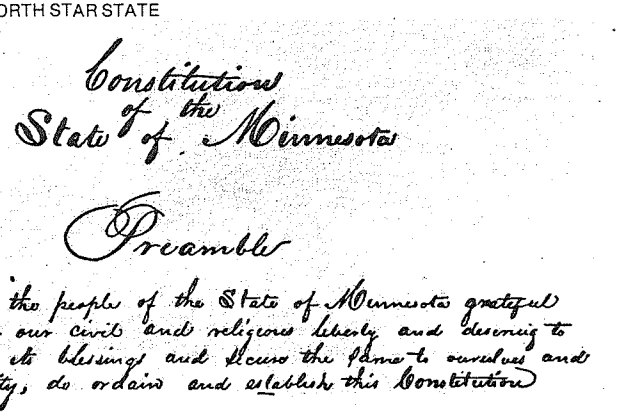
Constitution
State of the Minnesota

Preamble

We the people of the State of Minnesota grateful to God for our civil and religious liberty and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution

Minnesota Historical Society photo

AMENDING OUR STATE CONSTITUTION:
Continuity Through Ordered Change
by Betty Kane

Editor's note: *Five proposed amendments to the Minnesota constitution appeared on the ballot in 1980. In this article, Betty Kane, a member of the 1973 Minnesota Constitutional Study Commission and author of a 1961 League of Women Voters study on the state constitutional amending process, provides a perspective on the Minnesota constitution and its amending process. Ms. Kane presents an historical overview of successful and unsuccessful attempts to change the state constitution, and discusses the evolution of the amending process in Minnesota. She considers the problem of including in the constitutional process both stability and the flexibility to adapt to a changing society.*

An essential part of any constitution is the arrangement it makes for its own improvement.

Even a document like our federal constitution, which is so basic and flexible as to be "self-revising" by statutory change and legal interpretation, must make provision for meeting extraordinary and unforeseen needs.

Constitution-makers are faced with a paradox when they determine the process for change. The provisions must be flexible enough to adapt to changing conditions, but a constitution that is too easily changed invites manipulation by pressure groups, thus becoming unrepresentative.

Two avenues of change are provided by our state constitutions. Citizens may be elected to a convention to replace or refine the old document. Thirty-two states have replaced their original charters, anywhere from one to eleven times. Or the legislature may submit proposed constitutional amendments to the people at election time. All states continually use this latter amending process.

Some states make it easy both to call a convention and to pass amendments. Others make one process easy, the other difficult. There are countless variations.

The First Forty Years of Change

In Minnesota both methods are now difficult, but this was not always so for the amending article. To quote William Anderson and Albert Lobb's definitive study of our constitution, *A History of the Constitution of Minnesota,* University of Minnesota, 1921:

> From 1858 to 1898 Minnesota had, of all the states, the simplest process for amending its constitution. It was easy to get amendments proposed and easy to get them ratified.

Just how Minnesota's constitution was to be changed formed the "Great Compromise" of the 1857 conventions *(see page 35).* In Minnesota the issue of slavery, which pervaded every aspect of American life in these pre-Civil War days, took the specific form of Negro suffrage. The Republican delegates, described as more idealistic and more radical than their Democratic counterparts, were devoted to two great moral causes — prohibition and abolition.

To gain these ends in the near future, the Republicans accepted almost every article of the Democratic document in exchange for one concession: the new constitution would be easy to amend.

While the Republican members of the Compromise Committee (which assembled the final constitution from the two documents drawn up by the conventions of the two parties) were forced to accept one article after another in substantially the form proposed by the Democrats, they remained confident that the Republican Party would soon carry the state. At that time they would need an easy amending procedure to remake the document into one conforming more closely to the Republican views. This easy amendment method was: (1) proposal by a simple majority of both houses at one session, and (2) ratification by a simple majority of voters at the next election.

By 1896, sixty-six amendments had been submitted to the people. This large number is not surprising. Many faults both of commission and omission were bound to show up in the first years after adoption. Voters were largely agreeable to changes suggested by the legislature, approving almost three-quarters (73%).

The articles receiving most amendment proposals were the section on the legislature (seventeen amendments) and the articles on finances and corporations (nineteen). Since voters are usually mistrustful both of granting more power to the legislature and of financial tinkering, these amendments had a harder time than most. Only 47% of amendments to the legislative article and 63% of those to the finance and corporations sections were accepted.

The length of time allotted to the legislature for its duties has been a perennial question in Minnesota as elsewhere. The original constitution called for yearly sessions, with no limit on time. The legislature suggested a sixty day limit in 1860, which was overwhelmingly approved. In 1873, voters said "No" to a biennial session of seventy days and to lengthened terms (from one to two years for House members; from two to four years for senators). Four years later, the request for seventy days was changed to sixty and passed.

By 1881, lawmakers were finding sixty days every other year too restrictive and asked that all constitutional limits be removed. Voters answered with a firm "No". Seven years later, voters agreed to a ninety day session, providing that no new bills be introduced in the last twenty days, except for important matters requested by the governor, who was also given the power to veto items in appropriation bills.

Both citizens and legislators were troubled by the enormous volume of special bills pouring out of each session, more numerous and bulky than the general statutes. A restrictive amendment of 1881 quickly proved ineffective; a far-reaching restriction was adopted a year later. This reform led to a new problem. Local governments could no longer look to the legislature to help them out of difficulties. The final reform was home rule. Under amendments of 1896 and 1898 cities and villages were enabled to adopt and to change their own charters.

Unlike the legislative articles, provisions on the executive and the judiciary proved sufficient to these early years; changes were few and unimportant.

The frequency of constitutional proposals on state finances and corporations in these first forty years was due to restrictive constitutional language — a situation not soon to change.

The frequent changes to the elective franchise article were like a barometer of social climate. In 1865 and 1867 voters narrowly refused to grant Negro suffrage. They assented in 1868, also by a narrow margin, reflecting the slow change in public opinion, even after the end of the Civil War.

In 1875 women, too, came in for some slight enfranchisement when male voters decided that women were qualified to vote in school elections. Two years later, women were judged not capable of participating in local-option liquor questions. Twenty years later (1897) an amendment allowed women to vote for library boards, and even to serve on them.

For almost forty years aliens who had declared their intention to become citizens voted under the same terms as citizens (even though this provision had been roundly criticized in Congress when it reluctantly approved the state's constitution). An 1898 amendment withdrawing the privilege passed by a low vote and, according to Anderson and Lobb *(page 180),* disenfranchised over 84,000 previous voters.

The legislature of 1895 found it necessary to ask the voters to pass on six important constitutional amendments, one referendum on transfer of income from the internal improvement land fund to the road and bridge fund, and a second referendum on taxation of railroad lands. This was the heaviest burden of decisions yet put to Minnesota voters. Legislators agreed that, under these circumstances, it might be better to start afresh with a new document. Consequently, added to this long ballot was the question: "Shall a convention be called to frame a new document?"

This is the only time in Minnesota history that the question of a convention has gone to the people. More voters said "Yes" than "No", but on this question the constitution required a majority vote of all electors, which was not achieved. Anderson and Lobb *(page 145)* comment on the unfortunate timing of this important decision: 1896 was a presidential year and eight other difficult questions demanded attention.

Amending Made Difficult

Having been stymied in their attempt to hold down amendment changes by framing an entirely new document, the legislature now went to the other extreme of remedy. In the session following defeat of the convention call, the legislature proposed a change which would make the amendment process less accessible — almost prohibitively so. To pass thereafter, an amendment would need not only "Yes" votes from a majority of those voting on the amendment, but "Yes" votes from a majority of all those going to the polls at that election. So drastic a change seems inexplicable. After all, voters had not recklessly adopted any and all suggested changes, but had shown a great deal of discrimination.

According to Anderson and Lobb, the motivation was not entirely a disinterested attempt to improve Minnesota's constitutional machinery. "It has been said that the liquor interests promoted this change to prevent the adoption of an amendment prohibiting the liquor traffic" *(page 147)*. Ironically, the "brewers' amendment," as it came to be known, was passed by only 28% of those voting in the election. On its own terms the amendment would have been disastrously defeated.

Effect of Increased Amending Majority

The effect of the increased amending majority was dramatic. From 1858 to 1898 the voters accepted almost three-fourths of the submitted changes (72.9%). In the next half century, the acceptance rate dropped to less than one-third (32.5%).

Another striking observation about the more difficult amending process is this: Once the legislature decided that a constitutional provision (or lack of constitutional authority) stood in the way of solving an important state problem, the matter was not dropped. A defeated amendment was submitted over and over again until the public had been educated to the point of acceptance.

Usually the question made a prompt reappearance on the ballot. In 1930 the legislature requested permission to exchange state public lands for federal public lands. Although 378,716 voters said "Yes", and 174,231 "No", the approving voters were only 46% of the entire electorate. Subsequent submissions in 1932, 1934 and 1936 were unsuccessful. On the fifth try in 1938, a 53% majority was achieved.

Time took care of some failed attempts. Recall of all appointed and elected officials, on the 1914 ballot during the Progressive Era, was forgotten with a change in public mood. A defeated prohibition amendment (by a loss of 688) was soon followed by the federal amendment. Perhaps the imposition of a tax on dogs, proceeds of which would compensate farmers for animals injured by roving pets (1914) seemed, on sober second thought, not a truly constitutional matter.

On reforestation the legislature was ahead of a public not yet awakened to ecological concerns. Five quite different approaches were defeated between 1910 and 1924. A second amendment of 1924, aimed at preventing forest fires, passed; and in 1926 the legislature was given wide options to enact reforestation laws for both private and public lands.

A Study Commission Recommends A Convention

So, under the more difficult amending process, some changes were made in the constitution. However, for some observers the question became the costs: in legislative time and energy diverted from other important matters; in setting up the election machinery; in educating the voters; in lost efficiency until a reform finally became part of state law.

In 1947, the 90th birthday of Minnesota's constitutional convention, the legislature created the Minnesota Constitutional Commission (MCC), composed of eight senators, eight representatives, a member of the Supreme Court, a member of the administrative branch, and three citizens. Their charge was to study the constitution in "relation to political, economic and social changes which have occurred and which may occur".

The 1948 MCC Report considerably exceeded the rather modest mandate to recommend amendments, "if any", necessary to meet changing times. It recommended major changes in thirty-four sections, minor changes in another seventy-eight, and the addition of six new sections. The MCC recommended, unanimously, that these changes be made by a constitutional convention.

For several sessions, the question of calling a constitutional convention was a hard-fought issue. The chief factors in failure were the difficult requirement of a two-thirds vote of each house of the legislature; the fact that two of the senators to sign the MCC Report became adamant foes of the convention idea; and fear among rural legislators that the convention would force reapportionment (neglected since 1913), thus endangering their legislative control.

An Era of Amending Success

Pressured for constitutional reform both from within and from without, legislative leaders began to put into effect many recommendations of the MCC by framing significant and far-reaching amendments, some of them reshaping entire articles or major portions thereof. By 1959 G. Theodore Mitau, professor of political science at Macalester College, in a "ten-year's perspective" view of the effect of the MCC found a substantially improved document. He pointed out that entire sentences in subsequent amendments could be traced back to the language of the MCC Report. *(Minnesota Law Review 44, p. 461-83, 1959).*

Mitau concluded that both the executive and judiciary articles had been enormously strengthened. The local government article had been much improved by a 1958 amendment regulating special legislation and strengthening home rule. Taxation, finance and highway provisons had been improved.

Further amendments in the 1960's and early 1970's clarified succession to the governorship; provided for joint election of the governor and lieutenant governor; approved flexible legislative sessions; further reorganized the judiciary; and lowered the voter age.

There were two factors in this good record: legislative focus on amendment submission and intense citizen interest in passage. Persons and groups who had earlier favored the idea of one-step improvement by a constitutional convention now campaigned to achieve piecemeal improvement by amendment. The League of Women Voters, political parties, and bipartisan citizen committees devoted money, time, and public relations skill in the battle to overcome the obstacle of Minnesota's amending majority.

All the techniques we associate with campaigns for political office were employed, and with dramatic results. Of twelve amendments submitted to the voters in the 1960's, nine were accepted (75%).

A Second Commission Takes a Look

In 1971 Governor Wendell Anderson suggested that the legislature establish a second official commission to undertake an intensive study of our constitution. The legislature responded by setting up a twenty-one member Minnesota Constitutional Study Commission (MCSC), which was to make recommendations to the 1973 session.

The MCSC contained six members of the Senate, six of the House, a Supreme Court justice, and eight gubernatorial appointees. Former governors Elmer L. Andersen and Karl Rolvaag served as chairman and vice-chairman respectively. The six other citizen appointees included two members of the University of Minnesota Law School

faculty, a labor representative, a member of the governor's staff, and two members of the League of Women Voters long engaged in that organization's drive for constitutional improvement.

In its final report, the MCSC acknowledged that only a convention could produce a "brief, fundamental and organic" document, meeting the state's needs in a single election; but found little evidence of the intense interest essential to a successful convention. It also pointed to the significant improvements in Minnesota's constitutional machinery since the MCC Report of 1948. The commission did find need, however, for extensive changes in the legislative, executive, and judicial articles, the elective franchise provision, the amending process, and the transportation article.

Needed changes would be best made through "phased, comprehensive revision" or a "series of separate, but coordinated amendments planned for submission over several elections." The commission recommended creation of another body to study areas which the MCSC had not had time to review, and to recommend "the second and subsequent phases of revision."

The MCSC made two specific recommendations for amendments necessary to enable the comprehensive staged changes it envisioned. One was a revised constitutional format, reorganizing related sections, deleting obsolete provisions, and clarifying the language, all without altering the substance. The other key to the plan was a change in the amending process which "would open the door to thorough-going reform by the amendment route".

The voters of 1974 accepted the amendment revising the format of the constitution. They narrowly rejected the so-called "gateway amendment" to ease the amending process. Although 57.4 percent of those voting favored the change, the result was 9,330 votes (1.4%) short of the majority of electors.

Variables Affecting Amendments

Since 1900, 128 amendments have been submitted to the voters; 54 passed and 74 failed. Of the 74 rejected amendments, 61 would have passed under the original amending majority of the constitution; 12 would have failed. (Figures are not available for a rejected amendment of 1900).

Generally speaking, complete or extensive revisions of an entire article have had a good success rate: trunk highway amendment of 1920; reforestation provisions of 1926; airports amendment of 1944; judicial reforms of 1954 and 1972; highway reorganization of 1956; home rule amendment of 1958; school fund changes of 1962, and allowance of flexible, legislative sessions of 1972.

There is no discernible difference between the fate of amendments presented at presidential elections and those at which only state officials are elected. The number of amendments on the ballot has, since 1900, had a bearing on acceptance/rejection ratios. Approval percentages for two to four ballot questions are much higher than for five to eleven (that top number being submitted in 1914, with a subsequent severe reproach from Governor Hammond). Oddly enough, of the seven amendments submitted alone on the ballot, six failed.

The Future of the Amending Process

Can Minnesota hope to keep its governmental machinery in good working order if its recent amending history keeps on repeating itself? In 1976, one amendment was submitted and defeated. In 1978 none were submitted. In 1980 four of five amendments failed.

The MCSC was only the last of many individuals and groups to recommend that Minnesota reexamine the procedure by which it adopts constitutional change. Looking at recent efforts across the country to update old documents, the Commission noted:

> Many states, facing up to the need for thorough-going revision of old constitutions, have encountered their first opposition in the revising sections of these very documents. As the first step to reform, they have had to amend the revising article.

In considering whether Minnesota's amending process needs change, it is instructive to look at the various phases in amendment adoption in the light of (1) what other states do; (2) what different authorities and official bodies have recommended.

Submission of Amendments — Here Minnesota is very permissive. Although eighteen other states also require only a majority vote of the legislature to submit an amendment to the people, eight of these require this vote in more than one session. A two-thirds vote of the legislature is required in seventeen states; three-fifths in nine; a variation, such as, two-thirds in one session or a majority in two sessions, in six states.

The MCC report of 1948 recommended a two-thirds vote of both houses to place an amendment on the ballot. The previously cited article by Dr. Mitau favored the same majority: "While obviously slowing down the rate of submission, such a formula would enhance submitted amendments' chances with the voting public." However, most members of the MCSC felt that "an extraordinary legislative majority for submission limits amendments to those with greatest support but also weakens quality" because of the need to please many legislative viewpoints.

Passage by More Than One Session — This safeguard against facile constitutional change has not yet been proposed for Minnesota. However, it would certainly guard against pressure group manipulation of an easier amending process by giving opponents ample time to mobilize. Eight states in which amendments are submitted by a simple legislative majority require a vote in two sessions.

Submission of Amendments by Initiative — The MCC recommended against initiated amendments. So did the MCSC except for "matters affecting the structure of the legislature", a change which was made in Illinois on the theory that legislators are naturally reluctant to propose changes adversely affecting their status quo.

Submission of Amendments at a Special Election — Both the MCC and the MCSC recommended Minnesota join the many states which allow badly needed amendments to be voted on at special elections. The latter commission emphasized that it was "not encouraging" such a practice, "only providing for the contingency in which a time factor might be critical". The MCC recommended that such a special election not be held within thirty days of a general election; the MCSC recommended that a two-thirds majority of the legislature be required to call such an election.

Majority of Voters Required for Ratification — In requiring "Yes" votes from a majority of those voting at the election, Minnesota now stands in the sole company of Wyoming and Tennessee (where a limited constitutional convention of 1976 made several changes hitherto not accomplished). At the time of the Anderson and Lobb study (1920) ten states had required this majority.

The MCC recommended that amendments require only a majority of all those who vote on them:

> This change would restore a provision of the original constitution, and it takes account of the fact that, on the average, one-third of the voters at a general election fail to vote on constitutional amendments, thus in effect defeating such amendments by inaction.

All of the persons and organizations testifying to the MCSC favored a change from the present majority for amendment approval and the MCSC recommended that Minnesota adopt an alternative method: either the present majority at 50% of those voting or 55% of those voting on the measure.

Applying the latter ratification majority — 55% of all votes cast on the proposal — to the seventy-four amendments rejected since 1900 shows that fifty-four would have passed, twenty not.

Constitution-makers are indeed faced with a paradox when they determine the process for change. Subsequent generations, including ours, face a similar paradox: Can our state's constitution be adapted to serve new times and solve new issues in a manner that provides for both continuity and change?