERDELL: And -- Any objection to that?

6 REPRESENTATIVE EVANS: Of course it would have to be
7 addressed by statute.

8 MR. HILL: There's another section that says, you
9 know, in Article VI when we ratified on establishment of the
10 court of claims we state that the soverienlty of the state is
11 preserved, the sovereign immunity of the state is preserved
12 unless and until otherwise provided by law, and so I guess
13 I'm wondering -- well, we'll just have to check, but we have
14 to make sure there is a statute that allows for this that we
15 can waive sovereign immunities for counties to this extent or
16 else it wouldn't happen, so we will have to make sure that's
17 true, but otherwise it could be eliminated.

18 MR. HENRY: Mel, isn't it true that counties can't
19 be liable unless they're authorized to be liable, and absent
20 express authorizatinn you can't sue a county?

21 MR. HILL: Because of that provision in Article VI
22 that I just said, just mentioned.

23 CHAIRMAN COVERDELL: Let's go on to 2, then.

24 MR. HILL: "Should cities and counties continue to be
25 authorized to appropriate money or loan its credit for

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1 purely charitable purposes?"

2 This comes from the present constitution also.

3 MR. SUMNER: How did you answer the second part of
4 Question 1 on this sovereign immunity part?

5 MR. BURGESS: We didn't answer it. That's a good
6 point.

7 MR. SUMNER: Let me ask you this question --

8 CHAIRMAN COVERDELL: I'm confused now. You mean
9 "Should the present provisions authorizing the purchase..."
10 Is that what you're referring to?

11 MR. SUMNER: We're talking about the next sentence
12 under that, "More generally..."

13 MR. BURGESS: Mr. Chairman, the sovereign immunity
14 as I understand it is very rapidly being eroded, and more and
15 more governments are being sued in actions involving perfor-
16 mance of government functions that previously had not been,
17 and the courts I believe have tended to move in that
18 direction.

19 Would it not help the plight of local government to
20 have a restatement or a strong statement of governmental
21 immunity in the constitution?

22 MR. SUMNER: Let me make one point. Our folks are
23 doing -- they did identify where the counties have it better
24 than cities because it's really being eroded at the city
25 level.

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1 We felt like cities and counties ought to both have
2 it or both not have it to the same degree as far as
3 immunity. Cities have been found liable in more suits than
4 counties, and they ought to be treated -- If you're going
5 to treat them the same way everywhere else, you ought to
6 treat them the sameway here.

7 MR. BURGESS: All over the country they're even
8 enacting statutes in some states saying that cities are no
9 longer immune in performance of governmental functions.

10 CHAIRMAN COVERDELL: What about at present, there is
11 no statement on it in the constitution at present? Is that
12 what you're saying?

13 MR. HILL: There's no statement about local
14 government immunity except as I mentioned in Article VI which
15 says it's frozen, the sovereign immunity of the state is
16 frozen and counties are considered to be units of the state
17 and therefore they have absolute immunity unless otherwise
18 provided by law, and there's never been a law, but they have
19 carved out -- the court has carved out an immunity, an
20 exception to sovereign immunity for cities in the area of
21 nuisance, and there's a statute that also opens the door to
22 sue under certain circumstances, so they have a couple -- the
23 city is not considered an administrative arm of the state,
24 so they don't --

25 CHAIRMAN COVERDELL: I guess we want them treated

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1 the same.

2 MR. HILL: So I guess if you write that it would have
3 to be an affirmative statement of that in the constitution.

4 CHAIRMAN COVERDELL: Any comment on that?

5 The question of sovereign immunity, I've never
6 gotten into it. I'm assuming that it is thought to be --
7 its removal would generate serious financial problems for
8 both cities and counties.

9 MR. SUMNER: That's the big concern, and places
10 really have problems where the judge may rule, the court may
11 rule back and use common law and adopt it, there was really
12 nothing in the constitution until they put this thing in.

13 There was a move in 1973, the case out of Chatham
14 County, a '73 case where they're asking the court "You made
15 the rule, overturn it," say, you know, the cities and counties
16 are just like everybody else as far as their liability and
17 all areas. They said "Well, as much as we would like to,
18 there's a strong sentiment amongst the court members over there
19 to do away with it," they said "We can't do it any more
20 because a judge may rule the General Assembly put in, people
21 voted in the State Court of Claims provision, they in effect
22 locked in our statement in the constitution," so they cannot
23 take away judicially.

24 The move around the other states is the judges in
25 like Alabama, Louisiana and Tennessee, they have a court



1 decision that says "We establish it, we knock it out." The
2 said the times have changed, no longer there's any reason for
3 it, for cities and counties to be immune. In response to
4 that the General assembly or the legislatures in those states
5 would come in and in most cases pass a state tort claim act,
6 they have said cities and counties can be liable up to
7 \$50,000 or a maximum of \$100,000 per claim, put some kind of
8 limit on it. Even those are under attack, though, there
9 some question on these particular grounds, can you say an
10 individual person is liable all the way up while a county is
11 only limited to 50,000 or \$100,000 in damages, and I think
12 one state may have thrown that out, one out in the Midwest
threw it out, or the West, said you could not put a limit on
14 it. Others have been upheld. Generally they're upholding
15 limits, but it is a heck of an issue.

16 MR. HILL: Mr. Chairman, frankly, the people when
17 they voted on this back in '74 on that Article VI provision
18 the question was "Do you think the state of Georgia should
19 be authorized to set up a court of claims?", and that was
20 the question I think on the ballot. I don't know that it said
21 anything at all about sovereign immunity, but the actual
22 amendment itself said that until such time as it would have
23 been established the sovereign immunity of the state shall
24 be frozen or shall be preserved, and because of that the
25 court has in fact said "We have nothing more to say about it

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1 until the court of claims is established," and sovereign
2 immunity is frozen in the state.

3 There has been no court of claims established, who
4 knows when or if there ever will be a court of claims
5 established, and there is a tremendous inequity now -- I mean
6 this is a policy matter for the committee and I don't know
7 that it's something you can even delve into, but a citizen
8 of Georgia who's injured by an act of a governmental unit
9 has no recourse under the present system, and there is no --

10 CHAIRMAN COVERDELL: What are these claims that
11 we're handling every year in the Senate?

12 MR. HENRY: Compensation resolutions?

13 CHAIRMAN COVERDELL: Yes.

14 MR. HENRY: I think that's your court of claims
15 effectively.

16 MR. HILL: That's it. That's the only way that a
17 person can have any recourse against the government.

18 I could give you some facts and figures and case
19 studies, a case in fact that would turn your hair about how
20 the inequities that are created under the present system.
21 Now, I don't know what this article on counties could do
22 about it, but --

23 CHAIRMAN COVERDELL: It seems this question is
24 almost as broad as or as perplexing as the agenda we have
25 covered so far.



1 I don't know that we are in a position today to --
2 I can see, you know, two basic issues that the governments
3 could become besieged by claims, it might be thought of in
4 even lesser terms than insurance companies in terms of their
5 protective rights.

6 On the other hand, you say -- and too I suppose
7 everybody here has had an opportunity to know someone who
8 has been wronged, clearly wronged by a government and has
9 virtually no recourse unless you know a legislator.

10 MS. METZGER: Should the General Assembly's time be
11 taken up in dealing with these?

12 CHAIRMAN COVERDELL: It's not. They simply raise
their hand and that's it.

14 REPRESENTATIVE EVANS: Of course it has to go
15 before a commission of -- who's on that commission? They
16 make a recommendation and, of course, that's not binding
17 though.

18 CHAIRMAN COVERDELL: It is not a good system,
19 Elinor. I didn't mean to be facetious, but the legislature
20 doesn't really -- they get a pile of pink slips and don't
21 recognize them at first because they're a different color,
22 and --

23 MS. METZGER: What would it take to set up a court
24 of claims?

25 MR. HILL: It would take a group of people that are

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1 very interested in doing it, but it's hard to find that
2 group because you don't really get concerned until you're
3 hurt, until you're injured, and that group of people that are
4 injured is a small one, and it's an expensive thing, it adds
5 to the court proliferation.

6 CHAIRMAN COVERDELL: I agree with that premise. I
7 think that, you know, whoever was the author was correct in
8 recognizing the balance which we discussed and they didn't
9 want to open the door, they wanted a system that had some
10 integrity in place to deal with it. You don't put the system
11 in place, you don't open the door, and I think in essence
12 that's pretty sound thinking. Now, why they didn't go forward
I don't know.

14 REPRESENTATIVE EVANS: Of course I adhere to the
15 principle generally of sovereign immunity to counties and
16 cities, I don't think it's opening the door to litigation
17 against cities and counties so that they would be constantly
18 in court, but by the same token there are certain times I
19 don't think municipalities or counties ought to hide behind
20 their immunity, such as one of their trucks injures you, I
21 don't think they ought to be able to hide behind the sovereign
22 immunity.

23 CHAIRMAN COVERDELL: Do they have a right now to --
24 if a truck does some damage to an individual, a city or county
25 truck, does the local authority have the right to compensate



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1 if they choose?

2 MR. HILL: To the extent of the insurance.

3 REPRESENTATIVE EVANS: Only to the extent of the
4 insurance.

5 CHAIRMAN COVERDELL: They couldn't self insure
6 themselves?

7 REPRESENTATIVE EVANS: They can hide behind it.

8 Most counties I think do carry insurance, but there
9 again the liability is limited to the amount of the insurance.
10 If they've got a \$10,000 policy --

11 MR. SUMNER: I'm not sure if cities can self
12 insure. I think Atlanta for example, they've got a limit,
they pay up to \$1,500 and that's it. You know, if it's more
14 than 1,500 you're out.

15 REPRESENTATIVE EVANS: What I'm saying, they can
16 hide behind this. There ought to be some limit as to that.

17 CHAIRMAN COVERDELL: Mike?

18 MR. HENRY: Senator, I think on a theoretical
19 basis some of the legal commentators today are putting forth
20 the theory that where a government is engaged in a govern-
21 mental function they should have unfettered discretion to
22 carry out their governmental function, but where a government
23 enters into a commercial market in any way they should be made
24 to pay the piper, just play by the same rules as everybody
25 else in that commercial market if they commit a tort or



1 breach a contract or some other action, that they should have
2 to pay the piper as well.

3 I don't know that you want to write that into your
4 constitution because I think to the extent that the sovereign
5 immunity is being eroded it's being eroded in that direction,
6 and, Ed, you can disagree with me or --

7 CHAIRMAN COVERDELL: The problem is, of course,
8 the distinction of governmental or proprietary is totally
9 inadequate too, what is and what isn't.

10 MR. BURGESS: In the performance of a proprietary
11 function, your commercial or your utility function they have
12 always been clearly liable, there's been no immunity there.

13 MR. RIECK: Senator, I'm only familiar anecdotally
14 with the question of sovereign immunity, but I think it was
15 CBS had a special on a couple of weeks ago called "See You in
16 Court," and they spent a great deal of time in that program
17 talking about basically there was more of a problem of cities
18 of in the Midwest, and I think Berkley, California was
19 mentioned where the courts were upholding the notion that
20 the governments were liable for their actions, and they went
21 into court -- Mel, maybe you can answer the question,
22 in which court are people filing suits and winning? Is it
23 in federal courts under the equal protection?

24 MR. HILL: Yes, under 1983.

25 CHAIRMAN COVERDELL: What would be the possibility



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1 -- are we reversing our general concept of the constitution
2 if we mandated insurance for cities and counties and
3 restricted sovereign immunity beyond the limits?

4 MR. HILL: Except to the amount of the insurance,
5 and not just automobile liability but as to tort?

6 CHAIRMAN COVERDELL: It would be required, they
7 would be required to protect themselves and, therefore, we
8 would have opened the case for action against a municipality
9 or a government to that extent, but clearly state,
10 emphatically state beyond that it was sovereign, they had
11 sovereign immunity.

12 MR. SUMNER: They had a bill in to do that the last
13 two or three years, to mandate the purchase of insurance,
14 and it just ain't there. I think all areas -- The market
15 is not very good there to get the right kind of coverage,
16 and --

17 CHAIRMAN COVERDELL: Now, the state could establish--

18 MR. SUMNER: That's another issue.

19 CHAIRMAN COVERDELL: The state could establish its
20 own self insurance program and mandate participation in it by
21 -- in other words, it could say the state shall establish
22 X, Y, Z liability coverage and the counties and municipalities
23 of the state shall participate.

24 I frankly think it could be done effectively and
25 reasonably efficiently.



1 MR. SUMNER: Let me say we have had discussions
2 along that line and we've got very little excitement from the
3 executive branch on that issue, at least from the
4 administrative -- DOAS have, they've got state self
5 insurance funds for both workers comp and the whole ball of
6 wax, and there's been some preliminary discussions along that
7 line, but I don't think the state is really interested in
8 doing it right now.

9 South Carolina is one that does that, they can go
10 the private insurance route, they can go the self insurance
11 or they can go into the state funds.

12 CHAIRMAN COVERDELL: What have they done with the
sovereign immunity beyond the limits of that?

13 MR. SUMNER: I think they're still immune up to that
14 amount. I don't recall, it's been a long time since I've
15 looked at it.

16 They have three choices, the private insurance, the
17 state fund or self insurance maybe up to a certain amount I
18 think, a 20,000 limit or something. That's an option.

19 CHAIRMAN COVERDELL: It seems to me we've got to
20 make a major investment in this thing to answer the question.
21 We either have to leave it as it is or we have to arrive at
22 some -- really try to develop a system --
23

24 MR. BURGESS: Why couldn't you state the basic
25 principle in the constitution of reinforcing governmental



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1 immunity but let the General Assembly create the system.

2 CHAIRMAN COVERDELL: Authorize the General Assembly
3 to --

4 MR. HILL: I don't think they ever will.

5 MR. BURGESS: The General Assembly could pass a
6 statute saying cities are liable for everything. They
7 passed a statute for municipalities on their insurance.

8 MR. HILL: It's broader I guess.

9 MR. SUMNER: There's one for cities on automobiles,
10 cities and counties in Title 56, and then there's also one
11 in Title 89 for cities and counties that not only allows them
12 to purchase insurance but in effect allows them to establish
13 their own basic self insurance to pay claims for the
14 individual employee, for protecting the employee for his
15 individual liability as well as the liability of the
16 governing authority, both kinds of insurance.

17 That recently went up to the supreme court, there
18 was a case where the county did not establish an efficient
19 policy really but they -- I think the sheriff got sued and
20 they voted to pay the sheriff's attorney fees, and the court
21 said -- you know, they voted to pay the attorney fees and
22 that was in fact the policy and they upheld it by a 5 to 2
23 or 6 to 1 vote in the last three or four months.

24 So it's very broad now, they can purchase insurance,
25 they can self insure for both personal liability and for

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1 automobile type.

2 MR. BURGESS: How would you feel about this kind of
3 statement in the constitution, that cities and counties shall
4 be immune from liability in the performance of their govern-
5 mental functions, and maybe take the risk of enumerating those
6 functions or leave it up to the courts which we've done now,
7 provided the General Assembly would be authorized or is
8 authorized to define uniform limits within which this immunity
9 may be waived by local governments, something of that nature,
10 and just to say the General Assembly shall define -- not as
11 authorized, shall define uniform limits.

12 CHAIRMAN COVERDELL: I was going to ask if a mandate
would be in order.

14 MR. BURGESS: How would you feel about that, Ed?

15 MR. SUMNER: I'll tell you what. Frankly I think
16 our position is still primarily in favor of sovereign immunity.
17 I can tell you, we've got some of our top leadership, there's
18 kind of a split among the city officials themselves, some of
19 them, you know, they're concerned, you know, should a city or
20 county be treated differently, should they not. You're as
21 dead when a garbage truck hits you as when a transfer truck
22 hits you one way or the other, and there's a lot of discussion
23 about it. You know, it's still an issue open for discussion
24 even in our association as to what we're going to go.

25 I'm trying to think, we may have made a slight



1 change this year in our statement, we did some major overhaul
2 in our policy positions this year, I'll have to go back and
3 double check, I think it's fairly firm in favor of sovereign
4 immunity.

5 MR. BURGESS: What I'm trying to do is move in the
6 direction of cutting off the complete erosion. I think
7 without something along this line we're going to have a
8 complete erosion of governmental immunity, and the elected
9 official is going to be afraid to make a decision on anything.

10 MR. SUMNER: That's the flip side. Some folks are
11 scared to death, and there's no guarantee that the court may
12 reverse themselves on this Savannah case and say "Well, we
13 misread it, that still don't mean we can't do away with
14 immunity whether they establish a court of claims or not,"
15 and one of the big dangers is what happened in Louisiana, the
16 court just said it's all gone, and they have had a heck of a
17 time the last two or three years trying to get some limits
18 put in because the trial lawyers love it. You know, they're
19 suing left and right, no limits, and it's just caused a
20 terrible situation. You can imagine the trial lawyers group,
21 plaintiffs' attorneys are not going to want any kind of
22 limits established once they've got the door wide open there.

23 I think this year they've got hopes they're going to
24 put some reasonable limitations on it in Louisiana, but right
25 now there aren't any and it drives you crazy, but that's the

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1 other side, that's the opposite side.

2 CHAIRMAN COVERDELL: That's a good statement.
3 The question I think that still should be made --

4 MR. BURGESS: I've got no problem -- I don't think
5 it should be mandated.

6 REPRESENTATIVE EVANS: The legislature is not going
7 to mandate itself to the word "shall."

8 MR. BURGESS: I think the General Assembly in its
9 own discretion could do that, just give them the authority.

10 MR. SUMNER: That would equalize the immunity
11 between cities and counties, but leave it up to --

12 MR. BURGESS: The General Assembly to decide the
13 limits of immunity -- I'm sorry, to define the limits of the
14 waiver, the extent of the waiver of that immunity --

15 CHAIRMAN COVERDELL: And the manner.

16 MR. BURGESS: And the manner.

17 MR. HENRY: Don't they have that authority right
18 now?

19 MR. BURGESS: They do with cities.

20 MR. HENRY: Don't they have that authority with
21 counties as well?

22 MR. BURGESS: I don't think so.

23 CHAIRMAN COVERDELL: I think what Jim is saying is
24 there ought to be some reinforcement of the immunity above
25 whatever limit there is.



1 MR. SUMNER: Would this apply to the state as well,
2 or are you just talking about cities and counties? You see,
3 that's the problem.

4 MR. BURGESS: I think it would just deal with the
5 cities and counties.

6 MR. SUMNER: You know, should the cities and
7 counties have anything less than the state. That's the other
8 side. If the state has got total immunity and you get run
9 over by a state DOT truck, they're immune, you know.

10 CHAIRMAN COVERDELL: I think it should include the
11 state.

12 MR. HENRY: Ed, isn't it a very onerous procedure
13 right now to go after a city?

14 I was reading about something where, for instance,
15 if you trip and fall on a crack in the sidewalk don't you
16 have to give the city sixty days notice of that crack?

17 MR. SUMNER: I think we're talking about the six-
18 month notice -- you can't sue, you have to give them written
19 notice within six months of the injury before you can sue.

20 I'm not sure about having to give notice of the
21 sidewalk.

22 MR. HENRY: You've got to give them -- if you've got
23 a nuisance --

24 MR. SUMNER: They've got to have some reasonable
25 opportunity --

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1 MR. HENRY: You've got to give them notice of the
2 defect before the injury actually occurs.

3 CHAIRMAN COVERDELL: That's a little rough to do.

4 MR. SUMNER: They do that in New York City. That's
5 what New York City did that, and they got their pothole gangs,
6 they're going around and noting all the potholes and cracks
7 in the sidewalk in the city and sending them a written list,
8 "Here are all the ones we found" so they don't have to --
9 You know, that was New York City's answer to the thing.

10 CHAIRMAN COVERDELL: Have we answered this question
11 now? Ed?

12 MR. SUMNER: I don't know.

13 MR. HILL: I guess yes for now until we see what it
14 is.

15 CHAIRMAN COVERDELL: With that statement we will go
16 on.

17 Now let's try to get Question 2.

18 MR. HILL: Okay. This question comes from the
19 present constitution on page 76, Paragraph 3 of Section IV,
20 and it is "Should cities and counties continue to be authorized
21 to appropriate money or loan its credit for purely charitable
22 purposes?"

23 You see, it is a strange provision that we have in
24 the constitution now which prohibits the General Assembly from
25 authorizing any city, county or political subdivision to become

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1 a stockholder in any company, corporation, association or
2 appropriating money for or to loan its credit to any
3 corporation, company, et cetera, except for purely charitable
4 purposes.

5 It's a strange exception. The limitation seems
6 appropriate, but it's a strange exception, and I --

7 CHAIRMAN COVERDELL: Jim, you've got some thoughts
8 on that?

9 MR. BURGESS: Well, I think a lot of cities have used
10 this to avoid making donations, et cetera, and they have also
11 used it as authority, for example -- I think I have viewed
12 it as a protection to municipalities. You know, it gives you
-- if someone comes in and wants you to give a donation, you
14 can say "Well, I can't do that because you're not a charitable
15 organization."

16 Fulton County this year got a local constitutional
17 amendment to authorize them to get around this requirement,
18 they were going to open it completely wide open -- I've
19 forgotten how the final bill came -- Do you remember, Mary,
20 it was completely opened up. No, we limited it just to the --

21 CHAIRMAN COVERDELL: We followed your advice, but I
22 don't remember what your advice was.

23 MR. BURGESS: It was designed to get the arts
24 council I believe was the purpose of it, but I believe one
25 version of it was much broader. In fact, the bill was

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1 introduced in the Senate, and when it went into committee
2 the municipal officials and some county officials were just
3 horrified by the bill because they said "If that thing passes
4 we've lost all our protection and we'll have to give to all of
5 these charities," I mean all these I guess quasi charitable
6 organizations.

7 MR. HILL: My question is why --

8 CHAIRMAN COVERDELL: I still don't understand how
9 this becomes a protection, though. I mean what's the
10 distinction to allow this to protect -- it seems to me this
11 is --

12 REPRESENTATIVE EVANS: The protection would be if it
wasn't in there to authorize them to.

14 CHAIRMAN COVERDELL: That's the way it comes to me,
15 that it presently says they can appropriate for charitable
16 purposes, so it would seem to me that any and everybody could
17 call on them under this provision.

18 MR. BURGESS: Well, it is being used that way.
19 Atlanta gives to some 200 institutions, community organizations,
20 and I think it's justified under -- don't they use the
21 charitable purpose doctrine to do it, Ed?

22 MR. SUMNER: I don't know what they use. The
23 courts -- you look at what the courts have construed to be
24 charitable, it means very limited; not everything you might
25 think is charity, not all 501(c)3s qualify.



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1 I think it's things like -- there's a key phrase in
2 one of the locations, something that's designed to relieve the
3 suffering of the aged and the infirm or something, the ill,
4 aged and infirm I guess or something. It's a very limited
5 court construction which wouldn't meet all your 501(c)3.
6 The Arts Council wouldn't qualify.

7 REPRESENTATIVE EVANS: That was going to be my next
8 question. If you took it out, if we didn't have it in, then
9 what about contributions to the aged, to the infirm, the
10 disabled such as buses or transportation, things of that
11 nature. Would they be able to do it? Would they be able to
12 make contributions? I don't believe they would.

13 MR. HILL: I guess I'm curious as to how this became
14 an authorization in the first place.

15 REPRESENTATIVE EVANS: Probably because of that very
16 thing, because some disabled group -- I think possibly to
17 allow them to appropriate --

18 MR. SUMNER: -- to a private hospital, which I think
19 the county can pay a portion, some money to a private hospital
20 to extend the hospital to open up for general charitable
21 patients. I think that was probably the reason for it, to
22 allow them to support private hospitals.

23 CHAIRMAN COVERDELL: I don't see any compelling
24 reason to change this.

25 REPRESENTATIVE EVANS: I don't either.

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1 REPRESENTATIVE HAMILTON: Where is the reference?

2 CHAIRMAN COVERDELL: It's Paragraph 3.

3 REPRESENTATIVE EVANS: Jim made the point too that
4 I was going to make also, that this has probably been
5 established now by law, and if we change it then we're just
6 opening it up to the courts putting different interpretations.

7 MR. SUMNER: The flip side is the court now could
8 read charity much broader than they did previously. Right
9 now they might say "Well, if it benefits the general populous
10 it is charitable,"not necessarily --

11 REPRESENTATIVE EVANS: Have they ruled on for
12 instance art groups? Have they ruled on that, or are we just
taking that they might not?

13 MR. SUMNER: The court case I think made it clear
14 that the Fulton County attorney -- some 200 and some thousand
15 dollars worth of Fulton County appropriations were illegal
16 because they were not charitable as construed by the courts,
17 and that's why they had to come in with a bill to authorize
18 the Arts Council or some other things.

19 MR. BURGESS: You see, that's what I meant. I know
20 in talking to some of the county commissioners during the
21 legislature they felt like by having that in there if a group
22 came to them, they said "We can't appropriate money to you
23 because you're not a charity organization, therefore, we do
24 not have the authority." It gave them a way of stopping it.
25

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1 Fulton County was going to open it up --

2 CHAIRMAN COVERDELL: If you took out the language
3 it wouldn't open it up.

4 MR. BURGESS: Oh, yeah. If you took it out, it makes
5 it even more restrictive.

6 CHAIRMAN COVERDELL: This apparently leaves some room
7 to deal with strictly charitable, and so I don't see any
8 reason to choke that off.

9 MR. HILL: It just kind of -- I asked myself,
10 you know, as a matter of policy whether an elected body
11 should be able to spend public money for things that they think
12 are worthy causes that the general public has never voted on.
13 I mean it just seems like it's not necessarily a public
14 purpose to have them deciding what charities they want to
15 support, so it just -- I'm not sure why we have the exception
16 here. You see what I mean.

17 MS. METZGER: Yes, exactly.

18 CHAIRMAN COVERDELL: We have one expression that it
19 should be removed entirely.

20 REPRESENTATIVE HAMILTON: Aid to the infirm and so
21 on and so forth.

22 REPRESENTATIVE EVANS: I think we should leave it in.

23 MR. BURGESS: Let me make this point. This was
24 probably put in at a time when the objects of taxation were
25 more restricted than they are today. I think now you've got

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1 a much broader authorization for the expenditure of tax money
2 in terms of the indigent, the poor, et cetera. I'm saying
3 you possibly could take it out and not do that much violence
4 today because your objects of taxation have been broadened
5 so much.

6 This was probably put in at a time when the power of
7 taxation was so narrow --

8 MR. SUMNER: 1877.

9 MR. BURGESS: Yes, and it's just been carried
10 forward.

11 CHAIRMAN COVERDELL: How much difficulty have we had
12 with this? Is anybody aware of misappropriation? Do we have
the situation where \$200,000 was put in --

13
14 MR. SUMNER: The city-county attorney for Columbus-
15 Muscogee said, you know, when that bill -- there was originally
16 a general bill that opened it up, he said "We were able to cut
17 \$130,000 of our budget," you know, and it's a real political
18 problem for elected officials, they've got a friend who's
19 involved with maybe a good community project, but who wants to
20 spend tax money on it. They were able to cut \$130,000 out of
21 their budget ten or fifteen years ago with the opinion some
22 of the things they were doing were illegal, and the legislature
23 liked it because then they could say "We're not the bad guys,
24 it's a state policy," you know.

25 REPRESENTATIVE EVANS: Let's make the local officials

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1 bite the bullet then. That's been the scourge of these local
2 officials where "We can't do it because the legislature says
3 so." Let's just put the monkey back on their backs.

4 MR. SUMNER: On the other side there's a matter of
5 tax policy. Do you want to put them in the position where you
6 use tax money which everybody has to pay to support some things
7 which may be good or maybe should it be left to voluntary --
8 if it's good, let the community support it voluntarily. That's
9 the issue.

10 REPRESENTATIVE EVANS: Let them answer to their
11 constituents.

12 MS. METZGER: Could you take Jim's suggestion and
13 just remove that "except for charitable purposes," and then
14 they were restricted, and hopefully you haven't opened the
15 door up, you have just eliminated some other ways to spend
16 money.

17 MR. SUMNER: Also I think you'll find the Attorney
18 General was very strong, not only on this provision but also
19 on the one over on Article II not wanting to monkey with either
20 one of them because he said you can --

21 REPRESENTATIVE EVANS: On gratuities?

22 MR. SUMNER: Yeah. He's got one for the General
23 Assembly too, you get the same situation, you get everybody
24 in the world coming up here and saying "We want \$1,000 to
25 help support the committee for the people in X County," and

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1 they'll drive you crazy.

2 REPRESENTATIVE EVANS: The count in the House,
3 though -- I don't know whether the Senate acted on that
4 particular piece, but we changed the part on gratuities to
5 allow it to be done by the legislature with a veto, absolute
6 veto by the Governor. Wasn't that on the gratuities part
7 because we felt at the time --

8 MR. HILL: In two successive sessions, and the real
9 limit, the real check was going to be the press because it
10 would require that any exception to gratuities be by two-
11 thirds of each house and the Governor in two successive
12 sessions, so that between time the press would look at this
13 gratuity or exception to the gratuity and see if it was
14 worthy.

15 MR. SUMNER: That's the other side. You get a
16 privately approved donation to help benefit somebody who set
17 up some kind of a shell corporation, you know, which says the
18 purpose is to help paupers in X County and it's all pocketed
19 by somebody, and that's the other side. It's not openly.

20 MR. HILL: There are so many worthy causes that it
21 really gets --

22 MR. HENRY: Should the government be involved in
23 worthy causes?

24 CHAIRMAN COVERDELL: There are so many unworthy
25 causes too.

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1 MS. METZGER: I still don't understand why if you
2 take "except for purely charitable purposes" out it would
3 tighten it, not loosen it. We keep talking about loosening
4 it and throwing it open to everybody. If you took that out
5 you would tighten it up.

6 REPRESENTATIVE EVANS: Oh, you would certainly,
7 right, but my point is I feel like it ought to be left in
8 there to give the -- I mean there are some charitable groups
9 and so forth that I think local governments ought to be able
10 to assist.

11 MR. BURGESS: I think that's a good point. It
12 certainly tightens it up --

13 REPRESENTATIVE EVANS: I didn't realize about the
14 Art Council, but to me the Art Council furnish worthwhile
15 civic services, and I think cities and counties ought to be
16 able to contribute. Now, maybe the courts have said that
17 they couldn't, but I'm talking about the -- there ought to be
18 certain things, certain charitable organizations, and then
19 let the -- as I say, let the local officials bite the bullet
20 if they don't want to do it. Don't just give them an out.

21 CHAIRMAN COVERDELL: I don't see any objection to
22 leaving it.

23 MR. HILL: Leave it alone.

24 CHAIRMAN COVERDELL: I don't think it's worth it.

25 MR. HENRY: What about -- this is something I just

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1 throw out for your consideration -- when you create
2 authorities then you have to come back in with a local
3 constitutional amendment to allow contributions by cities
4 or counties to that authority to help it run its business
5 or something, a lot of local amendments would come in and
6 say "County X can levy a one-mill tax and donate that fund
7 to the local development authority," whether that's a purpose
8 that this committee feels should be --

9 CHAIRMAN COVERDELL: In other words whether an
10 authority should be a rightful source of appropriation?

11 MR. HENRY: Public corporation.

12 CHAIRMAN COVERDELL: We debate that in the General
Assembly too.

14 MR. SUMNER: You passed a law, there's a general
15 law which purports to be authority to allow up to a levy of
16 one mill by a city or a county for their development
17 authority, and it doesn't really define what development
18 authority is, it's very broad. Whether that's sufficient or
19 not I don't know.

20 MR. HENRY: That was precipitated I'm sure by the
21 years and years of local amendments on that issue.

22 MR. SUMNER: That's right.

23 CHAIRMAN COVERDELL: Let's come back to that. I am
24 inclined to not want to open that up. First of all, to put it
25 in here we would be in a sense making a policy statement to



1 encourage their development, and I don't know whether that's
2 a thing we want to do or not.

3 Number 3.

4 MR. HILL: Okay, Number 3 and the last question on
5 our agenda, "Should the present provisions authorizing the
6 General Assembly to provide by law for slum clearance and
7 redevelopment by cities, counties or housing authorities be
8 retained in the constitution?"

9 That is presently in the next paragraph of that same
10 section, Paragraph IV, and the reason that it's in the
11 constitution as far as I know is there was some question as
12 to whether this was a public purpose in order to allow for
13 this kind of activity, and therefore perhaps a violation of
14 the gratuities, but in any event the constitution was
15 specifically amended to allow this, and I have spoken with
16 Harvey, but he has been on vacation for a week or so, so I
17 want to double check with him, but he felt the last time I
18 spoke with him that it was rather important that this
19 specific authorization be retained so there's no question
20 about the public purpose.

21 CHAIRMAN COVERDELL: That would be my feeling.

22 MS. METZGER: The whole urban renewal program was
23 declared unconstitutional, I can't remember the exact date.

24 MR. SUMNER: We've got a very broad authority
25 because, like you mentioned, it was declared unconstitutional,



1 the whole process, then they came back with this amendment
2 and they passed a subsequent law, and we got a very broad --
3 Judge Duckworth's opinion about '56 or '57, a very broad
4 authority to undertake these things, we're able to do some
5 pretty interesting things with federal funds now in this
6 state that some states don't really get into.

7 MR. HENRY: In that case he said that neither slum
8 nor redevelopment is defined in the constitution, together
9 they may encompass areas as wide as the individual notion and
10 taste of the city council.

11 REPRESENTATIVE EVANS: Who said that?

12 MR. HENRY: Judge Duckworth.

13 MR. HILL: The general consensus would be that it had
14 better be retained just to make sure?

15 CHAIRMAN COVERDELL: Yes.

16 All right. Now let me raise a question here. We
17 have gone through the agenda. In completing this agenda is
18 it the general view of the staff we have essentially -- we
19 have to look to you for guidance -- addressed the questions
20 before this subcommittee of the subcommittee of the Select
21 Committee?

22 MR. HILL: Very well, I might add.

23 CHAIRMAN COVERDELL: All right. Now I have a couple
24 of suggestions. One is that I think a revised agenda and our
25 consensus, short conceptual answers should be completed and

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1 distributed, and Mary who is the Administrative Director of
2 the Fulton Senate delegation has been keeping notes for me
3 on this and has basically concluded, and we might have her
4 go ahead and just finish. Mary, you could give that to Mel
5 and Vickie.

6 In any event, complete that with answers, the new
7 questions that we have inserted, and distribute that to each
8 of the members of the subcommittee.

9 Then I know you have done some initial language here.

10 MR. HILL: Yes.

11 CHAIRMAN COVERDELL: I have just some thoughts I
12 would like to share with you and then we'll sort them out.

13 I feel we should do a language draft that subscribes
14 to the basic description and answers we have set forth in
15 our decision agenda as it relates to this decision agenda
16 with no regard at the moment for what another subcommittee
17 may have dealt with on an overlap question. In other words,
18 the view of this subcommittee should be stated in language
19 so that in fact we would have the answers to our decision
20 agenda and a first draft as recommended by the committee that
21 subscribes to the decisions we have made.

22 I would then see that we would distribute that
23 language -- and this is where I might be varying from the
24 format -- the language would be distributed to each member of
25 the subcommittee, and comments by any member could be made and

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1 recorded as the comments of that committee member and
2 attached.

3 I am inclined to turn over to the full subcommittee
4 the staff draft and the comments versus going through an
5 exercise of trying to actually draw language in this sub of
6 the sub, because I feel that by the time we have gone through,
7 then matching the subcommittees, then the full subcommittee,
8 then the Select Committee, and then the General Assembly that
9 we won't recognize a great deal and that we would be expending
10 a lot of your time for maybe little purpose.

11 I think that once we have conceptually -- we're not
12 the drafters -- we have conceptually stated our view, we have
13 given the subcommittee a reasonable draft of how that view
14 might be stated along with individual or minority comments
15 from the individual members so that the full subcommittee can
16 reflect upon those variables just as it's going to have to
17 do as it compares the language which will contradict some of
18 this from other subcommittees versus trying to consolidate
19 and go through that, because it would be most, most tedious
20 process for us to actually start crossing Ts and dotting Is,
21 and I think it is too early.

22 I would have one other suggestion, and that would be
23 that at the next meeting then we would sort of to get every-
24 body's thoughts back together go through, go over our decision
25 agenda one more time, sort of "This is what we've said,"



1 "This is what we've said," and I'm sure there will be a few
2 changes that will emerge, and we will finalize our
3 conceptual thoughts, and in the meantime this will have been
4 distributed as the staff draft and it will not be necessary
5 for the subcommittee members to attach their comments as of
6 the next meeting, but there will be one more after that at
7 which time we will simply consolidate our work and prepare to
8 turn it over to the subcommittee.

9 That's a system that I'm not certain is the way to
10 do, but it would be my initial thought as to how to consolidate
11 what we have done in a manner and turn it over to the next
12 level.

Any comments on that, or disagreement whatever?

14 REPRESENTATIVE EVANS: Fine.

15 MR. BURGESS: That's fine with me.

16 CHAIRMAN COVERDELL: Elinor?

17 MS. METZGER: I agree.

18 CHAIRMAN COVERDELL: Grace?

19 REPRESENTATIVE HAMILTON: Yes.

20 CHAIRMAN COVERDELL: All right. That's what we will
21 do.

22 So at the next meeting -- in advance we would like
23 to distribute this agenda as we see it, and that's what we
24 will discuss.

25 As soon as you're prepared to distribute this, do so

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1 at will and alert everybody again, particularly those that
2 are not here that they have one more meeting with the
3 decision agenda, and then a last meeting at which time they
4 will attach any written comments they choose to make.

5 REPRESENTATIVE EVANS: Will you get in touch with
6 Senator Barnes and tell him to try to be here at the next
7 meeting? We need Roy to --

8 CHAIRMAN COVERDELL: I'm almost afraid to have Roy
9 come.

10 (Laughter.)

11 REPRESENTATIVE EVANS: That's why I want him here at
12 this next meeting, because we want to get --

13 CHAIRMAN COVERDELL: Yes, we have been pressing, but
14 I guess he -- let's see, he's been involved --

15 REPRESENTATIVE EVANS: He's been involved with a
16 criminal case for a couple of meetings, I know that.

17 CHAIRMAN COVERDELL: If there is no other business,
18 let's set the meeting and everybody can get on with their day.

19 MR. HILL: Mr. Chairman, in order to give the staff
20 sufficient time to get all the work prepared I would like to
21 have a meeting on the week of the 25th, and then plan to set
22 the next meeting for the second week of September as our last
23 meeting where we'll just be getting things prepared.

24 CHAIRMAN COVERDELL: We will have met our deadline
25 I think.

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1 MR. HILL: Yes.

2 REPRESENTATIVE EVANS: I think that week I can't
3 be here.

4 MR. BURGESS: Could you have your meetings the first
5 and second weeks in September?

6 REPRESENTATIVE EVANS: As I recall, I've already got
7 three meetings that week.

8 CHAIRMAN COVERDELL: Okay.

9 MR. HILL: We have an opening on the 22nd of
10 August, which is two weeks from tomorrow.

11 CHAIRMAN COVERDELL: I will be out of the city.

12 MR. HILL: We have a meeting every other day that
13 week, and next week we certainly won't be able to have it,
14 it's too early, and the following week everybody is out of
15 town, so maybe we are talking about the week of Labor Day.
16 That would be Monday.

17 CHAIRMAN COVERDELL: When is Labor Day?

18 MR. HILL: That's Monday, the 1st of September.

19 CHAIRMAN COVERDELL: Can we go later in that week?

20 MR. HILL: We have a meeting scheduled on Thursday,
21 but Wednesday is available.

22 CHAIRMAN COVERDELL: Okay.

23 MR. HILL: Wednesday, the 3rd of September.

24 CHAIRMAN COVERDELL: Perhaps we will set the 10th --

25 MR. HILL: Mr. Chairman, why don't we set the 10th

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1 then for the next meeting, the 3rd and the 10th.

2 REPRESENTATIVE EVANS: That throws me right in the
3 middle of my term of court, so I know I can't make that
4 date, but then again you're not going to get --

5 CHAIRMAN COVERDELL: Is there another day near the
6 10th to get you?

7 REPRESENTATIVE EVANS: Probably later -- I mean I've
8 got two cases to try, and I think it will be the first part of
9 that week.

10 CHAIRMAN COVERDELL: When will you be through?

11 REPRESENTATIVE EVANS: Probably -- What about on
12 the 12th, would that be --

13 MR. HILL: We have a meeting all day that day, I
14 mean all of us, all the staff.

15 CHAIRMAN COVERDELL: The problem is the staff is
16 serving more than one subcommittee.

17 What was the first meeting, the 3rd?

18 MR. HILL: Wednesday, the 3rd is the first meeting.
19 It really depends what happens at that meeting.

20 REPRESENTATIVE EVANS: If my case isn't tried that
21 day I can come, but that's my week of court.

22 MR. BURGESS: Could you not at that meeting on the
23 3rd of September cover both?

24 CHAIRMAN COVERDELL: We might be able to do it.
25 Why don't we try that?



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REPRESENTATIVE EVANS: Why don't we meet all day?

CHAIRMAN COVERDELL: I don't think the second part is going to take very long.

We'll meet at 9:30 as we have been doing, and we'll plan to run through the lunch hour, maybe get some sandwiches here or something.

The 3rd will be the final meeting.

(Whereupon, at 11:40 a.m. the subcommittee meeting was adjourned.)

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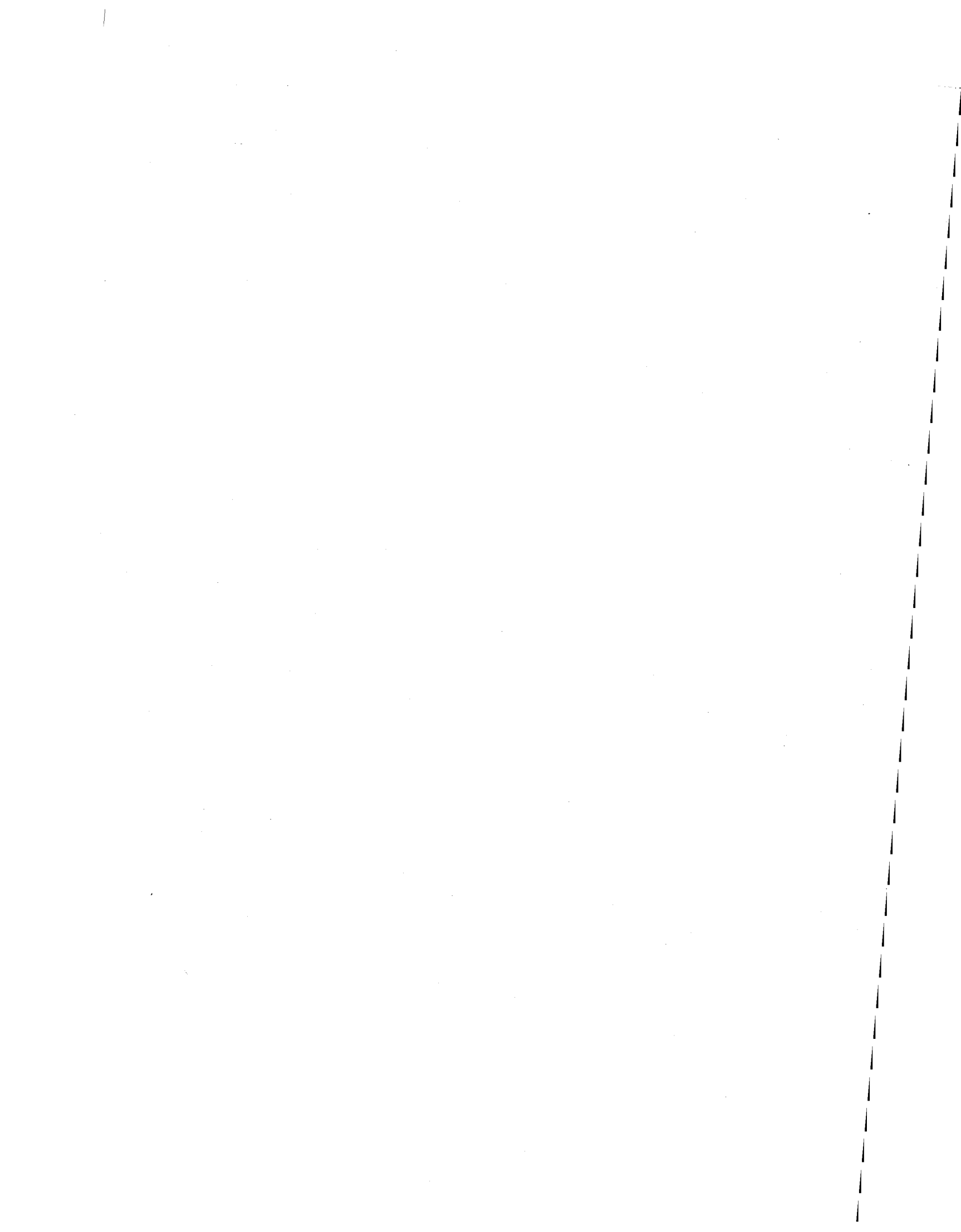


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