

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Of course, Utah did not adopt this plan until 1967, so there has been no legal challenge to the constitutionality of that provision. Is that not correct?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Entirely correct.

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: And further, as you say, it might be improbable, but possible that a governor might fail to act, but at the same time, using that logic, would it not be improbable but possible that a nominating commission might not act in the allotted time?

THE CHAIRMAN: Delegate Mudd?

DELEGATE MUDD: Yes.

THE CHAIRMAN: Had you finished your question, Delegate Mitchell?

DELEGATE MITCHELL: No, sir.

THE CHAIRMAN: Proceed, Delegate Mitchell.

DELEGATE MITCHELL: Why then did the Committee not provide for such a possibility on the part of the nominating commission?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Well, for the simple reason that we feel the possibility of a nominating commission such as we propose, consisting of several people not acting in the premises, is much more remote than the possibility of the governor, an individual, failing to act.

THE CHAIRMAN: Delegate Mitchell, do you have a further question?

DELEGATE MITCHELL: And therefore, you considered using this method, having the judge select and appoint, as an alternative?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: No. The judge could not select. The nominating commission selects. The judge appoints, and then only in the event the governor fails to appoint, as we mandate in the constitution that he shall do. He shall fill the vacancy; that is the provision of line 1 of section 5.14.

THE CHAIRMAN: Are there any further questions, Delegate Mitchell?

DELEGATE MITCHELL: Mr. President, I have no further questions, but may I make a comment at this point?

THE CHAIRMAN: Yes. You may proceed.

DELEGATE MITCHELL: Prior mention has been made here in the Convention of Judge Robert B. Watts, who came on the floor after the Convention had adjourned, and Judge Watts authorized me to say to the Convention that he and a number of judges are opposed to having this responsibility thrust upon them.

After I had read the draft of the Committee recommendation with regard to 5.14, I questioned a number of other judges, and they felt that this was not a judicial responsibility, and they would rather not have this obligation made a constitutional requirement.

THE CHAIRMAN: Does any other delegate desire to speak in opposition to the amendment?

*(There was no response.)*

THE CHAIRMAN: Does any other delegate desire to speak in favor?

*(There was no response.)*

THE CHAIRMAN: Are you ready for the question — I am sorry. Delegate Bamberger?

DELEGATE BAMBERGER: Will the Chairman yield to a question?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Yes, Mr. Chairman.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: If the language of the Committee's proposal remained mandatory, that is, that the governor shall fill the vacancy, and if the additional language proposed by the amendment, which puts upon the governor a duty to perform that act within the limited period of time were in the constitution, would that not be enforceable by a court; and if that is so, then do we not create some danger that a governor — though I can't imagine the circumstances in which a governor would be reluctant to exercise the power of appointment — would have an out were he to get a list he did not like; might he not in a moment of pique be able to say, "well, I will let that judge over at the Court of Appeals play with this mess. I will not make the appointment from this list."