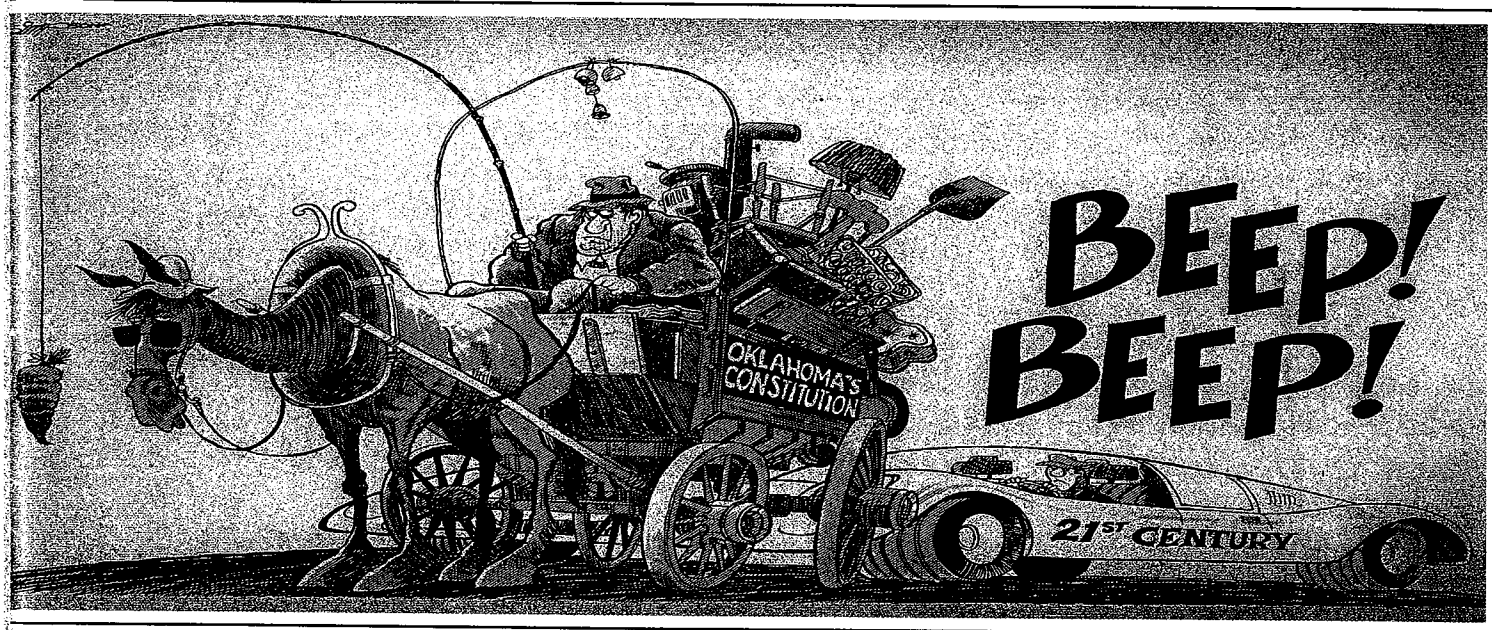


THE OKLAHOMA ACADEMY FOR STATE GOALS

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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DoubleTree Hotel, Downtown Tulsa



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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.

Citizens elect a governor because they approve his or her political platform and expect him or her to carry out stated policies. The "weak governor" has little ability to carry out executive policy because the governor currently cannot appoint a majority on any board or commission until well into his or her term. If the governor appoints all members of executive branch boards and commissions, beginning with immediate appointment of a simple majority, he or she may exercise true executive authority throughout state government.

If the governor has a majority on executive branch boards and commissions, he or she will be more accountable to the citizens. Current executive power is so diluted among agencies and elected offices that any given officer or agency can evade responsibility for any particular practice or omission. A strong governor will be unable to blame others for the success or failure of his or her proposals. If the governor has sole appointment to executive boards and commissions, there may be fewer of them.

2. The Governor should be removed from the Parole Process

While clemency, pardon and reprieve are necessary and appropriate executive powers, there is no need for the Governor to be involved in the parole process. This involvement places a strain on the governor's staff and energy, which is better directed to other executive duties.

The Governor's participation in the parole process suggests at least the appearance of political influence in the process. Individual governors may make blanket pronouncements regarding the intention to grant or deny parole for certain classes of offenders. Citizens may assume the parole board's decisions regarding those offenders were affected by the Governor's position, rather than the merits of each individual case. This may in fact occur. A public perception that parole decisions are made for political reasons undermines confidence in the parole process. Creation of an independent parole board ensures that parole determinations are made on individual merit.

The proposal removes the parole board from the "gift of grace" grants of pardon, clemency, and reprieve. There will be no prior outside review of such petitions before the governor's decision, and he will no longer be bound by any previous recommendations. Those decisions should be left to the governor without intervening review.

3. Role and Election of the Lieutenant Governor

The Lieutenant Governor succeeds the Governor in times of emergency and at times acts as chief executive during the Governor's absence. The duties of the Lieutenant Governor are prescribed by the Governor. It makes sense to elect these two officers together.

Electing the Governor and Lieutenant Governor together would strengthen the accountability of the executive branch. Such election would ensure that the chief executive is not seconded by a person he or she may have defeated and who may disagree with some or all of his or her objectives.

The Lieutenant Governor's presence in the Senate and at joint sessions of the legislature is unnecessary.

Argument Opposed to the Proposals Presented to the Conference

1. The State should create a "strong governor" system

A constitutionally-created cabinet is not necessary; adding these provisions neither makes the executive branch more accountable nor affects the executive boards and commissions. The current Cabinet has authority to advise the governor, which is all the proposed Cabinet really would do. Cabinet members need no more authority than they already have.

The problem lies with the excessive number of boards and commissions, not their makeup. Giving the governor sole appointment power does not address this problem. This proposal does nothing to reduce the number of executive branch boards and commissions and may in fact increase it.

Allowing the governor to appoint all officers of executive boards and commissions gives him or her power of

appointment to entities which may be legislatively created. This conflicts with the Article 4 mandate of separation of powers.

This proposal guts legislative power and authority, creating a super-governor. The ability to control all executive board and commission offices (noting the exceptions above) and reorganize the executive branch at any time is contrary to the Article 4 principle of checks and balances that is a foundation of our government.

There is no need to reform the current system. Citizens are better off having a weak executive branch with less accountability than they would be with a strong governor who was able to push through executive policy at the expense of the state. The proposal assumes that any subsequent governor will be benevolent and reasonable, and consequently affords too much power to a single office.

2. The Governor should be removed from the Parole Process

Removing the safeguard of pardon and parole board review in pardon, clemency and reprieve cases literally puts offenders at the governor's mercy. The governor need not articulate reasons for granting or denying clemency in any case, and there is no independent or objective review of that decision.

This proposal removes the clemency hearing which is a part of Oklahoma's current death penalty scheme and leaves capital offenders with no procedure to present evidence in support of clemency to an independent reviewing body.

While the proposal assumes the parole board would be a separate entity, that may not be the case. The current Pardon and Parole Board was for some time funded through the Department of Corrections (DOC). This gave rise to at least the appearance that parole decisions were made by considering the Department of Corrections' wishes for particular offenders, rather than on individual merit. Removing the governor from the process does not necessarily either remove politics or make the board truly independent.

The parole board will not be independent of politics because the governor will control all appointments to the board. Even though the governor no longer carries out board recommendations, board members will be aware of and consider executive preferences when making their decisions.

Issues Raised by Conference Participants

1. A nominating commission should appoint the parole board with senate confirmation
2. A 5 member parole board should be created
3. The position of Lt. Governor should be eliminated, and succession should be redefined
4. The conditions under which the Lt. Governor succeeds the Governor should be redefined
5. Thirty days is not sufficient time to re-organize the government
6. Cabinet appointments should not duplicate statewide elected positions
7. How would the Corporation Commissioners be effected?
8. What would be the role of senate confirmation under the proposed appointment system?
9. Provide for Governor's appointments at the end of the first year in office, and limit the process to once only

RECOMMENDATIONS OF THE CONFERENCE

Accept the proposals as submitted by the Academy.

LEGISLATIVE POWERS

INTRODUCTION

The power of the legislature of the State of Oklahoma is set forth in Article 5 of the state constitution. The proposals submitted for discussion by the Academy concern term limits, the starting date of the fiscal year, and the origination and submission to the voters of revenue bills.

ARTICLE OF THE CONSTITUTION ADDRESSED

Article 5

PROPOSALS REGARDING LEGISLATIVE POWER

1. The term limitation imposed by Article 5, section 17A should be modified.
2. The state government fiscal year should begin October 1st.
3. The limits on the legislature regarding the origination, passage and submission of revenue bills to the voters imposed by State Question 640 (Article 5, section 33) should be modified.

Background Information

Term Limits

On September 19, 1990, the voters of Oklahoma adopted Initiative Petition No. 346, thereby amending the state constitution to limit the time any person may serve in the legislature. *See*, Article 5, section 17A. The effects of this amendment will be felt in 2002 when some legislators will be ineligible for reelection. Will term limits improve state governance?

State Government Fiscal Year

The state government fiscal year begins July 1st. If the start of the state government fiscal year were changed to October 1st, it would coincide with the federal fiscal year, and the state legislature could better handle problems arising under the emergency clause.

Limits on the Origination, Passage, and Submission of Revenue Bills to the Voters

Passage of State Question 640 in 1992 placed strict limitations on the process by which revenue bills are enacted. These provisions are found in Article 5, section 33 of the state constitution. Questions have arisen during the ensuing eight years as to whether S.Q. 640 applies to fees as well as taxes, and whether the voters' intent in passing S.Q. 640 has been realized in practice.

Discussion Points Presented to the Conference

Term Limits

One argument against the term limit is that it consolidates too much power in lobbyists and legislative staff, and results in an undesirable loss of institutional knowledge. An argument in favor of the term limit is that it is necessary in

order for new people with fresh ideas to serve in the legislature. Now that the impact of term limits is about to be experienced, there are unanticipated consequences which concern some voters.

Fiscal Year

The present state government fiscal year start of July 1st places certain pressures on the legislature to end the session and complete appropriations in a timely way. It has been suggested that a change in the start of the fiscal year would allow for a more orderly and considered appropriations process.

Modification of the Limitations imposed on the Legislature regarding the origination, passage and submission of revenue bills to the voters by State Question 640

The Legislature has found ways to circumvent the limitations of S.Q. 640. For example, the Legislature has raised a number of fees. Does S.Q. 640 apply to fees as well as taxes? Should it? What has the impact of S.Q. 640 been, and has this been desirable?

Issues Raised by Conference Participants

1. We should allow passage of revenue bills by a 2/3 majority in the legislature.
2. Term limits should apply only to present incumbents, or persons should be able to run after a period of several years.
3. Spending should be limited by imposing a cap

RECOMMENDATIONS OF THE CONFERENCE

Accept proposals as submitted by the Academy.

REVENUE AND TAXATION

ARTICLES OF THE CONSTITUTION ADDRESSED

Article 10, section 25 Authorization of Debt

Article 5, section 33 Revenue Bills

Article 10, sections 9, 9A - D, 10 and 10A Local Government finance Property Tax Article 10, section 9 Amount of *Ad Valorem* Tax: School Finance

PROPOSALS REGARDING REVENUE AND TAXATION

Borrowing Money and Increasing Taxes

1. The wording of Article 10, section 25 should be clarified to include the requirement of a vote of the people on "appropriation risk" or "moral obligation" bonds issued with the expectation that the bonds will be serviced from general revenue fund appropriations, with the exception of construction of state buildings to be rented by state agencies at market competitive rates.
2. Oklahoma should repeal the provisions of State Question 640 while at the same time adopting measures to limit the aggregate growth and relative size of government.

Measures should be considered which assure any increases in specific tax rates will be revenue neutral and limits on the overall size of the state's budget be in comparison to aggregate state economic measures such as total person income.

Local Government Finance and Property Tax Issues

1. All constitutional millage maximum levies should become subject to legislative change as is provided for in the case of vo-tech districts.

School Finance

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

Background Information

Borrowing Money and Increasing Taxes

Article 10, section 25 was part of the original 1907 Constitution and applies to the issuance of what are called "general obligation" bonds. These bonds differ from "revenue bonds" which are serviced from a flow of revenue generated by the asset financed by the bonds.

In 1997, with the later approval of the Oklahoma Supreme Court, the legislature began issuing "appropriation risk" or "moral obligation" bonds to be serviced directly or indirectly from the state's general revenue fund. Similar bonds were issued again in 1998, again with approval of the Oklahoma Supreme Court. In each of the Supreme Court decisions, a minority argued that these bonds were, in reality, general obligations of the state and should not have been issued without a vote of the people as required by the constitution.

Procedures for handling legislation raising revenue are set forth in Article 5, section 33. In 1992, State Question 640 amended this section requiring such bills to be submitted to a vote of the people at the next general election. This vote on a tax increase is not required if the legislature approves the measure by a three-fourths majority in each house. Even then, the measure does not become law until ninety days after its approval--possibly giving opponents a chance to implement an initiative petition in opposition.

There is concern that this requirement for all revenue raising measures is making it difficult for the legislature to adjust the state's tax system in a revenue neutral manner in response to changes in the structure of the state's economy. Long-term prospects for adequate growth of revenues from the gross production tax and the sales tax are problematical.

2. Local Government Finance Property Tax Issues

Oklahoma's state constitution places rigid limits on the ability of local units of government to provide resources for local services through property tax. Limitations on millage levies have been in place at one level or another since the first constitution was adopted in 1907. The limitation on county governments has been in place **without change** since 1933 although the assessment ration has declined by half since that time.

Since statehood, the millage limit for schools has been increased, but still places a maximum that can be raised locally regardless of the wishes of the local residents for the level of service demanded. Other jurisdictions have been given access to the property tax since statehood including county health departments, library systems, vocational-technical area schools and waste districts. Each jurisdiction has a constitutionally set maximum levy that can be placed on property, although the levy for vo-tech districts can be altered by the legislature, but must be locally voted on before becoming effective in a particular jurisdiction.

3. School Finance

The state constitution places two severe limits on the ability of local patrons of elementary and secondary schools to provide the level of support they may desire for their schools. Millage caps limit operating funds from property taxes and capital funds are limited by a unique voter requirement of 60% affirmation to issue debt.

Millage caps have been raised periodically, but no increase has been allowed since 1965. Since that time the equalization ration has declined approximately 50 percent reducing the power of one mill to raise revenue by approximately half. Other changes have and will cause these limits to restrict the ability of local patrons to fund their schools at a level they desire.

Discussion Points and Argument Presented to the Conference

Borrowing Money and Increasing Taxes

Discussion Points

Should the legislature and governor be able to incur debt burdening future budget allocations without passing the test of a vote of the people?

Does this practice allow the state to run the risk of getting itself into serious long-term fiscal difficulties, since spending is more attractive to politicians than taxing?

Is no constitutional change necessary since these new types of bonds represent modern financial instruments not anticipated in the original Oklahoma Constitution? Therefore, since in a representative democracy the elected officials are responsible to the voters, is there a need to place constraints on elected officials blocking the use of such instruments without a vote of the people?

Does the rigidity which the State Question 640 provisions build into the state tax system bar "supply-side" conservatives from experimenting with tax cuts?

In cases where a particular major tax source is growing rapidly, does this lead to an ever-larger state government in contravention to the original intent of S.Q. 640?

In cases where economic conditions are unfavorable for a major tax source, does S.Q. 640 create difficulties for the state in recalibrating other taxes upward in a revenue neutral manner?

Are attempts to repeal S.Q. 640 nothing more than thinly-veiled efforts to increase state taxes and spending?

Will supporters of repeal find spending escape valves for any substitute measure limiting the aggregate growth or scale of state government?

Will the likely weaknesses in revenue from the sales tax and gross production tax result in desirable reductions in the relative size of state government, and should this be allowed to take place?

Local Government Finance Property Tax Issues

Argument In Support of the Proposal

A change as proposed would allow local citizens to provide the quality of service that they demand. Changes that cannot be foreseen may need a response that a binding limitation does not make possible without significant cost in dollars and time. As an example, with the pending de-regulation of investor owned electric utilities, significant changes in the ability of one mills to raise revenues can be expected. Local citizens may wish to maintain the current level of services, but under rigid limits this is not possible.

Historically, the assessment ration has declined to the current range of approximately 12 to 15 percent. This has dramatically affected the ability of one mills to raise revenues. This proposal would allow local citizens to fund their local services at levels that are not tied to historical and institutional circumstances that can only be expected to change over time. This proposal maintains the millage cap philosophy, but allows the legislature to make changes that would only become effective in a jurisdiction upon a vote at the local level.

Argument In Opposition to the Proposal

Millage caps should remain in the state constitution because without them property holders will bear a disproportionate tax burden as they are out-voted by those with small or no landholding. Agriculture interests, while currently receiving significant tax benefits through the use of the "use" value appraisal would, nonetheless, be expected to carry a much heavier tax burden under such a proposal.

Further, if individual school districts are allowed to increase the property tax, without an offset in the state aid formula, this would create severe differences in educational opportunity. Besides being unfair to property poor districts, this would potentially subject the state to lawsuits similar to those in many states during the past decade. The outcome of such a suit would surely be an increase in state aid that would either mean a general tax increase or a decline in the level of other critical state services. Finally, local millage elections are notorious for being nothing more than an opportunity for special interests to vote taxes on others for their own benefit.

School Finance

Argument in Support of the Proposals

Schools are the quintessential local unit of government. In Oklahoma, however, because of the rigid limitations placed on local support, the state has taken on a significantly larger role in finance than almost any other state. Along with this greater role has come greater control. If local schools are to become true local units of government they must have the ability to choose the local level of support desired by local citizens.

Millage caps do not allow this choice. During the past two decades, no school district has failed to approve the emergency levy and the local support levy, attesting to the fact that greater local support for school funding is likely to exist, but is thwarted by the constitutional limits in place. As proposed, limits would remain in place, but would be subject to change by the legislature and would further require annual approval by the local citizens. This would provide greater flexibility while retaining the safeguard of voter oversight.

Voter approval for the issuance of debt is an essential feature of government. It binds future taxpayers as no simple tax increase does. Voter approval is thus appropriate. Voter approval for all other activities of government, however, requires simple majority approval except for the case of school bond debt creation. No rationale mitigates against the time honored principle of majority rule in this case.

Argument Opposed to the Proposals

Eliminating the millage caps would subject property holders to taxation by those with special interests. Voters are notoriously poorly informed on school finance issues and thus school elections are poorly attended. One can not truly state that the outcomes of these elections are the will of the people. Increasing the millage cap would result in an increased and disproportionate burden to finance schools with a tax on real property. Other types of wealth currently escape taxation altogether and simple equity considerations argue against increasing the burden on this narrow definition of wealth.

Requiring a super-majority approval for the issuance of debt recognizes the simple fact that once issued, all future generations are required to pay the taxes to cover repayment. One vote creates future tax burdens as no other voter-approved tax increase. A sales tax increase, for example, can be rescinded by a simple vote the next year. Debt issuance is different from other public policy acts. The fact that other units of government may issue debt without a super-majority does not argue for a more liberal policy for schools, but argues that the more conservative policy of schools should be applied to all other units of government.

Issues Raised by Conference Participants

1. A vote of the people should not be required in order to incur debt
2. State Question 640 should be replaced with a flexible scheme for new economies
3. Only the authority to tax, the cap on government size, and the tax rate should be constitutional; other issues should be addressed by statute
4. The new economy should be considered when considering revision of revenue and taxation
5. The majority of voters should set the millage limits
6. The legislature should set millage limits
7. Schools should be consolidated

8. Appropriations and millage caps should be a top-priority issue
9. Measures to limit the size of government should be in place if S.Q. 640 is revamped or repealed.
10. Bond limits should be repealed from the constitution.

RECOMMENDATIONS OF THE CONFERENCE

Accept proposals as presented by the Academy

AMENDMENT PROCESS

INTRODUCTION

Article 24, section 1 addresses amending the constitution through legislative referendum and it contains the single subject limitation and its "articles" exception. The single subject limitation states that the voters shall not be presented with any proposal to amend the constitution that contains more than one general subject. "General subject" is undefined. The section, as written, sets forth an exception to the single subject rule and permits a single proposal to amend the constitution by "articles which embrace on general subject." Proposals for amending the amendment process are made necessary due to rulings by the Oklahoma Supreme Court interpreting the meaning of "single subject."

ARTICLE OF THE CONSTITUTION ADDRESSED

Article 24, section 1

PROPOSALS PRESENTED BY THE ACADEMY

1. The second paragraph of Article 24, section 1 should be amended to state explicitly that the single subject rule applies to amendment by legislative referenda and initiative petitions.
2. If the Supreme Court determines that a proposed amendment to the constitution contains more than a single subject, the Court shall separate the multiple subjects into single proposals, to be voted on separately at the same election, but the Court shall not redraft any of the proposals.
3. An entire article shall be repealable through a single proposal.

Background Information

In 1990, the Oklahoma Supreme Court held that two initiative proposals, one to repeal Article 9 (Corporations) and one to repeal Article 6 (Executive) violated the single subject limitation of Article 24, section 1. *In Re Initiative Petition No. 342*, 797 P.2d 331; *In Re Initiative Petition 344*, 797 P.2d 326.

These cases appeared to overturn earlier law, which was thought to treat proposals to amend the constitution by article as not violative of the single subject rule, given the language of Article 24, section 1 (the amendment by article proviso) and section 3 (stating that Article 24 shall not impair the right of the people to amend the constitution by initiative petition). See, for example, *In Re Initiative Petition 314*, 625 P.2d 595, 608 (Okla.1981)(observing that a "multifarious proposal could have been effected either by submission of three separate proposals or a submission amending, under Art. 24, sec. 1, the entirety of Art. 27, as an amendment by article, as was done in 1959 when prohibition was repealed and Art. 27 was submitted and adopted by a vote of the people").

Given these 1990 cases, it appears that meaningful constitutional change--with the exception of adding single subjects to the constitution (see, for example, *In Re Initiative Petition No. 341*, 796 P.2d 267 (Okla.1990)(rejecting protest to State Question No. 1627 proposing formation of ethics commission)--is unworkable. The constitution itself is a hodgepodge of sometimes antiquated, sometimes statutory, sometimes quirky provisions. Because its articles deal with multiple subjects, their repeal is effectively foreclosed by judicial interpretation of the single subject limitation.

Article 5, section 1 of the constitution states "the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature." Article 5, section 2 states that "The first power reserved by the people is the initiative." This power amounts to little, trumped as easily as it is by the single subject rule as it has been interpreted by the controlling judicial opinions of 1990.

Discussion Points

State that the single subject rule applies to both referenda and initiatives

The single subject rule clearly applies, by its terms to *any* proposal to amend. (No proposal for the amendment...shall"). But the single subject rule is located in a section that is otherwise devoted exclusively to legislative referenda.

Should the single subject rule apply to proposals stemming from a constitutional convention? Conventions are addressed in Article 24, section 2. Applying the rule here would require, at minimum, that the suggested changes stemming from a convention be presented as proposals by article. Our suggested language, "submitted by the Legislature or by initiative petition", would have the effect of making the single subject limitation inapplicable to proposals generated by convention. Again, the current language in this regard is "No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject." If that section 1 language covers section 3 initiative petitions, as the Court has consistently held, why should it not cover section 2 conventions.

Provide that the state Supreme Court shall remediate proposed amendments it finds to violate the single subject limitation by separating the proposal into single subjects without redrafting individual proposals

The purpose of a single subject limitation is to prevent logrolling--presenting voters with several unrelated issues, thus forcing them to decide on the merits of the issues collectively rather than individually. Otherwise undesired aspects of proposals might be approved in order to approve their desired aspects. This might be a necessary cost of doing the business of voting on any moderately complex proposal. But where the aggregated issues are essentially unrelated to one another (for example, where one proposes a unicameral legislature, the specific gravity test of gasoline, and the prohibition of turbo-prop commercial air service to the state capital) there is no good reason to not separate these issues for independent voter consideration. Indeed, one wants to say these are separate proposals, and should be so treated by the voters.

If logrolling is a bad thing, are we suggesting an amendment that makes logrolling easier to do? No. Assume the above proposal regarding "unicameralism" and "anti-turbo-propism." If that proposal is challenged, the Supreme Court will decide if it contains separate proposals. These will be separated, using the language of the proposal (the court is disallowed to re-draft any portion of the proposal) and accordingly presented to the voters. A fan of turbo-props need not vote for a unicameral legislature.

If no one challenges such a proposal, then we probably deserve to be forced to treat it as one proposal. It is unlikely that the language we propose would have the effect of conferring jurisdiction on the Court in the absence of a challenge. Article 7, section 4 gives the Supreme Court appellate jurisdiction in "cases at law and in equity;" original jurisdiction to superintend courts, agencies, boards, and commissions; and "such other and further jurisdiction as may be conferred by statute."

Do these proposals make it too easy to amend the constitution? Perhaps. We're trying to render meaningful (non-piecemeal) constitutional change possible. If we succeed, it is inevitable that there will be proposals to amend the constitution that we think are unwise. Our starting position is that the status quo as to amending the constitution is unacceptable, that capacity to work meaningful, genuine change is superior to our present incapacity. We are, certainly, seeking to allow the people of the state to more freely enjoy the Article 5 and Article 24 right to amend the constitution by initiative petition. It cannot be denied that we seek to make the process of constitutional change easier.

Repeal entire articles through a single proposal

Without this change, it would simply be too cumbersome to repeal entire articles. While there is a virtue associated with separating unrelated proposals, a constitution as long and idiosyncratic as ours is likely to be replete with articles that deal with sometimes staggering numbers of unrelated issues. It is desirable, therefore, to be able to repeal such provisions wholesale rather than piecemeal.

The Academy proposes that our state bill of rights expressly not be repealable by a single proposal.

Is there a danger of "negative logrolling", that is forcing voters to repeal parts of an article when it is presented along with others? Indeed, why force (or allow) voters to vote up or down on a proposed repeal that might involve hundreds of unrelated subjects? A primary motivation of anti-logrolling provisions is the prevention of cynical manipulation of voter preference. The chances of such manipulation are much higher for positive logrolling than for negative logrolling.

First, the universe of possible positive logrolling proposals is infinite. The universe of extant articles is finite.

Second, extant articles are--at least as an important matter of theory--known. They have been around for a while; people have had a chance to see them in operation and to have an informed view of them. Their consequences and judicial interpretations require less speculation.

Third, alarm bells will likely sound in the case of a proposed repeal. There will be those who feel a sense of entitlement regarding extant articles--things already enshrined in the constitution--and who will focus on the vices of removing this or that item from the constitution. Put differently, an article with several disparate provisions is likely to have vocal proponents of some of them. A more entrenched initial base of supporters of the status quo will serve as a brake on initiatives to remove articles.

Finally, there are probably more motives to cynically manipulate voters to add articles to the constitution than to repeal them, if only because of the already-noted infinite number of possible proposals.

But it is possible that, just as one might seek to hide or leverage one part of a proposal by pointing to other parts (positive logrolling), so too could one seek to not reveal or (more likely) to leverage one part of an extant article by focusing attention on other parts (negative logrolling).

Issues Raised by the Conference

Conference attendees favored the idea of abolishing the single subject rule in the case of repeals by article. People were concerned about the inability to repeal parts of the constitution given the current cramped interpretation of the single subject rule.

Hostility to the single subject rule even manifested itself in terms of support for eliminating the rule in the case of amending (not just repealing) by article. But a number of participants were also sensitive to logrolling concerns in the absence of any limitations on the amending process. If Article 24 were to require the provisions of such amendments to reasonably relate to one another, fears regarding logrolling would be reduced. The single subject rule would no longer be an impediment to change, and a reasonable relation test would prevent forcing voters to make a single up or down decision on a set of unrelated proposals.

Some attendees wondered if the "silly, nonconstitutional" portions of the constitution could be repealed in one fell swoop. Others wondered whether these oddities did any real damage legally or economically, however undesirable they might be as parts of a constitution.

Some participants had questions about expense and the political "do-ability" of meaningful constitutional change.

RECOMMENDATIONS

The conference recommends that the Academy do everything possible to amend the amendment process so that meaningful constitutional change can occur. Once the amendments process has been changed, the other significant recommendations developed at this conference can be addressed.

CONCLUSION AND ACTION PLAN

The Annual Town Hall Conference 2000 expressed overwhelming support for constitutional change in each substantive category: Business and Regulated Industries, Executive and Legislative Departments, and Revenue and Taxation.

The Conference identified the amendment process, and particularly the single subject limitation, as an unacceptable impediment to desired constitutional change. As a result, the Conference gave the highest priority to working toward amending the amendment process, and removing the single subject limitation.

The Oklahoma Academy for State Goals has given the amendment process its highest priority for research, and legislative development in the coming year. The Implementation Committee will visit with the Governor and key legislators for advice on the initial steps to take to propose amending the amendments process. The Academy is prepared to push this recommendation for the next two years, if necessary.



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