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GATEWAY TO WHAT?

ROBERT L. FARWELL

IT HAS BECOME commonplace to say that governmental reform is not a sport for the short-winded. Even the long-winded have begun to despair of effecting constitutional revision by the amendment process in Illinois. A little more than a decade ago, civic and professional organizations in Illinois spearheaded an effort to have a constitutional convention.¹ Prominent among these were the League of Women Voters of Illinois and the Illinois and Chicago Bar Associations.² In 1949 in his inaugural address, the then Governor of Illinois, Adlai E. Stevenson, urged Illinois Legislators to enable the necessary referendum vote of the people to be held at the next general election.³ A resolution authorizing such a referendum was introduced in the General Assembly and was brought to a vote.⁴ However, the forces opposed to holding a convention were strong, and the House of Representatives failed by a handful of votes to approve the resolution.⁵ The

¹ LEAGUE OF WOMEN VOTERS OF ILLINOIS, *A CONSTITUTIONAL CONVENTION FOR ILLINOIS* 5 (1959).

² CHICAGO BAR ASS'N, *A CONSTITUTIONAL CONVENTION FOR ILLINOIS* (1947). For many years Kenneth C. Sears of the University of Chicago Law School had been writing articles on constitutional revision, some of which are referred to herein. In the late 1940's the Chicago Bar Association's Committee on Constitutional Revision through its membership also added to the literature on the subject, including Witwer, *The Illinois Constitution and the Courts*, 15 U. CHI. L. REV. 53 (1947) and Cummings, *Amending the Revenue Article of the Illinois Constitution*, 28 CHI. B. REC. 259 (1948). See Witwer, *Action Programs to Achieve Judicial Reform*, 43 J. AM. JUD. SOC'Y 164 (1960).

³ Illinois 66th General Assembly, Jan. 10, 1949, S. JOUR. 30-31 (1949).

⁴ H. J. R. 9, offered February 1, 1949, and referred to the Executive Committee of the House which recommended its adoption on March 3. The final vote on the issue after a considerable amount of switching had taken place was 89 in favor, 54 against, and 1 present but not voting.

⁵ Three reasons cited for opposition to a convention were: (1) fear that an income tax would be adopted, (2) fears that Cook County would come to dominate both Houses of Legislature as a result of redistricting, and (3) the feeling that this was no time for a change in the basic law. Barnabas Sears, *Constitutional Revision—A Must*, 38 ILL. B.J. 247, 250-51 (1950). In the General Assembly there was additionally the opposition of the so-called West Side Bloc of legislators who sought to barter for their own security with this issue. BUSCH, ADLAI E. STEVENSON OF ILLINOIS 105 (1952).

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effort was then abandoned for the next decade, as civic and political leaders turned their attention to an alternate method.

In the subsequent years, Illinois experimented with constitutional revision by the amendment process. Through passage of a "Gateway" amendment in 1950, the procedure for adopting amendments was liberalized.⁶ The revised procedure of section 2, article XIV, allowed (1) up to three articles of the constitution to be voted on at each general election, and (2) an amendment to be adopted by a favorable vote of two-thirds of those voting on the proposition (as well as by a majority of those voting in the election). This, it was hoped, would enable more piecemeal changes to be made in the Illinois constitution. Even piecemeal changes had been rare under the procedure in effect during the preceding sixty years.

A review of actual experience during the decade shows that only one major change in the constitution has been adopted. This was an amendment to modify the system of representation in the General Assembly, known as the Reapportionment Amendment. It was designed to alleviate a situation which resulted from the Legislature having ignored for more than forty years a constitutional directive to redistrict after each decennial census.⁷ The vote by which the amendment was passed was so large that it could have been adopted even if there had been no change in the method of amending the constitution.⁸ There is some thought, however, that this favorable vote resulted only because of a fortuitous scandal which contributed substantial publicity

⁶ Ill. Laws 1949, at 1634, gives the text of Senate Joint Resolution 27, adopted by the Senate April 27, 1949, and concurred in by the House May 11, 1949. The amendment was adopted by referendum held November 7, 1950. For a discussion of the amendment and its history, see ILLINOIS LEGISLATIVE COUNCIL RESEARCH MEMORANDUM, FILE 1-151, AMENDING THE ILLINOIS CONSTITUTION (1950).

⁷ Legislative districts under the Illinois Constitution of 1870 were based upon population alone. There had been no redistricting since 1901. The effect of redistricting would have been to give Cook County a majority of the seats in both Houses. The solution offered by way of the Reapportionment Amendment was to redistrict the House on a population basis and to redistrict the Senate on a geographical basis. This guaranteed the rest of the counties a majority in the latter House. ILLINOIS LEGISLATIVE COUNCIL, FILE 1-968, LEGISLATIVE DOCUMENTS DEALING WITH THE PROPOSED CONSTITUTIONAL AMENDMENTS TO BE SUBMITTED AT THE GENERAL ELECTION, NOVEMBER 2, 1954, at 2 (1953).

⁸ The law formerly in effect required a favorable vote by a majority of all those voting in the election. Of the 3,455,173 persons voting in the 1954 election for all offices and proposals, 2,085,224, or 60%, voted for the Reapportionment Amendment. STATE OF ILLINOIS, CHARLES F. CARPENTIER, SECRETARY OF STATE, OFFICIAL VOTE OF THE STATE OF ILLINOIS 19-21 (1954).

to the amendment at the last moment.⁹ Not only have no other major changes in the constitution been made, but also the "Gateway" has not been fully utilized to bring even minor amendments to a referendum vote. The result is that calling a constitutional convention at the end of this present decade (on the hundredth anniversary of the adoption of our constitution) is being seriously proposed.¹⁰

It is hoped that current efforts to bring a revised Judicial Article to a referendum vote in 1962 will be successful. This will require full cooperation of the Bar, press, political parties, and civic groups. Whatever the outcome, it is suggested that Illinois citizens give consideration to setting up a permanent, legislatively constituted citizens' commission for constitutional revision. This body would review all suggestions for revision, provide hearings and recommend the wording of, and reasons for, amendments. If such a commission is unable to improve substantially the record under Gateway, then there should be general agreement with the proposal for calling a constitutional convention in 1970.

HISTORY OF ILLINOIS CONSTITUTIONAL REFORM

Revision of the Constitution of 1870 began immediately after its adoption. From 1870 to 1890 revision was relatively easy. During this twenty-year period, five amendments were submitted to a referendum vote and all were adopted.¹¹ After 1891, the form of ballot was changed and Illinois joined the ranks of states noted for having an exceptionally difficult system for constitutional amendment.¹² Of fourteen amendments proposed on referenda between 1891 and 1950 only two were adopted. A Gateway amendment failed five times; the voters rejected amendments to the Revenue Article four times.¹³ A constitu-

⁹ JUERGENSMEYER, *THE CAMPAIGN FOR THE ILLINOIS REAPPORTIONMENT AMENDMENT*, INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS OF THE UNIVERSITY OF ILLINOIS 23 (1957).

¹⁰ LEAGUE OF WOMEN VOTERS OF ILLINOIS, *op. cit. supra* note 1, at 7.

¹¹ The vote in favor varied from 51.7% to 73.8%. ILLINOIS LEGISLATIVE COUNCIL PUBLICATION 85, *CONSTITUTIONAL REVISION IN ILLINOIS* 12 (1947). During this time voting a straight party ticket automatically gave support to any amendment endorsed by the party. A return to the so-called party circle ballot was recently proposed as a means of easing constitutional revision. Sears, *Constitutional Revision and Party Circle Bills*, 14 U. CHI. L. REV. 200 (1947).

¹² Laughlin, *A Study in Constitutional Rigidity. I*, 10 U. CHI. L. REV. 142 (1943). Although the amendment procedure did not change, the change in ballot form was credited with increasing the difficulty of amending. Cedarquist, *Party Responsibility and Constitutional Revision*, 30 CHI. B. REC. 164 (1949).

¹³ The voters approved amendments on Chicago Charter (art. IV, § 34) in 1904 by

tional convention was called as a result of a referendum vote in 1918, but the product was not adopted.¹⁴ Another convention was proposed to the voters in 1934 but was refused.¹⁵ Experience accumulated to show how time and again a majority of the interested citizens—those voting on the issues presented on the ballot—could not pass an amendment.¹⁶

Serious proposals for revision at the beginning of the last decade numbered in the dozens. The Chicago Bar Association listed some eighteen different subject matters.¹⁷ The League of Women Voters of Illinois called for several others in addition.¹⁸ Major topics included home rule for cities, a short ballot, annual legislative sessions, changes in township and county forms of government, as well as changes in the amending process, the revenue and judicial articles, and in apportionment, already mentioned. The need for changes was so well documented that every governor in thirty years, except for John Stelle, had called for some form of constitutional revision.¹⁹

In May 1947, the Chicago Bar Association appointed a Committee on Constitutional Convention to take action in support of a convention in preference to a Gateway amendment. Among the reasons cited for this stand was the fact that historically the latter had failed so often and that currently the need for revision was so extensive.²⁰ The feelings of those seeking reform found expression in the words of Adlai E. Stevenson:

a 62.3% favorable vote and Deep Water Bonds (following art. XIV) in 1908 by 59.2%. The other twelve had favorable votes varying from 9.7% to 48.9%. From 29.1% to 79.6% of those voting in these elections did not vote on the referenda at all. ILLINOIS LEGISLATIVE COUNCIL PUBLICATION 85, *op. cit. supra* note 11, at 12.

¹⁴ *Id.* at 3. Only 17% of the votes were favorable.

¹⁵ *Id.* at 4. Only 23.5% voted in favor, and 56.5% did not vote.

¹⁶ ILLINOIS LEGISLATIVE COUNCIL RESEARCH MEMORANDUM, FILE 1-151, *op. cit. supra* note 6, at 3.

¹⁷ CBA, *op. cit. supra* note 2.

¹⁸ LEAGUE OF WOMEN VOTERS OF ILLINOIS, A CONSTITUTIONAL CONVENTION FOR ILLINOIS (undated).

¹⁹ Witwer, *A Constitutional Convention for Illinois*, 37 ILL. B. J. 9 (1948).

²⁰ CBA, ANNUAL REPORTS SUBMITTED BY COMMITTEES IN THE ASSOCIATION YEAR 1947-48, at 6 (Groups Reporting May 4, 1948). The Chicago Bar Association Board of Managers polled its members on the question, "Do you favor the adoption by the Legislature of a joint resolution submitting to referendum the calling of a constitutional convention?" 1906 voted yes, and 555, no. This was the largest number participating in a referendum to that date.

In another environment, the energetic ingenuity we have developed here in Illinois to avoid the anachronisms of our Constitution might be amusing. But it cannot be amusing when it concerns basic principles of our form of government. A Constitution as Americans look at things is to be respected and obeyed, not evaded and flouted.²¹

A dozen years later nearly the same situation prevails. The resolution introduced to implement the reform effort failed, and the Governor turned to Gateway as a substitute. This amendment was brought to a referendum vote in 1950 and became the first amendment adopted in Illinois since 1908.²²

"GATEWAY"

The passage of Gateway was heralded, as might have been expected considering its history, with both reservations and anticipation:

The spectacular failure of the attempt to call a Constitutional Convention and the equally spectacular success of the Gateway Amendment requires a fresh consideration of the present position and prospects for constitutional revision in Illinois.²³

And, on the other hand:

It is to be noted that, while Gateway itself was a relatively noncontroversial measure, approximately 22 per cent of those people who voted on the proposal cast adverse votes, thereby disclosing a disposition to oppose any change whatever in the fundamental law.²⁴

Even if twenty-two per cent voted against a change, it was thought that it would be possible, although difficult, to obtain the two-thirds favorable vote required under the new procedure.²⁵ Furthermore, allowing three articles of the Constitution to be amended each session would take some of the sting of delay out of the piecemeal method.²⁶ The years have proven otherwise.

²¹ Address by Adlai E. Stevenson before the Illinois League of Women Voters, October, 1948.

²² The enthusiasm built up for a convention appeared to carry over to the referendum on Gateway. In that election only 13 % of those voting in the election failed to vote on the issue. In previous referenda, four of which only would have increased the number of amendments which could be presented to the voters each general election, from 54.6 to 79.6% failed to vote. Special Committee on Constitutional Convention of the Association, *The Gateway Amendment*, 38 ILL. B. J. 308 (1950).

²³ *Ibid.*

²⁴ Witwer, *The Illinois Constitutional Amendments of 1952*, 41 ILL. B. J. 7, 8 (1952).

²⁵ In the bleak period from 1891 to 1950, of the fourteen amendments proposed, nine would have passed under the Gateway requirement, whereas only two in fact were adopted under the old requirement.

²⁶ Special Committee on Constitutional Convention of the Association, *The Gateway Amendment*, *supra* note 22, at 314.

Of ten amendments proposed to the voters since 1950, five have been adopted, it is true. Only one of these, the Reapportionment Amendment, could be called substantial, and, as noted previously, it could have been adopted under the amendment procedure obtaining before the passage of Gateway. Without Gateway, however, there might never have been the attempt, nor the optimism as to the possibility of adopting this amendment. Four other amendments of less importance were passed under the new test. Two of these, adopted at the same time as the Reapportionment Amendment, would, like it, have been approved under the old test. The other two were adopted in 1952 in a referendum in which voters distinguished between the various proposals by turning down two amendments as well. After 1954 all amendments were rejected.²⁷

As the decade passed, optimism cooled. A Revenue Article amendment failed twice; the voters refused by a narrow margin a new Judicial Article. The provision allowing the amendment of three articles at one time did not add much substantively or quantitatively to the process. In 1952, four amendments to three articles were proposed; in 1954, three; 1956, one; 1958, two, and in 1960 no amendments were proposed. If one reason for this was a conscious effort on the part of strategists not to have more than one controversial amendment to vote on at each election, another was not a lack of issues before the Legislature. While Governor Stevenson, in his 1951 mid-term address to the General Assembly following passage of Gateway, left the selection of amendments to the Legislature, Governor Stratton made specific proposals in each subsequent biennial session.²⁸ There were from five to ten resolutions proposing constitutional amendments submitted to the Senate in each of these sessions, and from ten to twenty intro-

²⁷ ILLINOIS LEGISLATIVE COUNCIL RESEARCH MEMORANDUM, FILE 1-151, *op. cit. supra* note 6. The amendments were November 4, 1952, Revenue—§§ 1, 2, 3, 9, and 10 of art. IX, and repeal of § 13 (failed); County Officers Re-election—§ 8 of art. X (failed); County Officers Salaries Fixed by Law—§ 10 of art. X (passed); Double Liability of Bank Stockholders Removed—§ 6 of art. XI (passed). November 2, 1954, Reapportionment—§§ 6, 7, and 8 of art. IV; Lengthening State Treasurer's Term—§§ 1, 2, and 3 of art. V; Repealing Special Illinois-Michigan Canal Provision—separate section repealed (all passed). November 6, 1956, Revenue (failed). November 4, 1958, Judicial Article—art. VI; County Officers Re-election (both failed).

²⁸ Address by Governor Stevenson, Illinois 67th General Assembly, Jan. 3, 1951, S. JOUR. 22 (1951); Address by Governor Stratton, Illinois 68th General Assembly, Jan. 7, 1953, S. JOUR. 45-6 (1953); Address by Governor Stratton, Illinois 69th General Assembly, Jan. 5, 1955, S. JOUR. 34 (1955); Address by Governor Stratton, Illinois 70th General Assembly, Jan. 14, 1957, S. JOUR. 9-11 (1957); Address by Governor Stratton, Illinois 71st General Assembly, Jan. 7, 1959, S. JOUR. 34 (1959).

duced in the House. The most popular subject was Revenue (26 resolutions), followed by Judiciary (20) and Reapportionment (17). Among new subjects appearing during the decade was one providing a means for filling vacancies created in state offices as a result of enemy attack.²⁹ The decade also saw a short-lived interest in a short ballot during 1957, after a scandal resulting in the jailing of one of the major elected officers.³⁰ Throughout the decade, there have been continued proposals for a constitutional convention.³¹

SUCCESSSES OF REVISION BY AMENDMENT

Before condemning the piecemeal approach, if such is in order, its successes should be examined to determine, if possible, what ingredients were present and whether they could be assembled again.³²

1. *Unity*. The absence of organized opposition and the presence of co-ordinating leadership have been demonstrated to be important. In the Gateway campaign, there were only two small statewide organizations known to oppose the adoption of the amendment.³³ A co-ordinating committee made it possible to avoid conflicts in approach among the supporters.³⁴ It also helped to carry on the campaign statewide.³⁵ In the campaign for the Reapportionment Amendment no statewide organization opposed its adoption. The Illinois Manufac-

²⁹ H. J. R. 36, Illinois 71st General Assembly (1959). For other resolutions see House and Senate Journals for the five sessions of the decade.

³⁰ S. J. R. 12, H. J. R. 50, H. J. R. 52, Illinois 70th General Assembly (1957).

³¹ H. J. R. 38, Illinois 68th General Assembly (1953); H. J. R. 33, Illinois 69th General Assembly (1955); H. J. R. 10, Illinois 70th General Assembly (1957). As the decade progressed the question of representation at a convention also was raised since this was unchanged by the Reapportionment Amendment. H. J. R. 15, Illinois 70th General Assembly (1957); H. J. R. 27, Illinois 71st General Assembly (1959).

³² For a study of the amendatory process, the following bibliography has been suggested, partly by JUERGENSMEYER, *op. cit. supra* note 9, at iii:

1. Statewide agitation leading to the resolution.
Olson, *Illinois Faces Redistricting*, 43 NAT'L MUNIC. REV. 343 ff. (1954);
Martin, *What Those Legislators Do to You*, Saturday Evening Post, December 19, 1953, p. 30 ff., and December 26, 1953, p. 28 ff.
2. Campaign for adoption at the polls. JUERGENSMEYER, *op. cit. supra* note 9.
3. Passage of Legislation following adoption. STEINER & GOVE, *THE LEGISLATURE REDISTRICTS ILLINOIS* (1956).

³³ ILLINOIS COMMITTEE FOR CONSTITUTIONAL REVISION, *REPORT OF GATEWAY AMENDMENT I* (1951).

³⁴ *Ibid.*

³⁵ *Id.* at 2. The committee had concluded that a contributing factor making unsuccessful previous efforts was the carrying out of a strong campaign in Cook County without commensurate effort downstate.

turers Association refused to support it; support was withdrawn part-way through the campaign by the Illinois Industrial Union, CIO; and some few individual legislators campaigned openly against it.³⁶ Again, the work of a coordinating committee made it possible for the proponents to agree on strategy and to reconcile differences statewide.³⁷

Contrasted with this, a Revenue Article amendment failed in 1952 by only a narrow margin. It did not receive open opposition, but it had little organized support. There was a successful statewide campaign in that year to adopt a banking amendment relieving bank stockholders of double liability. In spite of the fact that this amendment affected a relatively small number of people, voters were able to be aroused to support it. The success of the Revenue Article on the same ballot gave rise to conjecture that some amendments can be carried to success or doomed to failure, depending on what other amendments are proposed at the same time, how their campaigns are run, and what opposition they uncover. The exact same amendment proposed alone on the ballot in 1956 and supported by a statewide committee encountered strong, well financed opposition and failed by a substantially greater margin.³⁸ As members of the Bar in Illinois know, the Judicial Article amendment in 1958 had the support and leadership of the Bar Associations, but lacked unanimity of support from members, as well as having outspoken organized opposition.³⁹ Nevertheless, the vote was close enough to warrant a further effort involving the courts. Hopes were dashed when a favorable decision which would have increased the number of votes counted in the referendum was not forthcoming.⁴⁰

2. *Simplicity.* The Gateway Amendment was passed using the slogan, "Vote Yes."⁴¹ In the campaign for Reapportionment, voters were urged to "Vote Yes on the Blue Ballot," which carried in fact three amendments.⁴² Neither of the other two was so controversial,

³⁶ JUERGENSMEYER, *op. cit. supra* note 9, at 20-21.

³⁷ *Id.* at iv, 46.

³⁸ In 1952, 61.4% of those voting on the issue approved its passage, whereas in 1956 only 39.7% approved.

³⁹ Two statewide committees opposing were those of justice of the peace and of county officers. Kohn, *Modern Courts for Illinois*, 42 J. AM. JUD. Soc'y 49 (1958).

⁴⁰ *Scribner v. Sachs*, 18 Ill.2d 400, 164 N.E.2d 481 (1960). The attempt was to obtain a recount of votes in which marks other than a cross in the box might be counted.

⁴¹ ILLINOIS COMMITTEE FOR CONSTITUTIONAL REVISION, *op. cit. supra* note 33, at 3.

⁴² JUERGENSMEYER, *op. cit. supra* note 9, at 8.

it was assumed, as to endanger the overall campaign, while the simplicity of the instruction, it was felt, would be desirable. By way of contrast, the Revenue Article amendment appeared all by itself on the ballot in 1956 and was similarly publicized, yet it failed of adoption.

For the Gateway Amendment, and subsequently, changes in the election laws were adopted to call the attention of voters to constitutional amendments by more obvious means than previously.⁴³ The amendments have appeared on a separate blue ballot, even in districts using voting machines. Each voter is supposed to have his attention directed to the ballot. The voter is required to return the ballot to the election judge whether or not the voter used the ballot. This procedure was credited with part of the successes of Gateway⁴⁴ and Reapportionment.⁴⁵ Only 12.95 per cent of the voters failed to vote on Gateway in 1950, whereas in the 1946 referendum 54.6 per cent failed to vote. On the other hand, even after adoption of this new procedure, as many as 34.3 per cent of the voters failed to vote on the Revenue Article amendment in 1952.

Simplicity as to issue, rather than publicity or procedure, may have been the element which contributed to the successes of Gateway and Reapportionment. *Why* there should be changes made in both cases was more difficult to explain than *what* they were. The first amendment could hardly have been misunderstood after the amount of public discussion and the history of attempts to change the system of amendment. In the case of Reapportionment, the scheme proposed for representation was roughly comparable to one to which the people were already accustomed in the Congress. In addition, the supporters found a last minute rallying point in a scandal arising over the naming of Representative Adducci to the Legislature.⁴⁶ Neither the Revenue Article nor Judicial Article amendments had the advantage of this simplicity of issue—which fact could allow the political parties to avoid giving their strong support, which is essential, and prevent the newspapers and radio and television from communicating their support as effectively.⁴⁷

⁴³ ILL. REV. STAT. ch. 46, §§ 16-6, 17-9 (1959).

⁴⁴ ILLINOIS COMMITTEE FOR CONSTITUTIONAL REVISION, *op. cit. supra* note 33, at 6.

⁴⁵ JUERGENSMEYER, *op. cit. supra* note 9, at 36.

⁴⁶ JUERGENSMEYER, *op. cit. supra* note 9.

⁴⁷ ILLINOIS COMMITTEE FOR CONSTITUTIONAL REVISION, *op. cit. supra* note 33, at 3-4.

PROSPECTS

The fact that half the amendments submitted to the voters in the last decade have been adopted could be taken as an encouraging sign. This is an increase in the rate of adoption. However, what has been accomplished was all done in the very first years after Gateway. Since 1953, the Legislature has not offered as many referenda to voters as it could have, and since 1954 the people have accepted none of those offered.

Other drawbacks to the amendatory process observed elsewhere appear to apply equally well here: Although debate of the pros and cons is desirable, it may undermine public confidence or add to public confusion. Language decided upon in the haste of a legislative session and designed for the ballot form may well lack preciseness or completeness. Some amendments may be so technical that the public could probably never be aroused to their support.⁴⁸

Leadership for the enactment of each major amendment in this decade has been provided through civic and professional organizations. The financial support for the campaign has come from firms and individuals making contributions on a tax deductible basis. The experience has been that considerable sums are needed for the public education, meetings, travel—the staff and publicity functions—which are necessary to support the organized campaign.⁴⁹ If gifts to this type of co-ordinating body cannot be made on a tax deductible basis, there will be difficulty in raising the necessary sums. This is unhappily the prospect, which makes less likely the running of successful campaigns in the future.⁵⁰

In the current session of the General Assembly, the Chicago and Illinois Bar Associations arranged introduction of a revised Judicial Article amendment. There will be statewide activity under coordinated direction of a citizens' committee. Support of each member

⁴⁸ Mitau, *Constitutional Change by Amendment*, 44 MINN. L. REV. 461, 479-80 (1960).

⁴⁹ ILLINOIS COMMITTEE FOR CONSTITUTIONAL REVISION, *op. cit. supra* note 33, at 15; JUERGENSEMEYER, *op. cit. supra* note 9, at 7.

⁵⁰ *Cammarano v. United States*, 358 U.S. 498 (1959). Two cases were considered, one relating to sums paid by an individual and the other by a corporation to organizations engaged in publicity programs to persuade voters how to vote on a measure. The court held the sums were not deductible as "ordinary and necessary" business expenses even though it was argued that the taxpayer's business would be seriously affected or destroyed by an unfavorable outcome. For excepted contributions see *Treas. Reg. § 1.162-15* (1958), especially the part added by T. D. 6435, 1960-4 CUM. BULL. 7.

of the Bar will be sought, both financial and political; support of the press and the two parties are considered essential. If successful, the amendment will appear on the ballot in 1962.

Governor Otto Kerner was quiet on the subject of the Judicial Article amendment in his inaugural address. This would have been a propitious moment for his unqualified support to have been given. The Governor did state his intent to turn over the subject of Revenue Article revision to a commission reporting to the General Assembly no later than 1963.⁵¹ This could result in a Revenue Article amendment appearing in 1964. There is some sentiment for the position that such an amendment should be proposed this year. Proponents argue that the Legislature should decide whether this or judicial revision should be the subject of a referendum vote in the next general election. Some also state that there is no clear showing that having both revenue and judicial revision on the ballot at the same time would necessarily mean defeat for either or both.

The prospects of having both revenue and judicial revision on the ballot, if followed by favorable votes in both cases, could render valid the piecemeal process of constitutional revision for Illinois. In order to plan for other amendments, including making full use of the provision allowing three amendments each session, it seems desirable to consider establishing a continuing commission for constitutional revision. The purpose would be to have (1) a forum for discussion and argument in advance of proposing legislation, (2) a place to work out discrepancies and ambiguities in the language of amendatory resolutions, and (3) a body to make contacts, provide leadership, and coordinate support before the referendum.⁵² In a comprehensive review of methods of constitutional revision, the advantages of a commission were set forth as follows:

(1) It is smaller in size and can therefore work more efficiently. (2) It is a select appointive body and can therefore command the services of the ablest men in the state. Because a commission can exact aid from able men, (a) it

⁵¹ Address by Governor Kerner, Illinois 72nd General Assembly, Jan. 9, 1961, H. R. JOUR. 21 (1961). After introduction of S. J. R. 21 and H. J. R. 40, which contain the Bar proposal for Judicial Article revision, the Governor was quoted as predicting its failure. Chicago Sun-Times, March 31, 1961, p. 23, col. 2. He also stepped up his demand for Revenue Article revision in a special message to a joint session of the Legislature.

⁵² LEAGUE OF WOMEN VOTERS OF ILLINOIS, COMMISSIONS FOR THE STUDY OF CONSTITUTIONAL REVISION 3 (1960). The Minnesota Commission, for an example, has been credited with "significant substantial achievements." Mitau, *Constitutional Change by Amendment*, *supra* note 48, at 478.

can make more effective use of the experience of other states, (b) it is more independent, and (c) it is less susceptible to the influence of pressure groups and log rolling. (3) A commission is the least expensive method of revising a constitution. (4) It is politically expeditious.⁵³

The writer points out that basic research is necessary to provide a thorough understanding of what may result from complex or fundamental changes in the constitution, and citizen participation is required to ensure that amendments are adopted.⁵⁴ These can best be provided through a commission established by the Legislature to which outstanding citizens are appointed. Such a commission might be expected to make a substantial difference in this decade using the Gateway, as contrasted with the last ten years here reviewed.

There should be general agreement, however, that in the event this present decade fails to witness any improvement in experience, in particular with the Judicial and Revenue Article amendments, then the subject of constitutional convention will warrant renewed interest. If by 1969 there has been no additional piecemeal revision, the voters should then be given the chance to vote on whether or not they want to have a constitutional convention assembled. They might also be allowed to express a preference on a separate referendum as to the method of representation in such a convention. Twenty years of experience with Gateway should have proved its effectiveness or convinced us of its inadequacy.⁵⁵

⁵³ KEITH, METHODS OF CONSTITUTIONAL REVISION, BUREAU OF MUNICIPAL RESEARCH OF THE UNIVERSITY OF TEXAS 17 (1949).

⁵⁴ *Id.* at 55.

⁵⁵ The Minnesota Constitutional Commission, in spite of its own successes, recommends that the subject of constitutional convention should automatically be submitted to the voters once every twenty years. Mitau, *Constitutional Change by Amendment*, *supra* note 48.