

THE CHAIRMAN: Delegate Cardin.

DELEGATE CARDIN: Could something of this nature be solved if that should occur, subsequently by the General Assembly?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: I have just been advised by my constitutional lawyers that it could not be.

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

Does any delegate desire to speak in opposition? Delegate Bamberger.

DELEGATE BAMBERGER: Mr. Chairman, ladies and gentlemen of the Convention, it is hard to speak against this amendment but I am afraid that you are in the hands of the lawyers, and worse than that, you are in the hands of the tax lawyers, and we are going to dot i's we have already dotted and cross t's we have already crossed.

I suggest to Chairman Mudd that the answer to Delegate Cardin's question lies in the next section, 5.14; if what we are concerned about is that a commission sends to the governor the minimum number, three names, and it turns out that they looked in the wrong telephone book and put on there somebody who did not reside in a proper county, or that one of the members of that commission died, then the list which they sent would not be a list of a minimum of three as is required by section 5.14. It does not take a statute and it does not take Amendment No. 27 to empower the commission to perform its duty under 5.14, which is to supply to the governor the list of a minimum of three, at least alive, and fairly literate people for appointment to the bench.

As I say, I think it is hard to speak against the amendment, but if we are going to spend our time here trying to guard against every possible contingency, guard against not just possibilities but even against probabilities, we are going to be here a long time, and we are going to produce a constitution which will be longer than the one we have now.

I suggest that we vote against the amendment.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the amendment? The Chair recognizes Delegate Scanlan to speak in opposition.

DELEGATE SCANLAN: I am sorry, I am somewhat embarrassed. Delegate Bamberger has stolen my speech.

THE CHAIRMAN: Does any other delegate desire to speak? Delegate Schneider?

DELEGATE SCHNEIDER: Mr. Chairman, I do not think there is any real problem here for the reasons which were pointed out earlier; that we have a question of what is sufficiency and who is to determine sufficiency and also because the list is supposed to be made up of the people most qualified and eligible to be a judge, so if there are only one or two left after somebody on the list dies, these men are supposed to be the most eligible and the most capable and the most desirable candidates for judge in the area, and it would, therefore, seem that adding someone who would be less capable and less desirable to the list would be undesirable. I would urge the defeat of this motion.

THE CHAIRMAN: Is there any further discussion? Delegate Chabot?

DELEGATE CHABOT: Just before supper this Convention voted overwhelmingly to determine that under each and every circumstance in the matter of the size of the bar or whatever else, you must have at least three names on the list.

Now, the Convention is about to determine that there are many circumstances under which it is all right to have fewer than three names on the list.

I will bow to the will of the Convention, but I think it is being rather ridiculous.

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: I simply want to add that Delegate Bamberger is proposing the very argument which is an argument against what Chairman Mudd has said is highly improbable, but possible, that should a governor not exercise his obligation to appoint one of the nominees to the vacancy that power has been delegated to the judicial branch. We continue to feel that that is a violation of the doctrine of separation of powers, and it is in that spirit of certainly not violating the doctrine of separation of powers, but substituting language which would compel the governor to act, that this amendment by Delegate Chabot has been presented. I would add that this is preferable to having a chief judge of the Court of Appeals appointed from the list.

THE CHAIRMAN: Is there any further discussion? The pages have, I understand, already distributed the reprinted amendment. Will you please destroy the other?

Does everybody have the reprint?