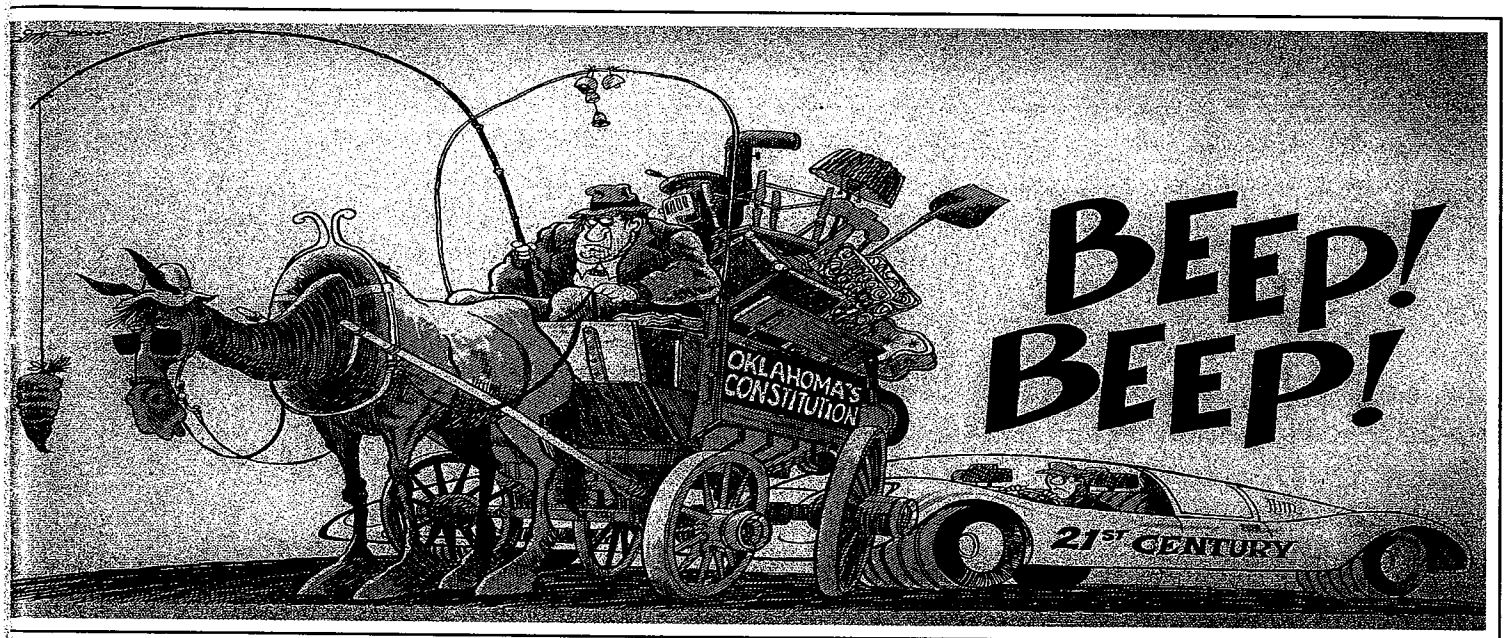


THE OKLAHOMA ACADEMY FOR STATE GOALS

2000 ANNUAL TOWN HALL CONFERENCE



Back to the Future...

Transforming Oklahoma's Antiquated Constitution



Conference Report &
Recommendations
Issued January 2002



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Reports & Recommendations From 2000 Town Hall Conference

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Preface
Preface to Oklahoma Academy Report on Constitutional Conference
Robert A. Butkin, Conference Chair
November 20, 2000

On April 6 and 7, 2000, the Oklahoma Academy sponsored in Tulsa a conference entitled "Back to the Future-Transforming Oklahoma's Antiquated Constitution." The Conference had two goals, to provide factual background information about the history of our constitution and the political environment in which it was framed, and to discuss openly and frankly suggested changes to the Constitution.

The Oklahoma Constitution was chosen as the topic of the 2000 conference because it is widely perceived as an anachronistic document which frustrates economic development and individual opportunity, and which fosters a lack of accountability and efficiency in government. The Constitution was drafted during the heyday of the Populist period, a time of intense distrust of concentrations of power of any form-be it political or economic. The result was a document which extensively regulated business activities, which contained one of the longest ballots in the country, and which denied the Governor the opportunity to appoint majority members of important agencies and commissions. Few would argue that our constitution-the second longest in the world- provides an ideal governing framework for the twenty-first century and beyond.

In preparing for the 2000 conference, the Academy sought volunteers across party lines from backgrounds in public service, business, and academics. Rather than hold an open-ended forum, we decided to focus on those specific elements of the Constitution where change might foster an improved economic environment or promote greater accountability and efficiency in government services. The specific topics were 1) Revenue and Taxation; 2) Business and Regulated Industries; 3) Executive and Legislative Power; and 4) the Amendments Process. In addition, to insure maximum public input and awareness of the upcoming conference, seven town meetings were held throughout the State.

The conference was attended by one hundred and forty one individuals. It succeeded both in enlightening the attendees and focusing public attention on needed changes to the Constitution. Among the highlights of the conference was a Chautauqua dramatic presentation, "Alfalfa Bill and The Real Estate Mogul," written and directed by Hal Kohlman. Glen Johnson, President of Southeastern Oklahoma State University, provided a fascinating historical perspective, and University of Oklahoma Professor Danney Goble was the keynote speaker at the banquet honoring former Governors Henry Bellmon and David Boren for their commitment to constitutional reform. Judge Robert Henry moderated an "Honorable Executive and Legislative Discussion on the Oklahoma Constitution" at which Governor Frank Keating, former Governor George Nigh, Speaker Glen Johnson, and Republican House Leader Fred Morgan were featured speakers. The principal work of the conference was the presentation of suggested changes by each subcommittee. The presenters were Neal Leader (Executive and Legislative Power); Don Murry and Kent Olson (Business and Regulated Industries); Alexander Holmes and Larkin Warner (Revenue and Taxation); and Art LeFrancois (the Amendments Process). All of these outstanding individuals, together with Julie Knutson and her staff, deserve our deepest thanks.

TRANSFORMING OKLAHOMA'S ANTIQUATED CONSTITUTION

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INTRODUCTION

The Preamble to the Oklahoma Constitution powerfully defines our fundamental and timeless state goal:

Invoking the guidance of Almighty God, in order to secure and perpetuate the blessing of liberty; to secure just and rightful government; to promote our mutual welfare and happiness, we, the people of the State of Oklahoma, do ordain and establish this Constitution.

The Oklahoma Academy for State Goals boldly posed the question to the Annual Town Hall Conference 2000: Is our state constitution accomplishing its goal? If not, should the constitution be amended? The Academy focused discussion on five subject areas governed by the State Constitution: 1) Business and Regulated Industries, 2) Executive Powers, 3) Legislative Powers, 4) Revenue and Taxation, and 5) the Amendment Process.

Daring to ask this question posed certain risks. Americans are a constitutional people; we respect and revere our constitutions. To suggest that our State Constitution has somehow failed, is impertinence bordering on sacrilege. We all take pride in the timeless genius of the federal constitution which outlines those fundamental principles which define our American way of life.

We want to believe that the state constitution likewise is fulfilling its promise, but most Oklahomans have never seen, let alone studied it.

Our state founding fathers inherently trusted the common man, and inherently distrusted big business and powerful government. The constitution they drafted reflects these political currents, for it places strict limits on business, and diffuses and limits governmental power. The questions posed to the Annual Town Hall Conference 2000 all focused on one fundamental issue: does our state constitution, as now written, in fact, promote our mutual welfare and happiness.

The conference answered a resounding, NO.

The Academy also asked the conference whether specific changes to the constitution would better serve our goals for ourselves as a state. Conference responses follow.

STRUCTURE AND DEVELOPMENT OF ANNUAL TOWN HALL CONFERENCE 2000

Our state constitution is written by and on behalf of "we, the people of the State of Oklahoma." No person, no group, no party has special standing to speak for the rest of us on constitutional matters. Herein lies the strength of the document. Respecting this special constitutional status, the Oklahoma Academy strove to reach every Oklahoman who wished to address the constitutional issues posed by Annual Town Hall Conference 2000.

State Treasurer Robert Butkin was chosen by the Academy to serve as the conference chairman, and he accepted this daunting task. Mr. Butkin named a 56 person bi-partisan steering committee to address the five identified subject areas. The steering committee divided itself into 5 groups in order to develop proposals in each substantive area.

After proposals had been developed, and before they were finalized, committee representatives presented them at public town meetings held throughout the state during September and October, 1999. Town meetings were held in Enid, Norman, McAlester, Oklahoma City, Stillwater, Tulsa, and Lawton with more than two hundred citizens participating. Robust discussion focused the committee's work as people throughout the state expressed a need for, and fear of fundamental change to the constitution. The Academy solicited, and received additional comments via mail and e-mail.

All of the comments were presented to the subcommittees to consider as they finalized their proposals for the annual town hall conference.

Five thousand people were invited to attend the annual town hall conference, "Back to the Future: Transforming Oklahoma's Antiquated Constitution" held in Tulsa on April 6-7, 2000. One hundred forty one persons attended the conference. The conference was organized so that everyone attending would participate in each of the five substantive areas. At the close of each substantive session, session participants voted on proposals to take back to the Academy. At the close of each session, conference participants voted to endorse the proposals as presented.

SYNOPSIS OF CONFERENCE RECOMMENDATIONS

The Conference accepts all of the proposals set forth by the Oklahoma Academy for State Goals for consideration at the Annual Town Hall Conference 2000. The Conference believes the state constitution must be amended to meet present and future needs for economic growth.

Outline of Proposals Suggested by the Oklahoma Academy for State Goals and Accepted by the Annual Town Hall Conference 2000

I. Business and Regulated Industries

A. Corporation Commission

1. Amend constitution to make Corporation Commission's powers statutory, not constitutional
2. Revoke antiquated sections of Article 9 of the constitution
3. Study further whether Commissioners are elected or appointed

B. Alien Ownership of Land

1. repeal constitutional prohibition

C. Banks and Banking

1. Repeal sections of the constitution which address banks and banking and amend statutes to provide for governance

D. Insurance

1. Repeal section of the constitution which address insurance industry, and amend statutes to provide for governance

II. Executive and Legislative Departments

A. Governor

1. Create a "strong governor" system to replace the "weak governor" currently established by the constitution.
2. Create a constitutionally mandated cabinet of no more than fifteen departments.
3. The Governor shall appoint a simple majority of officers of each executive board or commission at the beginning of the term, and appoint the remaining officers at the beginning of the next odd-numbered year, with certain exceptions.
4. The Governor should be removed from the parole process

B. Lieutenant Governor

1. The Lieutenant Governor shall be elected together with the Governor
2. The Lieutenant Governor will no longer be presiding officer of both houses of the Legislature in joint session, nor presiding officer of the Senate, nor will the Lieutenant Governor have a tie-breaking Senate vote.

C. Legislative Department

1. Term Limits

The term limitation imposed by Article 5 section 17A should be modified.

2. Fiscal Year

The fiscal year for state government should begin October 1st.

3. Origin of Revenue Bills

The limits on the legislature regarding the origination, passage and submission of revenue bills to the voters imposed by State Question 640 should be modified.

III. Revenue and Taxation

A. Authorization of Debt

1. A vote of the people shall be required on "appropriation risk" or "moral obligation" bonds.

B. Revenue Bills

1. Repeal the provisions of State Question 640 and adopt measures to limit the aggregate growth and relative size of government.

C. Local Government Finance and Property Tax

1. Subject all constitutional millage maximum levies to legislative change as is provided for in the case of vo-tech districts.

D. School Finance and Amount of Ad Valorem Tax

1. Millage caps should be subject to change by the legislature, as is the case for vocation-technical districts.
2. The required level of voter approval for issuing debt should be set at 50% which is the same level as all other jurisdictions in the state

IV. Amendment Process

The rule that a proposed constitutional amendment contain only one subject, known as the single subject rule, limits the scope of constitutional amendment at any one time. The Academy proposes:

1. The single subject rule shall apply to both legislative referenda and initiative petitions.
2. If the state Supreme Court finds that a proposed amendment contains more than one subject, the Court shall separate multiple subjects into a single proposal to be voted on separately at the same election, but without the Court redrafting any of the proposed changes.
3. A single article of the constitution may be repealed in total as a single proposal within the single subject rule.

CONFERENCE PROPOSALS, RATIONALE, DEBATE AND RECOMMENDATIONS

In this section each proposal presented to the conference, together with its published background information and discussion points or argument is set forth in full. Issues agreed to by the conference participants in each session are set forth, as are the conference recommendations. Readers who wish to consult the relevant sections of the Oklahoma Constitution may do so in the index included at the end of this report.

BUSINESS AND REGULATED INDUSTRIES

INTRODUCTION

Conference discussion focused on streamlining the constitutional language, defining the power and authority of the Corporation Commission; whether Corporation Commissioners should continue to be elected in state-wide elections, or be appointed by the Governor; whether the constitutional prohibition of alien and corporate ownership of land should be repealed; and whether rules governing the banking and insurance industries should remain in the constitution or be removed to the state statutes.

ARTICLES OF THE OKLAHOMA CONSTITUTION ADDRESSED

Article 9: Corporations
Article 14: Banks and Banking
Article 19: Insurance
Article 20: Manufacture and Commerce
Article 22: Alien and Corporate Ownership of Land

PROPOSALS REGARDING THE CORPORATION COMMISSION

1a. The constitutional grant of power and authority to the Corporation Commission should be streamlined by A) moving to the statutes sections 21 through 27, 33 and 34; and B) revoking sections 17, 18a through 20, 28 through 30, 32 and 35.

1b. Whether the office of Corporation Commissioner should remain an elected position, or be appointed by the Governor requires further study.

Background Information

Nowhere in the state constitution are the framer's populist fears regarding future development more clear. The framers sought to protect the common citizen from the power of big business. Specifically, the framers granted a three-person tribunal the power to ensure fair treatment of our citizens by big business. Over the course of the past century, some of the constitutionally granted authority of the Corporation Commission has been superseded by federal regulation. Some of the industries granted constitutional attention are no longer viable. As industry has changed, the role of the Corporation Commission has changed as well.

Instead of protecting the citizens of our state from the dangers of monopolistic practices, the Corporation Commission today is writing the rules for how the largest companies do business in a competitive marketplace. As the Corporation Commission mediates and arbitrates the competitive balance, it does so to protect Oklahoma consumers and promote a competitive marketplace.

Argument Supporting the Proposals Presented to the Conference

The existing Article 9 is outdated, overly long, unnecessarily detailed and complex, and it does not reflect the needs of Oklahoma's economy now and in the future. Consequently, it should receive a major revision and be brought up to the standards of a modern, forward-looking economy. Much of the content of Article 9 is statutory in nature, not constitutional. Article 9 addresses the issues of railroad regulation in such detail that some analysts have called it embarrassing to the state.

Further, Article 9 does not equip the state well for the role of modern business, and it inhibits investment in public transportation and utilities. A more efficient Article 9 will serve the citizens and regulated state businesses more effectively. The recommendations streamline the constitution, but retain the substantive regulatory structure of the state.

Given the changing nature of the role of the Corporation Commission, which is now performing more policy making than quasi-judicial functions, might the public be better protected by representatives elected in a state-wide election, or appointed by the Governor?

Given the fact that the Corporation Commission is presently rewriting how the largest companies and utilities do business in the state, placing appointment of the Corporation Commissioners in the hands of the executive could create a constituency of one, placing too much power in the hands of one person. On the other hand, appointment might be desirable, for it would remove Commissioners from the potential conflict that might arise during the campaign for office.

Argument Opposing the Proposals Presented to the Conference

The provisions of Article 9 capture the philosophy of the drafters of the constitution at the time of statehood, and over the years the state regulators have adapted the constitution to the evolving transportation and utility businesses.

Issues Raised by Conference Participants

1. Article 9, sections 19, 20 and 28 should be retained
2. All retained sections of Article 9 should be rewritten
3. Constitutional provisions should concentrate on policy and powers issues; Article 9, section 35 renders sections 18-34 legislative in nature
4. Article 9, section 18 should be rewritten
5. Is Article 9, section 28 anti-economic development?
6. Revisions to Article 9 should be a low priority
7. The appeal process for review of books and records should be maintained
8. More specific language is needed to address corporation commissioners' current roles and responsibilities
9. The Corporation Commission should be split with oil and gas, telecommunications, gas and electric independent or separate
10. The term "foreign corporation" needs to be clarified.
11. Make all three corporation commissioners appointed in 5 years
12. Deregulation should require election of corporation commissioners
13. If commissioners are appointed, the appointment should be staggered
14. Distrust of governor should lead to keeping commissioners elected
15. Pattern Corporation Commission after Regents of Higher Education

PROPOSAL REGARDING ALIEN OWNERSHIP OF LAND

1. The prohibition against alien and corporate ownership of state land in Article 22 should be repealed.

Background Information

Despite unprecedented economic growth regionally and nationally, Oklahoma remains a relatively poor state. Per capita income here lags 20% behind income elsewhere, and Oklahoma does not make a strong showing according to most economic parameters. Article 22 of the state constitution bars the ownership of land by any "alien or person who is not a citizen of the United States."

Discussion Points Presented to the Conference

The provisions of Article 22, sections 1 and 2 are not necessary to protect the citizens of the state. The prohibition against alien and corporate ownership of land might impede capital investment in the state. If Article 22 were repealed, some statutory provisions might be needed to prevent abuses.

Issues Raised by Conference Participants

1. Corporate/Alien ownership is a real problem with economic development and with home ownership for high skill workers.
2. Prohibition of corporate ownership of rural land also creates economic development hardships.

PROPOSAL REGARDING CONSTITUTIONAL STATUS OF BANKING AND INSURANCE REGULATION

1. Article 14 addressing Banks and Banking, and Article 19 addressing Insurance should be repealed, and the subjects treated by statute.

Background Information

Numerous regulatory agencies, such as the Securities Commission and the Department of Environmental Quality have been created by statute.

Discussion Points Presented to the Conference

Regulation of the banking and insurance industries does not require constitutional status and should be accomplished by statute. Neither industry would be harmed by statutory rather than constitutional treatment, and the subjects treated in Articles 14 and 19 are better suited to statutory regulation.

RECOMMENDATION OF THE CONFERENCE

Accept the proposals of the subcommittee as presented.

EXECUTIVE AND LEGISLATIVE DEPARTMENTS

EXECUTIVE POWERS

INTRODUCTION

The power of the Governor is set forth in Article 6 of the Oklahoma Constitution. The Executive Powers Committee proposal has three broad themes: 1) create a "strong governor" system to replace the "weak governor" system currently established by the constitution; 2) preserve the constitutional right to parole, making the parole process less political and encouraging merit-based parole determinations; and 3) have the Governor and Lieutenant Governor running together on a party ticket, with removal of the Lieutenant Governor's role in the legislature.

ARTICLE OF THE CONSTITUTION ADDRESSED

Article 6

PROPOSALS REGARDING EXECUTIVE POWER

1. The state should create a "strong governor" system to replace the "weak governor" currently established by the constitution. This change is designed to a) make the governor and executive branch more accountable to citizens, b) allow the governor to accomplish goals within his or her term of office, and c) reduce or control the number of executive boards and commissions

A. The executive branch would include a constitutionally mandated cabinet, of no more than fifteen departments, with provision for health, welfare, education, transportation, law enforcement and corrections, and state government finance and management control. Cabinet members would be subject to Senate approval. Each governor would present the legislature with an executive branch organization plan, allocating duties, powers, functions and resources of executive agencies, boards and commissions.

Other elected executive offices and otherwise constitutionally delegated state offices and boards would be exempt. The plan would take effect thirty days after submission to the Legislature unless disapproved by both houses, and legislative disapproval is not subject to executive veto. The governor could revise the plan during the thirty-day submission period, and resubmit a proposal to reorganize the cabinet at any time during his term.

B. The Governor would appoint a simple majority of officers of each executive branch board or commission at the beginning of his or her term and appoint the remaining officers at the beginning of the next odd-numbered year. Each appointed officer term is four years. Excepted are 1) higher education; 2) Wildlife Conservation Commission; 3) attorney members of the Judicial Nominating Commission.

2. The Governor should be removed from the parole process.

A. The Governor has the power to grant reprieves, commutations, and pardons after conviction, for all offenses except impeachment.

B. There is created a Parole Board, with five members to be appointed by the governor from a list of three nominees for each position submitted by the Judicial Nomination Commission. Any attorney members may not represent persons charged with felony offenses in state courts. The Board makes impartial investigation and studies parole applications, and grants or denies applications by majority vote.

The Board may not grant parole on death sentences or life without parole sentences. The Legislature may prescribe mandatory minimum sentences before an inmate may be considered for parole. Board members shall be compensated, and the Legislature may make the Board a full-time organization.

3. The Lieutenant Governor: Election and Role

A. The Lieutenant Governor shall be elected together with the Governor.

B. The Lieutenant Governor will no longer be presiding officer of both houses of the Legislature in joint session, nor presiding officer of the Senate, nor will the Lieutenant Governor have a tie-breaking Senate vote.

Background Information

1. Accountability of the Executive to the People

Alfalfa Bill Murray summed up the work of the 1906 state constitutional convention and its allotment of power to the Governor as follows:

The convention made sure that the governor would exercise only supervisory power over the executive branch of the state government, and almost total decentralization was achieved.

Alfalfa Bill Murray, 62, Keith L. Bryant, Jr.

Does this "decentralization" still serve the state well? The people of Oklahoma elect a governor because they approve his or her political platform and expect him or her to carry out stated policies. But, in fact, as the executive is currently structured, the Governor has little ability to carry out executive policy because the Governor cannot appoint a majority on any board or commission until well into his or her term.

If the Governor were able to appoint all members of executive branch boards and commissions, beginning with the immediate appointment of a simple majority, he or she may exercise true executive power.

2. Role of the Governor in Pardon and Parole

The Governor's power in the area of pardon and parole is set out in Article 6, section 10 of the Oklahoma Constitution. The state constitution grants the right to parole and the executive "gift of grace" of clemency. Is it necessary for the Governor to be involved in the parole process?

3. Lieutenant Governor: Election and Role

Currently, the Lieutenant Governor is elected in a state-wide election and runs independent of the Governor. This can and does result in the Governor and Lieutenant Governor representing different political parties.

Article 6, section 15 of the state constitution provides the Lieutenant Governor serves as president of the Senate, presides over joint sessions of the House and Senate, and has a tie-breaking vote in the Senate.

Argument in Support of the Proposals

1. The State Should Create A "Strong Governor" System

Creation of a Cabinet more closely follows both the federal and business models, which allow an executive to enlist as advisors, and delegate authority to qualified persons of his or her own choosing.

The current legislatively-created Cabinet has little actual authority over executive branch agencies. Cabinet members who did not also hold some other state or agency office may be, in effect, members without portfolio. Agency heads may have little reason to carry out any particular governor's policies. Creation of a constitutionally-mandated Cabinet would ensure that the governor's advisors had authority to carry out executive branch policy across the board.

