

JOURNAL
MISSOURI CONSTITUTIONAL
CONVENTION OF 1875

VOLUME I

WITH AN HISTORICAL INTRODUCTION ON
CONSTITUTIONS AND CONSTITUTIONAL
CONVENTIONS IN MISSOURI

By ISIDOR LOEB, PH. D., LL. B.

AND A BIOGRAPHICAL ACCOUNT OF
THE PERSONNEL OF THE CONVENTION

By FLOYD C. SHOEMAKER, A. M.

Editors.



A Missouri Centennial Publication By
THE STATE HISTORICAL SOCIETY OF MISSOURI
COLUMBIA, 1920

Mr. Maxey offered the following resolution:

Resolved, That the Committee on Judicial Department inquire into the expediency of amending the Constitution so as to provide for dividing the State into eighteen judicial circuits and to reduce the number of circuit judges from twenty-nine to eighteen and to establish the office of circuit attorney, the circuit attorney to possess the same qualifications 88] and to receive the same salary as circuit judge.

which was read and on motion referred to the Committee on Judicial Department.

Mr. Mortell called up his amendment to Rule 18 offered on yesterday, which was not adopted.

Mr. Todd offered the following resolution:

Resolved, That the Committee on Miscellaneous Provisions be instructed to inquire into the expediency of reporting the following as an amendment to the Constitution: No officer of any kind elected shall have or enjoy a longer term of office than that of his office existing at the time of his election.

which was read and referred to the Committee on Miscellaneous Provisions.

Mr. Wallace offered the following resolution:

Resolved, That there be added to the Committee on Miscellaneous Provisions two additional members to be appointed by the President so as to make such committee consist of nine members.

which was read and adopted.

On motion of Mr. Lay, the Convention adjourned until tomorrow at 9 o'clock a. m.

THURSDAY, MAY 13, 1875

MORNING SESSION

The Convention met pursuant to adjournment, the President in the chair.

Prayer by the Rev. Mr. Barrett.

On motion of Mr. Norton the reading of yesterday's journal was dispensed with.

Mr. Gantt, from the Committee on Preamble to the Constitution and Bill of Rights, submitted the following report:

We, the people of the State of Missouri, without [with] profound reverence for the Supreme Ruler of the Universe and grateful for his goodness, do for the better government of the State, establish this Constitution. In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded we declare:

1. That all political power is vested in the people of the State 89] with those limitations only which are imposed on them by the Constitution of the United States and that the government hereby established is clothed with that portion of the political power thus inherent in the people which is defined, ascertained and committed to some department thereof by this instrument.

2. That the power not thus defined, ascertained and committed to some one of the departments of the government hereby established are reserved to the people and constitute that mass of governmental powers, the presence or absence of which distinguishes arbitrary from limited governments.

3. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails of its chief design.

4. That the people of this State have, now and always, the inherent exclusive and inalienable right, subject to the limitations before mentioned, of regulating after and amending their State Government whenever and in such manner as to them shall seem expedient.

5. That religious belief is a matter beyond the sphere of the government proposed by this Constitution; that no one can be questioned in respect of his religious opinions by any instrumentality of this government, or for any purpose connected with its administration, but that acts of immorality, licentiousness, or conduct inconsistent with the good order, peace or safety of society, may be rightfully presented and punished notwithstanding that the persons guilty of such acts or conduct may proffer and allege in excuse or justification thereof, that they are committed in obedience to the dictates of conscience.

6. That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, preacher, minister or teacher of any sect, church creed or denomination of religion; but that if any person shall voluntarily make a contract for any such object he shall be held to the performance of the same.

7. That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof as such; and that no preference shall be given to or any discrimination made

against any church, sect, denomination or creed of religion or any form of religion, faith or worship.

8. That every gift, sale or devise of land to any priest, minister, public teacher or preacher of the gospel as such or to any religious sect, 90] order or denomination or to or for the support, use or benefit of or in trust for any minister, public teacher or preacher of the gospel as such, or any religious order, sect or denomination; and every gift or sale of goods or chattels, to go in succession or to take effect after the death of the donor or seller to or for such use, support or benefit; and also every devise of goods or chattels to or for the support of any minister, public teacher, priest or preacher of the Gospel as such, or any religious sect, order or denomination, shall be void: except always a gift, sale or devise of so much land as may be required for a house of public worship, a chapel, a parsonage and a burial ground to be held for those purposes only, the quantity of land so held by any congregation, church or religious society not to exceed five acres in the country or one acre in a town or city.

9. That all elections ought to be free and open.

10. That courts of justice shall be open to every person and certain remedy afforded for every injury to person, property or character. That right and justice should be administered without sale, denial or delay and that the existence of a wrong for which the law affords no redress is a scandal to government.

11. That all persons shall be secure in their persons, papers, houses, and effects, from arbitrary searches and seizures; that no warrant shall issue to search any place or seize any person or thing except on probable cause, shown by oath or affirmation, and in every case whenever such probable cause is so shown, the warrant, by virtue of which alone it shall be lawful to make such search or seizure, shall describe the place to be searched or the person or thing to be seized, as nearly as may be.

12. That no person shall for an indictable offense be proceeded against criminally by information except in cases arising in the land or naval forces or in the militia in time of war or public danger or by leave of court for oppression or malfeasance in office.

13. That no conviction shall work corruption of blood nor forfeiture of the estate of the offender, except so much thereof as may be necessary to pay a fine imposed by law and the costs of prosecution and that the estate of those dying by suicide shall descend or vest as if they had died from disease.

14. That no law be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any 91] subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence and the jury under the direction of the court, shall determine the law and the fact.

15. That no act retrospective in its operation shall be passed by the General Assembly.

16. That imprisonment for debt shall not be allowed except for non-payment of fines and penalties imposed for violation of law, or when a debtor refuses to deliver up his estate for the benefit of creditors, in

such manner as shall be prescribed by law, or when there is strong presumption of fraud.

17. That all property in the State except such as belongs to the United States, the State of Missouri, to counties, cities or municipal subdivisions, or municipal corporations within this State, or such as is held exclusively for the interment of the bodies of deceased persons, shall be taxed in proportion to its value for all purposes for which other property, similarly situated, is taxable and the General Assembly shall have no power to exempt from taxation of any kind, whether State or municipal purposes, the property of any particular owner or class of owners.

18. That the dwelling house of each citizen shall be sacred from invasion or entry by all persons except officers of justice in the execution of a warrant as described in Section eleven of this article, or in fresh pursuit on view of a fugitive from arrest; and that the right of no citizen to keep and bear arms in defense of his home, person and property when lawfully threatened or in aid of the civil power when thereto legally summoned shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.

19. That no person elected or appointed to any office or employment of trust or profit under the laws of Missouri or any ordinance of any municipality in this State shall hold such office without personally performing the duties to the same belonging.

20. That no person who is now or may hereafter become a collector or receiver of public money or assistant or deputy of such receiver or collector, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof or under any municipality therein until he shall have accounted for and paid over all the public money for which he may be accountable.

21. No person who shall hereafter be guilty of embezzling any 92] money belonging to whomsoever or of appropriating to his own use any money received by him in trust or confidence from another, as distinguished from a debt arising out of the casualties of ordinary trade and business, shall be eligible to any office of trust or profit under the laws of this State or the ordinance of any municipality therein until he shall have paid and made good any such defalcation.

22. That no private property can be taken for private use with or without compensation, unless by consent of the owner, and that whenever an attempt is made to take private property for use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and as such judicially determined without regard to any legislative assertion that the use is public.

23. That whenever private property is taken or damaged for public use, just compensation shall be made to the owner thereof and the measure of such compensation shall be the fair price or value in money of the property taken for, or a sum sufficient to balance the injury done thereto by the public use without any deduction from such price, value or compensation by reason of any real or alleged benefit to the same or other property of the owner by the proposed public use. In all cases, the owner

of the property taken or injured may require that compensation be assessed by a jury and until the compensation awarded shall be paid to the owner or into court for the use of the owner, the proprietary rights of the owner shall not be divested.

24. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses against him face to face, to have process to compel the attendance of witnesses in his behalf, and a speedy trial by an impartial jury of the county.

25. That no person shall be compelled to testify against himself in a criminal cause nor shall any person after being once acquitted by a jury be again, for the same offense, put in jeopardy of life or liberty; but if the jury to which the question of his guilt or innocence is submitted, fail to render a verdict, the court before which the trial is had may in its discretion, discharge the jury and commit or bail the prisoner for trial at the next term of court, or if the state of business will permit at the same term and if judgment be arrested after verdict of guilty on a defective indictment, or if judgment on a verdict of guilty be reversed 93] for error in law, nothing herein contained shall prevent a new trial of the prisoner on a proper indictment, or according to correct principles of law.

26. That all persons shall be bailable by sufficient sureties except in capital cases when the presumption of guilt is great.

27. That bail more than sufficient to secure the appearance of the accused for trial shall not be required nor shall excessive fines be imposed, nor cruel and unusual punishment be inflicted.

28. That the privilege of the writ of *habeas corpus* shall never be suspended.

29. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

30. That the limitations imposed on the State of Missouri in common with her sister states by the Federal Constitution are cheerfully acquiesced in and so far as it is possible or becoming for the State of Missouri to enact as part of her organic law provisions which are already and by an authority superior to her own, part of the supreme law of the land, are hereby declared to be incorporated into this Constitution.

On motion of Mr. Gantt the further reading of the report was dispensed with.

Mr. Cottey offered the following amendment:

Resolved, That all of Section seventeen be stricken out and the same referred to the Committee on Revenue and Taxation. Said section is in words following, to-wit: "That all property in the State except such as belongs to the United States, the States of Missouri, to counties, cities or municipal subdivisions or municipal corporations within this

ABSENT

Adams Farris Mortell Pulitzer Rippey 5

Mr. Lackland offered the following amendment to Section twelve as reported by the Committee of the Whole:

Strike out the words, "otherwise than by indictment," and insert in lieu thereof the words, "by information."

which was read and rejected.

The question recurring on the adoption of Section twelve of the report of the Committee of the Whole as amended, it was adopted.

Section twenty-two was reported by the Committee of the Whole as follows:

That no private property can be taken for private use, with or without compensation, unless by the consent of the owner, except for private ways of necessity as may be prescribed by law, and that whenever an attempt is made to take private property for a use alleged to be public the question whether the contemplated use be really public shall be a judicial question, and as such, judicially determined without regard to any legislative assertion that the use is public.

which was read.

Mr. Lackland offered the following amendment to Section twenty-two of the report of the Committee of the Whole on Preamble and Bill of Rights:

Amend Section twenty-two by inserting after the word "necessity" in line two the following words: "and except for drains and ditches for agricultural and sanitary purposes across the lands of others in such manner."

which was read and adopted.

The question recurring on the adoption of Section twenty-two of the report of the Committee of the Whole as amended, it was adopted. No objections being made the section was numbered twenty.

The following substitute was recommended by the Committee of the Whole for Section twenty-three of the Preamble and Bill of Rights.

That private property shall not be taken or damaged for public use without just compensation, and the compensation shall be the fair value in money of the property taken. Such compensation shall be ascertained by a jury in such manner as may be prescribed by law; and

until the same shall be paid to the owner or into court for such owner, the property shall not be disturbed or the proprietary rights therein divested.

which was read.

Mr. Ross of Polk offered the following substitute for Section twenty-three of the report of the Committee of the Whole:

Private property shall not be taken or damaged for public use without just compensation therefor first paid or secured; but no benefits of a general character shall be deducted in assessing damages.

which was read.

Mr. Gottschalk offered the following amendment to Section twenty-three of the report of the Committee of the Whole:

Amend Section twenty-three by striking out the words, "and the compensation shall be the fair value in money of the property taken," in the second and third lines.

which was read and adopted.

Mr. Crews offered the following amendment to Section twenty-three:

Strike out all after the word "that" and insert the following: "private property shall not be taken or damaged or applied to public use without just compensation. Such compensation shall be ascertained by a jury in such manner as may be prescribed by law, and until the same shall be paid to the owner or into court for such owner, the property shall not be disturbed or the proprietary rights divested."

which was read and rejected.

The question recurring on the adoption of the substitute for Section twenty-three offered by Mr. Ross of Polk, it was rejected.

Mr. Hardin offered the following amendment to Section twenty-three:

Amend by adding to the section as amended the following: "The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owner subject to the use for which it is taken."

which was read and adopted.

Mr. Todd offered the following amendment to Section twenty-three:

Amend by inserting the words, "or board of commissioners of not less than three freeholders," after the word "jury" in line three.

which was read and adopted.

174] Mr. Wallace offered the following substitute for Section twenty-three as amended:

For Section twenty-three as amended substitute the following: "That no private property can be taken, damaged or applied to public use, without just compensation, to be ascertained in the manner that may be provided by law and the fee of the land for railroad tracks taken without the consent of the owner thereof shall remain in said owner subject for the use for which it was taken."

which was read.

Mr. Shanklin offered the following amendment to the substitute offered by Mr. Wallace:

Amend by striking out all after the word "law," and insert the following: "When land is taken for public use the fee shall remain in the owner subject to the use for which it was taken."

which was read and rejected.

The question recurring upon the adoption of the substitute offered by Mr. Wallace, it was rejected.

Mr. Gantt offered the following substitute for Section twenty-three of report of Committee of the Whole, as amended:

That whenever private property is taken or damaged for public use, just compensation shall be made to the owner therefor and the measured inch compensation shall be the fair value of the property taken, or a sum sufficient to balance the injury done thereto by the public use or improvement. In all cases the owner of the property taken or injured may require the compensation to be assessed by a jury; and until the compensation awarded shall be paid to the owner or into court for the use of the owner his proprietary rights therein shall not be divested.

which was read.

Messrs. Heyer and Halliburton demanded the ayes and noes.

The substitute to Section twenty-three offered by Mr. Gantt was rejected by the following vote:

AYES

Adams	Carleton	Gantt	Pipkin	Roberts
Alexander	Conway	Hyer	Ray	Ross
Boone	Dysart	Letcher	Ripsey	of Polk

Rucker	Taylor	Todd	Watkins	Mr. President	
Spaunhorst	of St. Louis				20

NOES

175] Allen	Edwards	Hardin	Massey	Ross	
Black	of Iron	Holliday	Maxey	of Morgan	
Bradfield	Edwards	Johnson	McAfee	Shackelford	
Broadhead	of St. Louis	of Cole	McCabe	Shanklin	
Brockmeyer	Eitzen	Johnston	McKee	Shields	
Chrisman	Fyan	of Nodaway	McKillop	Taylor	
Cottey	Gottschalk	Lackland	Nickerson	of Jasper	
Crews	Hale	Lay	Norton	Wagner	
Crockett	Halliburton	Mabrey	Priest	Wallace	40
Davis					

ABSENT WITH LEAVE

Dryden	Hammond	Rider			3
--------	---------	-------	--	--	---

ABSENT

Farris	Mortell	Mudd	Pulitzer	Switzler	5
--------	---------	------	----------	----------	---

Mr. Dysart offered the following amendment to Section twenty-three of the Committee of the Whole:

Amend by striking out all after the word "that" in the first line and insert as follows: "private property shall not be taken, appropriated or damaged for public use without just compensation to be ascertained in such manner as may be provided by law. In all cases the owner of the property taken or injured may require that compensation be assessed by a jury, and until the compensation awarded shall be tendered or paid into court for the use of the owner his proprietary rights shall not be divested."

which was read and rejected.

The question recurring upon the adoption of Section twenty-three of the Committee of the Whole as amended, it was adopted.

There being no objection Section twenty-three was numbered Section twenty-one.

The following section as reported by the Committee of the Whole as a substitute for Section twenty-four as reported by Committee on Preamble and Bill of Rights:

In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation, to meet the witnesses against him face to face, to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county.

which was read.