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Ray C. Simmons

Law Offices of Ray C. Simmons, Fremont, Nebraska, rsimmons@vnet.com

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A Constitutional Convention Is Neither Needed Nor Desirable

Ray C. Simmons*

I. INTRODUCTION

The proposal for a constitutional convention has much appeal at first glance when we are told that we must keep up with the times with a "modern constitution." However, the merits of such a convention cannot be determined unless one analyzes in detail the constitutional changes allegedly needed, how the convention will operate as a practical matter, the cost, the dangers, and the other possible disadvantages.

When one makes such an analysis, a very different picture emerges and it is clear that the disadvantages far outweigh the advantages. This apparently has been the conclusion of previous Nebraska Legislatures, which after careful study have rejected constitutional convention proposals at each of the last seven sessions of the legislature.¹

And, it appears that there may be less reason for a constitutional convention now than in all of these past years when it has been rejected since the system of when-needed-where-needed amendment has been making needed constitutional changes intelligently and without the risks or expense of a constitutional convention.

II. LACK OF NECESSITY

The Nebraska Constitution provides that the Legislature shall call a convention when it is deemed "necessary." Advocates of a convention fail to show this necessity. There are three methods of amending the Nebraska Constitution.

* B.A., 1949, LL.B. 1950, University of Nebraska; Legal assistant to Associate Justice Harold H. Burton, United States Supreme Court, 1950-1951; author, NEBRASKA AUTOMOBILE NEGLIGENCE LAW (1957); member of Nebraska Legislature 1957-1961; practicing lawyer in Fremont, Nebraska, since 1953.

¹ L.B. 519, 60th Neb. Leg. Sess. (1947); L.B. 200, 61st Neb. Leg. Sess. (1949); L.B. 191, 62nd Neb. Leg. Sess. (1951); L.B. 23, 65th Neb. Leg. Sess. (1953); L.B. 270, 67th Neb. Leg. Sess. (1955); L.B. 238, 68th Neb. Leg. Sess. (1957); L.B. 606, 69th Neb. Leg. Sess. (1959).

Article XVI, Section 1 of the Constitution of the State of Nebraska provides the customary method whereby amendments are proposed by the legislature and approved by the people. Under it, there have been since 1920 periodic, orderly and desirable changes in the constitution where they are needed and when they are needed. The petition method is provided by Article II, Section 2. The constitutional convention method is the third procedure and is set forth under Article XVI, Section 2. It provides that a constitutional convention may be called by the Legislature when three-fifths of the latter's members "deem it necessary."

How then has the customary where-needed-when-needed method of constitutional revision failed? What is there about the situation that makes it "necessary" to call a convention? Is our constitution in bad shape and has it failed the state? Apparently not. The July 1950 Report of the Nebraska Legislative Council Committee on Proposed Changes in the State Constitution states:²

The Constitution of Nebraska does *not* present any horrible examples of blundering or ineptness on the part of its framers. On the contrary, it seems to have served the state very well.

Although the 1950 committee by a three to two vote³ stated that it favored a constitutional convention, it should be noted that many of the constitutional changes it said might be needed as a reason for the convention have since been effected. So, if the constitution was not so bad in 1950, and with its many improvements since then, perhaps we are in good shape as to our constitution now.

If it is "necessary" to have a constitutional convention, it would seem that proponents of a convention would tell us of many substantive changes which are required.

In his article Mr. Thone mentions areas of possible substantive revision of our state constitution. Four of the "areas" he mentions appear to me to be too general to be considered as specific recommendations. These are reorganizing the executive branch, improving the taxing system, defining responsibility for education and outlining budget procedure.

Of the others which are specific, six are in large part covered by bills introduced in the 1961 Legislature⁴ and one was the subject

² Neb. Leg. Council Rep. No. 27, *Proposed Changes in the State Constitution* 4 (July 1950).

³ *Id.* at 26 (emphasis by the committee).

⁴ Increasing to four years the term of office of the governor and the lieutenant governor, L.B. 101; changing tenure and method of selecting judges, L.B. 315; appointive board of pardons, L.B. 377; reapportionment of legislative districts, L.B. 217 (this bill at least as originally introduced

of a bill introduced and defeated in the 1957 Legislature.⁵ Of the six 1961 bills, three have been passed and approved by the governor at the time of this writing,⁶ two have been indefinitely postponed,⁷ and one has been approved by committee and is on general file.⁸ Only one of the specific proposals suggested by Mr. Thone, spelling out the item veto of appropriations, has not during the last four years at least been presented to the legislature as a possible amendment!

Are we to have a constitutional convention to consider the very few suggested substantive changes which have not been introduced or have failed of acceptance? Perhaps those which have failed are not desirable. If advocates of a constitutional convention know other substantive changes which are "necessary," they have a duty to advise the legislature what they are so they can be immediately acted upon. If a change in the constitution is "necessary," such as an item veto of appropriations, for example, why is it that no one has even introduced a bill to accomplish it?

It is interesting to note that the then attorney general in 1957 at the request of the principal introducer of the 1957 constitutional convention bill prepared a detailed analysis,⁹ section by section, of changes he thought were needed in the constitution. Twelve of these were specific substantive changes plus a general suggestion that the revenue and taxation provisions be studied. Of the twelve, one, the matter of lieutenant governor's salary, was largely taken care of by the 1959 Legislature.¹⁰ Six more are the subject of proposed amendments by the 1961 Legislature. They are: lotteries,¹¹ giving executive officers four year terms,¹² making state officers

dealt only with the conditions for re-apportionment. L.B. 353, indefinitely postponed, called for an amendment to increase the size of the Legislature to between sixty and seventy-five members, which would doubtless in effect have been a re-apportionment. L.B. 352, seeking to amend the statutes by increasing membership to fifty also calls for re-apportionment.); increase membership of Legislature, L.B. 353; increase in terms of legislators, L.B. 96.

⁵ Partisan election of Members of the Legislature, L.B. 11, 68th Neb. Leg. Sess. (1957).

⁶ L.B. 101, 315 and 96, 72nd Neb. Leg. Sess. (1961).

⁷ L.B. 377 and 353, 72nd Neb. Leg. Sess. (1961).

⁸ L.B. 217, 72nd Neb. Leg. Sess. (1961).

⁹ See Judiciary Committee records on L.B. 238, 68th Neb. Leg. Sess. (1957).

¹⁰ L.B. 639, 69th Neb. Leg. Sess. (1959), set the annual salary at three thousand dollars.

¹¹ L.B. 82, 72nd Neb. Leg. Sess. (1961).

¹² L.B. 101, 72nd Neb. Leg. Sess. (1961).

eligible for other offices,¹³ having an appointive board of pardons,¹⁴ changing the method of selecting members of the Railway Commission,¹⁵ and the Missouri Plan for selecting judges.¹⁶ The lottery, four-year term, Railway Commission and Missouri Plan bills have been approved by the Legislature and signed by the Governor. The Board of Pardons bill and the bill making state officers eligible for other office have been indefinitely postponed by the legislature. Another proposal, abolishing the office of Justice of the Peace, was the subject of a bill¹⁷ introduced in and defeated by the 1959 Legislature.

Only four of his suggestions, aside from a study of revenue and taxation, have not been at least proposed in the last two sessions of the legislature. They are: appointing certain constitutional officers, eliminating the restriction on the state treasurer to two terms, eliminating township government, and combining some of the less-populated counties.

Actually, one, the joining of government in several counties, has been partially accomplished by a 1960-approved amendment permitting one county judge to serve several counties¹⁸ and a growing practice of having several counties share the same official, such as LB 124 passed by the 1961 Legislature, permitting several counties to have the same county superintendent. And, there have been several amendments passed since 1957 as to revenue and taxation, which may at least in part take care of the proposals the attorney general had in mind in 1957.

It is striking in studying the report of the 1950 Legislative Council Committee and the committee testimony of convention proponents in 1957¹⁹ and 1959²⁰ to see how many of the substantive constitutional changes proponents have said were needed have since been effected. One of the introducers of the 1957 constitutional convention bill is quoted in the committee hearing minutes as saying, "I don't think there will ever be a raise in the salaries of

¹³ L.B. 93, 72nd Neb. Leg. Sess. (1961).

¹⁴ L.B. 377, 72nd Neb. Leg. Sess. (1961).

¹⁵ L.B. 299, 72nd Neb. Leg. Sess. (1961).

¹⁶ L.B. 315, 72nd Neb. Leg. Sess. (1961). The bills referred to in notes 11, 12, 15 and 16, *supra*, have been approved by the legislature and signed by the governor. Only the bills referred to in notes 13 and 14 were indefinitely postponed by the legislature.

¹⁷ L.B. 527, 72nd Neb. Leg. Sess. (1961).

¹⁸ NEB. CONST. art. V, § 15.

¹⁹ L.B. 238, 72nd Neb. Leg. Sess. (1961).

²⁰ L.B. 606, 69th Neb. Leg. Sess. (1959).

the Legislature without a convention." The 1960 approval of the salary-increase amendment²¹ proved this fear unfounded.

Are we then to have a convention whose purpose is to "explore" to see what changes could be made in the constitution in the areas of taxation, the executive, and in fact the whole constitution? I wonder if Nebraskans really wish such a convention?

Mr. Thone and other proponents of a constitutional convention of course say that there are additional reasons for having a convention other than just substantive changes. Mr. Thone says that, "Although not fundamentally fatal, much harmonizing and house-keeping is badly needed." He says that "many of its provisions could be improved," and uses the terms "patch work," and "hit-and-miss."

Rather than "patchwork," I think it would be more accurate to say that changes are made in the constitution where and when needed. When all that is needed is a small change here or there, such is done without re-writing an entire article or section of the constitution or the constitution itself. One does not tear down and rebuild a house just because a window screen needs repairing or a little paint is needed here and there.

If one is concerned about "patchwork," one should look at the United States Constitution, which has twenty-three amendments on various subjects tacked on the end so that anyone studying that Constitution must continually alternate his analysis from the body of the constitution to the amendments and back. This compares with the Nebraska Constitution, where amendments after acceptance are placed in the body of the constitution where they fit rather than tacked on the end.

And, the process of amending our statutes could be called "patchwork" in the sense that if a law can be corrected by merely changing a word or two, or adding a new section or subsection, this is done rather than re-writing the whole. "Patchwork" could probably describe constitutions and statutes in all of the states. Actually though, when a constitutional or statutory provision is amended, it is of course reprinted in the statute books such that the "patching" most often does not show. But, even where it does show, as long as the provision is usable, what harm is caused? Constitutions and statutes are things of use, not of artistic beauty.

When the expression "hit-and-miss" is used, it might be suggested in answer that there are fewer "misses" under a system of

²¹ NEBRASKA LEGISLATIVE COUNCIL, NEBRASKA BLUEBOOK 620-21 (1960).

a few periodic revisions than there would be in a mass re-write of the constitution.

Mr. Thone says that the Nebraska Constitution contains obsolescent and redundant provisions, such as references to the bi-cameral system. Certainly it does, and if these could be removed without the expense, bother and risks of a constitutional convention all of us would of course favor removing such provisions. But, actually, what harm do these cause? If one has a specific constitutional question, one reads right by these obsolescent and redundant provisions with scarcely the loss of a few seconds time. The 1950 Legislative Council report in speaking of the reference to the bi-cameral, while acknowledging that there was "still room for confusion" said:²²

Generally speaking, this does not cause any difficulty, since the amendment establishing the unicameral legislature provides that such references shall be construed to mean the "said legislature of one chamber."

It is interesting to note the large number of obsolescent and redundant provisions in the United States Constitution. Article I, Section 2 mentions "free Persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other Persons." It states that an enumeration shall be taken "within three years after the first meeting of the Congress." It sets up the number of representatives each of the thirteen states shall have prior to the first census. It says the Congress is forbidden to prohibit the importation of "Persons" prior to 1808 but a tax may be imposed not exceeding ten dollars for each person. Article V prohibits amendments to certain clauses prior to 1808. Article VI says that debts contracted before the adoption of the Constitution are as valid against the United States under the Constitution as under the Confederation. Article XIV mentions "Indians not taxed" and covers claims for loss of slaves. Article XVIII has been repealed and Article XXI states that Article XVIII has been repealed. Articles XX and XXII state that they are not operative unless ratified. In a quick scanning I find thirteen words whose customary spelling has been changed since writing of the constitution and some words and expressions which are outdated, such as "post roads" and "enumeration" instead of "census."

Most of these obsolescent and redundant items have been in the United States Constitution for over 173 years, but what harm are they?

²²Neb. Leg. Council Rep. No. 27, *Proposed Changes in the State Constitution* 5 (July 1950).

Mr. Thone also states that there are confusing and inflexible sections. We should be told what these "confusing" sections are. If they are major provisions they should be the subject of amendment now by the Legislature. If they are minor provisions, perhaps their confusion has caused no harm. After all, it is impossible to remove all doubt in the meaning of statutes and constitutional provisions. And, it might be suggested that where constitutional provisions have been on the books for many years and have been interpreted by the courts, attorney general opinions or accepted practice, they are no longer confusing and far more confusion can often be caused by changing them, thus inviting litigation as to what the new language means.

As for there being too many inflexible provisions, I agree, but it is reassuring to see that a number of the unnecessary ones are being steadily amended away. On the other hand there are some "inflexible" provisions which many of the people of the state would like to see remain. The restriction against state indebtedness,²³ the Right-to-Work provision,²⁴ the provision forbidding a state property tax if a general sales or income tax are adopted,²⁵ the prohibition against local or special laws,²⁶ the prohibition against extra compensation to public officers and contractors,²⁷ and the prohibition against gambling²⁸ all are "inflexible," as are the provisions of the Bill of Rights.²⁹ Perhaps some should be removed or amended. Yet, I believe it would be much safer to have these considered by the public a few at a time rather than have these and many other provisions considered all at once.

In any event, would a constitutional convention take out unnecessary inflexible provisions, and might it add more? It appears that at least one-third of the forty-one amendments passed by the 1920 convention actually were additional inflexible provisions.³⁰

As for the constitution needing a reduction of some unnecessary language, it is interesting to note that Exhibit Number 1 submitted by the introducer at the 1957 committee hearing on a constitutional convention bill stated that the Nebraska Constitution was about

²³ NEB. CONST. art. XIII, § 1.

²⁴ NEB. CONST. art. XV, § 13.

²⁵ NEB. CONST. art. VIII, § 1A.

²⁶ NEB. CONST. art. III, § 18.

²⁷ NEB. CONST. art. III, § 19.

²⁸ NEB. CONST. art. III, § 24.

²⁹ NEB. CONST. art. I.

³⁰ NEBRASKA LEGISLATIVE COUNCIL, NEBRASKA BLUEBOOK 95 (1960).

17,000 words long whereas the average length of all states' constitutions was 27,000.³¹ So again we are not doing so badly.

Is the legislature shirking its job in making needed amendments to the constitution? Personally, I have confidence in the legislature and think it is doing a good job as to constitutional changes. If the voters felt that the legislature was shirking in these or other areas it would soon make its wants felt.

Is the legislature too busy to spend the time on needed constitutional changes? The fact that it has not called a convention indicates that it feels it can handle the job. Actually constitutional amendment bills during the last three sessions have only run between about two and three per cent of the total number of bills.³² Nor have they required more or much more time on the average for consideration by the legislature than other bills, in part due to the fact that they usually are brief in their language. The legislature could readily hear more, if needed. With the legislature's recent salary increase, it will be even more willing to take additional time to consider constitutional changes.

As for the fact that so many constitutional amendment bills are being introduced in recent sessions, this does not necessarily mean that the constitution is bad. No matter how good or bad it is, groups still will want to make changes.

III. DELIBERATE AMENDMENT

A Constitution is not expected to be entirely or largely re-written at one time. Amendments should be made gradually and carefully. A constitution is a safeguard against an excessive growth of government and an attempt to protect man against encroachments on his liberty. A serious problem today is preventing excessive power, growth and expense of government. A constitutional convention in opening a constitution to wholesale change would invite further problems in these areas.

It is true that it has been over forty years since the Nebraska Constitution last had a general over-haul. However, it has been over 173 years since the United States Constitution was written

³¹ Exhibit, p. 1.

³² The constitutional amendment bills are listed in the Nebraska Legislative Journals in the indices. The percentages for 1957 are 2.4%; 1959, 2.4%; and 1961, 3.2%.

and it has never had a general revision. And, the average age of state constitutions in 1957 was 76.4 years.³³

There is too much belief these days that our problems can be solved merely by changing the laws or that change is desirable just for the sake of change. With this I disagree.

IV. RISKS OF A CONVENTION

The calling of a constitutional convention involves substantial risks which are not justified by the good a convention could accomplish. Proponents tell us we have little to fear in a constitutional convention. Perhaps so. But perhaps not. It may be that the constitution coming out of a convention will be an improvement over the present one. On the other hand it may have ten or twelve improved provisions but also one or two provisions so "bad" that the latter will far more than offset all the good ones or even cause serious problems for our state. We may end up with a constitution which has removed from it all "patchwork" and "obsolescent" and "redundant" provisions—but has also had taken from it some of our safeguards for personal freedom or against higher taxes. Or it may have added to it certain requirements as to allocation of tax funds to certain activities such that its effect is a substantial automatic increase in taxes.

When we hear some say that we have nothing to fear in a constitutional convention, we must recall assurances we have received in past years that we had nothing to fear in a federal income tax since it would never go above a few per cent, that certain "emergency" taxes would be quickly removed when the emergency ended, and that the state would never be asked to bear the expense of certain local projects. As we see taxes ever increasing and the rights of the individual ever diminishing, can we be blamed for being afraid of letting the constitution be re-written by an unknown group?

Who would make up the membership of a constitutional convention? Proponents always talk of the lawyers who would be members. A proponent at the 1959 committee hearings is quoted in the committee report as saying, "In a convention you will draw some of the very best lawyers—constitutional lawyers—in the state."

I would hope that this proponent's prophecy would be correct.

³³ Exhibit 1 of the Judiciary Committee records on L.B. 238, 67th Neb. Leg. Sess. (1957).

Though all groups should be represented at a convention, lawyers are especially needed. However, looking at the matter realistically, I would have strong doubts about the number of lawyers who would attend. In former years a considerable number of lawyers served in the legislature each session, but in recent years this has not been the case. How many "constitutional lawyers" or lawyers generally will wish to obtain petition signatures, campaign in one or two elections to be delegates, and then serve for two, three, five, six or even more months for only \$1,200 with no expense allowance except one round trip to Lincoln, usually maintaining a separate home in what is often the monotonous work of phrasing the language in the constitution and with the possibility that the whole effort will be wasted if the public votes down the proposals? The 1920 convention lasted only seven days short of four months.³⁴ How long would this next convention be?

If so few practicing lawyers are willing to serve in the legislature at higher pay, in more interesting legislation, and with, I believe, considerably higher prestige as state senators, it is certainly optimistic to expect many to participate in a constitutional convention. Let us remember that a person filing as a delegate has no way of knowing how long a convention will last.

Who else is going to be able to attend under these conditions? How many will require salaries from other sources, and perhaps be obligated to those sources? And, let us remember that whereas state senators feel responsibility to their constituents since most of the senators run for re-election delegates do not run for re-election so have no concern about being defeated if they go against their constituents' interests.

One of the proponents appearing at the 1959 committee hearing is quoted in the committee minutes as saying that when a convention is provided for, "there ought to be some qualifications for the men who serve."³⁵ Whether such restrictions would be possible or desirable is debatable. Nevertheless, it shows that at least one proponent himself had concern about the qualifications of delegates.

The principal introducer of the constitutional convention bill at the 1959 legislative committee hearing said in a prepared statement introduced at the hearing:

Today, the only opposition to a Constitutional Convention comes from those who are afraid—afraid of change—afraid they will lose some "pet law" they now have on the books or some Con-

³⁴ Neb. Leg. Council Rep. No. 27, *Proposed Changes in the State Constitution* 1 (July 1950).

³⁵ Minutes, Judiciary Committee, L.B. 606, 69th Neb. Leg. Sess. (1961).

stitutional provision that guarantees their immunity from any change.

The charge about a "pet law" is unfortunate. There are doubtless some who oppose a constitutional convention for this reason. However, I like to think that most of us who oppose do so for unselfish reasons, in the same way that I think that Mr. Thone and the introducers of the constitutional convention bill are sincere. We oppose a convention because we think our constitution is basically good and are afraid that a mass rewrite may seriously harm it. But—since the question has been raised, is it not possible that some of the convention delegates, as distinguished from the introducers, will be candidates just because they have some "pet law" they wish to put in or take out of the constitution? And, might not there be some well-organized trading of votes so to enact "pet laws"? Some will remember when this has been done in Nebraska. Are we going to open a "Pandora's Box" of trying to add "pet laws"?

Also, is there not a danger that some in attendance at the convention may have the philosophy of let's-make-an-entire-quick-rewrite or the philosophy of if-there-are-errors-the-next-legislature-can-correct-them? And, no matter how carefully the constitution is rewritten, there is always the danger of un contemplated errors or oversights. In a constitution these are especially serious because correction of them would require action by a later legislature—or another conventional convention—plus approval by the voters still later on. Each legislative session has a number of bills correcting oversights in bills carefully considered and passed by the preceding legislature.

Is there not in fact a danger that those attending a constitutional convention may reopen and unsettle dozens of constitutional questions which have been determined over the last 40 years? Is there not also a risk that, possibly after trading votes, those attending might propose one or two provisions so unpopular that the public might reject the proposed new constitution or large numbers of proposed changes? In such case the whole convention expense and effort would accomplish nothing.

These dangers in a constitutional convention are compounded by the fact that neither the present constitution nor statutes set up requirements as to procedures to be followed by a constitutional convention. Each convention writes its own rules.³⁶ The one opponent to a constitutional convention at the 1959 legislative hear-

³⁶NEB. REV. STAT. § 49-225 (Reissue 1960).

ings raised this serious point, asking according to the committee minutes³⁷ "Under what rules is a convention set up?"

It should be especially noted that in a constitutional convention delegates are selected at a special election³⁸ and the completed convention's proposals also may be approved at a special election.³⁹ The public vote on the 1920 constitutional convention proposals was at a special election held September 21, 1920.⁴⁰ The danger of course is that special elections are poorly attended. This invites special interest groups or a combination of groups to get out their own votes and swamp the special elections, especially in instances where the vote otherwise would be close. In the 1920 special election the highest combined "for" and "against" vote was 82,384 on the first amendment and trailed down to 68,956 on the last.⁴¹ This compares with a total of 382,653 votes cast for governor in 1920. A similar extremely light vote after the next convention would be an invitation to groups with special proposals they desired.

From all these facts it appears that a constitutional convention could well turn into a special interest group's paradise. Can proponents blame us for being a bit afraid on a constitutional convention?

V. FURTHER AMENDMENT OF A NEW CONSTITUTION

Holding a constitutional convention would not end the amending process. The chief introducer of the constitutional convention bill states that sixty-seven amendments to the constitution have been submitted since 1924 at an advertising cost of \$492,161.03. (The number of times a constitutional amendment had to be published was reduced in 1952,⁴² however.) This would imply that if a constitutional convention had been held years ago that this expense would have been saved.

With due respect to the chief introducer, I do not think this would be the case. The constitution would still require periodic amendment. To say that holding a constitutional convention in 1924 or 1940 or 1950 would have avoided the subsequent amendment proposals would be like saying that the legislature having 739 bills

³⁷ *Supra* note 35, at 5.

³⁸ NEB. REV. STAT. § 49-212 (Reissue 1960).

³⁹ NEB. REV. STAT. § 49-226 (Reissue 1960).

⁴⁰ *Supra* note 30, at 93.

⁴¹ *Id.* at 94.

⁴² *Id.* at 86.

introduced in 1959 would require only a fraction of that number in 1961. At this writing there have been 715 bills introduced during the 1961 session. A constitutional convention in 1940 or 1950 would not have recognized the need for many of the amendments approved in 1960,⁴³ such as continuity of government, livestock taxation changes, executive election contests, tax-exempting bonded warehouses, and industrial development. Only by taking out in wholesale fashion the restrictive provisions in the constitution would this amending process have been stopped, and the desirability of doing this is questionable. Even then, some groups would later desire bills adding restrictive provisions. As previously noted, the 1920 convention in fact added a number of additional restrictive provisions to the constitution.

VI. CONVENTIONS ARE EXPENSIVE

The expense of a constitutional convention is considerable. To hold such a convention would mean hiring eighty-six additional legislators to do what the original forty-three can well handle. The cost of a constitutional convention would be considerable. It would involve placing the question on the ballot in 1962, the holding of a special election and perhaps primary elections in some districts in 1963, the salaries of eighty-six delegates at \$1,200 each, the delegates' travel expenses, the hiring of a considerable number of clerical assistants for some months, other administrative expenses, the expenses of a research committee, and the expense of a probable special election in 1964.

What all this would amount to is impossible to estimate, but it would be considerable. It would in any event mean hiring eighty-six additional legislators to do what the original forty-three are capably and willingly doing at a fraction of the expense.

And—how many bills would be required at the next legislature to make the statutes conform to the new constitution?

VII. INABILITY TO KEEP THE PUBLIC INFORMED

The public would not be better informed about proposed constitutional changes, as the proponents claim, but rather much less informed, because of the large number of amendments they would need to know about in one election. Mr. Thone says that with a constitutional convention the people can become familiar with the

⁴³ *Id.* at 616.

issues and will be able to vote more intelligently. The principal introducer of the present convention bill said in a prepared statement given the Judiciary Committee on the 1959 constitutional convention bill, L.B. 606, that under the present system of amendment "In many, if not most instances, the voters were asked to give almost blind approval of proposed changes"

However—if the voters had difficulty becoming familiar with the nine proposals which were on the November 1958 ballot⁴⁴ and the nine on the November 1960 ballot,⁴⁵ what would they do if there were a constitutional convention which brought out forty-one (such as did the 1920 convention) or 100 or even more amendments to be voted on at one election? Proponents seem to go on the theory that if the voters are required to vote on only a few amendments they are ill-informed, but if they are presented with dozens they are well informed!

How do proponents claim the public would be better informed on constitutional issues by a convention? First, they say because proceedings of a constitutional convention would be well publicized. In answer, the proceedings of the Nebraska Legislature in considering constitutional amendments are equally well publicized. It is true that constitutional amendment bills are considered by the legislature along with the statutory bills so that the amendment bills are not clearly separated in the minds of the public. However, this advantage, such as it might be, of the convention method is far more than offset by the fact that a convention would be considering dozens and dozens of proposed changes, of which the voter would have great difficulty keeping track.

As a practical matter, the public does not really begin trying to acquaint itself with proposed amendments until a few weeks before they are voted upon. For most of the public there is little reason to study until one knows the proposals will be on the ballot and even then one makes his study shortly before election so conclusions will be fresh in his mind when he votes. Most of the education on amendments is by news stories and editorials just before election. It is a job to acquaint oneself with eight or ten amendments during this time. Imagine trying to study dozens and dozens of them, or the newspapers trying to editorialize on them all!

Second, proponents say that eighty-six convention delegates across the state would be available to talk to groups about the amendments. This is true, but presently forty-three legislators are

⁴⁴NEBRASKA LEGISLATIVE COUNCIL, NEBRASKA BLUEBOOK 585 (1958).

⁴⁵*Supra* note 30.

available to talk about amendments, along with former legislators, lawyers and others who acquaint themselves with amendments. Legislators are pleased to give such talks. Certainly the demand for such talks is not such that members of the legislature and others who are available have not been able to easily handle all requests. As a matter of fact when only a few amendments are considered as at present, some non-legislators easily acquaint themselves with the amendments so as to be able to give talks. But, if they were required to learn about dozens of amendments, they would be discouraged from so doing.

And, I think Members who have given such talks will agree that speaking on a half dozen or a dozen amendments is plenty. A marathon talk on dozens of amendments leaves little time for each, and discourages the audience and attendance.

Presentation of dozens of amendments at one election invites a degeneration of the situation with a voter being confronted with a mass of confusing advice. It is generally recognized that when desirable constitutional changes are voted down by the public it is usually because of lack of understanding them. Having large numbers of proposed changes would just make the problem worse. Requiring the public to pass on large numbers of proposed changes thus is a double risk: the danger of desirable changes being voted down and undesirable ones being approved.

If a constitutional convention is not going to make a considerable number of changes in the constitution, there is no point in having a convention. The present where-needed-when-needed method will take care of a small number of changes.

If the constitutional convention were to propose an entirely new constitution, then voters would find it necessary to acquaint themselves with the constitution entirely outside the ballot box and would be still less informed. Moreover, to entirely rewrite the constitution would invite defeat of the entire effort if the individual voter were aware of anything about the new constitution he did not like or understand.

A related argument made by proponents is that a convention would "educate the public." In answer to this, it might be mentioned that the public presently has more than an ample opportunity to become "educated" by trying to keep up with actions of the federal, state, county, city, township and school district governments, drainage district, and a dozen other types of district governments—to say nothing of the United Nations. They can learn about our state constitution and needed changes by following constitutional amendment bills in our legislature. They do not need an additional government agency to "educate" them.

Seriously, how much heed is the public going to give to many of the constitutional changes, including the removal of the obsolescent and redundant provisions proponents say should come out? The pitifully small turnout at the 1920 election on the amendment proposals show how few were concerned much then about the "education" they were receiving on our constitution. And since so many less voted on the last of the 1920 proposals than did on the first, it seems that many lost interest in this "education" as they went along.

VIII. NO PUBLIC DEMAND

There is no public demand for a constitutional convention. Proponents seem to admit that there is no public demand for a constitutional convention when they talk about "public indifference."

At the 1957 committee hearing on the constitutional convention bill, only one witness appeared in addition to two introducers. As one who attended the hearing as vice chairman of the committee, I saw that there were practically no spectators in the hearing room. In 1959, in spite of a tremendous and able effort by the introducer, there still appeared to be little interest in a convention. Although I was chairman of the committee at the 1959 hearing, I recall receiving no personal contacts for a convention from anyone outside the legislature.

As for the proponents' argument that opponents of a convention "are afraid to submit their position to the people for final decision,"⁴⁶ the answer is that the legislature is elected to study and determine such matters. If it decides that a convention is undesirable, as the last seven legislatures have decided, it has a duty *not* to submit the matter to the people. Under the proponents' reasoning should all of the constitutional changes proposed in this legislature be sent to the public for vote? The argument "please let the public or legislature vote on this" is commonly made for proposals otherwise weak.

IX. CONCLUSION—A SUGGESTED ALTERNATIVE

An alternative: A legislative council committee, with hired assistants, could study needed constitutional changes and recommend their passage to the next Legislature. A legislative council commit-

⁴⁶From Statement Regarding Proposed Constitutional Convention, p. 2, offered by the introducer of L.B. 606 to the Judiciary Committee at the 1959 legislative session.

tee could be formed to study needed changes, with the help of a hired staff similar to that intended by Section 49-232, R.S. 1943. This committee could recommend changes to the 1963 Legislature. The 1963 Legislature could propose and the public approve those which appear desirable and the changes could become law in 1964, at about the same time as proposals of a constitutional convention. This would be done without the substantial risks and expenses of a constitutional convention. The legislature has in the past given careful consideration to proposed changes and the public, at least at the last two elections, has generally voted in favor of those amendments the legislature has approved.