

# SIXTY-FOURTH DAY

## AFTERNOON SESSION.

MONDAY, April 29, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the member from Clermont [Mr. DUNN].

The journal of yesterday was read and approved.

### MOTIONS AND RESOLUTIONS.

Mr. THOMAS: I offer a resolution.

The resolution was read as follows:

Resolution No. 110:

*Be it resolved by the Constitutional Convention of the state of Ohio,* That the congress of the United States be, and it is hereby requested to make proper and suitable provisions by law for the loan, to states, counties and municipalities within the United States of the moneys or funds deposited in the postal savings banks of the United States, at two and one-half per cent. interest, upon the said states, counties and municipalities depositing with the treasurer of the United States bonds of said states, counties or municipalities in a sum equal to the amount so loaned.

The PRESIDENT: The resolution will go over under the rule.

Mr. KNIGHT: The select committee created some time ago to have supervision over the official reporter desires to call one matter to the attention of the Convention and follow it with a request from the committee. As we are presumptively approaching the closing days of our discussion, we desire that the material of the reporter shall be in shape to be at the future disposition of the Convention and we find that there are some twenty or thirty speeches delivered to the members, some of them five weeks ago, that have not been returned, and the committee feels that a simple statement of the fact, and perhaps the suggestion for their return, is all that is necessary. That can be done this week in order that our records may be complete before we take the recess.

Mr. DOTY: If they are not returned will they be omitted from the record? If they will, there is no use in anybody returning them.

Mr. KNIGHT: The committee has no power to make the members speak over again.

The PRESIDENT: Motions and resolutions are still in order.

Mr. MILLER, of Crawford: I offer a resolution.

The resolution was read as follows:

Resolution No. 111:

WHEREAS, The deliberations of the Convention have been so much disturbed by loud talk and unnecessary moving about of the members in the hall and lobby; therefore

*Be it resolved by the Convention,* That members and employes be requested and required to refrain from talking or moving about in the hall or lobby, while any member is speaking or while the clerk is reading or calling the roll.

*Be it further resolved,* That the president and the sergeant-at-arms be required to strictly enforce the requirements of this resolution.

Mr. FESS: I move a suspension of the rules and that the resolution be put upon its passage.

The motion to suspend the rules was carried.

Mr. DOTY: This is the first resolution of censure that has been offered upon the officers—

Mr. MILLER, of Crawford: It is not a censure upon the officers, but upon the members. The officers are trying to do all they can.

Mr. DOTY: I am in favor of the purpose of the resolution, but I do not think the resolution itself is proper.

Mr. KRAMER: I think it is exactly right if we will only meet on Friday. We solemnly resolved to keep order and we don't keep it, just as we solemnly resolved to meet on Friday and haven't met. We only have one or two weeks left and I am sure the president and sergeant-at-arms will keep order.

Mr. ANDERSON: I will offer this amendment that all delegates be required to give strict attention to the speeches being made by any other delegate and the delegates must refrain from reading any documents or newspapers while speeches are in progress.

The amendment offered by the delegate from Mahoning [Mr. ANDERSON] was disagreed to.

Mr. LAMPSON: I think inasmuch as public attention has been called to this situation members ought to take it upon themselves to abide by the rules. The rules already cover what is involved in this resolution and it will not look in the record exactly as it sounds when it is read here before the full Convention, all of us understanding the evil that we are seeking to cure. I therefore move to lay the resolution on the table.

The motion was carried.

### INTRODUCTION OF PROPOSALS.

The following proposals were introduced and read the first time:

Proposal No. 335 — Mr. Dunn. To submit an amendment to article XII, section 2, of the constitution. — Relative to taxation.

Proposal No. 336 — Mr. Read. To submit an amendment to article I, section 7, of the constitution. — Relative to moral training.

### REPORTS OF STANDING COMMITTEES.

Mr. Knight submitted the following report:

The standing committee on Education, to which was referred Proposal No. 321 — Mr. Miller, of Fairfield, having had the same under consideration, reports it back, and recommends its indefinite postponement.

The PRESIDENT: The question is on agreeing to the report of the committee.

The report was agreed to.

## Reports of Standing Committees—Resolutions Laid Over—Second Reading of Proposals.

Mr. WALKER: I submit a report.

The standing committee on Public Works, to which was referred Proposal No. 331 — Mr. Walker, having had the same under consideration, reports it back, and recommends its passage.

The PRESIDENT: The question is on agreeing to the report of the committee.

The report was agreed to.

The PRESIDENT: If there is no objection the reports will be engrossed.

Mr. KRAMER: I offer the following report;

The standing committee on Legislative and Executive Departments, to which was referred Proposal No. 310 — Mr. Read, having had the same under consideration, reports it back, and recommends that it be indefinitely postponed.

The PRESIDENT: The question is on agreeing to the report of the committee.

Mr. READ: I believe this question ought to be debated. While of course I bow to the superior wisdom of the committee, I was led to believe that that committee was going to report that without recommendation, but in their wisdom they have deemed to do it differently. They treated it very cordially. I only asked that they might give me an opportunity to argue it before the Convention, and when I left them a few days ago I felt quite good because they were going to allow that to be done, but the next thing I know they handed me one in the solar plexus. Now I am a little disfigured, but I am still in the ring, and I want to ask the Convention to be kind enough to allow me to present it to the body and see if the Convention can not see some merit in it. I hope, therefore, that this report to indefinitely postpone will not be carried. I think I at least should have the privilege of presenting it to the Convention.

Mr. DOTY: This proposal in its present form is not one I would care to vote for, but it has in my judgment some principles involved in it that are worthy of consideration by this Convention. The whole question of when our legislature shall meet and how it shall perform some of its duties is involved in some of the proposals. While I do not agree with Mr. Read upon some parts of the proposal, I think it is one that is worthy of earnest consideration. I hope the recommendation of the committee will be voted down and the proposal will be engrossed and put upon the calendar.

Mr. KRAMER: The committee ought to say just a word or two on that. We had this proposal or one like it before us three different times. We heard from Mr. Read three different times. The proposal provides for a session of legislature each year. The first session of the legislature does nothing but put in bills and refer them to committees. The second year they may consider bills already presented at the first session. While it may have some merit in it, the committee didn't think it had sufficient merit to take up the time of the Convention in discussion. We have had the idea that the people of the state would rather have a session of the legislature every four years than every year. I think that is pretty much the sentiment of the committee.

Mr. DOTY: Does not the member know that the evil came down from the time when the legislature was,

in addition to what an ordinary legislature is, a board of county commissioners for eighty-eight counties, a city council for seventy-one cities and a board of education for seven or eight thousand school districts in the state of Ohio? Don't you know that is true?

Mr. KRAMER: No.

Mr. DOTY: It is a fact, just the same.

Mr. KRAMER: If you say it is a fact, it is. I just wanted to make that statement so that the Convention would know.

The motion to indefinitely postpone was carried.

Mr. WATSON: I did not have time to introduce a proposal during the regular hour and I would like to introduce it right now.

Mr. DOTY: A proposal at this time?

By unanimous consent the following proposal was introduced and read the first time:

Proposal No. 337 — Mr. Watson. To submit an amendment to the constitution. — Relative to the recall.

Mr. WATSON: Some gentleman has suggested that I may have a speech, but I have not. I have just one new idea.

## RESOLUTIONS LAID OVER.

The PRESIDENT: The order is still reports of committees. If none, resolutions laid over. The first is Resolution No. 109 — Mr. Stilwell.

Mr. DOTY: That is a resolution of my colleague, who is not present. I therefore move that this resolution be informally passed upon the calendar.

The motion was carried.

## SECOND READING OF PROPOSALS.

The PRESIDENT: The next order of business is proposals on their second reading and the first is Proposal No. 272 — Mr. FitzSimons.

Mr. KNIGHT: As the chairman of the committee on Municipal Government, who expected to be here for this session, is evidently delayed by a late train, and it is the desire of the proponent as well as the committee that this proposal and the proposal following it on the calendar be informally passed until the chairman of the Municipal committee is here, I move that this be done.

Mr. DOTY: There are about one hundred and sixteen members here who came in for this two o'clock session. They came in to take up this matter of municipal government. The author of the proposal and a very influential part of the committee are here. Why can we not read it the second time and proceed with the debates? There are a lot of people who want to make speeches on the proposal. The rest of us got here at two o'clock, as we agreed on Thursday we would do, and I do not see why we should informally pass anything. I am willing to do this, as agreeable all around, to transfer the fourth item on the calendar up in the place of the first two.

Mr. KNIGHT: It is evident from the fact that none of the delegates from Cincinnati who were to come up on that train have arrived, that the train is delayed in some way. They expected to be here. That is the reason for the suggestion, but if the Convention insists, rather than make the change in the order proposed, we will take up Proposal No. 272.

## Suits Against the State.

The PRESIDENT: Does the member from Franklin make a motion?

Mr. KNIGHT: I move that Proposals No. 272 and 329 be informally passed and retain their places on the calendar.

The motion was carried.

The PRESIDENT: The next is Proposal No. 252 — Mr. Weybrecht.

The proposal was read the second time.

Mr. WEYBRECHT: Mr. President and Gentlemen of the Convention: The proposal, which has been recommended by the Judiciary committee, recognizes the right of the individual to seek redress for claims against the state in such courts as may hereafter be designated, without petitioning the legislature as is now the custom.

It is probably one of minor importance in comparison with many of the proposals introduced and considered by this Convention, yet in its denial of the old-time notion that the state or sovereign can not be amenable to the suit of a citizen without its consent, it is in line with the recommendation of constitutional writers for the past sixty years and in accord with the practice that during the same time obtains in every European country, with the possible exception of Russia.

In our national government this ancient attribute of sovereignty was overthrown many years ago when congress conferred on a special court the adjudication of all claims of the individual against the general government.

Today the states of Pennsylvania, New York and Connecticut, through their constitutions, confer on the legislature, as does this proposal, the right to designate the tribunal in which redress may be sought.

I understand that in Virginia and North Carolina such courts have been named by legislative enactment, and on this point I desire to quote Judge Cooley in his admirable "Constitutional Limitations," in which he decries the tendency of state legislatures to abrogate to themselves the right to enact laws that seek to nullify the immemorial rights of sovereignty, among which privileges he names this very proposition, the inviolability of the state in denying claimants (without its consent) judicial redress for private grievance.

From the reading of this section one would infer that Judge Cooley takes the position that any interference with what he calls the right of sovereignty is incompatible with good government yet further along in another section, in speaking of the action of congress in establishing the United States court of claims, he approves the creation of this court by saying that "it was clearly within the constitutional authority of congress to do so."

From Judge Cooley's analysis I believe that the proposal is eminently a constitutional question, and not, as in the case of Virginia and North Carolina, a proper subject for legislative enactment.

It will no doubt, be argued that the citizen has now, and always has had, the right to submit his grievance to the legislature, and supplicate that body for the privilege of making the state a party to a suit in some court in which he might judicially establish his claim.

Our year books contain innumerable laws of this nature passed by former legislatures. They also contain laws appropriating money for the settlement of claims, as determined by some committees of the legislature with-

out the formality of court procedure. In this method of disposing of such claims we might well ask the question, Why should the state demand of her citizenship a certain line of conduct in the settlement of disputes between individuals, partnerships or corporations, and hold herself aloof from the operation of her own laws? Is the pecuniary loss of such a creditor any less because the state arrogates to herself an immunity founded on the fetish that the sovereign is sacred and therefore not amenable?

Why should the humble claimant against the state be obliged to abjectly supplicate the legislature for the privilege of entering the court of justice?

On the other hand, why should the legislature appropriate the people's money in settlement of claims against the state of dubious and uncertain origin and without the intervention of courts?

Let the state exemplify by this constitutional provision her willingness to submit to every enactment she imposes on the citizen. Let the state indicate by the adoption of this proposal that the same restrictions — the demands of the industrial establishments within her borders — must apply to the numerous charitable and penal institutions under her management. The thousands of employes in these institutions are entitled to the same protection of life and limb in their various avocations — many of them hazardous — as are the workmen in any manufacturing plant in the state, and, in case of injury, to just compensation determined after a fair and impartial trial, and not as such cases are usually disposed of by the legislature — a settlement based upon charity and doubt.

If we want to get the government back to the people, make it responsive to their ideals of equal and exact justice. Let the humblest citizen feel that while the state can impose on him all the duties of citizenship, taxation, obedience to law and the common defense, he is the equal of the sovereign before the law.

In closing I want to read, at the suggestion of the member from Marion [Mr. NORRIS], sections 1677 and 1678 of Story's Federal and State Constitutions. When we consider that this was written many years ago, we must conclude that the argument adduced therein has had its influence in shaping both national and state legislation on this subject:

Section 1677. As to private injustice and injuries, they may regard either the rights of property or the rights of contract, for the national government is per se incapable of any merely personal wrong, such as assault and battery, or other personal violence. In regard to property, the remedy for injuries lies against the immediate perpetrators, who may be sued, and cannot shelter themselves under any imagined immunity of the government from due responsibility. If, therefore, any agent of the government shall unjustly invade the property of a citizen under color of a public authority, he must, like every other violator of the laws, respond in damages. Cases, indeed, may occur in which he may not always have an adequate redress without some legislation from congress; as, for example, in places ceded to the United States, and over which they have an exclusive jurisdiction, if his real estate is taken with-

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out or against lawful authority, here he must rely on the justice of congress, or of the executive department. The greatest difficulty arises in regard to the contracts of the national government; for, as they cannot be sued without their own consent, and as their agents are not responsible upon any such contracts when lawfully made, the only redress which can be obtained must be by the instrumentality of congress, either in providing (as they may) for suits in the common courts of justice to establish such claims by a general law, or by a special act for the relief of the particular party. In each case, however, the redress depends solely upon the legislative department, and cannot be administered except through favor. The remedy is by an appeal to the justice of the nation in that forum, and not in any court of justice, as a matter of right.

Section 1678. It has been sometimes thought that this is a serious defect in the organization of the judicial department of the national government. It is not, however, an objection to the constitution itself; but it lies, if at all, against congress, for not having provided an adequate remedy for all private grievances of this sort in the courts of the United States. In this respect there is a marked contrast between the actual right and practice of redress in the national government, as well as in most of the state governments, and the right and practice maintained under the British constitution. In England, if any person has, in point of property, a just demand upon the king, he may petition him in his court of chancery (by what is called a petition of right), where the chancellor will administer right, theoretically as a matter of grace, and not upon compulsion, but, in fact, as a matter of constitutional duty. No such judicial proceeding is recognized as existing in any state of this Union as a matter of constitutional right, to enforce any claim or debt against a state. In the few cases in which it exists it is a matter of legislative enactment. Congress has never yet acted upon the subject so as to give judicial redress for any nonfulfillment of contracts by the national government. Cases of the most cruel hardship and intolerable delay have already occurred, in which meritorious creditors have been reduced to grievous suffering, and sometimes to absolute ruin, by the tardiness of a justice which has been yielded only after the humble supplication of many years before the legislature. One can scarcely refrain from uniting in the suggestion that in this regard the constitutions, both of the national and state governments, stand in need of some reform to quicken the legislative action in the administration of justice; and that some mode ought to be provided by which a pecuniary right against a state or against the United States may be ascertained and established by the judicial sentence of some court; and when so ascertained and established, the payment might be enforced from the national treasury by an absolute appropriation. Surely it can afford no pleasant source of reflection to an American citizen, proud of his

rights and privileges, that in a monarchy the judiciary is clothed with ample powers to give redress to the humblest subject in a matter of private contract or property against the crown, and that in a republic there is an utter denial of justice in such cases to any citizen through the instrumentality of any judicial process. He may complain, but he cannot compel a hearing. The republic enjoys a despotic sovereignty to act or refuse as it may please and is placed beyond the reach of law. The monarch bows to the law, and is compelled to yield his prerogative at the footstool of justice.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 79, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Stark,	Peters,
Beatty, Morrow,	Hoffman,	Pettit,
Beatty, Wood,	Holtz,	Pierce,
Beyer,	Hoskins,	Read,
Cassidy,	Hursh,	Redington,
Cody,	Johnson, Madison,	Rockel,
Colton,	Johnson, Williams,	Roehm,
Cordes,	Keller,	Shaffer,
Crites,	Kerr,	Shaw,
Crosser,	Kilpatrick,	Smith, Geauga,
Cunningham,	King,	Solether,
Davio,	Knight,	Stalter,
Donahay,	Kramer,	Stewart,
Dunn,	Lambert,	Stilwell,
Dwyer,	Lampson,	Stokes,
Earnhart,	Leete,	Tannehill,
Eby,	Longstreth,	Tetlow,
Elson,	Ludey,	Thomas,
Evans,	Mauck,	Ulmer,
Farrell,	McClelland,	Wagner,
Fess,	Miller, Crawford,	Walker,
FitzSimons,	Miller, Fairfield,	Watson,
Fox,	Moore,	Weybrecht,
Hahn,	Nye,	Winn,
Halenkamp,	Okey,	Wise,
Halfhill,	Peck,	Mr. President.
Harris, Ashtabula,		

Those who who voted in the negative are: Antrim, Brattain, Collett, Doty, Stevens, Woods.

So the proposal passed as follows:

Proposal No. 252 — Mr. Weybrecht. To submit an amendment to article I, section 16, of the constitution. — Providing for redress of claims against the state.

*Resolved, by the Constitutional Convention of the state of Ohio,* That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Suits may be brought against the state, in such courts, and in such manner, as may be directed by law.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Leave of absence was granted to Mr. Riley and Mr. Marriott.

Mr. KNIGHT: At the request of the proponent of Proposal No. 272, which was informally passed a moment ago, and by the desire of members of the committee, I wish to call up Proposal No. 272.

## Municipal Home Rule.

Mr. DOTY: We have gotten to Proposal No. 170. That is the regular order of business. Regularly Proposal No. 272 does not come up until tomorrow, when we are going to take up municipal government and when we are going to take up taxation. I now have my desk full of papers thinking we were going to start on something else. What are we going to do? The next thing before the Convention is Mr. Worthington's taxation proposal.

Mr. KNIGHT: The motion before the Convention is to take up the proposal about municipal home rule, and I want to take it up and have it discussed. Then we will follow right on with the calendar.

Mr. DOTY: Well, what is the question?

The PRESIDENT: That Proposal No. 272 be taken up.

Mr. KNIGHT: I would like, in behalf of the chairman of the committee, to explain the proposal and then the discussion can proceed.

The motion was carried.

The PRESIDENT: Proposal No. 272 — Mr. Fitz-Simons, is up for its second reading.

The proposal was read the second time.

Mr. Leete here assumed the chair as president pro tem.

Mr. KNIGHT: Gentlemen of the Convention: In the absence of the chairman of the committee I desire to explain this proposal somewhat in detail.

The proposal undertakes to accomplish three things not now possible under the present constitution:

First, to make it possible for different cities in the state of Ohio to have, if they so desire, different forms and types of municipal organizations.

Under the present constitution it seems that it is not competent for the lawmaking body to classify municipalities, save in the two classes mentioned in the present constitution, namely, cities and villages; and the further provision which requires uniformity of laws for corporations makes it necessary that the legislature in enacting laws shall provide for one general uniform type of government for all cities and another general uniform type of government for all villages. With cities in the state varying in population from five thousand to half a million, it is obvious that either the large city must get along with crude machinery inadequate for its needs, or the small cities must have all the machinery of government adequate to a city of half a million. In either case the awkwardness is apparent and the burden of expense upon the smaller municipality is needlessly large. Therefore, the first thing that this proposal undertakes to do is to provide that municipalities shall — and I shall go into the details of that a little later — have the right, if they so desire, to frame charters for themselves, to provide each for itself such type or form of organization for municipal business as it desires.

The second thing, and the main thing, which the proposal undertakes to do is to get away from what is now the fixed rule of law, seemingly also required by the constitution, that municipal corporations, like all other corporations, shall be held strictly within the limit of the powers granted by the legislature to the corporation, and that no corporation, municipal or otherwise, may lawfully undertake to do anything which it has not been given specifically the power to do by the constitution

or the lawmaking body. It has often been found under our present system, and undoubtedly would be found also in the future, that many things necessary from the standpoint of city life, which the city may need or urgently desire to do, can not be done because of the lack of power specifically conferred on the municipality itself. Therefore, this proposal undertakes pretty nearly to reverse that rule and to provide that municipalities shall have the power to do those things which are not prohibited, that is, those things with reference to local government, with reference to the affairs which concern the municipality, which are not forbidden by the lawmaking power of the state, or are not in conflict with the general laws of the state under the police power and the general state regulation. So the presumption would now become a presumption in favor of the lawfulness of the municipalities' act, and that presumption would only be overcome by showing that the power had been denied to the municipalities or that it was against the general laws of the state.

In the third place the proposal expressly undertakes to make clearer or make broader the power of municipalities to control, either by leasing, constructing or acquiring from corporations now owning or operating the public utilities within the corporation and serving the corporation, the water supply, the lighting and heating supply and the other things — without specifying — which come within the purview of municipal public utilities, thus removing once and for all, all legitimate questions as to the authority of municipalities to undertake and carry on essential municipal activities.

These three things are the fundamental things which are undertaken by the proposal, and these three things taken together certainly constitute what may be termed, and rightly termed, municipal home rule.

The proposal does not undertake, your committee believes, to detach cities from the state, but it does undertake to draw as sharply and as clearly as possible the line that separates general state affairs from the business which is peculiar to each separate municipality, be it a city or a village, in the state, and to leave the control of the state as large and broad and comprehensive in the future as it has been in the past with reference to those things which concern us all in the state of Ohio, whether we live in cities or in rural districts, and, on the other hand, to confer upon the cities for the benefit of those who live in the cities control over those things peculiar to the cities and which concern the cities as distinct from the rural communities. I repeat, to draw as sharply and as definitely as possible, a line between those two things and to leave the power of the state as broad hereafter with reference to general affairs as it has ever been, and to have the power of the municipalities on the other hand as complete as they can be made with reference to those things which concern the municipalities alone, always keeping in mind the avoidance of conflict between the two so far as possible.

Now, I will take up the proposal somewhat in detail. In the first place, as a matter of form, there are only two or three sections of the present constitution which either directly or indirectly touch the subject of municipal corporations. Therefore, it seemed to the committee desirable to embody this in a new article to the constitution. The present constitution has seventeen articles,

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and therefore it is proposed that this shall be article XVIII, devoted solely to municipal corporations. The first section speaks so obviously for itself that it needs no explanation beyond the statement that it recognizes what has been the rule and custom for years in Ohio that there are two kinds of municipal corporations, differing from one another on the basis of population, known as cities and villages. It preserves the same line between those cities and villages that is now observed, and distinctly confers the right upon the lawmaking power to determine the method of transition.

Mr. HOSKINS: Why did you select five thousand as this basis?

Mr. KNIGHT: The municipal code adopted that, and as there has to be some division somewhere this would work the least possible change with the present code, and we kept the same line of division.

Mr. HOSKINS: Without desiring to break up your remarks in anyway, with this proposal conferring those powers of municipal local government is it necessary to leave the dividing line between the villages and cities as it has been in the past?

Mr. KNIGHT: Yes, and no. Principally yes, because this proposal, as I shall attempt to explain in a moment, provides that the general assembly may enact general laws for the government of cities and general laws for the government of villages, one type of government, and unless a city or village chooses to exercise its option under one or the other it has no charter; it just continues as now. Therefore, if there were no differentiation between the cities and the villages, those cities that choose to remain as they are now would be obliged to have a form of government necessary for the large city.

Mr. HOSKINS: Under this provision a city, no matter what the size, could form its own charter?

Mr. KNIGHT: Yes, but there must be a general law to take care of cities until and unless they form charters for themselves. It is not mandatory upon any city to form its charter.

Mr. HOSKINS: My reason for asking you this is that a number of municipalities very much object to the arbitrary limitation of five thousand and think that the limitation should be higher in number, so that a city of five or six or seven thousand could be governed as a village instead of as a city if it chose.

Mr. KNIGHT: Under this a city of six thousand could choose its own form of government and continue until it gets one hundred thousand, but we must take care of the present villages which do not choose to exercise their rights for framing a charter for themselves. The present code would continue and the present type of city government would continue until any city exercising its right under this proposal should frame a different charter. It could simplify its government if it wants to. If Cleveland wanted to have the government of Canal Winchester it could, or Canal Winchester could have the form of Cleveland.

Mr. DOTY: Is it possible for the legislature to pass a law under this to allow a village to have ten thousand people in it?

Mr. KNIGHT: I didn't catch your question.

Mr. DOTY: Could not they so frame the law that a village can maintain itself as a village although it went

over the five thousand? In our county that would be quite an advantage. A village like Dexter, with a city population, wants a village government.

Mr. KNIGHT: I do not think the legislature would have the power to continue a village as a village. It must provide one type of government for the city and one for the village. Then the village can choose its form.

Mr. DOTY: Suppose the legislature passed the law that no city in Ohio could pass from one grade to the next higher grade except by a resolution passed by its own city council. If such provision were passed and a village did not pass such a resolution would it not under this proposal remain in the lower class?

Mr. KNIGHT: It is possible that this is susceptible to that construction. What the committee had in mind was that it must devolve upon some one to decide whether a village has passed the type in which it is, at other periods than the census period, for if it depended on the census a village having five thousand in 1910 must remain as a village until 1920, even though it has double the population.

Mr. DOTY: You see here is our difficulty: In the larger counties we have villages that are cities in population, but want to retain the village form of government.

Mr. ANDERSON: How do you get around section 1 where it says, "All such corporations having a population of five thousand or over shall be cities; all others shall be villages?" Do you think the legislature would pass a law that would permit a municipal corporation of over five thousand to remain as a village?

Mr. KNIGHT: Beyond the decennial period of the census. I think it would be proper for the legislature to pass laws that they should take their place only at decennial periods.

Mr. ANDERSON: That is, if they were under five thousand at one census they could continue that until the next census?

Mr. KNIGHT: Yes.

Mr. ANDERSON: What is the use of putting five thousand in there? Why not put that entirely in the hands of the legislature to do as it pleases and to say where the line of demarkation shall be between the village and the city?

Mr. KNIGHT: One legislature might make it four thousand and the next legislature might make it three thousand. The next one might say it shall be some different number.

Mr. ANDERSON: In article XIII, section 2, the constitution provides: "Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed." Now the word corporation has been held to mean municipal corporation?

Mr. KNIGHT: Yes.

Mr. ANDERSON: Now, without any change of section 2 of article XIII there would be a conflict.

Mr. KNIGHT: I think before the proposal is passed finally there will be a modification in the last section.

Mr. ANDERSON: Again in section 1 of article XIV there is mentioned—

Mr. KNIGHT: You mean section 6 of article XIII?

Mr. ANDERSON: Yes, and the adoption of this article would repeal section 6 of article XIII. Don't you think so?



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Mr. KNIGHT: There is no trouble there.

Mr. ANDERSON: Would you as a member of the committee on Arrangement and Phraseology recommend the leaving of both of those two sections as they are?

Mr. KNIGHT: I can not see any objection to it.

Mr. WINN: The question in my mind has reference to section 4—

Mr. KNIGHT: If the gentleman withhold, I am going through this, explaining each section, and I will reach section 4 directly. Through the generosity of the rules of the Convention there is no time limit on this debate.

Mr. DOTY: No; you can take a week.

Mr. KNIGHT: With permission of the Convention I want to go through section by section, and perhaps this is as good a place as any to say the committee on Municipal Government held between twenty-five and thirty meetings, and that every proposal and every word of the proposal was gone over, and most of them more than once, before this proposal was reported. We are perfectly willing that any "i" should be dotted and any "t" shall be crossed, but we think we have saved the Convention some trouble by the careful manner in which the proposal has been gotten up and considered in the committee.

Mr. STOKES: The demarkation between cities and villages of five thousand has reference to those organized under general law only, has it not?

Mr. KNIGHT: No, sir; any kind. A village under that would be less than five thousand. However, a municipality with more than five thousand can adopt a village form of government.

Mr. STOKES: It would be a city with a village form of government?

Mr. KNIGHT: It would be technically a city, but it could decide its form of government. There is no crystallized type.

Mr. STOKES: The form of government could be that of a village?

Mr. KNIGHT: Yes, and a city in point of law.

Mr. STOKES: But a village as a matter of fact?

Mr. KNIGHT: No.

Mr. STOKES: In its form of government it would be?

Mr. KNIGHT: No. It would be like a village.

Mr. HOSKINS: If this proposal is adopted all the present statutes relating to cities and villages remain in operation just as they are until a municipality seeks to take advantage of this and change its form?

Mr. KNIGHT: I do not mean to put it that broadly, because there are some provisions that would modify some features of the code.

Mr. HOSKINS: Everything else remains as it is until they take advantage of it?

Mr. KNIGHT: Yes; it does not force the next general assembly to adopt any new municipal code for all the cities and villages, but it would have the effect to strike out some items. It would not, however, affect this line between the city and the village.

Mr. DOTY: May I ask a question about section 1?

Mr. KNIGHT: Yes.

Mr. DOTY: Don't you think, after all, inasmuch as we are attempting to give villages and cities in the state the right to form their own charters, that it would be just as well that section 1 be omitted altogether?

Mr. KNIGHT: No, sir.

Mr. DOTY: Why?

Mr. KNIGHT: Because there must be a line of division between the cities and villages that choose to operate under the general law.

Mr. DOTY: I see; but the question was whether the bulk of the laws on the books will now stand until the villages and cities do away with them.

Mr. KNIGHT: They will stand and be effective as controlling the organization of all cities and villages in the state until and unless such villages or any one of them, or such cities or any one of them, choose to form a charter for themselves providing for a different form of government, save where this proposal, if adopted, repeals certain items of the present code because they would be inconsistent with this new constitutional provision; but it does not affect the line between cities and villages, nor does it affect the question of the form of government now provided for cities in general, or now provided for villages in general.

Mr. HALFHILL: Do I understand this correctly? You attempt this classification because you want to have general laws that apply to both cities and villages and also special laws that, if adopted by municipalities, may apply to cities and villages, and also further special charters?

Mr. KNIGHT: Yes; there are three ways provided here for city organizations.

Mr. HALFHILL: And your classification of villages and cities in the first instance is necessary in some form to have a line of demarkation to apply these three several things?

Mr. KNIGHT: No; not necessarily to apply these three several things. If I may restate it, we are most all of us familiar with the fact that under the present constitution the general municipal code of the state provides for cities, namely, municipal corporations having more than five thousand population, and also villages, namely, municipal corporations having less than five thousand population, and the municipal code provides one single form of government for all cities and one single form of government for all villages. It is not presumed that all cities in the state will at once take advantage of their right to form for themselves charters. It may be presumed also that there always will be some villages and cities that will be satisfied with the general type of government provided for by the general law, and, therefore, it is necessary, unless we abandon cities and villages altogether and have one form of government for all municipal corporations that do not choose to form their own charters, to have a fixed line of demarkation for the cities, because if the cities ever need a larger or more extensive form of government than do the villages it is necessary to have a provision for it and it is also necessary to have another type simpler and less extensive for less than five thousand population, namely, villages.

Now, passing on to section 2, it reads, "The general assembly shall, by general laws, provide for the incorporation and government of cities and villages". That is the present power. If this proposal stopped right there, there would be nothing new in it compared with what we now have in Ohio. That is, the present municipal code would remain or could remain without the general

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assembly having to adopt a new municipal code for cities and villages. The general law will be applicable to all cities and villages that have not by their own action taken themselves out from under it.

"And it may also enact special laws for the government of municipalities adopting the same". The meaning of that is this: We may assume that the present municipal code stands. Take that as an hypothesis to work upon. If it stands, then no city can get, for example, a commission form of government were it not for the last lines I have read, namely, lines 11 and 12, unless it further by special election chooses a charter commission and that charter commission provides a charter form of government. Under the provision of lines 11 and 12 the general assembly may enact a special law providing for a commission form of government which may, by a vote of the people of any municipality, be adopted for that municipality without having resort to the charter commission itself to frame it. In other words, a ready-made form for each city to adopt if it wants to, or it may adopt a separate plan applicable to all cities, and such cities as choose by referendum to adopt it.

Mr. HOSKINS: I am at a loss to understand the word "same" in line 12. It reads "The general assembly shall, by general laws provide for the incorporation and government of cities and villages; and it may also enact special laws for the government of municipalities adopting the same".

Mr. KNIGHT: That is analogous to the local option feature — that is, it may provide an alternative form of government for any city that chooses to adopt it. If the city doesn't choose to adopt it, it remains under the general law.

Mr. HOSKINS: Does it mean that the legislature may provide a system of general laws for the government of municipalities that any one municipality, if it sees fit, may avail itself of?

Mr. KNIGHT: In addition to the code. It provides the present form of government in the code, and then it might enact a statute providing a ready-made commission form or federal form of government in the alternative, to go into effect only where they see fit to adopt that in place of being governed under the municipal code.

Mr. HALFHILL: Would that be adopted as a general law — it says a special law?

Mr. KNIGHT: Yes.

Mr. HALFHILL: Then the legislature would have the right to pass special laws, laws applicable to special cities?

Mr. KNIGHT: Not necessarily. The idea is that the legislature should have the right to pass laws for fewer than all corporations, but only to go into effect when a municipality itself by a referendum vote chooses to adopt it.

Mr. HALFHILL: If my home city wanted to get a special law it could get it by adopting it or ratifying it on a referendum vote?

Mr. KNIGHT: That would take the form of a general law, that any municipality could have anything special by a referendum vote.

Mr. HALFHILL: I think it is important to understand just what the committee means, whether a special law can be passed applying to some particular class.

Mr. KNIGHT: Yes; you can pass a law or a statute

that applies to any municipality that chooses to adopt it. You may pass one that affects only one, but it can not go into effect unless the people of that locality can ratify it.

Mr. STOKES: An enactment of the legislature under general laws would not be applicable to villages or corporations operating under this special act?

Mr. KNIGHT: It would not necessarily affect the form of government. It might vary it at some single point. It would not take it out from under the general law, except so far as the special law covered it. It comes back in another form and is intended to come back to the point where the legislature may enact special laws for municipalities or a municipality, but no such special law shall become effective by mere act of the legislature. It can become effective only upon a referendum vote of the people of the municipality itself. The old danger of the ripper bill is entirely avoided, because a ripper bill would rarely, if ever, be ratified by the people of the municipality. This provides that no special act for any municipality can go into effect in any municipality except by a vote of the municipality.

Mr. DWYER: The word "special" seems to be obnoxious. Why not say a general law of limited application? The word "special" I dislike very much in there, and I think it is an obnoxious word. And "special" as applied to municipalities is very obnoxious.

Mr. KNIGHT: It is often desirable that the law-making power of the state should have the right to enact a law for one municipality alone.

Mr. DWYER: I would object to that, most surely.

Mr. KNIGHT: But it can not be forced upon the municipality without the consent and the ratification of the people of that municipality. No boss or group of bosses can come to the general assembly and get a special law passed and force it upon any municipality until and unless it is accepted by the people of that municipality.

Mr. WATSON: After the people of that municipality have accepted that by a referendum vote could they then at some future time change or modify it, and if so how?

Mr. KNIGHT: By adopting a charter for themselves.

Mr. ROCKEL: Or by the legislature passing another law.

Mr. KNIGHT: Yes, and the people under a referendum accepting it.

Mr. WINN: If I understand this section 2, under its provisions it would be possible for each city of the state to have a government entirely distinct from every other city?

Mr. KNIGHT: Possibly not under this section, but certainly under section 7, if you could find as many forms of government as there are cities.

Mr. WINN: Why not under this one? If the general assembly has a right to enact special laws for the government of municipalities, why can it not enact one special law providing that cities can be controlled by certain boards and commissions and then if that is adopted by any city it is operative; then the legislature may enact another measure providing for another system of government, and if that is adopted by another municipality that is the law, and every city can have a government distinct from every other city? Am I right?

Mr. KNIGHT: Theoretically, yes; but I do not think



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you can find enough forms of government for every city in the state to have a different government.

Mr. WINN: That would be the only limit; the abilities of the different municipalities could concoct different schemes?

Mr. KNIGHT: Not to frame different plans of government.

Mr. DWYER: In 1851 we had municipalities under special act and they were very obnoxious and objectionable.

Mr. DOTY: What is your notion of what would happen after the legislature had passed a special act for the city of Cleveland and the city of Cleveland approved it and it became a law, and also there was a special act passed that had something distinctive about it so that another general law could be passed which would say that all counties in Ohio having a city of thus and so that applied to—could that be done?

Mr. KNIGHT: I doubt whether it could be done under this.

Mr. DOTY: That is exactly the form of all special legislation since 1892.

Mr. KNIGHT: I think all of the gentlemen forget the one fundamental difference between this and anything that has been in the state of Ohio before, and that is that the general assembly had no power under the present constitution to submit a question to a vote of the voters of any municipality, but it has the power to force it upon the municipality at some one's behest. The committee admits that this provides for special legislation, but I submit that is protected when we say that it does not take effect until the people of the municipality vote for it.

Mr. DOTY: That is a principle that I concur in and agree with, but where does it provide that the county of Cuyahoga may have a referendum on such a law as I have indicated—

Mr. KNIGHT: It does not. This does not undertake to legislate for counties.

Mr. DOTY: But it makes it possible to pass special legislation for counties.

Mr. KNIGHT: No, sir; for cities.

Mr. DOTY: Every city in the state?

Mr. KNIGHT: Yes, sir; but a county is not a municipality.

Mr. DOTY: Of course not, but you can pass a law describing the county, saying every county that has a city thus and so—

Mr. KNIGHT: I don't think there will be any trouble on that. You can pass a law that the city of Cleveland could—

Mr. DOTY: I am not talking about Cleveland, but about Cuyahoga county, and I am referring to the kind of special legislation we have had for forty years. If you are sure we are not getting into that I would like to know it.

Mr. KNIGHT: I think the gentleman is confusing things or I am.

Mr. DWYER: That word "special" is very offensive to me and it has been in the past.

Mr. HALFHILL: May I ask a question?

Mr. KNIGHT: I want first to try to answer Mr. Doty's question and then I will yield to the gentleman from Allen. This proposal undertakes to deal with

municipalities and does not undertake to impose any authority or to withhold any authority from the lawmaking power with reference to anything else. I don't think I catch exactly the point of Mr. Doty's question.

Mr. DOTY: I would like to make that plain. Suppose this was in the constitution of the state of Ohio and we had a legislature and we had passed a special law which provided that a city may build five viaducts; now Cleveland, being the only city that has five viaducts, why can't we pass another law after the city of Cleveland has accepted that—why can't we pass a special law applicable to every county in Ohio which has a city which has built five viaducts?

Mr. KNIGHT: The supreme court has already knocked that legislation out.

Mr. DOTY: But the supreme court has not passed upon such legislation as that authorized under this constitutional provision.

Mr. DWYER: If you put it in a constitution they can't knock it out.

Mr. KNIGHT: I submit that all of us are inclined to see a thing that we are looking for and not anything else.

Mr. DOTY: I am trying to see a way out. I am not trying to get into trouble, I am trying to get out.

Mr. KNIGHT: I am trying to argue with the gentleman from Cuyahoga [Mr. Doty]. I am trying to show him that he and I agree. The proposal does not confer any authority to enact special legislation to become operative or effective upon anybody except by vote of the people of the municipalities that choose to accept it.

Mr. DOTY: That is plain and I see that.

Mr. KNIGHT: That being the case I still feel that the hypothetical case put by the gentleman from Cuyahoga is not in point.

Mr. DOTY: Would you say it is hypothetical in view of our experience? Both the gentlemen from Ashtabula [Mr. HARRIS] and myself and the gentleman from Williams [Mr. JOHNSON] have voted for laws like this: All counties containing cities that have a population of sixty-four thousand, three hundred and sixty-three and not more than sixty-four thousand, three hundred and seventy-five, shall be able to do thus and so.

Mr. KNIGHT: Oh, no.

Mr. DOTY: Oh, yes.

Mr. KNIGHT: What the general assembly has done is to provide that all cities having a population of not more than sixty-four thousand, three hundred and seventy-five and not less than sixty-four thousand, three hundred and sixty-three—

Mr. DOTY: Now I know what I am talking about. That is not the way of it. We used to pass laws with the provision that in all counties containing a city having the population of thus and so, when there would be only one county in the state having a city of that population, could do so and so. That is the only way the county would be allowed to issue \$1,000,000 of bonds for instance.

Mr. KNIGHT: I can answer your question directly now. This proposal neither confers the right to enact such legislation, nor does it change by the least letter or syllable the present power of the general assembly to enact the kind of law you have named. If it has not such power now this does not give it. If it has that power

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now, this does not take it away. That is not a part of the subject matter of city government.

Mr. CROSSER: This does not give the legislature power to pass a special law for anything but a municipality?

Mr. KNIGHT: I have said so several times.

Mr. HOSKINS: I have been trying to get the very point that you just made and I want to ask a question on it.

Mr. KNIGHT: I was to answer the gentleman from Allen [Mr. HALFHILL], and when I get through with him I will take you next.

Mr. HALFHILL: Your proposal, of course, absolutely repeals the present provision of the constitution which provides for the incorporation of villages by general law, does it not?

Mr. KNIGHT: No; it adds to it.

Mr. HALFHILL: Now, here is a question, but I shall have to read section 29 of article II of the present constitution to put it:

All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

Mr. KNIGHT: Is not the gentleman reading the constitution of 1874?

Mr. HALFHILL: No, sir; the present constitution. I withdraw that. I have not the right section before me. I will put that in a different shape. There is a section which provides that all laws of a general nature shall be of uniform operation throughout the state. Now is not there a conflict?

Mr. KNIGHT: Insofar as any conflict with the present sections of the constitution is concerned, it is the desire of the committee, and it will undoubtedly be done after the proposal has been threshed out, to make such necessary adjustments between it and the other clauses as shall avoid any conflicts. Our proposal provides part of what you have covered: "The general assembly shall, by general laws, provide for the incorporation and government of cities and villages." And then it goes on and says it may pass special laws which will become operative by the vote of the people. If there be conflict between this and the clause you have cited we will modify the final section of this proposal. The difficulty with the present constitution is that under the interpretation that the courts have placed upon the section applying to corporations there is confusion between private corporations and municipal corporations, and it is the intent and, I doubt not, it will be the desire of the Convention to so completely separate those that the provision the gentleman is referring to shall retain its place as applying to private corporations, but shall not apply to municipal corporations in any other way than as provided here in section 2.

Mr. HALFHILL: What I intended to read to you was section 26 of article II. I had the wrong book. Then it would be possible, if I understand your interpretation correctly, for there to be actual special legislation such as we have found to be inimical in this state under

the old constitution. Of course, if you are going to change that it would change the entire theory of it.

Mr. KNIGHT: The gentleman is right. This undertakes to provide authority to the general assembly to pass special legislation, subject to ratification by the municipality before it can go into effect. There is no use for discussion on that. It is intended to have that effect, and the difference between the kind of legislation the gentleman from Montgomery [Mr. DWYER] referred to and the kind referred to by Mr. Halfhill is that the people of the community affected by it did not have anything to say about it. A group of men would come to the legislature and get a bill passed and it would go into effect over night without the people having anything to say about it, but under this no such law could go into effect without a vote of the people, which, in the judgment of the committee, removes the entire evil which has been thought to exist in special legislation.

Mr. NYE: Why would it not obviate all of this difficulty by leaving out the term "special"? Then your provision would read "and it may also enact laws for the government of municipalities adopting the same; but no such law shall become operative in any municipality until it shall have been submitted," etc. Why call it "the special law" at all? Why not have a general law to be adopted by any municipality that may choose to adopt it?

Mr. KNIGHT: So far as I am personally concerned, I see no objection to it. The language, however, was put in by the committee.

Mr. ROEHM: Would not that in effect be a special law even though the word "special" were left out?

Mr. KNIGHT: Yes, but there is something in sentiment, I suppose.

Mr. ROEHM: Suppose a city had about made up its mind for a certain kind of government—for instance, a commission form of government, which many cities desire to adopt. Now, in order to get it they would have to go through the form of an election, electing a commission, which would be expensive?

Mr. KNIGHT: Yes.

Mr. ROEHM: In the committee was it not thought a good thing if the legislature should pass, say for the city of Dayton, a commission form of government, which then could be adopted by any other municipality by a referendum vote without going to the expense of another election? That is all really that this accomplishes; it saves the expense of an election by a municipality for the government that they desire.

Mr. KNIGHT: Just the difference between going to a tailor and having a suit made and going to a ready-made clothing establishment and buying one. You get your individual suit.

Mr. ROEHM: One fits better than the other usually.

Mr. KNIGHT: And one is cheaper than the other usually. We have already discussed lines 13 and 14 which provide that no such special legislation shall go into effect until submitted to the electors and confirmed by a majority of those voting thereon under regulation to be established by law.

It will be noted that in every portion where anything is submitted by a referendum vote it is passed by a majority of "those voting thereon." That is the principle we have adopted, and it goes all the way through.

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Section 3 provides: "Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, affecting the welfare of the state as a whole." That is intended to give general, widespread, complete, local police power to municipalities to enact ordinances coming within the category of the police and other similar regulations, wherever those are not in conflict with general laws that are or may be upon the statute books affecting the welfare of the state as a whole. It is further provided, in lines 19 and 20: "and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon."

They can add to and make more strict the requirements, but no such local police, sanitary and other similar regulations shall be regarded as in conflict with the statutes unless all municipalities have been forbidden to legislate on that particular phase of police regulation. This is the clause which reverses to a degree the present presumption, and the conflict, if a conflict arises, is resolved in favor of the city unless the legislature has forbidden all municipalities to touch that particular subject.

Mr. LAMPSON: What is the primary purpose of that section?

Mr. KNIGHT: To give the municipalities beyond question, the full police, sanitary and regulatory power without the presumption now existing that the exercise of such power is in conflict with or in derogation of state authority. It is simply in furtherance of the general power and general intent of the proposal to make each municipality as nearly autonomous locally as possible.

Mr. LAMPSON: Would not the power granted in this section be sufficient to enable a municipality to set at naught general statutes and put a burden on the people outside of the municipality or the state generally to show that the particular ordinance was against the general laws of the state?

Mr. KNIGHT: I don't think so. Has the gentleman in mind any specific instance of illustration?

Mr. LAMPSON: I have not, but I have been studying over it very carefully and I am very much in doubt as to the power contained in that section. It looks as if it might be very extensive.

Mr. KNIGHT: It is not intended to invade state authority in the least, but to make clear that the municipality has the right to enact such local police, sanitary and other similar regulations as are not in conflict with general laws. It can not take away, however. For instance, take the quarantine laws. A city can not make them less strict than the state, but it can make them more strict.

Mr. PETTIT: In line 18, the first part of it says "In conflict with general laws," and then it adds "affecting the welfare of the state as a whole." Is not that surplusage? Would not "general laws" cover it without "affecting the state as a whole?"

Mr. KNIGHT: Not if the statement made five minute ago is correct, that we could pass a special law under the form of a general law. If that is so, it would not

be surplusage. This means it shall be a bona fide general law.

Mr. PETTIT: It seems to me those words are surplusage. I think any general law passed would affect the state as a whole.

Mr. HOSKINS: I want to ask a question relative to line 17: What power under "local police, sanitary and other similar regulations" would be conferred on the municipality in addition to what we have now? Have you in mind any concrete instance?

Mr. KNIGHT: At the present time municipalities have only such power under those heads as are specifically conferred by the general assembly in the code; they can not touch a single subject that is not specified by the general assembly in the code. Under this they have all power over those subjects insofar as an ordinance under this head does not attempt to weaken some general law of the state on the same subject.

Mr. HOSKINS: Then the municipality might exercise all authority to put local police, sanitary and other similar regulations not forbidden by the state into effect?

Mr. KNIGHT: Yes.

Mr. HOSKINS: And now they can exercise only those that are granted?

Mr. KNIGHT: Yes.

Mr. HOSKINS: It just exactly reverses the rule on that?

Mr. KNIGHT: That is the intent.

Mr. HOSKINS: The latter part of it, where it refers to "general laws, affecting the general welfare of the state as a whole"—would that have any effect on the law which was in general operation throughout the state and yet in which there was no specific provision denying the right? In other words, is it the meaning of that section that the law must specifically provide that it was denied the municipality, or would the general law be construed to deny it?

Mr. KNIGHT: It would not. It says "specifically deny all municipalities" the right to touch that subject. But the extent of that is qualified in line 17, because it applies only to "local police, sanitary and other similar regulations," and in line 19, "in addition to" those fixed by law—not subtracting from those fixed by law, but in addition.

Mr. WATSON: Is there any danger of the court holding under that provision that the question of local option is not a general law?

Mr. KNIGHT: Personally I do not think so.

Mr. LAMPSON: Suppose a municipality should pass an ordinance enlarging the sanitary powers of a municipality beyond those granted by the general law of the state. Would the municipal law control over the general law?

Mr. KNIGHT: If it goes further than the general law, it would, but if it would fall short of the general law it would not.

Mr. DOTY: Is not that true of all sanitary regulations throughout the cities now?

Mr. KNIGHT: To a degree only, because the general assembly has in the code specifically conferred that. It is contingent on the law remaining as it is.

Mr. DOTY: Is not there such a wide difference between the necessities of different municipalities that it is necessary to have that?

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Mr. KNIGHT: Yes. In one city, for instance, there will be a necessity for very strict laws about sanitary plumbing. That will not apply to a rural district. There may be a law about quarantine, and different sections would be affected differently. For instance, in a thickly populated municipality there would necessarily be more stringent regulations on the quarantine.

Mr. DOTY: Sometimes you would have a quarantine in the city where the state would not?

Mr. KNIGHT: Yes.

Mr. LAMPSON: But the source of power of the municipality now is in the general law?

Mr. KNIGHT: Yes, and this undertakes to reverse that. They will have the right to exercise power so long as it does not detract from the general law. They may make more stringent but not less stringent.

Mr. LAMPSON: Under the police power of the state—I suppose you regard the power of the municipality as coming under the police power of the state—before you can have police power in the municipality it has to be granted by the state, and under the conditions now the municipality in and of itself has no police power?

Mr. KNIGHT: I understand that.

Mr. ANDERSON: Then you take a city and give it all the police power and more too than the state has?

Mr. KNIGHT: You give it supplementary power to meet local conditions. You do not lessen the power. It can not destroy or weaken any statute enacted by the general assembly of uniform application.

Mr. ANDERSON: Under this proposal you do not need any right in the state itself to do anything under the police power. You have it inherent in the cities?

Mr. KNIGHT: Yes, you do.

Mr. ANDERSON: Can you name one instance?

Mr. KNIGHT: The general assembly in behalf of the people not living in the city might enact laws to protect the rural people from infection from the cities.

Mr. ANDERSON: But under this proposal the city itself as such has all the police power, and it makes no difference what the state may do in reference to it?

Mr. KNIGHT: Oh, yes, it does.

Mr. ANDERSON: If the municipalities can go beyond the state in passing laws under this police power, can it not have complete police power without the state acting?

Mr. DOTY: In answer to that—

Mr. ANDERSON: I am asking the professor. I think he knows more about law than you do.

Mr. KNIGHT: I think the objection to the gentleman's point of view, rather than his question, is this: This proposal does not undertake to take the city of Cleveland or Cincinnati or Columbus out of the state of Ohio. There are certain regulations of a police character, many building code regulations and quarantine regulations, and a great many others with reference to drainage into rivers and all that sort of thing, which it is necessary for the general assembly to enact for the welfare of everybody in the state. Now in the absence of this provision the municipality might—

Mr. LAMPSON: Under this provision is not the police power of the municipality found directly in the constitution?

Mr. KNIGHT: Yes, sir.

Mr. LAMPSON: Rather than through the legislature from the constitution?

Mr. KNIGHT: Yes, and it ought to be.

Mr. LAMPSON: And, therefore, would it not be paramount and superior, whatever it might be, if it were within the constitutional authority, to any general law upon the same subject?

Mr. KNIGHT: It can add to what the state has enacted under the police power. The municipality can add to the law because the needs of the municipality are beyond the needs of the state as a whole.

Mr. LAMPSON: But the power of the constitution is greater than the power of the statutes?

Mr. KNIGHT: Of course.

Mr. LAMPSON: And the municipality getting its police power directly from the constitution would not need to be concerned about the state?

Mr. KNIGHT: No; it could go further than the general assembly for the municipality. If the general building code is not sufficient for the needs of a municipality, the municipality can enact a stronger one, but it can not enact a weaker one.

The president here resumed the chair.

Mr. HOSKINS: Referring to the questions asked by the gentleman from Ashtabula [Mr. LAMPSON], would it not be a fact under this proposal, say a municipality undertook to exercise police power for regulations stronger, if I may use that expression, than the police power asserted by the state, yet if thereafter the state undertook to extend and broaden its police power, would the act of the municipality or of the state be supreme?

Mr. KNIGHT: Insofar as the later act of the general assembly went beyond the act of the municipality the state law would be superior, beyond any question.

Mr. HOSKINS: Then by this provision you do not undertake to permit the municipality to limit the police power that may be exercised?

Mr. KNIGHT: Not in the least. It does not subtract a particle from the police power of the state, but does give the municipality unquestioned right for local purposes to go further than the general assembly is willing to use its powers.

Mr. HOSKINS: But the general assembly may subsequently go further?

Mr. KNIGHT: Yes, and that would supersede the local statutes.

Mr. LAMPSON: Wouldn't that furnish an excellent opportunity for a lawsuit to run three or four years to determine that question?

Mr. KNIGHT: Yes; almost anything we do will furnish opportunity for a lawsuit to those seeking it. I do not think it would afford any very excellent one in this case—

Mr. WATSON: Is not this fact apparent, that if we are going to retain our present prohibitory laws that that section will have to be safeguarded?

Mr. DOTY: Safeguarded!

Mr. KNIGHT: I don't catch the "safeguarded." What is the point?

Mr. WATSON: To retain our present prohibitory laws—the local-option laws?

Mr. KNIGHT: Personally I do not think so. If there is anybody able to show that that provision has anything of that character in it—that there are any "sleep-

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ers" in it anywhere—I am ready to vote to strike it out, and to help put it in proper shape.

Mr. PECK: Point out the specific language which provides the exercise of police power that the municipality may go beyond the state but will not diminish the state.

Mr. KNIGHT: The last four words in line 19 and the first three words in line 20.

Mr. PECK: The whole proposition strikes me as being as vague as smoke.

Mr. KNIGHT: "No such regulation shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict" with the general law. That is they can go further than the general law, but if they undertake to weaken any provision of the general law it is in conflict with the general law and therefore inhibited, but if they undertake to make it more stringent it shall not be deemed in conflict with the general law. That is the intent.

Mr. PETTIT: The question I want to ask is this: If the rule works one way, why not the other? If they can pass more stringent laws, why can they not make more liberal laws?

Mr. KNIGHT: This provides against it by six words, and if those six words do not do it I am willing to have put in any other six words or any number of words that will do it.

Mr. WATSON: On the point that I raised a while ago: This gives home rule to each municipality on all questions—

Mr. KNIGHT: Are you asking a question?

Mr. WATSON: Yes—which are not in conflict with general laws affecting the whole state. Is the question of local option a law that is going to be in conflict with the general laws affecting the state as a whole?

Mr. KNIGHT: I am of opinion not. I do not think there is anything in this provision that endangers local option. If there is anything—if this thing is thought to be loaded in any way, then the man who objects to it on the theory that it is loaded must show where it is loaded, and if he can prove his case I for one do not propose to vote for a proposition doubtful on this or any other point.

Mr. ANDERSON: Can it not be remedied—even the doubt—by just a few words offered at the proper time in the way of an amendment, and can not the amendment be so framed that it will in no way interfere so far as home rule in the cities is concerned?

Mr. KNIGHT: I do not know that I can answer it. I have not undertaken to modify the proposition yet. I have no doubt that those who think it needs modification can frame something. I am undertaking to explain the operation and admit any valid objection. I am not here to say this is perfect in every way, though I am sure it has had more care in committee than any other proposal that has come before this body.

Mr. HALFHILL: Did your committee find in any constitution of any state a provision similar to this?

Mr. KNIGHT: The constitution of California.

Mr. HALFHILL: Was that one of recent adoption?

Mr. KNIGHT: I am not certain how long ago it went into effect, but within a few years. It was not one of last fall's adoption, however.

Mr. HALFHILL: It is a fact, I believe, that we con-

cede that the present municipalities get their power by a grant from the general assembly and that they exercise that power and such other powers as the legislature permits them to exercise. Your committee has absolutely reversed that rule; you grant all the police power to municipalities, and that being so, is not the question pertinent that was raised by the gentleman from Guernsey [Mr. WATSON]? Do we not control the liquor traffic by the exercise of the police power?

Mr. KNIGHT: Yes, sir.

Mr. HALFHILL: If you grant all the police power in the first instance to the municipality and only restrict it by special law, is there not danger of a conflict right to start with between the state and municipality, and can that conflict ever be avoided unless the general assembly can restrict the police power of a municipality?

Mr. KNIGHT: I think so. This provision does restrict it in that they can not break down any statute enacted under the police power that is of general application throughout the state. It is so provided in terms in lines 21 and 18, and under this provision the municipality may stiffen within its borders the provision of the general law upon whatever particular subject is within the police power. Let me state what seems to me to be an illustration: The general assembly may enact a law—I would like to use some other illustration, but this comes to mind—providing that all restaurants shall close at ten o'clock at night. No municipality would have a right to say that they shall keep open till eleven, but they would have a right to say they shall close at nine. That illustration occurs to me off hand.

Mr. HALFHILL: Did your committee not consider that this was to a certain extent experimental, to grant all that power to a municipality, to put it on a plane with sovereignty itself?

Mr. KNIGHT: No, sir; it is not experimental at all to those familiar with municipal home rule. That is what it means. It means the people of a municipality shall have the right to control their own affairs.

Mr. PECK: Can you cite a city where they have home rule to that extent?

Mr. KNIGHT: Los Angeles.

Mr. PECK: How long since have they had it?

Mr. KNIGHT: Under the provision of the present constitution of California.

Mr. HALFHILL: Is it not wrong on principle to create the same power of sovereignty in the municipality as exists in the state? The municipality being a creature of a state, is it not wrong on principle to put the municipality in the constitution on a parity in power with the state?

Mr. KNIGHT: We do not put them on a parity, because any time the general assembly of the state sees fit to enact a new regulation under the police power making it more stringent than under the municipal government, then to that extent the state provision immediately supercedes the municipal ordinance. The ultimate authority is in the hands of the state, but the municipality is clothed with the power beyond what the lawmaking power of the state thinks is necessary for the state as a whole. This says that the municipality can do a thing until or unless it thereby undertakes to weaken some exercise of a power established by a law made by a general lawmaking

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power of the state applicable to the people of the entire state.

Mr. HALFHILL: Would not any municipality that framed and adopted a charter have the same right and reach the same end that you intend to grant by this provision?

Mr. KNIGHT: This applies to all municipalities. Your question applies only to those who frame their own charters.

Mr. WOODS: In line 18 you have the words "general laws, affecting the welfare of the state as a whole." Have you any objection to leaving out the words "affecting the welfare of the state as a whole"? You can not have a law unless it does affect the general welfare of the state.

Mr. PETTIT: That was my objection.

Mr. WOODS: Why have you those words in there?

Mr. KNIGHT: The committee felt that under the guise of general laws a good many really special laws are passed that do not affect the welfare of the state, and in order to make sure it would be a general law in fact as well as in form this was put in there.

Mr. WOODS: You mean by that whenever a general assembly passes a law in order to show it is a general law you have to show that it affects the welfare of the state as a whole? Is that what that is put in there for?

Mr. KNIGHT: I know of no purpose except what is given in my answer of a moment ago. The court would be likely to take official knowledge of the provision of the constitution on this point.

Mr. HOSKINS: What words do you want to strike out, Mr. Woods?

Mr. WOODS: I suggest striking out the words "affecting the welfare of the state as a whole." I do not understand what those words are in there for.

Mr. KNIGHT: I have no knowledge of their being in there for any purpose other than that I have just stated.

Mr. LAMPSON: Don't those words limit the words "general law," and with them in there authority would be granted to the municipality to enact some laws that were in conflict with general laws, but they must be not in conflict with general laws affecting the welfare of the state as a whole? That leaves it open as a matter of judgment to the court, as to whether the particular law does so affect?

Mr. KNIGHT: I thought the gentleman was going to ask a question; if so, I didn't hear it.

Mr. LAMPSON: I did ask a question.

Mr. KNIGHT: Then I missed it.

Mr. LAMPSON: My question was do not the words "affecting the welfare of the state as a whole" limit the words "general law"?

Mr. KNIGHT: Obviously.

Mr. LAMPSON: And that being so, can municipalities pass some laws in conflict with general laws provided those general laws are held not to affect the welfare of the state as a whole?

Mr. KNIGHT: Yes; I think so. The general laws must affect the welfare of the state as a whole under the police power in order to defeat the right of the municipality to supplement that or to enact laws of a similar character.

Mr. PECK: I do not know that I undersand the

meaning of the words "affecting the welfare of the state as a whole." Do they mean it is applicable to each and every place in the state?

Mr. KNIGHT: So intended from the discussion of the committee.

Mr. PECK: You are aware that the supreme court has decided that there may be a general law which has application in only a few places? It may be drawn to apply to any place in the state, but as a matter of fact would not apply to any but one.

Mr. KNIGHT: For instance, what?

Mr. PECK: For instance, one city.

Mr. KNIGHT: What kind of a law?

Mr. PECK: Conferring power. Any subject whatever. They may pass a law conferring any sort of power upon any municipality in the state and yet limit it in such a way as to only apply to one particular place.

Mr. KNIGHT: That is an old form of special legislation that is knocked out by the supreme court.

Mr. PECK: The definition of general law has not been knocked out. There might be a general law which would necessarily not apply generally because there was only one place that would be affected by it.

Mr. KNIGHT: The committee was of opinion that a general law was one that in fact and in form touched the subject that affected the state universally.

Mr. PECK: You might have a law that bridges shall be erected in such a way, but some counties have no streams and there are no bridges. That is a general law?

Mr. KNIGHT: Yes.

Mr. PECK: But would not those words "affecting the welfare of the state as a whole" really alter the meaning of such a law as that because the law as to bridges would not affect any county in which there was no stream and did not have any bridges?

Mr. KNIGHT: No.

Mr. PECK: Why not?

Mr. KNIGHT: It is general where there are bridges.

Mr. PECK: But it doesn't operate over the whole state; it doesn't affect the state as a whole?

Mr. KNIGHT: It doesn't say that. It says it must operate throughout the whole state. You wouldn't have a bridge where there was no stream, but wherever you have a bridge anywhere in the state it would apply.

Mr. PECK: I can not understand a good deal of your exposition. A good deal of it is subjective and not objective.

Mr. KNIGHT: I am trying to explain why the committee put this in.

Mr. HARRIS, of Ashtabula: If I understood you, in your reply to Mr. Lampson, you admitted there might be difficulty in making the distinction between an ordinance of a local place or the law the municipality might enact which would not affect the state as a whole. Will you observe the same language is used in the same section at another place?

Mr. KNIGHT: Yes; it is in three places because the proceeding was the same in the three parts of the proposal.

Now, in section 4 we touch on a subject that undertakes to convey the power to construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to



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the municipality or its inhabitants. The acquisition of any such public utility may be by condemnation or otherwise, and the municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to the municipality or its inhabitants the service or products of any such utility. That has in mind the supply of water and supply of municipal lighting, and therefore the provision confers specifically the power to acquire by condemnation or otherwise. It provides in section 5 the method which must be resorted to and the details which must be resorted to by a referendum vote.

Mr. WINN: I want to ask a question about section 4, down to the first period. The first sentence in section 4 seems to limit the public utility that may be purchased and acquired by the municipality to such public utilities as are in use in the particular municipality. Is that intended?

Mr. KNIGHT: To what exactly do you refer?

Mr. WINN: Let me read that: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to its municipality or its inhabitants."

Mr. KNIGHT: It is possible that it would be improved by substituting "may be" for "is."

Mr. WINN: It seems to me that this language limits application to those utilities now existing.

Mr. KNIGHT: It was not so intended.

Mr. WINN: See if this would express the intention of the committee: "Any municipality may, for the purpose of supplying the product or service thereof to the municipality or its inhabitants, acquire, construct, own, lease and operate, within or without its corporate limits, any public utility; and may contract with others for any such product or service."

Mr. KNIGHT: Simply hearing it once I think that would cover it, but I think it would be more easily covered by inserting two words after "is" and make it read "to be." That would cover it.

Mr. WINN: Under the provision of this section if the municipality is now receiving a water supply from some private corporation the municipality may purchase the plant, but if the municipality has no water supply it could not erect or purchase a plant?

Mr. KNIGHT: It was not so intended.

Mr. HALFHILL: In section 4 you provide for the acquiring by the municipality of any right or rights to operate a public utility. Would there be any objection to saying that those utilities ought to be under the same regulation as may be provided by general law—that is to say, a public utility of a municipality ought not be regulated under ordinances, but should be under general law?

Mr. KNIGHT: That has been covered under section 3. The state has a certain power and the municipality can not do anything else, but may do more.

Mr. HALFHILL: Ought not the municipal utility be subject to all the same general rules?

Mr. KNIGHT: That is a matter of police regulation. The state has that police power. It has a right to say that all public utilities in the state shall conform to certain things, or that no municipality can break that down, but it can be stricter if it wants to. It can go beyond

the state, but not fall short of it. The committee believes that is amply taken care of in section 3.

Mr. HALFHILL: Now the latter part of that same section 4 reads. "The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to any municipality or its inhabitants the service or product of any such utility." Is there any conflict, in the judgment of the committee, between that provision and the limitation of the federal constitution which says no laws shall be passed by a state that in any way impair the obligation of a contract?

Mr. KNIGHT: I think not.

Mr. HALFHILL: Is not a franchise a contract?

Mr. KNIGHT: This undertakes to give a right to the municipality under condemnation proceedings. The question of purchase has no application, because that is not under condemnation proceedings. Condemnation proceedings condemn not only the property but the franchise.

Mr. HALFHILL: The point I want to inquire about is, a franchise being solely a matter of contract, can the corporation under the right of eminent domain condemn that contract?

Mr. KNIGHT: It condemns the value of the contract and pays the value for it, and under this provision any franchise granted in the state of Ohio, hereafter at any rate, will be granted subject to that right.

Mr. HALFHILL: Was that question raised by the committee, or do you recall?

Mr. KNIGHT: At one stage of the proceedings, yes.

Mr. HALFHILL: Can it now condemn as property, under the power of eminent domain a contract right; and is not the grant and acceptance of a franchise purely a matter of contract?

Mr. KNIGHT: This is true. If there be any apparent conflict in so far as there is such, this can not override a provision of the national constitution. I say if there be such a conflict, but I am not sure there is not any.

Mr. HOSKINS: Is it not a fact that the franchise granted to the corporation is a property right which the owner enjoys and which may be condemned as any other property right under the power of eminent domain?

Mr. KNIGHT: That is my understanding, that any property right can be condemned and paid for, and that a franchise is a property right. That was the attitude of the committee.

Mr. HOSKINS: Would that be a similar illustration to the one where the state has obtained title to land property direct—and we have many such deeds on record—and the state or municipality had failed to use that property, would not they have a right to condemn that property?

Mr. KNIGHT: Beyond doubt. A direct provision of our own constitution fully recognizes that.

Mr. HOSKINS: That, like all private property, is subject to condemnation for public use, and if this constitution undertakes to say that the property value of a franchise is needed for public use, that property, like any other property, is held subject to the superior right of the public to take it, and it can be taken under condemnation proceedings, and the municipality can not simply

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abrogate the contract, but it can take over the property value represented without in any way coming in conflict with the provisions of the federal constitution on that subject.

Mr. KRAMER: We have a company that runs a line from Mansfield eight or ten miles out into the country. I was wondering what the rights of the city of Mansfield would be under this provision with reference to that company or any other company that runs outside of the corporation.

Mr. KNIGHT: That is provided for in lines 42, 43, 44, 45, and 46: "—may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality." That is clear, and the committee thought it entirely clear, and that under it no municipality would have the right to have more mileage outside than one-half of the mileage inside.

Mr. KRAMER: Then the municipality can to that extent own an interurban line that would run between two cities?

Mr. KNIGHT: If it did not exceed one-half of the mileage within the city of that same public utility.

Mr. KRAMER: Suppose it did exceed one-half. How would you deal with a railway company like that? Suppose the mileage outside of a city exceeded more than one-half of the mileage within the city?

Mr. KNIGHT: My judgment is you could not take it over under municipal ownership under those circumstances.

Mr. KRAMER: Could you take any of it?

Mr. KNIGHT: That within the corporate limits, I think, but I do not think it would be advisable to do that.

Mr. CUNNINGHAM: I would like for information to inquire, what additional power does the proposal give to villages to acquire public utilities.

Mr. KNIGHT: It is not clear that they now have any power about street railways.

Mr. CUNNINGHAM: What else?

Mr. KNIGHT: Telephones.

Mr. CUNNINGHAM: Also electric lights?

Mr. KNIGHT: Might do it.

Mr. CUNNINGHAM: Those are the only two powers that will be conferred by the proposal in addition to what they have?

Mr. KNIGHT: Those are the only two public utilities now that they can not have.

Mr. KERR: In line 26, "The acquisition of any such"—would it not be better to insert "any property for any such public utility"?

Mr. KNIGHT: Suppose you want the existing plant?

Mr. KERR: If you want to construct such a plant outside of the city you have to acquire the property first.

Mr. KNIGHT: That particular part applies only to public utilities previously in existence, and the power of condemnation here is for the purpose of acquiring them. Section 4 confers specific power on the municipalities to construct; while the condemnation proceeding here was intended to apply to existing public utilities, and therefore it was put in that form.

Mr. DWYER: I would like to know whether under section 4 the municipality could not purchase an interurban street railway by condemnation? Is not that broad enough to permit that, and then could they not extend it thirty miles?

Mr. KNIGHT: I answered that question during your absence from the hall by calling attention to lines 43, 44, 45 and 46, which limit the municipality in such a way that it can not furnish transportation outside of the corporation beyond fifty per cent of what it has within the corporation. Obviously it would not undertake to condemn property that it could not operate afterwards. It is limited in the amount it could operate, and therefore it would be clearly limited by common sense in the amount it could condemn.

Mr. HOSKINS: If a municipality undertook to condemn an interurban line across the state and that line had much more mileage within the city than outside of it and they undertook to condemn just what was in the city, would they have a right to do that?

Mr. KNIGHT: Yes.

Mr. HOSKINS: Then would not the company have an action for the damages resulting in taking the part within the city and not the other; wouldn't that be an element of damage to be considered in fixing the price to be paid?

Mr. KNIGHT: Beyond all question.

Mr. HOSKINS: So if they would largely damage the interurban property it would become a matter of inadvisability for the city to undertake to buy the part within the city?

Mr. KNIGHT: Beyond doubt. The committee thought that was so clear it didn't need guarding on that point.

Mr. KRAMER: Section 6 doesn't say they can't own it.

Mr. KNIGHT: Has the gentleman any idea that any municipality would undertake to construct a railway line that it couldn't operate afterwards?

Mr. KRAMER: I am just saying you have not put in any restrictions. All it says is that they may sell it.

Mr. KNIGHT: Sell what?

Mr. KRAMER: Sell and deliver to others any transportation service.

Mr. KNIGHT: But go on: "transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality."

Mr. KRAMER: I do not see anything that prevents the municipality from owning it. Where is there anything that prevents the municipality from owning an interurban line clear to Columbus?

Mr. KNIGHT: What would it do with it? What could it do with it?

Mr. KRAMER: Suppose it wanted to go into the railway service?

Mr. KNIGHT: What for?

Mr. KRAMER: As a matter of profit.

Mr. KNIGHT: It can not do it. It can not furnish service to anybody outside of the corporate limits in any amount exceeding fifty per cent of what it furnishes inside of the limits.

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Mr. KRAMER: What does that mean in section 6, "may also sell and deliver to others"?

Mr. KNIGHT: Go on and finish the line.

Mr. KRAMER: I can not comprehend it.

Mr. KNIGHT: "Sell and deliver to others any transportation service of such utility." It is the service that is sold, not the railroad. The service of a road is transportation. It can not furnish transportation outside of its corporate limits exceeding fifty per cent of what it furnishes inside. Suppose you built a railroad clear across the state. The municipality couldn't operate it.

Mr. DWYER: What are we to understand by this: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits"? It can purchase a public utility outside of its corporate limits. What is that for and what are we to understand by that?

Mr. KNIGHT: There are cities in the state of Ohio that are so far back in the middle ages that their water supply is furnished by a corporation and the sources of that water supply are outside of the limits of the municipality. This simply gives the municipality the right to acquire that and apply it in the same way as I stated a moment ago while the gentleman was out of the room, that in the case of supplying electric lights to a city the era is almost here when a good deal of the water power will be utilized by transforming its electricity to supply heat and power to a municipality, and what use would it be to a municipal corporation to acquire a line inside of the town when it could not get the part that furnishes what the electricians call the "juice"?

Mr. DWYER: Do you think there would be no danger of having another lawsuit such as they had over the Cincinnati Southern? There was an act passed by the legislature authorizing any city of the first class having a population of one hundred and fifty thousand or over to construct a railroad, one terminal of which was to be in the city and the other terminal wherever it saw fit to select it. Under that law they built the Cincinnati Southern from Cincinnati to Chattanooga and issued city bonds, and of necessity the supreme court had to hold them to be constitutional.

Mr. KNIGHT: I am glad you put in that statement.

Mr. DWYER: Would there be any danger that such a thing could be done again?

Mr. KNIGHT: I think not, because of the limitations of lines 43, 44, 45 and 46. They can lease it from a private corporation so as to operate it—

Mr. DWYER: I know that in the presentation of the question to the supreme court the lawyers argued that if the city of New York could go forty miles to bring the water of the Croton river into New York, that by analogy Cincinnati had the right to build a railroad to bring coal to the city of Cincinnati. They put it on the same ground that the city of New York was allowed to get the Croton water, but I think most of us are convinced that there never will be another decision like that. They had to do it.

Mr. HARBARGER: In lines 44 and 45 you say "in an amount not exceeding in either case fifty per centum of the total service." In the case of a municipal lighting plant do I understand they are limited to the amount they can sell in the municipality and that much more?

Mr. KNIGHT: That section applies to selling outside and you can only sell outside one-half as much as inside.

The delegate from Franklin here yielded the floor for a motion to recess.

Mr. DOTY: I move that we recess until seven o'clock this evening.

The motion was carried.

## EVENING SESSION.

The Convention was called to order by the president pursuant to recess, and the delegate from Franklin [Mr. KNIGHT] was recognized.

Mr. KNIGHT: At the time of recess an attempt had been made to explain as far as section 6 of the proposal.

Section 7 is in some ways the most important single section in the proposal, for it provides what has been unknown hitherto in the state, the right, already referred to two or three times this afternoon, of any city to frame, adopt or amend a charter for its own government and to exercise under it all power of local self-government.

This is the third of the three ways suggested this afternoon under which and by which cities and villages may be governed, the first under general laws applicable to all the villages and the cities, the second the referendum idea and the third that each city by the machinery provided in the following section 8 may elect a charter commission to frame for the city its own charter, irrespective of the form of government that may prevail in any other city of the state. It may be likened to this body now assembled. Just as this body is seeking to frame or amend a charter for the state of Ohio, so this proposal in section 7, with the details provided in section 8, undertakes to confer on each municipality the right to have its electors choose a charter commission, which charter commission is exactly analogous to this Convention, the charter convention being authorized to frame a charter, which again may be likened to a city constitution, a charter for the city, which, if ratified subsequently by the voters of the city, shall become the charter of that city. Provision is made in this seventh section that under that charter the city may exercise all powers of local self-government, but that under any such charter powers shall be subject to the general law affecting the welfare of the state as a whole.

Mr. WOODS: Back in the same place, that is, over in line 18. I would ask the member from Franklin if he is not willing that that phrase shall come out of those two sections?

Mr. KNIGHT: In the three places in which it occurs?

Mr. WOODS: Are there three places?

Mr. KNIGHT: Yes; it occurs in three places of the proposal, lines 18, 21 and 49 and 50. Now what is the question?

Mr. WOODS: Are you not satisfied that that phrase should be taken out of the three places in the proposal?

Mr. KNIGHT: I may answer that question by stating a fact or two first. The basis upon which this proposal was framed was a draft of a charter formulated by the Municipal League of Ohio. Section 3 as here con-

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tained in the proposal and section 7 now under consideration are substantially as framed there, but the words concerning which the gentleman has asked the question were added in the committee.

Mr. DOTY: By the committee?

Mr. KNIGHT: By the committee in the committee meeting.

Mr. DOTY: Will you please tell us why they did it?

Mr. KNIGHT: So far as I know they were added for reasons undertaken to be explained this afternoon, in order to make more certain that the phrase "general law" should mean what it said. A gentleman has asked me if I would have any objection to their being stricken out, and, not wishing to be understood as in any way binding the committee, I would say in my own personal opinion the clause in question is not necessary to accomplish the purpose intended.

Mr. DOTY: What is that purpose?

Mr. KNIGHT: That is that the general law of the state as mentioned in section 3—and I apprehend the same here—that the general laws of the state shall control. Let me read that to get it clear: "Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws" on the subject of police regulation of the state. That would be just as formulated in the Municipal League, and the committee added after "general laws" the words "affecting the welfare of the state as a whole." Now, I am answering from my personal opinion only. I do not believe those words add anything to the section. If it is felt by the Convention that there is anything which involves ambiguity, personally I feel that either the language of those few words should be changed or they should be omitted. Again, I am not speaking for the committee on that point.

Mr. DOTY: If you care to give it, the information might throw light on the subject, you might state why this was put in, for what purpose?

Mr. KNIGHT: To strengthen the words "general laws."

Mr. DOTY: Was that the purpose?

Mr. KNIGHT: So far as I know.

Mr. DOTY: Was that the purpose given in the committee?

Mr. KNIGHT: I think so. I do not know of any other purpose. I am subject to correction by any member of the committee, however.

Mr. DOTY: But does it strengthen the words "general laws"? In other words, if you were to put a period after the word "laws" and strike out all the rest of the paragraph, would not the paragraph mean just exactly what you suppose it means now?

Mr. KNIGHT: In my personal opinion it would.

Mr. ANDERSON: As a matter of fact, if you strike out that part that has been referred to by the gentleman from Medina [Mr. Woods] and the gentleman from Cuyahoga [Mr. Doty] would not the section mean more than it does now? Is this not in fact the limitation on general laws? In other words, are there not laws which would come under the definition of "general laws" that will not come under the words as contained here, "general laws, affecting the welfare of the state as a whole"?

Mr. KNIGHT: No; but I do not think the words to

which the gentleman from Medina referred enlarge any powers or the meaning of the phrase "general laws."

Mr. ANDERSON: But what I am after is, do they not limit it to some extent?

Mr. KNIGHT: It might be so interpreted. It seems to have been so interpreted by some on the floor.

Mr. ANDERSON: Then either they were put in from a mistaken notion or for a reason not stated. Is that true?

Mr. KNIGHT: I have stated every reason of which I have any knowledge.

Mr. ANDERSON: If there is any other reason you never heard of it?

Mr. KNIGHT: That is right.

Mr. ROCKEL: In the discussion of this section 7, the original draft had in it "except in municipal affairs?"

Mr. KNIGHT: Yes.

Mr. ROCKEL: Did not the committee find out that the courts had had a great deal of trouble in construing what were "municipal affairs" as used in section 7?

Mr. KNIGHT: That is true.

Mr. ROCKEL: And, therefore, in that place these words were inserted?

Mr. KNIGHT: In what is now section 7?

Mr. ROCKEL: Yes.

Mr. KNIGHT: The words "affecting the welfare of the state as a whole" were inserted.

Mr. ROCKEL: Those words were inserted in place of "except in municipal affairs."

Mr. DOTY: What line is that in?

Mr. KNIGHT: Forty-seven.

Mr. ROCKEL: That is the way these words got in the proposal?

Mr. KNIGHT: Yes, sir.

Mr. ROCKEL: And afterwards, to make the proposal conform, they were also put in the other sections?

Mr. KNIGHT: I am obliged to the gentleman for the statement on that point, which is correct.

Mr. DOTY: I would be glad to have that stated again.

Mr. KNIGHT: I yield to Mr. Rockel to make the statement.

Mr. ROCKEL: In the original draft of section 3, after it was put in section 7, it had the words, "Any city or village may frame and adopt a charter for its own government and may exercise thereunder all powers of local self-government; but all such charters shall be subject to the general law of the state, except in municipal affairs."

Mr. KNIGHT: That was the original proposal?

Mr. ROCKEL: Yes. Judge Worthington examined the decisions of California and of some other state, and I did too, and the judges there said they had very great difficulty in defining what should be included in the words "municipal affairs." Therefore, I think it was suggested by some member of the committee that there should be a change made from the language used in the brief furnished the committee. What they meant there was to convey the idea opposite to "local affairs" and that it referred to what would affect the state at large.

Mr. PECK: Do you think the phrase "local self-government" is any more definite than "municipal affairs"?

Mr. ROCKEL: That is probably true.

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Mr. DWYER: What other power has a city excepting in municipal affairs?

Mr. ROCKEL: Those California courts had a great deal of trouble and there were dissenting opinions from pretty nearly all of the judges. One of the judges said he did not know what it would include. So this term was really meant to include "state affairs" as opposed to "local affairs."

Mr. LAMPSON: Do you not think it would often be very difficult to determine whether a general law affected the welfare of the state as a whole?

Mr. ROCKEL: If anyone can suggest a phrase that would exactly mark the dividing line between local municipal affairs and state affairs we would be glad to have it. We do not want to take the city out of the state. We want to keep the city in the state.

Mr. DOTY: I would ask the same question I asked the gentleman from Franklin [Mr. KNIGHT]. I would ask you, if we were to take the section as it stands, put a period after "general laws" and strike out all the rest of the paragraph, what difference would that make in what you say was attempted to be put in there?

Mr. ROCKEL: I think the idea of this section was to give the city supreme authority—

Mr. DOTY: I am for that, all right.

Mr. ROCKEL:—and that the legislature could not take it away—

Mr. DOTY: Quite right.

Mr. ROCKEL:—unless it were by a law that would affect the state as a whole.

Mr. DOTY: Now will you answer that question?

Mr. ROCKEL: What difference it would make?

Mr. DOTY: Yes. You have laid the groundwork for my question and now what is the answer?

Mr. ROCKEL: Well, I don't know.

Mr. DOTY: Well, I don't.

Mr. ROCKEL: I might possibly conceive that there might be a general law—

Mr. DOTY: Is not the theory of the general law that it is for the welfare of the whole state? Is not that the entire theory?

Mr. ROCKEL: That is general law.

Mr. DOTY: Then general law means for the whole state.

Mr. ROCKEL: I would not have any objection to striking out the words "affecting the state as a whole."

Mr. DOTY: Then you do not think those additional words are of any use at all?

Mr. ROCKEL: I got it from this man's brief. He said that is what they meant; that they did not want to take away from the state the right to pass laws affecting the general welfare of the state as a whole.

Mr. WOODS: I want to suggest to the gentleman from Franklin [Mr. KNIGHT], if everybody seems to agree, I have an amendment taking those words out and we might take them out now and save a lot of trouble.

The PRESIDENT: Does the member yield?

Mr. KNIGHT: I would prefer to go on, not thereby meaning to oppose or obstruct any opportunity to introduce amendments.

Mr. HALFHILL: A question on the same point: In the last analysis who would determine whether or not there was any conflict?

Mr. KNIGHT: Conflict where?

Mr. HALFHILL: Determine whether there was any conflict between the general laws?

Mr. KNIGHT: The courts, I apprehend, would have to determine the conflict, as always.

Mr. HALFHILL: Then the sovereign power in the legislature to legislate and the sovereign power in the municipality to legislate would never be determined until the courts get it?

Mr. KNIGHT: That is true in all cases of conflict between two bodies acting under a constitution which confers powers that may possibly overlap. In the last analysis of it the courts always have to determine that.

Mr. HALFHILL: But is not the controversy much greater in an instance like this than it would be if the grant of the power came from the state to the municipality in the ordinary understanding?

Mr. KNIGHT: I apprehend not, if the proposal is drawn as carefully as we think it is. There is an attempt to provide against conflicts at all points where we can, and to confer in the constitution directly upon the municipalities the right to do certain things; and of course the state has a right under a modified constitution as now through its lawmaking body to legislate for the state, and this attempts merely to increase the local autonomy of the municipality and to avoid the necessity of coming to the legislature for each specific item of power which the municipality may be permitted to exercise. That is the sum and substance of the whole thing.

Section 8 merely provides the machinery for which, by which and under which this charter framing shall be done. In the first place, by a vote of two-thirds of the legislative body of the city or village, without any petition of the voters, or upon a petition of ten per cent of the voters, the ordinance shall be passed providing for the submitting to the electors of the municipality this same question, Shall a commission be chosen to frame a charter?

Mr. DOTY: A question on that point. Suppose in Columbus ten per cent of the electors would file a petition with the council and the council should refuse to pass an ordinance. What would happen?

Mr. KNIGHT: You could only postpone the matter until the next municipal election. The whole of section 8 provides the machinery by and under which the question shall be submitted to the voters whether they want a charter commission, and also the method of electing or selecting the charter commission.

Section 9 provides for a similar procedure with reference to amendments to a city charter at any subsequent time.

Section 10 deals with the question of the acquisition of property by the municipality, that in any proceedings to appropriate or acquire by any means property for public use, municipalities may acquire by either condemnation or other means of acquisition an excess amount of land or property beyond that needed immediately for the improvement or public use of any kind. That is what is known technically as excess condemnation, with the restrictions that bonds issued by the municipality for the acquisition of any such excess over and above the bonds that may be issued upon the general credit of the city must be what may be termed mortgage bonds simply and constitute a lien upon all the property acquired under the particular condemnation proceedings. If, for ex-

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ample, a municipality desires to acquire three hundred acres for a park, and in the process of, or at the time of, that acquisition it seemed to the municipality desirable to appropriate an additional one hundred acres surrounding that park or in connection with the park, but not immediately needed or not intended to be used for park purposes, such excess may be acquired under this condemnation proceeding, but the bonds issued for such excess shall not be a general liability of the municipality—

Mr. PECK: Necessarily it would be as to the interest?

Mr. KNIGHT: Just a moment—but will be a lien upon the entire four hundred acres thus acquired, and any forfeiture or failure to pay the interest upon such bonds at any time would immediately warrant and authorize, as under any other mortgage, the foreclosure and taking possession of the entire property, just as in any other similar proceeding.

Mr. PECK: It would have to be foreclosed?

Mr. KNIGHT: It would have to be foreclosed.

Mr. DWYER: Would not that allow the city to go into the real estate business?

Mr. KNIGHT: Yes, sir; exactly what is done in a large number of European municipalities. In order to make further municipal improvement, property has been acquired for the purpose, for instance, of erecting modern tenement houses for the people in the city and more property was acquired than was desired for the immediate purpose; that property was subsequently sold and a considerable portion of the expense of the original acquisition paid out of the increased value of the excess realty which was acquired in the first instance, the increase being due to the improvement by building on that part which the city wanted to use for its own purpose.

I want to emphasize or restate the proposition that the bonds so issued for this excess amount need not be a general liability of the city, but simply a lien upon the property in question, and, like any other bonds, secured by mortgage and that a default of interest upon them would enable the holders of these bonds to proceed to take possession of the property under foreclosure proceedings.

Mr. DOTY: Now will you explain lines 95, 96, 97 and 98?

Mr. KNIGHT: Lines 95, 96, 97 and 98—I want to call attention to those. I did not intend to pass them—“Any municipality appropriating private property for a public improvement may provide money therefor in part or in whole by assessments upon the abutting property not in excess of the special benefits conferred upon such abutting property by the improvements.”

At the present time, under the decisions of the court under our present constitution, the benefit conferred upon the abutting property may not be taken into consideration; consequently may not be made the basis of any special assessment or additional burden for the making of the improvement. This is intended to provide that the abutting property shall bear some share of the burden of improvement in an amount not to exceed the benefits conferred upon that property by the improvement.

Mr. ANDERSON: Say you were to take one hundred acres for a park. Would the owners of the abutting property have to pay for the taking of the park?

Mr. KNIGHT: Not beyond the amount of the bene-

fits conferred on the property by the fact that the park is created.

Mr. ANDERSON: How would you get at that? By taking the people living in the city who were interested—the taxpayers—to determine how much the general taxpayers should pay and how much the abutting property owners should?

Mr. KNIGHT: That is the rule everywhere.

Mr. ANDERSON: That is just the reverse of the situation at the present time.

Mr. KNIGHT: Yes.

Mr. PECK: Do you not know that was a question that was greatly discussed in the constitutional convention of 1851 and that there is a powerful argument against it by Rufus P. Ranney?

Mr. KNIGHT: A good many things were discussed in there.

Mr. PECK: And we haven't learned anything on that subject since, either.

Mr. DOTY: Is it not a fact that what is attempted to be done is what the supreme court decided for forty years could be done, and that suddenly, ten years ago, that was overturned?

Mr. KNIGHT: Yes; under the constitution of 1851 the abutting property was held liable.

Mr. DOTY: Was it abutting or benefited?

Mr. KNIGHT: Benefited. The decisions of the court for forty years were that the benefited property should bear its part. Now, the gentleman from Mahoning [Mr. ANDERSON] assumes a three hundred-acre park, and according to this language the abutting property—that is, the property all the way around—would have to bear a share of the burden, assuming that the burden was not in excess of the benefit.

Mr. ANDERSON: But the benefit of the park is not confined to the abutting property owners. Do you know any park that does not spread its benefits out over the people?

Mr. KNIGHT: Every improvement affects all the property.

Mr. ANDERSON: Oh, no; a curbstone in front of your property does not benefit people on the other side.

Mr. KNIGHT: Oh, no; it depends on how many want to go by that place.

Mr. ANDERSON: What I want to get at is the difference in degree of the spreading of the benefit. Excepting the very minor improvements the benefits spread farther than the abutting property, do they not?

Mr. KNIGHT: I suppose so.

Mr. ANDERSON: For forty-one years the supreme court held that benefited property should bear part of the cost.

Mr. KNIGHT: Yes.

Mr. ANDERSON: Then why, if we are trying to put in the constitution something that will put us back to that same situation, do you not use the word benefited?

Mr. KNIGHT: I have no objection.

Mr. ANDERSON: In your judgment is it not better?

Mr. KNIGHT: I am inclined to think it is as good.

Mr. ANDERSON: I am glad to get you at least up to that point.

Mr. KNIGHT: You didn't have to get me.

Mr. DWYER: I have had a good deal of experience on that in my time. Take the building of streets; they



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put the assessment on the benefited property and they would go out several squares where it was not benefited at all in order to get a larger amount. There is gross injustice done under that idea.

Mr. DOTY: That is not done now.

Mr. DWYER: I have known them to go several squares out, where the property was not benefited at all.

Mr. DOTY: Perhaps I can give an experience there. The city of Cleveland opened a street for the benefit of the whole lower section of the town at a cost of \$1,200,000 or \$1,300,000, and the city attempted under the old decision of the court to spread that out, and that was the case in which the supreme court reversed the decision that had stood for forty-one years.

Mr. KNIGHT: While I have no absolute authority to make a statement, I am of the opinion that the substitution of the word "benefited" for the term "abutting," or a similar equivalent, will be satisfactory to the committee.

Mr. PECK: Would not the word benefited include property not abutting?

Mr. KNIGHT: Certainly.

Mr. MAUCK: In the case of *Norwood vs. Baker* did not the supreme court of the United States hold that you could not take a street out of a piece of property and assess the rest of the property for that improvement? It has been many years since I have read that decision, but I think that is what the case decided. Maybe Judge Peck or some of the Cincinnati members might be familiar with that.

Mr. PECK: The court did so decide.

Mr. KNIGHT: My knowledge of that case is about as antiquated as that of the gentleman from Gallia [Mr. MAUCK], but my impression is that the extent of the holding of the supreme court was that the abutting property could not be assessed beyond the benefit of the remainder of the property. I may be in error, but that has been my impression as to the limit of that decision.

Mr. MAUCK: That was the Ohio rule under which it was attempted, and the federal court interfered by injunction and restrained the opening up of the street, because you could not take part of a man's property and assess the rest of it for the taking of it. If that is so, it is exactly against your proposition.

Mr. KNIGHT: I am not prepared at the moment to deny that, but my idea is that the decision did not go as far as the gentleman states.

Section 11 applies a similar principle to the issuance of municipal securities in the acquisition of public utilities as provided for in section 10, for the acquisition of excess property in connection with a park and other similar acquisitions, that where the municipality acquired, constructs or extends any public utility, and desires to raise the money for any such purposes, it may issue mortgage bonds therefor beyond the general bonded indebtedness permitted to a municipality, provided, however, that such mortgage bonds beyond this limit shall not impose any liability upon such municipality, but simply be a lien upon the utility itself, including the franchise, the terms of which shall be described, and which may be acquired by the bondholders if it becomes necessary to foreclose upon that mortgage on account of a default in payment of principle or interest.

Mr. KING: Does that mean the municipal corpora-

tion can proceed indefinitely to appropriate or purchase public utilities and proceed with the construction so far as the limit of bonded indebtedness will allow, and when it shall have had half or two-thirds constructed and the limit is reached, that then it is allowed to issue municipal securities binding upon the entire city, which can then proceed to give a mortgage upon the utility for the balance of the cost of construction?

Mr. KNIGHT: Yes; it means just that.

Mr. NYE: I would like to ask this question concerning the indebtedness of the city applying only as a lien on the utility when an individual is required, if the mortgage property does not pay the required debt, to be responsible beyond that. Now why should not the same rule that is applicable to an individual apply to the city or municipality? To illustrate: I have a large tract of land adjoining the city and the city appropriates it at a certain price and gives a mortgage on it and issues bonds to pay for it. Perhaps when they take the property it is of large value. Now the city may go in another direction and by the time the bonds are due the property will not sell for enough to pay the bonds. Why should not the city be liable for the whole indebtedness the same as an individual would be if a mortgage that he gives does not pay the debt in full?

Mr. KNIGHT: The committee in its judgment, which may or may not have been wise—I think it was wise—did not think it well to provide that these mortgage bonds, issued for a specific purpose and for the construction of a specific utility, should constitute a lien upon any of the municipal property other than the property in question.

Mr. PECK: And no obligation on the taxpayers?

Mr. KNIGHT: And no obligation on the taxpayers beyond the general liability of the municipality.

Mr. PECK: Do I understand that the additional bonds are to be no liability upon the taxpayers?

Mr. KNIGHT: No liability except through the mortgage bonds on the utility itself, and nothing else.

Mr. PECK: Then if the city issued in its own name specific mortgage bonds referring to a particular utility, including the franchise which would be granted to the holders of the bonds, and if foreclosure became necessary under it, you say that they might acquire the utility, but could not have any judgment over?

Mr. KNIGHT: Yes; that is what this is meant to do.

Mr. PECK: Do you not think if the individual did that he would be liable over?

Mr. NYE: A further question in connection with that: If the property taken is of great value when the city takes it and it depreciates in value during the time the city has it, and when it comes to be sold it does not pay more than half of the bonds, why should not the city be required to pay the balance of the indebtedness the same as an individual would be if the individual had bought the property and given a mortgage?

Mr. KNIGHT: We have simply provided here to put the municipality upon the same basis as a private corporation which issues a mortgage in which it pledges the utility in question. We put the municipality in no better or no worse shape than that private corporation operating the same utility and we put the holder of the bond in no better or no worse situation. In other words,

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we put the municipality operating a public utility upon the same basis as a private corporation, and the holder of these mortgage bonds when issued by the municipality on the same basis as the holder of mortgage bonds when issued by the private corporation.

Mr. NYE: Why should not the city be as liable as an individual who bought the same property? The individual would be liable for the balance of the indebtedness after the security was exhausted.

Mr. KNIGHT: Because the committee was of opinion that it should not be. This was meant in the first place not to encourage unduly the construction of public utilities by the municipalities until or unless it is evident that the municipality is making a wise municipal undertaking, and in that case there will be no depreciation, and consequently, since the mortgage bonds are a lien upon the entire property of that utility, including the franchise, the bondholder is secure.

Mr. THOMAS: It is a bond issue in the name of the city, but secured upon specific property insufficient to secure it. Would not that operate as a fraud upon innocent holders of the bonds?

Mr. KNIGHT: When the bond states specifically in its face what the lien is upon I do not regard it as a fraud.

Mr. DWYER: A great many years ago the city of Toledo issued bonds to the extent of \$700,000 or \$800,000, or possibly \$1,000,000, to get natural gas into Toledo. Suppose they had issued bonds of the city for that and the gas plant became a failure, which it did in that case. Who would be the loser, the men who held the bonds or the city?

Mr. KNIGHT: I apprehend in a case like that, where the municipality undertook to construct a public utility of that sort and to issue mortgage bonds for the entire cost of the public utility, that the thing would take care of itself, in that those bonds would not be purchased. You will note in this provision, up to the extent of the limitation of the general indebtedness provided by law, the city may issue its general bonds, and presumptively in every case the mortgage bonds would not be for the full value of the utility itself.

Mr. DWYER: I hope the president will allow the broadest discussion to this matter, as it is one of great importance. Now suppose a city wanted to buy an electric plant already in use and issues bonds. The bonds then are a lien on the plant. Suppose by bad management on the part of the city—which is generally the case where cities undertake to manage such things—the value of that plant deteriorated—and a plant of that kind deteriorates very fast unless properly taken care of—suppose the plant originally cost \$1,000,000, and it deteriorates by mismanagement on the part of the agent of the city. Who would suffer in that case? Would the bondholders suffer that loss?

Mr. KNIGHT: I apprehend so, but the Judge omits entirely one consideration which I thought I had explained a moment ago. I apprehend as a business proposition, if your city undertook to buy the electric light plant—I speak now without a definite knowledge of whether your plant now is a municipal plant or not—assuming that it is operated by a private corporation, and the city desires to purchase it and has no margin for the issuance of general bonds at the present time

and is not able to raise any part of it by taxation at the present time, I apprehend it could not float the mortgage bonds, and therefore nobody would be the loser, because the bonds could not be issued in the first instance, and the safeguard—with apologies to the gentleman from Cuyahoga [Mr. DOTY]—depends on what margin the city has left of general bonds, that a considerable portion would be provided for by the general bonds and only the remainder over beyond the amount the city could issue of general bonds would be covered by the mortgage bonds.

Mr. DWYER: From my experience of these matters I would be very slow to take any of those bonds—bonds issued by a city for a public utility, with the bonds only on the utility.

Mr. KNIGHT: Then probably you would not lose anything.

Mr. HOSKINS: We are gradually getting the question I wanted to ask answered. I would ask this, however: Is it the idea of this provision that if the city is already bonded up to the limit and desires to acquire a public utility then it can only give a lien upon that public utility itself?

Mr. KNIGHT: That is exactly the intent and exactly the provision, as near as the committee could frame it.

Mr. HOSKINS: Then if the city finds itself in that shape it would be impracticable to acquire a public utility at all—

Mr. KNIGHT: Until it reduced its general bonds so far below the limitation that there would be a margin.

Mr. HOSKINS: Would it not be possible and entirely probable that the city issuing mortgage bonds on a public utility which it might condemn and take over by condemnation proceedings might permit that property to depreciate and retrograde in value so as to destroy the mortgage security?

Mr. KNIGHT: I suppose that is possible. A good many things are possible in American cities.

Mr. HOSKINS: Do you think it possible in the market to float a mortgage of that kind, a mortgage that the city does not put its credit behind?

Mr. KNIGHT: Those whose advice the committee sought, and it has been sought rather widely, were distinctly of the opinion that that would depend altogether on how large a proportion of the original cost could be paid by general bonds, just the same proposition as confronts an individual when he undertakes to place a mortgage on his farm. It depends altogether on what relation the loan bears to the total value of the farm.

Mr. HOSKINS: If the city undertakes to acquire a public utility for the benefit of the public, why should not the city assume the entire responsibility itself and stand behind all of its own obligations the same as an individual?

Mr. KNIGHT: For the simple reason that under the present conditions if you confer upon the municipality power to go into full municipal ownership without this provision or some similar provision you practically destroy the power of limiting the indebtedness of the city, the value of which limitation we all know. That has been one of the greatest evils in connection with city government, and it was the purpose of the committee to guard against that evil and yet give the fullest practicable municipal ownership.

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Mr. HOSKINS: It was the purpose to limit what they might actually be bound for, but to leave no limit as to what the city might hog? They can take everything in the municipality—

Mr. KNIGHT: Provided they can pay for it.

Mr. HOSKINS: Or promise to pay.

Mr. KNIGHT: Or promise to pay in terms that anybody will take.

Mr. PECK: In other words, if they can catch suckers enough to buy those bonds.

Mr. TANNEHILL: If the city has a present limit as to indebtedness and is up to that and the city wants to go extensively into public utilities, your method is the only method by which they could do it?

Mr. KNIGHT: Yes.

Mr. PECK: I want to get back to this question as to general government and local self-government. In section 7 you say that "any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government." What powers do you mean?

Mr. KNIGHT: All the powers of local self-government, subject to the limitations of section 12.

Mr. PECK: You don't say anything about that?

Mr. KNIGHT: There is a specific limitation in section 12.

Mr. PECK: Point it out.

Mr. KNIGHT: Section 12: "The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes."

Mr. PECK: I am not thinking so much as to the amount, but as to the manner of doing it. Do you propose to let the city determine what shall be assessed, how it shall be assessed and who shall make the assessment and collect the assessment?

Mr. KNIGHT: Subject to general laws.

Mr. PECK: That certainly is a wide power of local self-government.

Mr. KNIGHT: The next line covers that, "subject to general laws."

Mr. PECK: You say "subject to general laws." There you come to a proposition I don't understand. What do you mean by that?

Mr. KNIGHT: General laws covering the matter of taxation.

Mr. PECK: Then you do not confer the power of local government in the matter of taxation?

Mr. KNIGHT: It does not confer any powers of local self-government beyond the limitation of the following lines, which is a limitation—I mean line 49.

Mr. PECK: There are many sorts of things that affect the general government and affect the city?

Mr. KNIGHT: Yes.

Mr. PECK: For instance, laws relating to elections—

Mr. KNIGHT: It is specifically provided that all elections shall be held under the general laws of the state.

Mr. PECK: A good provision, when you do not make any such provision as to taxes. You leave to them the power to limit, which might apply to the amount and not to the mode of collecting.

Mr. KNIGHT: It was not so intended and I doubt if the language would bear that interpretation.

Mr. PECK: I think it would be bad to confer local self-government of that sort.

Mr. KNIGHT: In the machinery for collecting taxes?

Mr. PECK: Yes, and you might think of others. The machinery for collecting taxes in this state is very perfect and so admitted by everybody.

Mr. KNIGHT: And the committee is of the opinion that lines 47, 48 and 49 do not interfere with it.

Mr. PECK: It is not likely to be improved on and the additional power of the municipality—

Mr. PETTIT: I rise to a point of order. These gentlemen are having a little discussion among themselves—

Mr. KNIGHT: I am answering questions.

Mr. PETTIT: But the gentleman is not asking a question, but arguing a question.

Mr. PECK: We are trying to get this in shape. My talk suggests what I want an answer to. Now, as to the matter of assessment. Suppose you lay out a road through a man's land, assess his compensation at \$3,000, pay him for that road and proceed to assess back on him \$3,000 for benefits conferred. Have you not simply appropriated his property for nothing?

Mr. KNIGHT: I think that has been covered by my answers heretofore.

Mr. PECK: It was not covered by any answer I have heard.

Mr. KNIGHT: The gentleman from Cuyahoga [Mr. Dory] asked whether the word "benefited" would not be acceptable in place of the word "abutting."

Mr. PECK: That does not fill the bill with me.

Mr. KNIGHT: That is a matter of opinion.

Mr. PECK: You may think so, but it does not. This thing of paying a man for his property in estimated benefits is a different thing from paying him in solid cash. If you take his property now you are bound to pay him and you can not pay him in estimated benefits.

Mr. KNIGHT: For forty years the supreme court held otherwise under the present constitution.

Mr. PECK: They didn't so hold except in connection with improvements. They held the improvements might be taken as an offset to any damage that might be done. The man had to be paid in cash for his property, but if he claimed there were any damages to the rest of his property those damages could be offset by benefits to the property.

Mr. KNIGHT: There is no difference between us. If the language here does not accomplish what you are trying to do we are willing to make it.

Mr. PECK: I am going to propose to strike all of that out when the proper time comes.

Mr. LAMPSON: Do you not think the practice of allowing a great city to issue bonds without being fully responsible for payment would be somewhat akin to the principle of selling bonds and stocks on blue sky against which we passed a proposal the other day?

Mr. PECK: Or gold bricks?

Mr. KNIGHT: Not at all, in the judgment of the committee; and there is no analogy between them.

Mr. LAMPSON: Do you not think it would have a tendency to encourage an adventurous city administration in speculation in building up railways and public utilities so that by the time the administration gets to its end it has failed and the bonds are worthless?

Mr. KNIGHT: That is an argument instead of a

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question, but, answering the argument, the provision is this: You have to sell your bonds before anybody loses any money. You have stated a double proposition, first that it would encourage municipal speculation. This very provision, in the judgment of the committee, has the opposite tendency. If you permit unlimitedly the municipality to go into municipal ownership, without any limitation on the city, you encourage municipal speculation.

Mr. PECK: Why not let them stop when they get to the end of their credit?

Mr. KNIGHT: We think there might be a well justified desire for the municipality to go beyond that limit to the extent covered here.

Mr. PECK: Some speculative gentleman that has something in mind, is about the amount of that.

Mr. STEWART: As I understand the situation in reference to municipal indebtedness, there are two types of bonded indebtedness. One class is based on paved streets, sewers, public buildings, etc., from which no revenue is received.

Mr. KNIGHT: Yes.

Mr. STEWART: The other type is such as water works, electric lights, etc., upon which revenue is received.

Mr. KNIGHT: Yes.

Mr. STEWART: Under our present system of limitation that applies directly to that portion from which there is no revenue received; do you not see that when you are combining these two types of indebtedness, you are absolutely closing the door to any improvement along the line of paved streets, sewers, public buildings, etc.?

Mr. KNIGHT: Yes; I understand the statement, but your question is not clear. Will you put that question over again?

Mr. STEWART: I mean that when you have these two types of public improvements, after having them created, might not this kind of a situation prevail: When the people have embarked in municipal ownership will it not take away from the people their right to incur any indebtedness for the things from which they receive no revenue and do you not thereby tie them up?

Mr. KNIGHT: No; not any more than they are tied at the present time. Any municipalities that have reached the limits of indebtedness are tied up now. It is discretionary with the municipality in which direction it will go.

Mr. DWYER: In the city I represent we are selling our bonds at three and one-half per cent because of the high character of the security. They have all the property of the city back of them. We have a private electric light plant there. Now suppose the city goes to work and buys that under this arrangement and issues bonds, what rate of interest would the city have to pay?

Mr. KNIGHT: It depends on whether the city attempted to issue bonds for its full value or not. They would have to pay a higher per cent if the value were only \$1,000,000 and they attempted to issue \$1,000,000 of bonds.

Mr. DWYER: You would have the city paying two different rates for money.

Mr. KNIGHT: Quite possible, depending on the nature of the security. That is the rule of the financial world.

Mr. DOTY: If the municipality decided to buy the

electric plant because it is of benefit to the whole community how can you justify the preventing of that municipality from using its own resources that it legitimately has for the purpose of bringing into existence that lighting plant? What is the justification in cutting down, as the member from Ashtabula brought out, one-half the resources to produce a thing for the benefit of the whole city? Why should not the whole city be allowed to use that which is for its own benefit?

Mr. KNIGHT: In the first place I undertook to answer that a moment ago by referring briefly to the history of municipal indebtedness in this country. The committee was unanimously unwilling to let the municipality incur indebtedness to an unlimited extent. If you answer, why put a limit? I reply, if we put no limit each municipality is allowed to go to ruin if it wants to.

Mr. DOTY: That is not the question. Leave the limit entirely separate, although I myself do not believe in a debt limit. That does not enter into the discussion. Assume the city has no debt, but has a debt limit which allows it to issue \$20,000,000 of bonds. Under this you do not allow the city to use any part of that \$20,000,000—

Mr. KNIGHT: We allow them to use \$20,000,000 of credit.

Mr. DOTY: You use the term mortgage bonds right in here.

Mr. KNIGHT: If the gentleman will read the proposal carefully he will find there is no such provision here.

Mr. DOTY: Section 11?

Mr. KNIGHT: Yes.

Mr. DOTY: If it has \$20,000,000 margin it may issue those \$20,000,000 as general bonds for which the entire municipality is liable?

Mr. KNIGHT: But if it takes twenty-one millions, the last one million is a lien only upon the entire public utility.

Mr. DOTY: Then it is on account of my inability to understand language.

Mr. KNIGHT: Or the committee has not used proper language.

Mr. DOTY: "Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor".

Mr. KNIGHT: Read the next six or eight lines.

Mr. DOTY: "beyond the general limit of bonded indebtedness prescribed by law". But a mortgage bond is not as good as a general bond, is it?

Mr. KNIGHT: That is not the intent. It is not undertaking to be so secure—

Mr. DOTY: But is a mortgage bond—

Mr. KNIGHT: Just a moment. You and I are of the same opinion, only you read the thing one way and the committee means it another way. What the intent of the proposal is—and if it does not so provide it is the fault of the language and not done wittingly—the intent is if there is a margin of \$20,000,000 the city of Cleveland may use the entire \$20,000,000 for the purpose of constructing or acquiring the electric light plant. Further than that, if it costs \$25,000,000 to construct that plant, the last \$5,000,000 can only be raised upon mortgage bonds, which mortgage bonds shall constitute a lien upon the entire public utility.

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Mr. DOTY: I can see out on the latter part, but not on the first part, where you say to raise money for such purposes you can issue mortgage bonds.

Mr. KNIGHT: Read a few lines further, read through the section.

Mr. DOTY: "provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality".

Mr. KNIGHT: Go on, you are doing first rate.

Mr. DOTY: "But shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."

Mr. KNIGHT: Now the security for the last five millions —

Mr. DOTY: I can understand that. That is plain. I am talking about the security for the first twenty millions.

Mr. KNIGHT: The general liability of the city.

Mr. DOTY: It does not say so. It says mortgage bonds.

Mr. KNIGHT: Let us go back to line 101. It may issue bonds beyond the general limit. Then up to the general limit it issues bonds for general public improvement, general bonds, and this simply confers additional power to go beyond that, but in going beyond it the additional bonds shall be secured by mortgage upon the utility alone and upon nothing else.

Mr. ROCKEL: This entire section is a section of limitation.

Mr. BROWN, of Lucas: Suppose a city is up to its bonded limit, as Cleveland is. What is your opinion as to whether the mortgage bonds would be readily saleable?

Mr. KNIGHT: My opinion is where a municipality undertakes to acquire a public utility and it has no power to issue general bonds because up to the limit, it would not be able to float the bonds.

Mr. BROWN, of Lucas: So that this provision in that sort of a case automatically defeats municipal ownership?

Mr. KNIGHT: The limitation is a limitation to that extent.

Mr. BROWN, of Lucas: It makes it impossible for the city to acquire title because it has not money to pay.

Mr. KNIGHT: Yes.

Mr. HARRIS, of Ashtabula: Reversing the figures used in the colloquy with Mr. Doty, with respect to issuing twenty millions of bonds and having an indebtedness of five millions over, suppose they could issue within the limit of five millions and the other twenty millions must be secured by the mortgage bonds and the lien on the utility itself, then in the event the property representing the loan depreciates is it fair to the man whose property has been appropriated to require him to have his redress only as a lien?

Mr. KNIGHT: What do you mean by his property appropriated?

Mr. HARRIS, of Ashtabula: The man from whom you got the property.

Mr. KNIGHT: You pay him in cash, not in bonds.

Mr. HARRIS, of Ashtabula: Then the people who buy the bonds —

Mr. KNIGHT: Where there is on the face of the bond a clear statement of what the mortgage covers, and in the mortgage a clear statement of what the bond covers, both sides are amply protected. I do not believe that we can in a constitution or by law accomplish the rather difficult feat of making men who have not ordinary business sense have extraordinary business sense.

Mr. LAMPSON: Will the gentleman yield for a question? Do you think that any reputable bond house or any honest man would recommend that kind of a bond to a woman or person unacquainted with such matters?

Mr. KNIGHT: It would depend on the proportion of the value of the utility that was covered by the mortgage bond. Neither you nor I would under any circumstances recommend a person with a small amount of money to invest to take a real estate mortgage equal to one hundred per cent of the supposed value of the farm. We would recommend the taking of a mortgage where there is say fifty per cent of the value of the farm or any such matter. I see no reason whatever, nor did the committee see any reason whatever, why, when the municipality undertakes to issue mortgage bonds of even fifty per cent of the value of the utility, including a franchise, the terms and conditions of which are described in advance and are part of the mortgage contract, and the total face value of the mortgage is a reasonable percentage of the value of the utility — I know of no reason under the canopy why a reputable bond house or a reputable individual might not and would not recommend such mortgage or such a bond under the circumstances named. In fact, we are advised in our committee by bond houses that they would do that thing.

Mr. LAMPSON: If you would allow me, I would say as a person who has been associated in the same office with a firm that is dealing in municipal and state bonds all the time, that I would not permit such a thing to be done. I do not believe that any reputable bond house would do it.

Mr. KING: Is it not true that the purchaser of a government bond issued by or under governmental authority takes it always subject to the conditions prescribed by the law under which it was issued regardless of what may be printed upon its face, and this law expressly exempts the municipality from liability?

Mr. KNIGHT: That is true as to the latter part, and as to the first part I have no knowledge.

Mr. DWYER: Suppose a city buys an electric light plant which has a franchise from the city. The moment the city buys it that franchise merges. The city gave the franchise and when it gets the property back the franchise comes to it and the whole thing is merged in the city. Is not that so?

Mr. KNIGHT: I concede that.

Mr. DWYER: Then there is no franchise; it becomes merged and is all in the city.

Mr. KNIGHT: The latter part of the section takes care of that.

Mr. DWYER: It becomes the city's property.

Mr. KNIGHT: The latter part of the section says that whenever a municipality acquires such a public utility and desires to issue its mortgage bonds, it must

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state in advance the terms upon which, in a case of foreclosure, the bondholders shall acquire not only the physical property but also a franchise under the terms of which they may operate the property when it comes into their possession by virtue of foreclosure. It is a new franchise dating from the time of foreclosure and has no reference to any terms or conditions of any franchise existing before the thing came into possession of the city.

Mr. DWYER: Now let us reason that out in a circle —

Mr. KNIGHT: There is not any circle.

Mr. DWYER: Wait until I get through. Say a private electric plant is in the city and the city buys that plant by condemnation or in some other way and it is city property.

Mr. KNIGHT: Yes.

Mr. DWYER: There is a bond issue put on that.

Mr. KNIGHT: Yes.

Mr. DWYER: Now suppose the indebtedness is not paid, what then? There will be a foreclosure?

Mr. KNIGHT: Yes, sir.

Mr. DWYER: And it sells for what it brings?

Mr. KNIGHT: Yes, sir.

Mr. DWYER: There is no franchise. It was merged, and therefore, when you sell it, you sell it without a franchise. I am talking about the legal proposition.

Mr. KNIGHT: Are you through?

Mr. DWYER: Is not that the fact?

Mr. KNIGHT: No, sir; it is not. If you will allow me to make a statement I can dispose of it. I do not want to take the time of the Convention repeating so much. I presume if you had been listening to my last explanation on that line you wouldn't have asked that question.

Mr. DWYER: I am illustrating where it leads to.

Mr. KNIGHT: I would like to answer the question if you would let me.

Mr. DWYER: Let me reason it out. Let me state the facts submitted to the Convention. Suppose the city buys an electric plant that has a franchise for twenty or thirty years. The moment the city buys that by condemnation or purchase the franchise is merged —

Mr. KNIGHT: Good.

Mr. DWYER: — into the superior title.

Mr. KNIGHT: We are agreed.

Mr. DWYER: Now, in course of time the interest is not paid on the bonds issued for that purpose. The men holding the bonds have to foreclose, and what do they get? No franchise at all, and they have to make terms with a city to get a franchise. Is not that so?

Mr. WINN: I rise to a point of order.

Mr. DWYER: What is the point of order.

Mr. WINN: I make the point of order that the member from Montgomery [Mr. DWYER] insists upon asking questions and will not permit answers, resulting in great confusion. Those questions have been asked over and over again and the speaker has not had any opportunity to make an answer.

Mr. DWYER: I will take two minutes and I will be through. I was reasoning this out on the lines of the proposal.

The PRESIDENT: The member from Montgomery has the floor.

Mr. DWYER: Just give me two minutes. I appreciate the position of the Professor. But I think it is clear that if the property is foreclosed the purchasers get the property and there is no franchise, the franchise is merged. Now he has to get a new franchise from the city; and suppose he gets a new franchise from the city. In the course of four or five years the city takes a notion to condemn that plant again, and the city may do it the second time and may go through the same process right straight along. That is the whole thing.

Mr. KNIGHT: I would like to answer the question if the gentleman will kindly listen. In line 105 it is specifically stated that a part of the property covered by the mortgage in the first instance is a franchise which shall date from the time of the foreclosure, the full terms and conditions of which are made and announced and determined before a single bond is issued, and that franchise, which will become operative whenever there is a foreclosure, is as much a part of the property covered by the mortgage as is the physical property itself. Therefore, when the mortgage is foreclosed those who foreclose it and who acquire title under the foreclosure have not only acquired the physical property of the plant, but they have acquired a franchise the full and definite terms of which are described in the mortgage before the mortgage was put to record and before a single bond was issued, and which can not be modified in any jot or tittle by the municipality after the foreclosure. Therefore, the holders of the bonds know in advance, before they purchase or acquire a single bond, just exactly the terms upon which they may operate that public utility in case it ever becomes necessary to foreclose the mortgage. There is no juggling about it. They know beyond any peradventure of doubt just how long they can operate and they know exactly on what terms and conditions.

Mr. LAMPSON: Do you think that such a franchise in the hands of miscellaneous bondholders would be very valuable as against a hostile municipal administration?

Mr. KNIGHT: I do not see what the question of the hostility or friendliness of the municipal corporation would have to do with it.

Mr. LAMPSON: Suppose the bonds were scattered around the country in the hands of small holders, widows and others, in sums of \$500 and \$1,000. Of what practical value would that franchise be to that class of bondholders as against an administration that might be seeking to get control of the franchise at a low price for the benefit of some of their number or for their city?

Mr. KNIGHT: That franchise is no more subject to subsequent control of the municipality than any franchise under which any municipality is operating any utility. It can not be interfered with.

Mr. LAMPSON: Suppose the bondholders do not know how to use it?

Mr. KNIGHT: Then they have the physical property, the entire public utility, plus the franchise —

Mr. LAMPSON: Which is worthless to them.

Mr. KNIGHT: Are you through?

Mr. LAMPSON: Yes.

Mr. KNIGHT: They have not only the physical property, but they have the franchise, which may run



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for twenty years, and the physical property, which they can operate under this franchise. I do not suppose it is necessary to assume that the bondholders themselves must operate the plant. They have the property, which has value and a decided added value because of the franchise, to-wit, a certain thing with which the municipality can not interfere during the life of the franchise.

Mr. TALLMAN: Under the foreclosure of the mortgage and when the physical property and franchise are sold, is not the prior bondholder relegated to his share in the proceeds of the sale and the widow or anybody else has no longer any interest in the plant or the bonds which he has theretofore bought?

Mr. KNIGHT: Any bondholder has the option to take his or her share of the property covered by the bonds in such form as may be determined, that is, upon partition of the property or upon partition of the proceeds, but as a business proposition we know that under those circumstances a committee of the bondholders takes charge of the whole matter in the interest of the bondholders. It is not necessary to assume that the franchise of the property is worth anything at all.

Mr. TALLMAN: She might take a bond in the new corporation that buys the plant or she might take her interest in money, as she chooses.

Mr. KNIGHT: No question about that part of it.

Mr. BROWN, of Lucas: Did the committee in making these bonds a general liability of the city consider an automatic sinking fund with a fixed or varying tax rate?

Mr. KNIGHT: I am not sure of the last proposition, but they did consider making it a general liability of the municipality and were unanimously against it as to the specific feature you have named. I know that was discussed, but I am not certain of the attitude of the committee on that, but this whole question of general liability was discussed.

Mr. BROWN, of Lucas: If a sinking fund were created and a tax rate made mandatory, would not that be a check against loss?

Mr. KNIGHT: It might be.

Mr. BROWN, of Lucas: Does not that automatically defeat municipal ownership in a large city?

Mr. KNIGHT: It depends on the present bonded indebtedness.

Mr. BROWN, of Lucas: Was that what the committee wanted to do?

Mr. KNIGHT: No, sir; not at all. Now, section 12 has in part already been discussed by the Convention in connection with section 10 and section 11:

The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

This last clause is especially desirable in order that there might be full and adequate public knowledge of the condition of the municipality operated public utility, and

it is practically a continuation or embodiment of what is now provided by the statutes.

Section 13 provides "All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general laws", and provides a basis and per cent for petitions required.

Section 14 is subject to modification to this extent: That it may be entirely removed or there may be added to it such a statement as will avoid any possible conflict between the new proposed article XVIII and the existing sections of article XIII touching private corporations and which have been incorporated in one or two other features as applicable also to municipal corporations.

Mr. KRAMER: I want to ask a question or two to find out how far the municipalities will be allowed to go into business. Take Cincinnati. It has three hundred and fifty miles of street railway. Suppose Cincinnati should take over that three hundred and fifty miles of street railway and suppose they take in \$2,000,000 a year. Does this section mean that the city of Cincinnati could go outside of Cincinnati with a railway to the extent of one hundred and seventy-five miles of inter-urban roads, or does it mean Cincinnati could go outside a sufficient extent to take in \$1,000,000?

Mr. KNIGHT: It was intended that the mileage outside of the city in the case of transportation service could not be in excess of one-half of that within the city itself. In the case of water supply it may supply outside of the city its surplus, but in no event to exceed one-half of that actually supplied to the people of the municipality, and the same way with lighting service.

Mr. KRAMER: Take the telephone service. To what extent could the city go out? It is easy to see as to the water supply and as to the electric light service, etc., but take the telephone company or electric railway company and how are you going to decide to what extent the city may go outside of its limit to do business?

Mr. KNIGHT: I just answered about the railroad. Beyond all question it would be on the basis of mileage.

Mr. KRAMER: Well, take the telephone.

Mr. KNIGHT: As there are no municipally owned telephone companies in the state of Ohio at the present time there are three or four possible bases on which that could be done, either fifty per cent of the number of calls or fifty per cent of the telephones, or possibly a length of line.

Mr. KRAMER: Would not that give any municipality in Ohio the right to maintain lines all through the state because of the vast amount of service done in the city compared with the service outside of the city?

Mr. KNIGHT: Possibly, though I doubt it. I might ask a question in turn — what of it?

Mr. KRAMER: Would it not be a whole lot better to limit the municipality in its ownership to such things as water supply and electric light supply and not allow it to go out into business — the interurban electric railway and the telephone service?

Mr. KNIGHT: If we want to stand still, yes — if we want to cut off the field of municipal activity; but a majority of us are not of that opinion. We already have that power on one or two things and the distinct idea attempted to be stated at the very beginning — the distinct idea underlying the whole proposal, the idea, as we believe, of the present time and the future and the

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thing desired by the municipalities of the state of Ohio, is the opportunity when they please to go into the ownership and control and operation of public utilities, with the limitation upon the power to burden their people with taxes and debt as indicated by the latter provisions of the proposal.

Mr. KRAMER : Will the legislature have to do something in order to make section 6 available, or does section 6 work itself, and if section 6 works itself, without any legislation whatever, what do you mean by the fifty per cent? You say it might be on the service rendered or it might be what calls are made or it might be on the income. Does the legislature have to do something in order to determine to what extent the city can go?

Mr. KNIGHT: As to the basis of determining the fifty per cent there are only two services which you mention on which there might be any doubt. One is telephone transportation service, and there is nothing in this to debar the legislature from enacting a statute as to that.

Mr. WEYBRECHT: Referring back to section 6, is it intended in that section to prevent municipalities from owning and selling those products at less than cost?

Mr. KNIGHT: Not that I know of.

Mr. WEYBRECHT: It could do that under this provision?

Mr. KNIGHT: I suppose so, just as a private corporation can if there is any reason for doing it. It places the municipality upon the same basis as a private corporation with reference to privileges.

Now I am compelled to apologize for taking up so much time. I was not attempting to make an argument, but simply to tell you just what, in the judgment of the speaker, the proposal means.

Mr. HARRIS, of Hamilton: Mr. President and Fellow Delegates: The chairman of the committee on Municipal Government finds himself in an embarrassing situation. When he left here Thursday it was with the distinct understanding that the proposal on municipal government would be taken up Tuesday morning. He does not know of any member of the committee who had a different understanding. You can appreciate his surprise and amazement on coming here this evening to find that the discussion of the proposal had been taken up this afternoon in his absence.

Mr. DOTY: I would like to ask a question.

Mr. HARRIS, of Hamilton: The speaker does not yield at present. He asks the indulgence of the Convention until he makes the few statements that he is now able to make.

I do not know — not having been here during the discussion — whether proper recognition has been given to the part that Judge Worthington played in our deliberations. If it has not, I now wish to acknowledge in behalf of the committee the deep sense of obligation which the committee is under to Judge Worthington. He was not a regularly appointed member of the committee. He came into the committee at my request, and on the vote of the committee he was made an honorary member. I knew his legal knowledge and his great interest in municipal government. I knew that he would be a valuable member of the committee if we could get his services. I feel that his illness is due in a great part

to the amount of work which he gave to our proposal, and it is no more than proper that public acknowledgment of his labors should be made on the floor of the Convention.

In listening to the discussion that we have had since seven o'clock this evening, it occurred to me that possibly proper recognition has not been had of the great difficulties under which your committee labored. There were two conflicting forces in the committee, those whom we shall call "radicals" — without any desire, of course, to be offensive — who demanded that the fundamental basis of this proposal should be complete sovereignty in the municipality, independent of the state. There were others who thought they were progressive, but who would not accept that doctrine. They could not see how there could be a sovereignty within a sovereignty. So the first clash was between those who demanded all powers for the municipality, practically without reference to the state, and those who demanded that the state should be supreme.

It is but fair to say that the most radical in the committee, with a fine sense of their obligations to the Convention, made very important concessions, and there was at no time anything but unanimity in the final consideration of every section. If you will read this proposal carefully you will see that the state is dominant. The great powers of taxation, the great police power, and the great powers of education and of health, all are held with a firm hand by the state. You may liken the power of the state to a bank note, through which the silken threads run strong and firm giving pliability but not permitting disintegration. That is the fundamental underlying principle of the proposal which you have to consider. The state is dominant in those principles in which, in the judgment of the committee, it should be dominant. Municipalities are given the greatest possible freedom, all of course protected and hedged in by these general fundamental principles.

Section 6 of article XIII of the present constitution provides: "The general assembly shall provide for the organization of cities, and incorporated villages, by general laws". As has been ably set forth by one of the best lawyers in the state of Ohio, the general assembly has construed this as a mandate to provide in detail for the organization of municipalities. Now, that rule is completely overthrown in the present form of this proposal. It seems to me that this is of such vital interest and importance that perhaps going over it a second time will not do any very great injury. It may test your patience a little, but just consider that you are legislating on the most vital subject for all the people of the state of Ohio living in cities and villages, and those not living in cities and villages at present, but in places which may later become cities and villages. My reason a week ago, when I first presented the proposal to the Convention, in not asking that it be put ahead of its place on the calendar, was for the purpose of giving every member a chance to study the proposal, and I did not think it ought to be hurried. The more you study it, the more discussion we have about it, the better in the long run it will be, and if defects can be found in it, as the result of careful consideration, the remedies will also be found. With the exception of two clauses, I will say that every word in every section was carefully weighed, not only

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with reference to its meaning, but in its relation to everything else. That was done by the lawyers in the committee, and in them I include the veteran, Professor Knight, who lent his scholarship to our efforts, without any thought of the time we asked him to devote to it. All of the phrases, and all of the words, and all of the legal interpretations, were considered by this most competent to do it. On a little clause of four words, Judge Worthington went through I don't know how many decisions of the state of California. I know in his desk there is a memorandum of something like forty or fifty decisions of the court, many of which he considered carefully, and gave our committee the benefit of his labors, and it was because of his judgment on that proposition that we discarded those words, although urged very strongly by the Municipal Government League, represented by Professor Hatton and Mayor Baker and others in Cleveland, to retain them. I mention this fact simply to give you an idea of the care that was taken in the consideration of every word, and the committee at one time thought that they would give you as nearly a perfect instrument as the intelligence of the committee could furnish. Now I take the liberty, with this explanation, of again calling your attention to certain sections, and asking you always to bear in mind these two propositions; firstly, that the state must be dominant, and secondly, that it is made so in those things in which the majority of the committee thought the state ought to be dominant.

Section 1 seems to be legislative. It is a division of municipalities into cities and villages. It was thought wise to make this now a constitutional provision. For sixty years this present division of municipalities into cities and villages has been found satisfactory by the people, and in order to take away the temptation from the legislature at any future time, during the life of the constitution, to change those lines of demarkation this was incorporated in the constitution.

Section 2. Now, I call your attention to the fact that our proposal allows for three methods of organizing municipalities:

1. As at present under general laws.
2. Under general laws, plus special laws.
3. By a charter commission.

It is believed by your committee, if the legislature is wise, there will be very few charter commissions named to frame special charters. There will be no occasion for it. Let me illustrate how your committee figured this out. We will suppose that the city of Cincinnati says to the legislature, "The general laws now applying are very good in the main, but there are certain conditions applying to large cities not now covered and which cannot be covered by general laws, we submit half a dozen special laws, and if you will enact them, we shall be glad to work under the general laws and the special laws." The legislature after careful scrutiny sees the wisdom of it and enacts those special laws. But those special laws cannot immediately be placed in effect in the municipality of Cincinnati. They can only become law there if that municipality adopts them by a referendum vote.

Now the city of Cincinnati, we will say, adopts these special laws by referendum vote. The city of Cleveland, the city of Columbus, the city of Toledo, the city of

Youngstown, and a dozen other large and prosperous cities in the state find out that those special laws, or some of them, will suit their case exactly, so they by referendum vote adopt such special laws as suit their peculiar conditions and needs, and work under the general laws, plus such special laws as they have adopted. The great advantage of that is that all temptation is taken away from the legislature to enact special laws in the interest of any political party, or for any particular reason, or for any special interest, because the enactment of the special law by the legislature will do no good until the municipality has accepted and adopted it by a referendum vote. We consider that of great importance, and there was some discussion in the committee and some objection in the beginning because we insisted on making it mandatory for each municipality to adopt the special laws before it could act on them. We were told that we were increasing the number of elections and increasing the expense of elections. Our conclusion was that the hardship caused by the number of elections and the expense of the elections was far outweighed by the general good done to the community for it to become educated on the special law, for a referendum vote means discussion; hence this was made mandatory.

The mere fact, as I tried to explain to you, that it is a limitation on the general assembly, shows that the incentive for an abuse of those powers is taken away from the general assembly.

Of course, you will readily see, as a municipality expands, it would naturally take advantage of certain special laws which would have been sought for by the larger municipalities, but which the smaller municipalities would not need; the elasticity enables the smaller municipality to act at any time under the special law and the referendum election had thereunder.

Section 3 gives municipalities such police, sanitary and other similar regulations as are not in conflict with general laws affecting the welfare of the state as a whole. I assume there is no disagreement in reference to the enactment of the "local police, sanitary and similar regulations." I understood some days ago that there was considerable dissatisfaction with the words "affecting the welfare of the state as a whole." In justice to myself, as chairman of the committee, because I had distinctly stated when I assumed that position—and the report was given to the newspapers, so as to give it the widest publicity—that so far as I could control, the wet and dry fight should not be put into the municipal government proposal, I wish to state that we were absolutely neutral, and I believed we had succeeded until my attention was called to that phrase, "affecting the welfare of the state as a whole." That phrase was put in at the very urgent request of one of the most radical home-rulers I ever met, namely, my colleague from Cincinnati, Mr. Starbuck Smith. He intends to leave a sick wife tomorrow morning to come to this Convention and explain his reasons for the use of those words, because I had called his attention to the necessity for so doing. Mr. Smith had repeatedly urged upon us that the limitation of the words "general laws," was most dangerous. Now, bear in mind that he is a radical homeruler. He believes in independent sovereignty. He was as radical as the Cleveland delegates, and that is saying a great deal, and he took this line of argument—how much

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merit there is in it, I do not know, but I do believe he is absolutely sincere: He stated that the general assembly might enact any number of laws that really fitted individual communities, and yet call them general laws, when as a matter of fact they would not be general laws in their application and effect, and he insisted upon those qualifying words going into this section 3. We made that concession the last evening, at the very last meeting held by our committee before instructions were given, or rather at the time instructions were given, to report out the proposal. I regret that he is not here to defend his position, but if he gets here tomorrow I am satisfied he will be able to do so.

In view of the dissatisfaction on the part of a certain element of the Convention to those words, and the insistence on the part of another element in the Convention that they should be there, it seems to me that the Convention may properly, and ought to, consider fully and carefully the merit of those words, and if there be anything "concealed in the woodpile," the Convention will know what to do. As chairman of the committee I do not feel justified in accepting their elimination as a voluntary act on my part, notwithstanding the fact, as I said, and as every member of the committee knows, they were inserted at the last meeting the committee held, when they instructed the chairman to report out the proposal, and use the words "local police, sanitary and other similar regulations, as are not in conflict with the general laws, affecting the welfare of the state as a whole." It was urged, and I believe properly, that it would in principle reverse the general law in the state on the subject, namely, that the law now presumes that no function not distinctly enumerated by the general assembly can be exercised by the municipality. This section, if I am correctly informed, would reverse that principle entirely. It would assume that all functions not specifically denied—local functions I refer to—could be exercised by the municipality, and, of course, that is the essence of home rule.

Section 4 confers power to acquire through purchase, lease or construction any and all public utilities, and the power is given to condemn for public use any existing private utility.

Section 5 covers the method of procedure under section 4. Of course it is inconceivable to imagine home rule without carrying with it the right of municipal ownership, and that without any regard whatsoever as to the individual opinions as to the advisability of municipal ownership, but home rule without the right of municipal ownership is the empty husk; the kernel has been removed.

Section 6 gives to the municipality the right to sell an amount of its surplus product or service in any public utility equal to fifty per cent of that supplied to the inhabitants of the municipality.

Now, we took a great deal of time in getting the correct phraseology for this section. The members will recall how every word was weighed, what its effect was in relation to what we had in mind, and it was found an absolute necessity in order to make municipal ownership feasible, because if you were going to stop a traction line at the city limits frequently you might as well have no traction line, but, to prevent that, the limit of fifty per cent excess product or service was determined

on, which seemed very reasonable. Of course, the question asked by Mr. Kramer as to how that fifty per cent would apply in a public utility like a telephone, would be a question for the courts to determine. The question of supplying water would be a very similar one. The question as to supplying fifty per cent of transportation might be and probably would be a question of interpretation. Would the unit be the number of miles occupied by the transportation service in the city, or would the unit be the horsepower generated? We recognize that these are things that must be left to the interpretation of the courts.

Section 7 gives the right to any municipality to adopt a charter, and I would ask you to bear in mind that no charter could grant or give one iota of power additional to that which the municipality would have under general and special laws without any charter. A charter might give the municipality a commission form, or any one of a dozen different forms of government, but it could not and does not give increased powers over those granted to any municipality not adopting a charter. The object was not to encourage charter government, but to give the city the right to exercise it if conditions justified.

Section 8 is the method of procedure under the charter. You will notice that throughout the proposal there is a great deal of what is called legislative enactment. This is absolutely necessary. We start out with the proposition that the municipality shall be given home rule. We did not want to curtail or dwarf or deform that cardinal principle in any manner by leaving to the legislature the right to make the form of procedure, for the legislature might be very slow about it and do any number of foolish things and therefore in the proposal itself are embodied those legislative features absolutely proper and essential for the rational carrying out of the scheme of government.

Section 9 provides the method of amendment to the charter, which, of course, is exactly the same as the method of adopting the charter.

Section 10 is something that is entirely new in American municipalities. There was not brought to my attention, nor do I believe to the attention of any member of the committee, a single instance of any American city having what we call "excess condemnation." It has been for fifty years one of the agencies of municipal government or power in London, Paris and Berlin. I have received from Mr. Herbert Swan, of New York City, who I believe is the leading authority in America on excess condemnation, the advance two or three hundred pages of his book on that subject, and I gave the committee the benefit of a resume of it. He showed by statistics from those great cities the large sums of money which the cities had made by reason of the use of excess condemnation. It ran up into the millions. I think London and Paris showed something like \$30,000,000 to 40,000,000 of profit in a period of fifty years by the use of excess condemnation. Broadly it is this: When a municipality finds it necessary to extend a street or acquire land for park purposes, it may also find it advisable to condemn and secure by purchase other property adjacent to or in the neighborhood of the proposed thoroughfare or park lands, which in the opinion of the municipal authorities will be likely

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to enhance very materially in value within a few years on account of the improvement contemplated. Of course there is danger of speculation in land on the part of the municipality to guard against which your committee attempted to make as reasonably difficult as it was reasonable to do, at the same time leaving it a practical working proposition by making the limitation of bonds for the payment of this "excess condemnation" conditioned upon certain things stated in the proposal, the limitation of bonds and the method of paying for the property.

Section 11. I call your attention to lines 95 to 98, which should have been a separate section. It has no bearing whatsoever upon the remainder of section 10, and it was an oversight on our part that we did not make it a separate section. Those lines revolutionize the existing laws in the state of Ohio on this subject. It was a matter of great concern to me, because some of the legal members of our committee were strongly opposed to the acceptance of the principle embodied in this section. So in order to get a clear understanding, and thinking it would be not only of interest to me, but of greater interest to the lawyers in the Convention, I went to my own attorney and asked him to write a short brief on the subject, and to furnish some leading authorities. I shall now read it to you because I think you will find it very interesting. I am now referring to the proposition on reversing the present law in the state of Ohio on the subject of appropriating private property for public uses. I want to say before reading this letter that I referred it to Judge Peck and Mr. Halfhill, whose opinions as lawyers I know will be acceptable, and they both approved so thoroughly of it, that I think I am justified in submitting it for your consideration:

Office of  
SIMEON W. JOHNSON  
Attorney-at Law  
Cincinnati

HON. GEORGE W. HARRIS,  
*Chairman of Committee on Municipal Government, Constitutional Convention, State House, Columbus, Ohio.*

DEAR SIR:—At your request I have given consideration to the following provision as adopted by your committee:

"Any municipality appropriating private property for a public improvement, may provide money therefor in part or in whole, by assessments on abutting property not in excess of the special benefits conferred upon such abutting property by the improvements."

The above provision radically changes the existing law on the subject in this state. Chamberlain v. City of Cleveland was decided by the supreme court of Ohio in 1878, 34 O. S. 551. That case involved the opening of a street and an assessment for the land ordered to be appropriated for that purpose.

In the language of the court in a later case, Dayton et al. v. Bauman, 66 O. S. 379, 394:

"The case of Chamberlain v. Cleveland was decided in the light of Cleveland v. Wick, 18 O. S. 303, and the question as to whether money could

be raised by assessments to pay for private property taken for public use was not raised and was not argued or decided but was conceded by counsel and assumed by the court."

The bar of the state, however, regarded the Chamberlain case as holding in effect that an assessment could be properly made against abutting property for the cost of appropriating the necessary land for opening a street, and many ordinances were passed making such assessment. This continued to be the course until 1902, when the case of Dayton et al. v. Bauman, 66 O. S. 397, was decided. In that case it was held:

"The limitation of section 19 of article I of the constitution on section 6 of article XIII as to assessment goes to the full extent of prohibiting the raising of money directly or indirectly by assessment to pay compensation damages or costs for lands appropriated by the public for public use."

Since 1902 in all municipal corporations the public has paid for the land appropriated for a public use, such as streets, etc. Is the amendment proposed, however, in violation of the fourteenth amendment to the federal constitution providing that no state shall deprive any person of property without due process of law or deny to any person within its jurisdiction the equal protection of the laws? In other words, to adopt the reasoning of our supreme court in the Bauman case heretofore cited, would a taking of private property for a public use, such as streets, confer any special benefits whatever upon the owners of abutting property? If not, then no assessment could be enforced. If no benefits were conferred then the levying an assessment for such an improvement upon abutting property would be the taking or the confiscation of such property to the extent of such assessment.

It was so held in *Norwood v. Baker*, 172 U. S. 269, decided in 1898, wherein the supreme court of the United States said:

"The exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking under the guise of taxation of private property for public use without compensation."

The decision in the Baker suit led to the bringing in the federal tribunals of hosts of assessment suits invoking the decisions of these courts on all possible phases of assessment law.

In *French v. Barber Asphalt Paving Co.*, 181 U. S. 321, 344, the United States supreme court in the year 1900 explained the Baker case as follows:

"This array of authority was confronted in the courts below with the decision of this court in the case of *Norwood v. Baker*, 172 U. S. 269, which was claimed to overrule our previous cases, and to establish the principle that the cost of a local improvement cannot be assessed against abutting property according to frontage unless the law under which the improvement is made, provides

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for a preliminary hearing as to the benefit to be derived by the property to be assessed.

But we agree with the supreme court of Missouri in its view that such is not the necessary legal import of the decision in *Norwood v. Baker*. That was a case where by a village ordinance, apparently aimed at a single person, a portion of whose property was condemned for a street, the entire cost of opening the street, including not only the full amount paid for the strip condemned, but the cost and expenses of the condemnation proceedings, was thrown upon the abutting property of the person whose land was condemned. This appeared both in the court below and to a majority of the judges of this court to be an abuse of the law, an act of confiscation and not a valid exercise of the taxing power. This court, however, did not affirm the decree of the trial court awarding a perpetual injunction against the making and collection of any special assessment upon Mrs. Baker's property, but said:

'It should be observed that the decree did not relieve the abutting property from any liability for such amount as could be properly assessed against it. Its legal effect, as we now adjudge, was only to prevent the enforcement of the particular assessment in question. It left the village in its discretion to take such steps as were within its power to take either under existing statutes or under any authority that might thereafter be conferred upon it, to make a new assessment upon the plaintiff's abutting property for so much of the expense of the opening of the street as was found upon due and proper inquiry to be equal to the special benefits accruing to the property. By the decree rendered the court avoided the performance of functions appertaining to an assessing tribunal or body, and left the subject under the control of the local authorities designated by the state'.

In the same year and in the same volume of reports the supreme court of the United States passed upon many assessment cases. Some of them are as follows: *White v. Davidson*, 181 U. S. 371; *Tonawanda v. Lyon*, 181 U. S. 389; *Webster v. Fargo*, 181 U. S. 394; *Cass Farming Co. v. Detroit*, 181 U. S. 396; *Shumate v. Heman*, 181 U. S. 402.

In *White v. Davidson*, supra, the federal supreme court held that no provision of the federal constitution was violated by the making of an assessment by the District of Columbia for the opening and extension of a street, which assessment was made under an act of Congress, providing that of the amount found due and awarded as damages for and in respect of the land condemned for the opening of said streets, not less than one-half thereof should be assessed by the jury in said proceedings against real estate situated and lying on each side of the extension of said streets, and also on the adjacent real estate which would be benefited by the opening of the same.

It is my opinion that the proposed provision is

not in any way in contravention of the constitution of the United States and would be sustained by federal courts. Should there not, however, be a limitation upon the amount of the assessment authorized to be made for the appropriation of private property to a public improvement? It may be urged that such a limitation should be left to the legislature and not made the subject of a constitutional provision; but in a practical making of assessments it has been found that legislative enactments limiting assessments to special benefits have been in effect ignored by the action of municipal legislative bodies in placing the entire cost of the appropriation upon the abutting property by the front foot, although the assessing ordinances recite that the assessments have been made by benefits.

As our supreme court now holds that the taking by appropriation of private property for a public use confers a public and not a private benefit, it would seem that the clause in question in effect declares that such taking of private property confers a private benefit. This may be true in view of the fact that the making of the improvement will enhance the value of the abutting property, but there can be no doubt that the public in the long run gets an equal benefit from such improvement.

The public, therefore, should pay fifty per cent of the cost of the appropriation, and I would therefore suggest an amendment covering this point of view. I would also suggest that the assessment for the appropriation of private property should not be confined to the abutting property alone, but may be made upon the property adjacent thereto, or in the immediate neighborhood of the public improvement, giving authority to the municipal authorities to levy such assessments upon the abutting, adjacent and other property in the district affected by the improvement, in such proportion as the municipal authorities may, in their discretion, determine.

Very respectfully,

SIMEON M. JOHNSON.

Mr. WATSON: Will the gentleman yield for a motion to recess?

Mr. HARRIS, of Hamilton: It will not take me more than ten minutes to finish.

Section 11, on the method of raising funds to pay for public utilities, has created a great deal of discussion. I believe that the method which your committee has suggested will be found most practicable and equitable, and at the same time the greatest possible safeguard to prevent extravagance and debauchery in the construction and leasing or purchasing of public utilities. In my judgment it gives the municipality all the power it ought to have. It gives it no more power than it should have; and at the same time the limitations which your committee have put upon it are to greatest possible safeguards to prevent the squandering of public funds in the reckless building or purchasing of public utilities. Starting with this theory, it would necessarily follow that the general powers of taxation are held firmly under



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the control of the state. The state has an interest in seeing that the municipalities should not become bankrupt, because the credit of every other municipality might be and probably would be affected by the bankruptcy of any large municipality. So the state says, "You may build, may buy public utilities, but our limitations are at present two and a half per cent of the tax duplicate without a referendum vote, and two and a half per cent additional by a referendum vote." Now, the moment that you have reached the maximum limit of five per cent of the tax duplicate for general bonds unless you can persuade the general assembly to increase the limit, then your credit must be based on the value of the utility which you propose to construct or purchase, and every buyer is cautioned that those special bonds issued against that utility have for security only that utility and by a franchise limited to twenty years only. So it seems to us that it was a most wise provision to make this limitation, and it is all that the municipalities have a right to expect or demand. If the municipality is foolish enough to use up all of its credit by general bonds for the purchase or construction of public utilities, and it has nothing left for the building of new sewers, the building of new streets, or the purchasing of parks, etc., then the municipality must suffer for its indiscretion in not making due allowance for these other necessities that every municipality demands.

The objections I heard raised while Mr. Knight was on the floor, did not appeal to me as sound, in either public morals or in sound finance.

Mr. LAMPSON: Will you yield for a question?

Mr. HARRIS, of Hamilton: Will you wait a few minutes until I get through? Then I shall be glad to answer any questions. My remaining notes are very few, and I want to get my views as chairman of the committee on Municipal Government before the Convention.

Section 12 gives authority to the general assembly to limit the power of any municipality to levy taxes and incur debts, and makes provisions for an examination of the vouchers, books and accounts of all municipal departments and of public undertakings.

You can see the wisdom and the necessity of that. As the law is today the limit of taxation allowed to a municipality is fifteen mills by a referendum vote. You can readily see that the municipality must not be given the power to levy fifteen mills, because in that fifteen mills there must be provisions for a school levy, a county levy and a state levy; as a matter of fact, the same provisions that practically exist now are really incorporated by us, and it will limit the power of the municipality to levy taxes and incur debt, which in my judgment is proper. There is also provision for an examination of vouchers, books and accounts of all municipalities and public undertakings.

Of course your committee was met by the demand of the state auditor that the state should have practically supreme authority, and the demand of the municipal authorities on the other hand for a limitation of this power. I received four or five letters from very able men, even the mayor of my own city, stating we had given the state too much control on this subject, but we did not waver, we did not change what was originally suggested by the League of Ohio Municipalities, be-

cause we thought it struck a happy balance. So I call your attention to the fact how reasonably conservative we have been. There has been no attempt to encourage debauchery and riot in public funds. There have been the greatest possible safeguards thrown around all of the matters that are of the gravest concern to the people of the state.

In section 13 elections are to be conducted under the supervision of the election officials as prescribed by law. The state controls with a firm hand the conduct of elections. The whole proposition might be summarized in the very incisive language used, I think by the reporter for the Cleveland Leader, who said that the principal of our municipal proposal could be stated thus: Under the old order of things that govern our municipalities now the general assembly has said "Thou shalt not do anything unless we give you specific authority to do it. Under the present scheme the general assembly says "Thou mayest." That is the sum total and practically the meat of this whole proposal.

Before I surrender the floor I shall offer an amendment in lines 97 and 98 carrying out the suggestion made by my attorney:

Strike out the word "property" in line 97, insert a comma and add the following: "adjacent and other property in the district benefited." In line 98 add: "Said assessments, however, upon all of the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per cent of the cost of such appropriation."

The reason for this is based on public morality. I will say that I asked Mayor Baker, when he urged us to incorporate this principle in our proposal, if he did not think it wise and proper and just that in revolutionizing the law in the state of Ohio on this subject of appropriating private property for public use, we ought not to limit the assessment to fifty per cent of the cost of the improvement. My theory was that the municipality has behind it all power. It has its local officials. So the great burden always falls upon the individual owner whose property is appropriated, and he must prove at great expense to himself that the benefit as stated by the municipal authorities is less than they claim. And it seems to me that, as the state of Ohio says now—remember that the present law is that the sum total of all assessments of whatsoever kind for streets and sewers in the period of five years shall not exceed thirty-three and a third per cent of the value of the property—it seems to me that when we say in the constitution that a municipality may appropriate the private individual's property for public use, and we limit the assessments that may be made for the improvement to not exceeding fifty per cent of the cost of the improvement we are very just and very fair. Before I surrender the floor I would like to answer the gentleman from Asthabula [Mr. LAMPSON].

Mr. LAMPSON: Did you not think it would be quite as wise to require the municipality to provide a sinking fund to take care of the utility bonds for which the municipality is not responsible as it is to require the state to provide a sinking fund to take care of the road bonds for which the state is responsible?

Mr. HARRIS, of Hamilton: I do not think there is the slightest analogy between the two cases, and I

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will show you why I do not think so. Roads are a subject of expense, always a subject of expense for repairing and maintaining them.

The new roads constructed this year at a cost of \$10,000,000 require next year possibly an outlay of \$100,000, or a quarter of a million of dollars to keep them in order.

A public utility is an income-bearing asset, and so recognized today by the laws of the state of Ohio to such an extent that they specifically exempt the bonds of an income-bearing utility from the limit of indebtedness. Why should a sinking fund be established by a municipality, thereby enhancing the cost of the service or the product to the people, on the theory of the sinking fund, that it is to take care of the bonds, and therefore pay all the debts of cost of construction of that municipal utility—why should the people living in Cincinnati, say between the years 1912 and 1932, pay for the entire cost of construction, and turn over to the people who live in 1932 an asset which brings to the municipality an annual income? Where is the justice in it?

Mr. LAMPSON: May not such a public utility become a burden instead of a profit-earning asset?

Mr. HARRIS, of Hamilton: It may, but the bankers who buy the bonds will determine whether the proposition in their judgment is a safe one. They are doing that right along.

Mr. LAMPSON: Right there, one more question: Do you think that the federal government or any state government would accept that class of bonds as security for its funds deposited in bank?

Mr. HARRIS, of Hamilton: The federal government, under the Vreeland act, is willing to accept bonds of any railroad company with anything like a history. Why, under the Vreeland act, the federal government will accept in an emergency the oddest kind of bonds as security for public funds.

Mr. LAMPSON: You would not think that was a good acceptance?

Mr. HARRIS, of Hamilton: I would not, and that is the reason I am very much opposed to the Vreeland act.

Mr. DOTY: I desire to offer an amendment upon the same point. The reason I would like to have it offered tonight is to have it go along with the one that is pending.

The amendment was read as follows:

Strike out the amendment and insert:

In line 96, strike out "the abutting", and insert "benefited".

In line 97, strike out "abutting".

Mr. HARRIS, of Hamilton: I call attention to the fact that I have not surrendered the floor. I am holding it only in the event any person wishes to ask a question. If anybody desires to ask a question I am willing to answer.

Mr. WATSON: Does the gentleman yield the floor for a motion to recess?

Mr. HARRIS, of Hamilton: Yes, sir.

Mr. WATSON: I move that we recess until tomorrow morning at ten o'clock.

Mr. DOTY: Let us get these amendments in shape so that they can be printed during adjournment.

The PRESIDENT PRO TEM [Mr. STOKES]: Does the gentleman from Guernsey yield?

Mr. WATSON: Yes; I withdraw the motion.

Mr. HARRIS, of Hamilton: I offer the following amendment [the amendment heretofore offered by Mr. Harris, of Hamilton, which had been reduced to writing]:

The amendment was read as follows:

Strike out the word "property" in line 97, and insert a comma and insert the following:

"adjacent and other property in the district benefited."

In line 98 add: "Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per cent of the cost of such appropriation."

Mr. DOTY: I offer the amendment which I just sent up.

The amendment of the delegate from Cuyahoga [Mr. DOTY] was again read, as heretofore.

Mr. ANDERSON: So that we can get it in, I offer an amendment now.

The amendment was read as follows:

In lines 18, 21 and in lines 49 and 50 strike out the words "affecting the welfare of the state as a whole."

At the end of line 22 change the period to a semi-colon and insert the following: "provided, however, that this article shall not be construed to confer any power upon municipalities to regulate, or prohibit, the traffic in intoxicating liquors."

Mr. WATSON: Now I insist on the motion to recess.

The PRESIDENT PRO TEM [Mr. STOKES]: The delegate from Clermont is recognized.

Mr. DUNN: I would like to bid you a very kind farewell in the matter of proposals. I have one I would like to offer.

Mr. DOTY: There is a matter pending, but I will move that further consideration of Proposal No. 272 be postponed, and that it be placed at the head of the calendar, so that the gentleman from Clermont [Mr. DUNN] can introduce his proposal.

By unanimous consent the following proposals were introduced and read the first time.

Proposal No. 338—Mr. Dunn. To submit an amendment to article I, section 5, of the constitution.—Relative to trial by jury.

Proposal No. 339—Mr. Dunn. To submit an amendment to article I, of the constitution.—Relative to the silence of the defendant in murder in the first degree.

Leave of absence for Monday and Tuesday was granted to Mr. Norris.

On motion of Mr. Watson the Convention adjourned until 10 o'clock a. m. tomorrow.