

Has every delegate voted?

*(There was no response.)*

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 106 votes in the affirmative and 20 in the negative, the motion is carried, and the amendment is adopted.

Delegate Mitchell, do you still desire to offer your amendment to section 5.16, amendment CZ?

DELEGATE MITCHELL: I gladly withdraw it, Mr. President.

THE CHAIRMAN: Thank you.

*(Applause.)*

Delegate Beatrice Miller, do you still desire to offer your amendment to section 5.14?

DELEGATE B. MILLER: I would, Mr. Chairman.

THE CHAIRMAN: The page will distribute amendment DG.

Amendment No. 32. The Clerk will read the amendment.

READING CLERK: Amendment No. 32 to Committee Recommendation JB-1 by Delegate B. Miller: On page 4 of section 5.14, Nomination and Appointment, lines 45 through 50 inclusive, strike out beginning with the words "if the governor" in line 45 down to and including the period in line 50 and insert in lieu thereof the following: "The governor shall appoint one of the nominees within 30 days after receiving the list".

THE CHAIRMAN: Is the amendment seconded?

*(Whereupon, the amendment was duly seconded.)*

The amendment having been seconded, the Chair recognizes Delegate Beatrice Miller to speak to the amendment.

DELEGATE B. MILLER: Mr. Chairman, fellow delegates: This amendment seeks to state specifically what the governor must do and that he must do it most expeditiously.

I would suggest that we are attempting in this section to make statutory law and that we have rejected all such attempts at statutory legislation in this constitution when we were writing the other article.

It seems to me that we have accepted the fact that the word "shall" is a mandatory word, and all through this constitution we have said that the legislature "shall", the executive "shall", in the Declaration of Rights we use the word "shall", and we do not provide for what happens in the case of failure.

It seems to me that in this one article, and possibly in this the lawyers are writing their own article, we are attempting to write in all the "ifs", "ands", "buts" and "maybes"; but I submit they have no place in this constitution. Further I would point out that in the text of the phone call that we were given, that the members of the Judiciary Committee called the committee in Missouri, they could only think of one occasion when the governor did not act in pursuing the matter from the list, and I would say that in this case we are trying to provide, as Chairman Mudd said, for the improbable and what would be possible or probable. On the basis of that he gave us another amendment, and for this reason I would hope that we consider this amendment in terms of mandating what the governor must do in terms of the plan that we have adopted here.

THE CHAIRMAN: The Chair calls attention to the fact that this amendment is precisely the same as Amendment 26, except for the period of time in line 9, thirty days instead of sixty days and hopes debate will be limited accordingly. Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, my first observation, is that this amendment reduces the time in which the governor has to act after receiving the list of nominees, from sixty days to thirty days, and again it is possible, but may not be probable, that the thirty days may be a rather strict time in which the governor is allowed to act, especially in view of emergency matters that might occur simultaneously.

I, therefore urge the rejection of this amendment and ask the delegates to vote against it; also for the second reason that it is identical with the amendment that has been defeated by a rather substantial vote, which proposes to eliminate the last provision, which in our humble opinion supplies an alternative in the event, again I say, of the possible, but the improbable occurrence of the governor not exercising his power of appointment.

I would, therefore, urge the defeat of this amendment.

THE CHAIRMAN: Is there any further discussion? Delegate Weidemeyer.